Supreme Court. Ill. January Term
2d Division
1862.

People of the State of Illinois
use of Woods & Lourie
vs
L. Job & others } Writ of Error to Madison.

This cause was originally taken up by appeal by consent to this division. By consent it was ordered to stand in this court as a writ of Error. Leave of service waived appearance entered by counsel for defendants in Error.—

The undersigned counsel was not in the case below, but understands that the demurrer to the declaration was sustained by the Circuit Judge for the reason that there was no averment in the declaration, that the ~~said~~ property levied upon by the attachment, and directed to be sold by the Special

fi. fa. was the property of the defendants in the attachment suit. It was urged, as I am informed, that the plaintiffs should on the face of the declaration recover no damage, as he received none unless the property was actually defendants and not a stranger. It is hardly conceivable that such a decision should ever have been made, but upon a careful inspection of the declaration, no other possible objection of any the least plausibility can be found.

Now it is very clear that when the Sheriff makes a return that he levied upon certain property of A. B. the presumption is that it is the property of A B, or else he would not have levied upon it. In the present case the Sheriffs returns in addition, that said property was in possession of the ~~defendant~~ at the time of levy. Now ~~[illegible]~~

if since the levy the Sheriff has lost possession by act of God any public calamity, or by legal process he is certainly bound to account for it and let it up by way of defence.

The plaintiff is informed of the levy & thinks his debt secured. If Sheriff has doubts in regard to property he ought not to make the levy. The plaintiff may then seek for other property of his debtor, whose title is indisputable. We think that by this levy the Sheriff absolutely bound himself for the title of the property, unless by subsequent events, such as named before, he lost possession. Of course he must show such events, and plead them in defence.

The brief filed in this case contains abundant authorities, for the views here advanced, if there was any necessity for relying

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Copy of
Woods & Lowrie
vs
L. Lob & others

argument of
Counsel for
plaintiffs
in Error.

Submitted

Filed Jan 14. 60
Wm A. Shaw
Cl

SUPREME COURT, JANUARY TERM, 1860.

PEOPLE, use of WOODS, LOWERY & Co.,
vs.
ZEPHANIAH B. JOB, and others.

The question in this case is as to the sufficiency of the declaration. It avers a levy by Job, upon *all the right title and interest of Field* in certain personal property. He and his sureties are sued upon the alleged ground that he has failed to [illegible] property to satisfy the debt.

We admit that the current of the authorities is to the effect that *in general* a sheriff cannot contradict his return, except as to the *ownership* of property levied on, and some few other cases.

Also, that where a sheriff in his return states the property *to belong to the debtor*, or that it was *found in his possession* it is *prima facie* evidence of ownership in the defendant. The reason why the law raises this presumption in these cases is, because in the first instance the sheriff has said it was defendant's property; and in the other he has set forth the fact of the defendant's possession from which the presumption of ownership arises.

In the case before the court, the sheriff has neither stated the property to belong to the defendant, and has expressly negatived that it was found in his possession. Hence no statement is made or fact shewn from which the presumption of title or ownership of the property in dispute in the defendant can arise; and consequently the averment should in this case have been made that the defendant in the writ was the owner of all or some part of the property levied on. Without such averment, plaintiffs fail to show that they are injured by the neglect of the sheriff to sell. The presumption of law is, that public officers do their duty. The words *all the right, title and interest*, &c., can consist as well with a case where there is no interest, as where there is an interest, and so we understand the use of these words in conveyances. If one sells all his right, title and interest in lands, and it turns out that he had no interest; he is not responsible, for the fact was not inconsistent with any thing that was stated.

All the cases we have met with are where the levy states the property to be the property of the defendant in some form or other, or where it states the property to be in the possession of the defendant in the writ. We advert in this connection to a mistake in the abstract of this case in respect to the statement that the property was found in the possession of Field, when in fact the contrary expressly appears in the record.

BILLINGS & GILLESPIE,
for Defendants in Error.

Plaintiffs must show that they have sustained damage by the act of the sheriff before they can recover. Nash vs Whitney, 39 Maine 343–5.

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Job

ads

Woods, Lowery & Co

Brief

Filed Jan 20/60

Wm A Emery

Jr

SUPREME COURT, JANUARY TERM, 1860.

PEOPLE, use of WOODS, LOWERY & Co.,
vs.
ZEPHANIAH B. JOB, and others.

The question in this case is as to the sufficiency of the declaration. It avers a levy by Job, upon *all the right title and interest of Field* in certain personal property. He and his sureties are sued upon the alleged ground that he has failed to sell the property to satisfy the debt.

We admit that the current of the authorities is to the effect that *in general* a sheriff cannot contradict his return, except as to the *ownership* of property levied on, and some few other cases.

Also, that where a sheriff in his return states the property *to belong to the debtor*, or that it was *found in his possession* it is *prima facie* evidence of ownership in the defendant. The reason why the law raises this presumption in these cases is, because in the first instance the sheriff has said it was defendant's property; and in the other he has set forth the fact of the defendant's possession from which the presumption of ownership arises.

In the case before the court, the sheriff has neither stated the property to belong to the defendant, and has expressly negatived that it was found in his possession. Hence no statement is made or fact shewn from which the presumption of title or ownership of the property in dispute in the defendant can arise; and consequently the averment should in this case have been made that the defendant in the writ was the owner of all or some part of the property levied on. Without such averment, plaintiffs fail to show that they are injured by the neglect of the sheriff to sell. The presumption of law is, that public officers do their duty. The words *all the right, title and interest*, &c., can consist as well with a case where there is no interest, as where there is an interest, and so we understand the use of these words in conveyances. If one sells all his right, title and interest in lands, and it turns out that he had no interest; he is not responsible, for the fact was not inconsistent with any thing that was stated.

All the cases we have met with are where the levy states the property to be the property of the defendant in some form or other, or where it states the property to be in the possession of the defendant in the writ. We advert in this connection to a mistake in the abstract of this case in respect to the statement that the property was found in the possession of Field, when in fact the contrary expressly appears in the record.

BILLINGS & GILLESPIE,
for Defendants in Error.

Plaintiffs must show that they have sustained damage by the act of the sheriff before they can recover. Nash vs Whitney, 39 Maine 343–5.

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January. 15. 1870

Wm A. Turney Esq.

Enclosed find written argument in case of People use of Woods & Lorrie vs Lee. —

Please hand an abstract immediately to the Mess. Gillespie, and whenever the case is called, or submitted by defendant in Error, hand the argument to Court, or you can file it now with the record, and state to Court, when case is called, that I have submitted it.

I don't want the case continued at all.

Yours truly

G. Rommer

State of Illinois }
Madison County }

Plea of record in the circuit court of Madison County State of Illinois,

Be it remembered that heretofore to wit: on the 7th day of April A.D. 1859 was filed in the Clerk's office of said circuit court, a Praecipe and bond for costs, in the words and figures as follows to wit:

State of Illinois } Madison Circuit Court
Madison County } May Term A.D. 1859.

The People of the State of Illinois for the use of James H Woods and John Lowry partners doing business under the name style and firm of Woods & Lowry

vs

Zephaniah B Job John A Pickett Gameson ~~George~~ R Austin, Eastman Trieb, Edward J Dorsey, and Joseph H Slop.

Debt $10,000
Damages $4,000

The clerk of the Madison circuit court will please issue summons in the above entitled cause, according

To Statute, returnable to May Term A.D. 1859
& much oblige

Jos. H. Slop Atty for Pltff

The People of the State of Illinois
for use of James H Woods &
John Lowry Partners &c,

vs

Zephaniah B Job, John A Pickett, ~~George~~ Gordon R Austin, Eastman T Irish Edward J Dorsey, & Joseph H Slop,

Madison cir Court May Term 1859.
Debt $10,000
Damages $4,000

I do hereby enter myself security for costs in the above entitled cause, and acknowledge myself bound to pay, or cause to be paid all costs which may accrue in this ~~cause~~ action either to the opposite party, or to any of the officers of this court in pursuance of the laws of this State, April 5th 1859.

M. G. Dale,

Whereupon on the same 7th day of April A D. 1859 was issued out of, and under the seal of said Circuit Court a summons in words and figures following to wit: —

State of Illinois }
Madison County } The People of the State

of Illinois. To the Sheriff of Madison County Greeting; We command you — That you Summon Zephaniah B Job, John A Pickett, ~~George~~ Garretson R Austin, Eastman T Irish, Edward J Dorsey, and Joseph H Sloss, To appear before the circuit court of Madison County on the first day of the next Term to be holden at the Court House in Edwardsville on the First Monday in the month of May A.D. 1859, to answer unto the People of the State of Illinois for the use of James H Woods and John Lowry partners doing business under the name style and firm of Woods & Lowry, of a Plea of Debt for Ten Thousand Dollars, and to their Damage Four Thousand Dollars as they say. And have you then and there this writ.

Witness Thos. O Springer Clerk of said circuit court, and the seal thereof at Edwardsville this 7th day of April in the year of our Lord one Thousand Eight Hundred and Fifty nine,

Thos. O. Springer, Clerk

Upon the back of which the Sheriff endorsed his return as follows to wit:

I have executed this writ on the within named Zephaniah B. Job, by reading the same to him on the 11th day of April A.D. 1859. also executed on the within named John A Pickett & Joseph A Sloss, by reading the same to each of them on the 11th day of April 1859. also executed on the within named ~~George~~ Gurkson R Austin, & Eastman T Irish on the 18th day of April by reading the same to them. also on the within named Edward J Dorsey by reading the same to him on the 15th day of April A D 1859.

W. T. Brown, Sheriff, M. C
By R Friday Dpty

And afterwards to wit: on the 21st day of April A.D. 1859. was filed in the Clerks office of said circuit court a Declaration in words and figures following to wit:

State of Illinois }
Madison County } ss. In the Madison Circuit court
May Term A.D. 1859.

The People of the State of Illinois. who sue for the use of James H Woods and John Lowry partners doing business under the name style and firm of Woods & Lowry plaintiffs in this suit - Complain of Zephaniah B Job

John A Prickett, Gideon ~~George~~ R Austin, Eastman T. Irish, Edward J Dorsey and Joseph H Slop, defendants in this suit of a plea that they render to the said plaintiffs, for the use aforesaid the sum of Ten Thousand Dollars which they owe to, and unjustly detain from them, For that whereas the said Zephaniah B Job was, at the election held on the fourth day of November in the year of our Lord one Thousand Eight hundred and Fifty six, elected sheriff of the said County of Madison for the term of two years, and whereas the said Zephaniah B Job, To qualify himself for the office of sheriff as aforesaid, in and for said County, under the Statute of the State of Illinois in such case made and provided, executed his bond, commonly called an official bond, with the said John A Prickett, Gideon ~~George~~ R Austin Eastman T Irish, Edward J Dorsey and Joseph H Slop, as his securities, and thereby heretofore to wit, on the first day of December in the year of our Lord one Thousand Eight hundred and fifty six, at the County of Madison aforesaid, they the said Defendants by their certain writing obligatory, sealed with their respective seals — The said Zephaniah B Job, executing the same by the name

and abreviation of Z. B. Job. and the said ~~George~~ G R Austin by the abreviation of G. R. Austin, and the said Eastman T Irish by the abreviation of E. T. Irish, and the said Edward J Dorsey by the abreviation of E. J. Dorsey, jointly and severally, firmly acknowledged themselves to be held, and firmly bound, to the People of the State of Illinois in the just and full sum of Ten Thousand Dollars, for the payment of which well and truly to be made, they bound themselves, their heirs, Executors and administrators jointly and severally, firmly — which said writing obligatory was, and is subject to a certain Condition thereunder written; whereby it was Conditioned, that, whereas the above named Defendant Zephaniah B Job was at the election held on the 4th day of November A.D. 1856, elected sheriff of said County of Madison, Now if the said Zephaniah B Job shoud faithfully discharge all the duties, required, or to be required of him, by law, as sheriff of said County of Madison, then the said writing obligatory was to be void, otherwise to be and remain in full force and virtue, — and which said writing obligatory with the condition aforesaid thereunder written, was approved by Thomas A Springer on the fourth day of December

in the year of our Lord one Thousand eight hundred and fifty six, then acting and duly elected and qualified clerk of the circuit court within and for the County of Madison aforesaid, no circuit court being held within said County of Madison within thirty days after the said Zephaniah B Job had received notice that his commission as sheriff of said Madison County as aforesaid had been received by the clerk of the circuit court of the County of Madison aforesaid, and the said Zephaniah B Job then and there before the clerk of the circuit court of the County of Madison aforesaid took and subscribed the oath required of him by law to do, and the said writing obligatory with the condition aforesaid was then and there received by the People of the State of Illinois - and thereupon the said Zephaniah B Job then and from thenceforth until, and at and after the misconduct, and default of the said Zephaniah B Job as sheriff of the County aforesaid hereinafter complained of, took upon himself to discharge - and were then and there sheriff of said County to wit, for the term of two years, computed next after the fourth day of November A.D. 1856, and until his successor was thereafter elected and qualified,

And the said Plaintiffs for the use of

the said James H Woods and John Lowry partners doing business under the name, style and firm of Woods & Lowry, avers that the said Zephaniah B Job did not faithfully discharge all the duties required of him by law, as said sheriff of said County of Madison during his said term of office in this to wit; That whereas James H Woods and John Lowry, partners doing business under the name style and firm of Woods & Lowry in pursuance with the Statute in such case made and provided, caused to be issued out of the clerks office, and under the seal of the circuit court of Madison County aforesaid a certain writ commonly called a writ of attachment directed to the sheriff of Madison County aforesaid, by which said writ of attachment, the said sheriff, who at the time was the said Zephaniah B Job, was commanded to attach so much of the Estate, real and personal, rights and credits, moneys and effects, of N. T. Crop, Thomas A Simpson and Franklin Field partners under the name, style and firm of N. T. Crop & Co to be found in his County as shall be of value sufficient to satisfy the Debt (Three Thousand two Hundred and Fifty Eight Dollars), for which the suit in which

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said writ of attachment was issued was brought to recover, besides the costs of suit, according to the complaint of the said James H Woods and John Lowry partners under the name style and firm of Woods & Lowry who were the plaintiffs in said suit, and the said sheriff was, by the said writ of attachment, commanded, such estate, so attached in his hands, to secure, or so to provide that the same might be liable to further proceedings thereupon, according to law, at a court, to be holden at Edwardsville, for the said County of Madison, upon the second monday in the month of may A.D. 1858, so as to compel the said H.T. Crop, Thomas A Simpson, and Franklin Field, partners &c, to appear and answer the complaint of the said James H Woods and John Lowry partners as aforesaid, — which said writ of attachment was dated and issued on the Eighth day of February in the year of our Lord one Thousand Eight hundred and Fifty Eight,

And which said writ of attachment was delivered to the said sheriff, being the said Defendant Zephaniah B Job, and came to his hands on the 8th day of February A.D. 1858, to be executed in due form of law.

By virtue of which said writ of attachment, the said Sheriff, being the said Defendant Zephaniah B Job, as appears by the return made by said Sheriff on said writ, levied the same, the fifteenth day of February 1858, - upon all the right, title and interest, of Franklin Field in and to the following per= =sonal property to wit: Two Dun mules about 4 years old, one Gray mule and one roan mule, about 6 years old, one yoke of work oxen, and eight head of horses, (which was des= =cribed as then being in the possession of William Wooldridge, in Madison County Illinois, - also upon the undivided one half of the North East ¼ of section No. 21, in Township No. five, North of Range, No. nine west, of the third P.M., in Mad= =ison County Illinois, containing 160 acres

Plaintiffs further aver, that the said writ of attachment was issued in a certain cause commenced and prosecuted in the circuit-court of said Madison County to the May Term thereof A.D. 1858, by James H Woods and John Lowry partners doing business under the name style and firm of Woods & Lowry, plaintiffs, and against H. T. Crop, Thomas A Simpson and Franklin Field, partners under the name, style & firm of H. T. Crop & Co, defendants, and that at

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the may Term of the circuit-court of said Madison County A.D. 1858, the said James H Woods and John Lowry partners doing business under the name style and firm of Woods & Lowry obtained and recovered a judgment, in said cause against the said N. T. Cross, Thomas A Simpson and Franklin Fields partners under the name style and firm of N. T. Cross & Co. — for Three Thousand two hundred and ninety two Dollars and fourteen cents, damages, besides the sum of twenty one dollars and fifty five cents costs of and in the said suit, as by the record thereof in said court appears,

And the plaintiffs further aver, that the said James H Woods and John Lowry, partners doing business under the name style and firm of Woods & Lowry, afterwards (viz:) on the fourteenth day of June in the year of our Lord one Thousand Eight hundred and Fifty Eight, sued and prosecuted out of the court aforesaid a certain writ called a special Execution, upon the said judgment, directed to the ~~said~~ sheriff of said Madison County, who at the time was the said Defendant Zephaniah B Job; by which said writ, the People of the State of Illinois commanded the said sheriff that of the property attached by virtue of the writ of attachment aforesaid, and which

said property was, and is described in the return upon said writ of attachment by the said sheriff as aforesaid, he should cause to be made the sum of Three thousand two hundred and Ninety two Dollars and four= =teen cents, damages aforesaid, and Twenty one dollars and Fifty five cents, costs as aforesaid, so as have the same, together with interest thereon at the clerks office of said circuit court at Edwardsville within ninety days from the date of said writ, to render the said James H Woods and John Lowry partners as aforesaid, their damages, interest and costs aforesaid, and which said writ was delivered to the said sheriff being the said defendant Zephaniah B Job, and came to his hands on the 21st day of June A.D. 1858, at 11 o'clock a.m. - to be executed in due form of law. = That the said sheriff, who was at the Time, the said Defendant, Zephaniah B Job, afterwards, To wit: on the Seventeenth day of September in the year of our Lord one Thousand eight hundred and fifty eight, returned the said writ into the office of the clerk of the circuit court of said Madison County with his return thereon "that" this special Execution is credited with the sum of two hundred

and Eighty one 29/100 Dollars on the Damages & interest, due thereon, and the further sum of Forty six 45/100 Dollars, being the costs due thereon, by the sale of the Real Estate hereinbefore described; for particulars of which, reference is to full return indorsed on special Execution No. 8812 which said sum of $281, 29/100. I have paid to plaintiffs attorneys or agents as per receipt — hereon indorsed — The personal property herein= =before recited and set forth I have not been able to find in my Bailiwick, and consequently have been unable to sell the same as herein commanded. — This Special Execution ~~is returned~~ not satisfied in full"

And the plaintiffs further aver that the said personal property described in the return of the said sheriff, who was at the time the said defendant Zeph= =aniah B Job, upon the said writ of attach= =ment; and out of which, by the said special Execution, the said sheriff, who was at the time the said defendant Zephaniah B Job, was commanded to make the amount of Judgment interest and costs of suit, in the said suit of James H Woods and John Lowry partners doing business under the name style and firm of Woods & Lowry, Plaintiffs, against N. T. Crofs Thomas a

Simpson and Franklin Field, partners, under the name style and firm of A. F. Cross & Co. defendants, towit: Two Dun mules about four years old, one gray mule, and one Roan mule about six years old, one yoke of work oxen and eight head of horses, - were of the value of four Thousand Dollars,

And the plaintiffs aver that the said Defendant Zephaniah B Job, of the said attached property, so as aforesaid described, did not cause to be made the said sum of Three Thousand, two Hundred and Ninety two Dollars and fourteen cents damages and Twenty one Dollars and fifty five cents costs, together with interest thereon, as commanded by virtue of the said Special Execution, at the Clerks office of said circuit court at Edwardsville, within ninety days from the date of the said Special Execution, to render the said James H Woods, and John Lowry partners as aforesaid, their Damages, interest and costs aforesaid; and had not at the time of the commencement of this suit,

And the plaintiffs further aver, that the said sheriff, who was at the time the said Defendant Zephaniah B Job, did not take and retain the custody and possession of the personal property towit: two dun mules, about

four years old, one bray mule and one Roan mule, about six years old, one yoke of oxen, and eight head of horses, attached by virtue of the said writ of attachment sued out and prosecuted as aforesaid by James H Woods and John Lowry partners doing business under the name style and firm of Woods and Lowry, against H. T. Crofs, Thomas A Simpson and Franklin Field, partners under the name style and firm of H. T. Crofs & Co, to answer and abide by the judgment of the Court — nor did the said ~~Sheriff~~, who was at the time the said Defendant, Zephaniah B Job, take from the person in whose possession the said property was found, a bond and security as by law required, in such cases = and the plaintiffs further aver that the said defendant Zephaniah B Job, has wholly failed and neglected — make the said sum of Three Thousand Two Hundred and ninety two Dollars, and fourteen cents together with the sum of Twenty one Dollars and fifty five cents, with the interest thereon, as he was by said Special Execution commanded to do, of the property attached by him in virtue of the said writ of attachment as aforesaid, although often requested so to do, of all which premises the said defendants

afterwards and before the commencement of this suit; to wit: on and at, &c had notice,

And the said plaintiffs in fact say, that the said Zephaniah B Job did not faithfully discharge all the duties required of him by law, as sheriff of said County of Madison, and that the said James A Woods, and John Lowry, partners doing business under the name, style and firm of Woods and Lowry, for whose use this suit has been brought, have been injured as aforesaid, by the said misconduct and neglect of the said Zephaniah B Job, as sheriff as aforesaid - whereby an action hath accrued to the plaintiffs to demand and have of and from the Defendants the said sum of Ten Thousand Dollars; yet the said Defendants have not, nor hath either of them paid the same, or any part thereof, to the damage of the plaintiffs for the use of, as aforesaid, Four Thousand Dollars - and therefore they bring suit &c.

Jas. A Sloss
Atty for Pltffs,

Copy of writing obligatory sued on,

Know all men by these presents that we Zephaniah B Job, as principal, and John A

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Prickett, G. R. Austin, E. T. Irish, E. J. Dorsey & Jos H. Slop, all of the County of Madison and State of Illinois are held and firmly bound to the People of the State of Illinois, in the just and full sum of Ten Thousand Dollars, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, dated at Edwardsville this First day of December A.D. 1856,

The condition of the above Bond is such, that whereas Zephaniah B Job, was at the Election held on the 4th day of November A.D. 1856, elected sheriff of said County of Madison, Now therefore if the said Zephaniah B Job, shall faithfully discharge, all the duties required, or to be required of him by law, as sheriff of said County of Madison, then this obligation to be void, otherwise to be and remain in full force and virtue,

This Bond approved in open court, this day of 185

Z. B. Job (seal)
John A Prickett (seal)
G. R. Austin (seal)
E. T. Irish (seal)
E. J. Dorsey (seal)
Joseph H. Slop (seal)

Circuit court

This Bond approved by me this 4th day of December A.D. 1856,
Thos. O. Springer
Clerk of Circuit Court
in Madison County Illinois.

State of Illinois
Madison County } I Thos. O. Springer Clerk of the circuit court within and for the County and State aforesaid, certify that the foregoing is a full, true, and correct copy of the official bond, of Zephaniah B. Job, as Sheriff of Madison County Illinois as the same is on file in my office,

In Testimony whereof I have hereunto signed my name, and affixed the seal of said Court at Edwardsville, this 21st day of April A.D. 1859.

L.S.

Thos. O. Springer, Clerk

And afterwards to wit: on the 2d day of may at the may Term A.D. 1859. an order was made and entered of record by said court in said cause in words and figures following to wit:

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The People of the State of Illinois for the use of James H Woods and John Lowry partners doing business under the name style firm of Woods & Lowry,

vs

Zephaniah B Job, John A Pickett, George R Austin Eastman T Nish, Edward J Dorsey and Joseph H Slofs,

Debt

This day came the plaintiffs by their attorney, and it appearing to the court that the Defendants have been duly served with process herein, time until Saturday is given Defendants to plead.

and afterwards to wit; on the 13th day of May at the May Term A.D. 1859 a further order was made and entered of record by said court in said cause, in words and figures following to wit:

The People of the State of Illinois for use of James H Woods & al,

vs

Zephaniah B Job & al,

Debt

On motion it is

ordered that this cause be continued until the next term of this court.

And afterwards towit: on the 18th day of October at the October term A.D. 1859 the Defendants by attorney filed in said Court their Demurrer to the Declaration of plaintiffs herein, which is in words and figures following towit:

Zephaniah B Job. John A Prickett and others,
ads
The People of the State of Illinois for the use of Woods Lowry & Co.

of the October term A.D. 1859 of the circuit Court of Madison County, Illinois.

The said Defendants by Billings & J. D. Gillespie, their attorneys come and defend &c, and say actio non because they say that the said Declaration, and the matters and things therein in manner and form as alleged are not sufficient in law, for the said People for the use aforesaid to have and maintain their action aforesaid, against these Defendants, and this the said Defendants are ready to verify, wherefore &c, they pray judgment &c.

Billings & Gillespies for Defts.

and afterwards on the same 18th day of October at the October Term A.D. 1859. a further order was made and entered of Record by said court in said cause in words and figures following to wit:

The People of the State of Illinois for the use of James A Woods and John Lowry, partners as Woods & Lowry,
vs
Zephaniah B Job, John A Prickett George R Austin, Eastman T. Irish, Edward J Dorsey and Joseph St Slop,
} Debt

This day came the plaintiffs by their attorney, and also came the Defendants by attorney, and file their Demurrer to the Declaration of plaintiffs herein, whereupon the court heard argument of Counsel, and being advised in the premises It is considered that said Demurrer be sustained, to which decision of the court, the plaintiffs by attorney at the time excepted.

And afterwards to wit: on the 21st day of October at the October Term A.D. 1859. a further order was made and entered of

record by said court, in said cause in words and figures following to wit:

The People of the State of Illinois for the use of James H Woods, and John Lowry partners &c as Woods & Lowry,

vs

Zephaniah B Job, John A Prickett George R Austin, Eastman T. Irish, Edward J Dorsey and Joseph H Slop,

Debt.

And now again at this day come the parties by their attorneys ~~and the~~ said plaintiffs having taken time to consider whether they would amend their Declaration or not, and afterwards having declined to amend the same, but being willing to abide by the said Demurrer. It is therefore considered by the court that the Defendants have judgment against the said plaintiffs on said Demurrer, and recover of and from the plaintiffs their proper costs to be taxed in this behalf, and have Execution therefor &c. whereupon the plaintiffs pray an appeal, to the supreme court of the State of Illinois, which is granted by the court. and by consent the same is to go to Springfield

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without a bond.

State of Illinois,
Madison County } I Thos. A. Springer Clerk of the circuit court within and for the County and State aforesaid certify that the foregoing is a true and correct copy of all the papers, process, pleadings and orders of Court in the above entitled cause as truly and correctly as the same now remain of Record, and on file in said Court.

In Testimony whereof I have hereunto signed my name and affixed the seal of said Court at Edwardsville this 30th day of December A.D. 1859

Thos. A. Springer Clerk

Supreme Court of Illinois
Springfield Division. } January term 1860

And now come the appellants by Roemer & Hoff & Rutherford and say that there is error in the record & proceedings in the above case & assign for Error.

That Court sustained defendants demurrer to declaration, & gave Judgment on the demurrer against the plaintiffs. —

Roemer, Hoff & Rutherford for appellants

Joinder in Error.

Billings & Gillespie

144.

People of the State of Illinois for the use of James H. Moore & Wife vs Schlencie B. Doe & others

Appeal from Madison.

14014

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Recd Jan 5, 60
Montgomery Clk

35. 25