

14167

No. _____

Supreme Court of Illinois

Love

vs.

Fairfield, et al.

71641  7

McJilton vs
Love.

In the Supreme Court of Illinois
This is an appeal from the Madison
Circuit Court ~~Court~~ sitting as a
Court of Equity.

The bill stated that one Fairfield
had obtained a judgment in the Circuit Court of St. Louis
against Love for Eighteen hundred Dollars
(\$800⁰⁰). That execution issued thereon, and being satis-
fied by Love was so returned, ^{and the judgment was entered satisfied} that at the return of the
writ ^{of execution} Field & Hall, claiming to be assignees of part ^{\$500.}
of this judgment, and alleging that Love had notice
of such a assignment, moved the Court to vacate the entry
of satisfaction and award execution to the extent
of five hundred Dollars: which motion the St. Louis Ci-
cuit Court sustained. That the defendant Love pro-
secuted a writ of error to the Supreme Court of Missouri
that in the meantime Field, ^{& Hall} taking to Illinois the trans-
cript of the Missouri record, sued Love by attachment in
Madison County and obtained judgment on which ex-
ecution issued and the real estate of Love was sold
thereunder to McJilton who ^{and after the staying out of said writ of error} prior to the sale, became
the assignee of Field & Hall as to the judgment against
Love. The Sheriff delivered to McJilton a certificate
of purchase. (the bid being ^{for} the amount of the debt &
costs) and the execution was returned.

Before the expiration of the year following the
sale by the Sheriff, the judgment of the St. Louis Circuit
Court was reversed & heid for naught by the Supreme Court
of Missouri. Love immediately filed his bill setting forth
the above stated facts, and asking relief. The Court enjoined

McJilton and the sheriff from any further proceedings under the sale. An answer was filed by McJilton denying notice of the writ of error to the St Louis Circuit Court pending at the time of his purchase of the judgment from Field & Hall. but not controverting any material fact stated in the ~~answer~~ Bill

At the hearing it was admitted that McJilton was a resident of St Louis Missouri. For the rest, the case was heard upon bill answered.

For the respondents it was insisted.

1^o. That McJilton denied notice of the writ of error, which was pending when he purchased the judgment from Field & Hall. That he must therefore be regarded as an innocent purchaser for value.

2^o. That Love had been guilty of laches, in not availing himself of the plea of payment to Fairfield in bar of the ~~judges~~ action on the judgment against him in Madison County Illinois - and therefore was not relievable ~~against~~ in equity.

3^o That the order of the St Louis Circuit Court setting ^{in favor of Field & Hall} aside the entry of satisfaction of the judgment against Love was no judgment; and consequently there was no reversal of the judgment of the St Louis Circuit Court.

4^o. That the judgments of the State of Illinois were too sacred to be reversed or set aside by the action of the Court of Missouri.

5^o. That Love should have pleaded the pendency of the writ of error to the judgment of the St Louis Circuit Court, in bar or in abatement of the action on

that judgment in the Madison Circuit Court & having failed to do so, Equity will not relieve him now.

6 That Love has an ample remedy on the attachment bond and need not come into Equity for relief.

For the Complainant it was insisted.

1^o That the reversal of a judgment is a reversal of a judgment obtained in an action on that original judgment. 1 Pennington's R 79. Id. 165. 2 Pennington 1034. 14 Mass. 233. 15 Mass 207.

2^o. That McJilton, who was owner of the judgment at the time of the sale in Illinois by the sheriff was affected with notice of lis pendens. He was bound to take notice of the whole record, both in Missouri & Illinois. 1 Johns. Ch. Rep 566; and see Fonblaque & Equity 418 & 419. (top page). (4 Am. Edition) With respect to the nut denor and every fact in the cause McJilton could no more claim to be an innocent purchaser than could John Fitch & Hall.

3^o. That Love had been guilty of no laches. He could no more have pleaded payment to the action on the judgment in the Madison Circuit Court than he could have interposed the same plea to an action on the judgment in Missouri. His only plea was nul tuel record: and on this plea the facts were against him so long as the judgment remained unreversed. Hampston on McCorneil 3. Wheat. 234. Millin Dungey 7 Cr. 481.

4^o. That the action of the St. Louis Circuit Court vacating the entry of satisfaction and awarding execution against Love was clearly a judgment of that Court and was reversed by the Sup. Court of Mo.

In support of which proposition appellee refers to the record.

5^o No infringement of the sovereignty of Illinois is implied by her courts correcting an error into which they had been by the mistake of the Courts of Missouri, when the action of the Missouri Court is of itself first corrected by its own appellate tribunal.

6^o Law courts not have pleaded in ~~bar~~ abatement of an action in Illinois the pendency of a suit in Missouri of Johns. 221. 12 Johns 99.

7^o That Lore without any delay resorted to the only defence which he ever had to the action in the Madison Circuit Court, which arose when the Supreme Court of Missouri reversed the judgment of the St Louis Circuit Court.

The Court decreed for the ~~complainant~~ ^{McGilroy} making the injunction against ~~Lore~~ ^{perpetual}.

8^o That by the reversal of the judgment of the Supreme Court of Missouri, Lore is entitled to have the judgment of the Madison Circuit Court, reversed a perpetually enjoined - and as a consequence of this even if he had obtained a deed from the sheriff he would be compellable to convey to Lore.

11 Illinois Rep. 579. McLagan vs Brown.

The Court decreed for Lore making the injunction perpetual; and McGilroy appealed to the Supreme Court.

The appellee, ^{in support of the judgment of the court below} relies on the same points which he used to procure it.

non perperat & ad in favorem appellatorum
Supreme Court.
The appellee, ^{in support of the judgment of the Court below} relies on the same points which he used
to procure it.

In support of the first point made by the appellee, he begs leave
to remark that the reason of the rule is well satisfied by the
~~authority of the~~ respectable authorities cited. They contain the
argument of the matter, especially the cases in 1. Perring-
ton. and to them the Supreme Court is respectfully refer-
red.

In support of the second point, it is submitted that it
needs no argument to show that a man is bound to know
the contents of his own title papers. And as McFeltow a
resident & citizen of Missouri was the owner of the
judgment in Missouri on which suit had been brought
in Illinois, he was of course bound to know whatever the Mis-
souri record would disclose. The writ of error to the Missouri
Circuit Court was, besides, pending when he became
the purchaser of the judgment from Field & Hall - and
was therefore his pendens of which he was bound to take
notice. 1 Johns. Chan. Rep. 566. Fonblaque, Equity 418-19
top page (4th Am Ed.). By the purchase from Field
& Hall under the circumstances, he became affected
with the ~~knowledge~~ ^{notice} of every fact with respect to which
he denies it.

3^o. The third point need not detain us long. That the order
of the Missouri Circuit Court vacating the entry of satisfaction
and awarding execution was conclusive on law in Missouri
until reversed, cannot be gravely denied. By this order
the fact of payment to Fairfield was not gained: but
it was denied that Field & Hall, as signers, were bound
by it. It was in Missouri a res judicata. The award
of execution was made on the judgment of the Court.
No plea, ^{is an action on the judgment} except nil in record would have stood the test
of a demurrer - and until the judgment was reversed
that plea was false. See 3 Wheat. 234. 7 Branch. 481

The fifth & sixth points are submitted without ar-

gment.

6. In support of the 6th point made by appellee it may be remarked that beside the reasons shown in the authorities cited (9 Johns 20. 12 Johns 99.) there was in fact no writ of error pending in Missouri at the time when the pleas were filed to the writ on the judgment in Illinois. This is evident from the record.

Will it be said then that Love was dilatory in springing out his writ of error? This cannot be, for he must have done it within the time fixed by law, else it would not have been successful. Five years are allowed to a plaintiff in error to sue out a writ of error to reverse an erroneous judgment in Missouri. (Ill Rev. Co 1845. Practice in Supreme Court. § 3.) No man is guilty of laches who conforms to the law. It was owing to the failure of Mr Field to furnish to the clerk of the Illinois Circuit Court a copy of the assignment under which he claimed, that there was any delay in issuing out the writ of error but this does not appear by the record and it is sufficient to state here that we were in time according to the laws of Missouri as decisively appears by the action of the Supreme Court itself.

7. That Love without delay resorted to the only measure which lay open to his adoption is shown by the date of the reversal of the judgment in Missouri, (which was, at the term beginning 3rd Monday of March 1850.) and the time of filing the bill for an injunction. The copy of the Missouri record was furnished during the term at the Illinois Circuit Court.

is shown by the date of the reversal of the judgment in Missouri, (which was at the term beginning 3^d Monday of March 1850.) and the time of filing the bill for an injunction. The copy of the Missouri record was furnished during the term at the special instance of Love.

8^o. Little consideration is necessary to show how devoid of Equity would be any attempt on the part of Mr. Filson "to keep his bargain" as he calls it notwithstanding the reversal of the judgment. But the whole matter is properly disposed of by the decision of the Supreme Court of Illinois in the case of *McLagen v. Brown*. 11 Ill. Rep. 519. It is there decided that if the plaintiff in the execution become the purchaser ^{of land} and the judgment be afterwards reversed for error, the plaintiff must not merely return to the defendant, or pay to the defendant, the money which he bid for his property, but must treat the sale as a nullity and restore the property sold. The Equity & good sense of the rule are too plain to need argument in their support.

In the case at bar, the purchaser, be it said, being the plaintiff, had never actually become entitled to a deed for the land. Before the time for redemption had elapsed, it was shown to the Court that his claim for a deed was entirely defeated.

For these reasons, the appellee respectfully prays the affirmance of the judgment of the Court below.

Thos. J. Gault
of counsel for Jas. Love.

In the Supreme Court of
Illinois

McFiltow & others
appellants

vs
James Love, appel-
lee.

Argument for appellee

Thos J. Gantt
for appellee.

James Love
as
Arthur Fairfield & others

} Bill for an Injunction
}

This day comes the Complainant
by Gallispies his Solicitors and makes proof
to the Court of due notice having been given
of the pendency of this suit by publication
as required by the Statute in such case made
and provided - Therefore on Motion - It is
Ordered that Defendants be ruled to answer
by Saturday next -

Which said Notice is in words and
figures, as follows. To wit:

"
Madison Circuit Court
State of Illinois } August Term
Madison County } ss } AD 1850

James Love
as
Arthur Fairfield, Alexander P
Field, David N Hall, James T
McCilton, Andrew Miller Sheriff
of Madison County, Illinois, John
G Cameron, and William Hadley
Administrator of the Estate of
John Duncan dec'd

}
In Chancery
}

Bill for Injunction and Relief

It appearing by affidavit on file in the Clerk's Office of the Circuit Court of Madison County aforesaid, in the above entitled cause, that Arthur Fairfield, Alexander P Field, David N Hall, James F L^c Gilton, and John G Cameron, five of the above named defendants, are non-residents of the State of Illinois so that the ordinary process of said Court cannot be personally served upon them, and the said Complainant having filed his bill of Complaint herein for an injunction and relief, and a subpoena in Chancery having been issued herein according to law -

Now you

the said Defendants, whose non-residence appears as above, are hereby notified, that unless you shall be and appear before the Circuit Court aforesaid on or before the first day of the next day Term thereof to be holden at the Court House in the Town of Edwardsville, on the third Monday in the month of August A.D. 1850, and plead, demur, or except to, or answer the Complainant's bill according to the rules and practice of said Court, the same will be taken as confessed, and a decree will be made according to the plea thereof

Dated at Edwardsville - April 29, 1850
Attest Wm T Brown, Clerk
J. S. Gillespie Sal'r for Compl't Edwardsville May 2, 1850
7.97r

To which Notice was attached a Certificate
of Publisher of Paper - which is in words
and figures as follows To-wit: =

Edwardsville August 2. 1850

I Robert H Peggles one of the publishers of the
Madison Record, a weekly newspaper printed
in Madison County State of Illinois do certify
that a Notice of which the annexed is a
true Copy, has been regularly published four
weeks in succession, commencing May 2
and ending May 23: 1850

Given under my hand at Edwardsville
this second day of

AD 185

Smith & Peggles
Printers

Printers fee \$7.00

And afterwards To wit on the 26th day of April A.D. 1857. An Affidavit and Bond for Costs of Suit were filed in words and figures as follows To wit:

State of Illinois } In Madison Cir Court
Madison County } ss Chancery side Aug 7 1857

James Love

vs

Arthur Fairfield, Alexander P Field, David } Bill for
N Hall, James I ll Siltou, Andrew Miller } Injunction
Sheriff of Madison County Illinois, John G } and Relief
Cameron, and William Hadley Administrator }
of the Estate of John Duncan dec^d } 5

David Gillespie being duly sworn deposes and says that Arthur Fairfield, Alexander P Field David N Hall, James I ll Siltou and John G Cameron five of the above named Defendants are non-residents of the State of Illinois, and without the jurisdiction of this Honorable Court to the best of his knowledge and belief - Subscribed and sworn to } David Gillespie
before me this 26th day of April A.D. 1857 }

Wm. S. Brown Clerk

I do hereby enter myself security for costs in this cause and acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action either to the opposite party or to any of the officers of this Court in pursuance of the laws of this State

Dated at Edwardsville this 26th day of April A.D. 1850
Approved by David Gillespie
J. S. Brown Clerk

And afterwards So with on the 26th day of April
A.D. 1850. a Bond in the above Entitled Cause was
filed, in words and figures as follows To wit =

" Know all men by these presents that we James
Love of the City and County of St. Louis and State
of Missouri, and Joseph Gillespie of the County of
Madison and State of Illinois are held and firmly
bound unto Arthur Fairfield, Alexander P. Field
David A. Hall, James T. L. Hilton, John G. Cameron
and William Hadley Administrator of the Estate
of John Duncan deceased and Andrew Miller Sheriff
of Madison County Illinois in the penal sum of
Five Hundred Dollars Current Money of the
United States, for the payment of which, well
and truly to be made, we jointly and severally
bind ourselves, our heirs Executors and Admin-
istrators firmly by these presents - Witness our
hands and seals this 26th day of April A.D. 1850

The Condition of the above Obligation is such that
whom as the above bounden James Love has prayed
for and obtained an Injunction in a certain
Cause pending in the Madison Circuit Court,
State of Illinois, at the August Term thereof A.D. 1850
on the Chancery side thereof, wherein the said
James Love was Complainant and the said
Arthur Fairfield, Alexander P. Field, David A. Hall
James T. L. Hilton, Andrew Miller Sheriff of

James Love was Complainant and the said Arthur
 Fairfield, Alexander P Field, David N Hall, James T
 McClinton, Andrew Miller Sheriff of Madison County
 Illinois John G Cameron and William Hadley
 Administrator of the Estate of John Duncan
 Treasard were Defendants, Enjoining and res-
 training said Defendants their agents, Attorneys &c
 from interfering with, or in any manner attempting
 to collect a certain Judgment rendered at the
 August Term AD 1848 of the Circuit Court of
 Madison County Illinois, against the said James
 Love for the sum of Five Hundred Dollars Debt
 and Sixty Nine Dollars and Nine Cents Damages
 and Costs of suit, in favor of Arthur Fairfield for
 use of Alexander P Field and David N Hall, and
 also Enjoining said Defendants from making or
 receiving a Deed under a sale made by virtue of
 said Judgment &c Now if the said Love shall pay
 or Cause to be paid all Money and Costs due
 or to be due to the said Plaintiffs in said Action
 at Law and all such Costs and Damages as shall
 be awarded against the Complainant, in case
 the said Injunction shall be dissolved and the
 Relief prayed for in said Bill be not granted
 then the above obligation to be void, otherwise
 to be and remain in full force and virtue

Seal
 James Love Seal
 J Gillespie Seal

And afterwards To wit on the 26th day of April AD 1850. An Injunction, was issued out of, And Under the seal of the Circuit Court of Madison County Illinois - in words and figures as follows To wit:

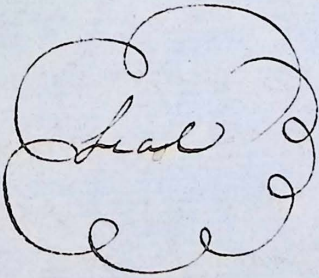
State of Illinois
Madison County

The People of the State of Illinois
To the Crown of Madison County Greeting,
Whereas on the 26th day of April AD 1850, James
Love Complainant has filed in the Circuit Court
of Madison County aforesaid, his Bill of
Complaint against Arthur Fairfield, Alexander
P Field, David N Hall, James T L Gilton, Andrew
Miller Sheriff of Madison County Illinois, John
G Cameron and William Hadley Administrator
of the Estate of John Duncan deceased, praying
among other matters, an injunction in the premises
and whereas the Honorable William H Underwood
Judge of our said Court, upon reading and examining
said Bill has allowed and directed that an Injunc-
tion issue as prayed for by said Complainant
We therefore in the name of the People of the State of
Illinois hereby restrain, Enjoin and Command
the said Defendants, or either, or any of them
their Agents, Attorneys or Solicitors not to ask or
demand, receive or deliver a deed for the follow-
ing Real Estate To wit: The South West Quarter
of Section Eight (8) The West half of the South East
Quarter of Section Eight (8) And the North West Quarter
of Section Seventeen (17) all in Township Five (5)

James Love was Complainant and the said Arthur
Fairfield, Alexander P Field, David N Hall, James T
McDilton, Andrew Miller Sheriff of Madison County
Illinois John G Cameron and William Hadley
Administrator of the Estate of John Duncan
Treasurer were Defendants, Enjoining and Res-
training said Defendants their agents, Attorneys &c
from interfering with, or in any manner attempting
to collect a certain Judgment rendered at the
August Term AD 1848 of the Circuit Court of
Madison County Illinois, against the said James
Love for the sum of Five Hundred Dollars Debt
and Sixty Nine Dollars and Nine Cents Damages
and Costs of suit, in favor of Arthur Fairfield for
use of Alexander P Field and David N Hall, and
also Enjoining said Defendants from making or
receiving a Deed under a sale made by virtue of
said Judgment &c Now if the said Love shall pay
or cause to be paid all money and costs due
or to be due to the said Plaintiffs in said Action
at Law and all such Costs and Damages as shall
be awarded against the Complainant, in case
the said Injunction shall be dissolved and the
Relief prayed for in said Bill be not granted
then the above obligation to be void, otherwise
to be and remain in full force and virtue

Deed
James Love Deed
J Gillespie Deed

North Range Seven (7) West of the Third principal Meridian, the same lying and being in the County of Madison and State of Illinois; And also from interfering with, or in any manner attempting to collect a Judgment for the sum of Five Hundred Dollars Deb- and Sixty Nine Cents Damages, rendered at the August Term of Circuit Court of Madison County Illinois; And also that the said Miller is hereby restrained & enjoined from making a Deed to any person under a Sale of the above described Land, made by him in pursuance of a Special Execution, directed to him on the 28th day of April AD 1849, until the said Bill of Complaint shall be heard, and a Decree by our said Court shall be made thereon: Hereof fail not under a penalty for a Contempt of our said Court



Witness W^m L. Brown Clerk of
the Circuit Court of Madison
County aforesaid, and the Seal
thereof at Edwardsville this 26th
day of April AD 1850
W^m L. Brown
Clerk

Upon the back of which the Coroner made his
return, in words and figures as follows To wit:

I have executed this writ by delivering a true Copy thereof
to Andrew Miller on the 15th day of July 1850, and by
delivering a true Copy thereof to William Hadley on
the 24th day of July 1850 - The other defendants

are not found in my County August 14 1850

William Gill

Coroner. U.C.

Coroner fees	
Serrins	1.00
2 Copies	1.00
Mileage	.60
Pet	10
	<hr/>
	2.70

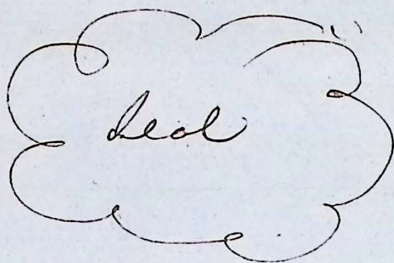
And afterwards. To wit. on the 26th day of April A.D. 1850. was issued out of and under the seal of said Court, a Subpoena in Chancery in said Cause in words and figures, as follows To wit:

State of Illinois }
Madison County } ss {

The People of the State of Illinois
To the Coroner of Madison County. Greeting -

We Command you that you Summon Arthur Fairfield, Alexander P Field, David N Hall, James T. M. Dilton, Andrew Miller Sheriff of Madison County Illinois, John G Cameron and William Hadley Administrator of the Estate of John Duncan Deceased - if to be found within your bailiwick, to be and appear before the Judge of the Madison Circuit Court, sitting as Chancellor in and for the County of Madison, on the first day of the next Term of said Court, to be holden at the Court house, in the Town of Edwardsville, on the third Monday in the Month of August in the year of Our Lord One Thousand Eight Hundred and fifty, to answer to a Bill in Chancery, exhibited in

our said Court against them by James Love - And this you will in no wise omit, under the penalty of what the Law directs. And have you then thus this writ:



Witness - W^m Tyler Brown, Clerk of our said Court, and the seal thereof at Edwardsville, this 26th day of April in the year of our Lord one thousand eight hundred and fifty
W^m T. Brown Clerk

Upon the back of which the Coroner made his return as follows to wit:

"I have executed this writ by delivering a true copy thereof to Andrew Miller on the 15th day of July 1850 and to William Hadley on the 24th day of July 1850 The other Defendants not found in my County August 14th 1850

Coroners fees serving 100

2 Copies 100

Mileage 60

Return 10

\$ 2.70

William Gill

Coroner U. C.

And afterwards to wit on the 26th day of April 1850 An opinion of Supreme Court of State of Missouri was filed in this cause, which opinion is in words and figures as follows to wit:

"Opinion of the Court in Love vs. Fairfield (after stating the case)

"The main question from the above statement of the case

involves the right of a party to assign to another a part of a judgment at law - Can the payee of a chose in action assign a part thereof to another so as to effect the rights of the payee without his assent -?

The validity of an assignment of a part of a judgment is a question which was not passed upon by this Court in the Case of Laughtin vs Gyle & Edwards (8 Mo R 369) because it was not made. It did not occur to the Court that there could be any doubt about the right to assign a part as well as the whole of a judgment -

The words "part" & "whole" being familiarly used in Mathematics the mind too readily ascribed to the power or right of him to assign a "part" who could legally assign the whole, without considering the consequences and legal bearing of the question.

Upon Examination we find it ascertained in general cases, and especially in the Case of Blundell vs Welsh (5 Whol 297) that a Court of law will not interfere to protect a partial assignment of a chose in action - The reason for the distinction as expressed by Judge Story in the Case first cited is this "a creditor shall not be permitted to split up a single cause of action into many actions without the assent of the debtor, since it may obligate him to many embarrassments and impossibilities not contemplated in his original contract. He has a right to stand on the singleness of his original contract and to decline any legal or equitable assignments by which it may be broken into fragments, when he undertakes to pay an integral sum to his creditor it is no part of his

Contract that he shall be obliged to pay in
Fragments to any other persons

A Judgment
so far as its assignable qualities is concerned
is like any other chose in action, if the doctrine
be applicable to the assignment of funds either
general or special secured by simple Con-
tract or specialty, negotiable or not negotiable
no reason is perceived why it does not extend
to an assignment of a judgment, Every reason
for the doctrine has as much application in
the one case as in the other

That such assignments
may create Equities between the immediate parties
the assignor and assignee is a matter not now
material to enquire. But the original debtor must
be a party consenting to such arrangement.
before he can be affected by it. - If a part of a
Judgment can be assigned we know of no
point at which its divisibility can be checked
It may be divided into aliquot parts and each
part assigned to different individuals. - Would
not this be a great inconvenience to the debtor
and one to which he cannot be subjected
without his consent - we have not found
any case in which a part of a judgment
has been assigned, and therefore have found
no decision directly upon the point
But is it not some evidence that such a
practice is not tolerable from the fact that it

seems not to have accrued. It is remarkable that no case can be found tolerating such an assignment. This circumstance alone is calculated to make against the claim.

Chases in action were not assignable at Common Law Courts, of Equity however took charge of the interests of the assignee and then the Courts of Law were forced to take notice of them.

But there is no policy in carrying the doctrine now held any further, such transactions at best tend to promote litigation, to increase costs & to prevent the amicable settlement of disputes between the parties originally only concerned. It is the interest of the State that litigation should not be encouraged -

The great tendency to promote champerty & maintenance, to prevent the parties themselves from making their own settlement of disputes, to increase the number of suits & to add to the burden of Courts now sufficiently onerous already, have had much consideration with this Court in forcing us to the conclusion that such partial assignments of judgment without the assent of the debtor shall not affect him.

From the view of the subject it will not be necessary for us to decide the question

of notice of the assignment of part of the
~~assignment~~ judgment of Messrs Field &
Hall previous to the arrangement between
Love & Fairfield, by which the Execution
was ordered to be returned satisfied and
was so returned by the Sheriff -

There is
no pretence that such assignment of part
of the judgment was made by the consent
of Love - Indeed there is very great doubt
whether he knew anything of such assignm-
ent before himself & Fairfield settled -

The judgment of the Circuit Court sustain-
ing the motion of Field & Hall to award ex-
ecution on the judgment against said
Defendant and to vacate the entry of
satisfaction on the execution by Fairfield
is erroneous, and the said motion should
have been overruled - The judgment of
the Circuit Court is therefore reversed
and this case is remanded to said Circuit
Court, with directions to overrule said
motion -

John F. Ryland

Concurred in
W B Napton
Jas H Birch

Opinion filed 22^d March 1850

And afterwards to wit a transcript from the
Supreme Court of the State of Missouri on the
26th day of April A.D. 1850 was filed in words
and figures as follows, to wit:

The State of Missouri, vs.

The State of Missouri, To the Judge of the St. Louis
Circuit Court in said State, Greeting;

Whereas, in the record and proceedings in a
certain cause lately pending in the St. Louis Circuit
Court, wherein Arthur Fairchilds was plaintiff and
James Love was Defendant in an action of Trespass,
manifest error hath intervened to the great damage
of the said defendant, as by his complaint we are in-
formed — Now we being willing that the error,
if any there be, should be corrected, and full and
speedy justice done to the parties aforesaid, in that
behalf, Command you, that you send to us, certified
under your seal, the record and proceedings in the
cause aforesaid, as fully as the the same remain of
record before you in said Court, so that we may
have them before us at our Supreme Court, to be
begun and held at the City of Jefferson in the
County of Cole, in said State, on the third Monday,
in October 1848 next, so that our Judges of our
Supreme Court on inspecting the record and proceed-
ings aforesaid, may cause to be further done there
in for correcting the error, what of right and
according to law ought to be done.

Witness Hampton L. Boon Clerk of our said

Supreme Court, at office in the City of Jefferson
Mo. This twelfth day of September, in the year of Our Lord.
One thousand eight hundred and Forty eight
H. L. Boon

State of Missouri }
County of St. Louis } In obedience to the within writ
I herewith transmit a True and complete transcript
of the record and proceedings in the within named case
of Fairfield vs Love, In testimony whereof I hereunto
set my hand and affix the seal of said Circuit Court
at office in the City of Saint Louis This fourth day
of October One thousand eight hundred and forty
eight

Wm Ireland Clarke

Messrs Fields and Hall

Gentlemen, Take notice that I have
sued out a writ of error in the case of Fairfield son of
Field and Hall vs. James Love, returnable to the third
Monday being the sixteenth day of October, 1848 which
is the next session or Term of the Supreme Court of
the State of Missouri,

Thos J. Gantt atty for
James Love

Received a copy hereof this fourth day of October 1848

Fields and Hall

Personally on this eighteenth day of October 1848 in open
Court appeared Thomas J. Gantt who being duly sworn
deposite and saith^{that} on the fourth day of October 1848,
he served the above notice on said Field and Hall
defendants in error, by leaving with them a copy thereof,
at St. Louis, Mo. That said Field and Hall, are
the defendants in error claiming the beneficial interest

of said judgement of Fairfield vs. Love — and that they the said Guild and Hall are attorneys at law partners in business and that the signature to this acknowledgment of the receipt of a copy of said notice is in the hand writing of said Hall whose name is David S. Hall, made in presence of said deponent, and further deponent saith not.

Subscribed and sworn to
in open Court this 18th Oct.
1848.

Thos J. Gault

H. L. Boon, Clerk

State of Missouri }
County of St. Louis } Be it remembered that here to fore
to wit; on the twenty third day of March eighteen
hundred and forty six, there was filed in the office
of the Clerk of the Circuit within and for the County
aforesaid, a declaration which is in the words and
figures following to wit

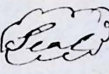
State of Missouri }
County of St. Louis }

Circuit Court
April Term 1846

Arthur Fairfield by
his attorneys Guild and Hall complains of James Love of
a plea of Trespass For that the said defendant here to
fore to wit; on the first day of April in the year one
thousand eight hundred and forty with force and
arms to wit at the County aforesaid unlawfully seized
and took certain four wheeled waggons and four
wheeled carriages of the said Plaintiff to wit
twenty four wheeled waggons and twenty four wheels
carriages, of great value to wit of the value of three

thousand dollars and there and there cut-sawed and broke
in pieces and destroyed said waggons and carriages of said
plaintiff, whereby the said plaintiff lost the sale benefit
and use and was deprived of all the advantages which
might and would have accrued and arisen to him otherwise
therefrom at to wit the County aforesaid, And also for
that the said Defendant heretofore to wit: on the day and
year last aforesaid, at the County aforesaid with force and
arms unlawfully seized and took certain other four
wheeled waggons and four wheeled carriages of the said
plaintiff, to wit: twenty four wheeled waggons and
twenty four wheeled carriages of great value, to wit:
of the value of three thousand Dollars and there
and there destroyed and rendered worthless said
waggons and carriages of said plaintiff whereby said
plaintiff lost the sale and benefit & use and was de-
prived of all the advantages which would otherwise
have arisen and accrued to her therefrom. And also
for that defendant heretofore to wit: on the day and
year last aforesaid to wit: at the County of St. Louis
aforesaid with force and arms unlawfully took and
seized certain other four wheeled waggons and
four wheeled carriages of the said plaintiff to wit:
twenty four wheeled waggons and twenty four wheeled
carriages of great value, to wit: of the value of three
thousand Dollars, whereby the said plaintiff lost the
sale and benefit and use and was deprived of all the ad-
vantages that would otherwise have arisen and accrued
to him the said plaintiff therefrom, and other wrongs to the
said plaintiff then and there did against the peace and
to the damage of the said plaintiff of the sum of
Five thousand Dollars and therefore he brings his suit

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Field and Hall Attys for Plff

County of St. Louis — To The State of Missouri
Summons To the Sheriff of St. Louis County — Greeting
We command you to summon James Love if he be
found in your county that he be and appear before the
Judge of our Circuit Court on the first day of the next
term thereof, to be held at the City of St. Louis within and
for the County of Saint Louis, on the third Monday of April
next then and there to answer unto Arthur Fairfields
of a plea of trespass to the damage of said plaintiff five
thousands dollars, and have you there there this writ
 witness John Roulund Clerk of our said Court, with
the seal thereof here to affixed at office in the City of
Louis this 23rd day of March in the year of Our Lord
eighteen hundred and forty six

John Roulund Clerk

Sheriff: Executed this writ in the County of St. Louis, this 24th day of
Return March 1846 by reading it and the declaration to James
Love the within named defendant — William Milburn
Sheriff by R. Dowling Deputy

Default: April 28th 1846 — Now at this day comes the plaintiff by his
Esquire attorney and the defendant although demanded comes not
but makes default nor hath he pleaded to the action afore-
said, wherefore said plaintiff ought to recover against him
but because it is unknown to the Court what damage the
plaintiff has sustained by reason of the premises in his
declaration mentioned it is ordered that enquiry thereof
be made at the present term of the Court

Monday May 11th 1846

Arthur Fairfield } Trespas

vs

} Also at this time comes the plaintiff
James Love } by his attorneys and there upon comes

also a jury to wit; Robert Deckerason, Calvin Morgan,
John Finney, Ezekiel Day, J. H. Muller, Daniels Murphy,
B. Clement, Charles S. Martin A. C. Crme., A. N. Green
P. W. Childs and J. P. Doan twelve good and lawful men
who being duly elected tried and sworn well and truly
to enquire into and assess the plaintiffs damages herein
upon their oaths aforesaid say that they assess the plain-
tiffs damages by him sustained by reason of the premises
in his declaration mentioned at the sum of eight hundred
dollars, Therefore it is considered by the Court that the
plaintiff recover of the defendant his damages aforesaid
by the jury assessed together with his costs and charges in
his behalf expended and have there of execution
County of St. Louis, St. The State of Missouri

Execution

To the Sheriff of the County of St. Louis— Greeting
Whereas Arthur Fairfield on the Eleventh day of May eight-
teen hundred and forty six at our Circuit Court before
our Judge thereof recorded against James Love the sum
of eight hundred dollars for his damages by him sustained
by reason of the premises in his declaration mentioned
and also the sum of twelve dollars for his costs and charges
in that behalf expended, Which to the said Arthur
Fairfield were assessed as appears to us of record,

These are therefore to command you, that of the goods and
chattels lands and tenements of the said James Love in your
baillivick, you cause to be made the aforesaid damages
and costs; that you have the same before the Judge of
our said Court on the third Monday of November next

to render to said Arthur Fairfield the damages and costs
afore said, And that you certify, to our said Judge how
you executed this writ, And have you then this
writ *(Seal)*

Witness John Rutland Clerk of our said Court at St. Louis
The sixteenth day of May in the year of our Lord One
Thousand eight hundred and forty six
John Rutland Clerk. C.C.

Return No goods chattels or real estate belonging to the defendant found
in my County whereon to levy and make this within dam-
ages and costs or any part thereof up to this 20th of August
1846

William Melburn Sheriff
By Henry B. Belt Deputy

The Sheriff of the County of St. Louis will please return
this writ satisfied in full St. Louis October 28th 1846
Arthur Fairfield

By order of the plaintiff above written this writ is returned
satisfied in full - costs paid by Defendant Oct 28th 1846
Saml. Conway Sheriff, By Henry B. Belt Deputy, Filed
28th Nov. 1846

Motion & } Arthur Fairfield for the use of
A. P. Field & T. S. Hall } Judgment at the April Term 1846
as } And now at this day comes the said
James Love. } A. P. Field and T. S. Hall and moves
the Court to award execution on the Judgment against
said defendant and to vacate the entry of satisfaction
on the execution by Fairfield for the following reasons
1st That said Fields and Hall had an assignment
of five hundred dollars by the said Fairfield before
said satisfaction was entered on sd. execution

2^d That said Defendant knew that the said Field and Hall had an interest in said judgment at the time he settled the same with Fairfield — A. P. Field for Field & Hall
Saturday January 9. 1847

Judgments } Arthur Fairfield } This cause came on to be heard on the
} vs. } motion of A. P. Field and D. S. Hall to award
James Love } execution of the judgment in the cause
and to vacate the entry of satisfaction on said execution made by the Plaintiff and thereupon after the argument of counsel and the hearing of evidence the Court doth order and adjudge that the entry of satisfaction on said judgment made by said plaintiff be and the same is hereby vacated so far as regards the claim of the said Field and Hall to the amount of five hundred dollars, and that execution for the said sum of five hundred dollars issue on said judgment for the benefit of said A. P. Field and D. S. Hall assignees of said judgment to that amount; and it is further ordered that the motion of the said James Murphy to be heard herein be and the same is hereby overruled

Bill of Exceptions In the matter of } In the Saint Louis Circuit Court December
Arthur Fairfield } Term 1846, motion of A. P. Field & D. S. Hall
vs } claiming as assignees of Fairfield for allowance
James Love } of execution against James Love and praying
that the entry of satisfaction on the execution be vacated

Be it remembered that at the hearing of this motion aforesaid in the above entitled cause, the said Field and Hall read the motion and offered to give evidence under their statement and motion and in support of the same, The Court asked, The Court asked if James Love were present and thereupon Thomas J. Gantt stated that he attended

on the part of said Love who was then present in Court and had accidentally on the morning of that day (which was Saturday November 28th 1846, the motion day in said Court) that there was such a motion, and had desired him said Gantt to attend to the same, and that he said Gantt as counsel for said Love objected to the irregularity of the proceedings and for particular objection thereto stated that all the parties interested in said motion & its determination were not before the Court & could only be brought before the Court by bill of equity. Said Love who had been subpoenaed as witness also John H. Duke were both present in Court at the hearing of the motion. The Court decided to hear such testimony as might be offered and there after to decide upon the law and the facts of the case: to which said Love by his counsel excepted. Said Field and Hall then read an affidavit of A. P. Field sworn in the words and figures following, to wit-

State of Missouri }
 County of St. Louis } ss Alexander P. Field and D. N. Hall being
 about the first day of May, eighteen hundred and forty six, one Arthur Fairfiled assigned and transferred to them five hundred dollars of a judgment obtained by said Fairfiled as plaintiff against James Love as defendant for the sum of eight hundred Dollars at the April term of the Circuit Court of St. Louis County State aforesaid for the year eighteen hundred and forty six, that said assignment was for a valuable consideration, being for legal services rendered to said Fairfiled before that time and for money paid by said Field and Hall on account of said Fairfiled and at his request and by his direction that said assignment was an instrument executed by

said Fairfield under his hand, and seal. That said James Love defendant had notice and full knowledge of the said assignment was fully known to the said Love, he the said Love contriving and intending as they believe to cheat and defraud them of their said interest in said judgment procured the said Fairfield to enter satisfaction of the whole of said judgment upon the records of the Court, That the said interest of these affiants is yet wholly and entirely unsatisfied and unpaid.

A. P. Field

Sworn to and subscribed before me this 28th November 1846

John Rutland Clarke

And then called as a witness John H. Deek (who was well known to said Council of Love) and who was sworn and testified as follows in substance, that some time in August 1846 deponent had had a conversation with Mr. Love about the judgment which Fairfield had obtained against him and that the conversation took place near the corner of Third & Vine Streets which was in the neighbourhood of the shop of said Love who is by trade a blacksmith, That in this conversation he deponent told said Love, that said Field and Hall had an assignment from Fairfield of five hundred Dollars of the said judgment, That he said Deponent had no interest in said judgment at the time he testified, That he had an interest in it which he sold to Field and Hall.

S. M. Bowman was next called in support of the motion who testified that about the 10th day of last October, Fairfield and Love came to the office of witness, They stated to witness that they had been trying to settle, Fairfield said that he was willing to settle with Love for he did not believe that Love had cut up his waggons and he did not want to hurt Love, Love said he could settle the

judgment-but Field and Hall the Attorneys were unwilling to settle. Love wished to have it settled and thought it a hard case as he never done any thing against Fairfield in his life &c. Fairfield said Field and Hall had an interest in the judgment-but he said he could fix it with them this was the substance of their conversation, the precise words witness does not recollect. The arrangement between Fairfield and Love by which satisfaction of judgment was entered &c. was made after this time and while witness was at New Orleans. The office of witness is on the same floor of Mess Field and Hall, Love said he did not know them at all, Love had his shop at the time nearly opposite City Hall, about 3 squares from office of witness.

Cross examined. Defendants counsel asked witness whether any thing was said at the time witness testified to about Field and Hall having an assignment of said judgment against Love or any part thereof. Witness answered there was nothing said about an assignment. Witness did not know that they had an assignment. Love was at witness office twice and perhaps three times but not oftener -

She said Field and Hall ^{then} produced and read a document purporting to be an instrument of assignment to them of the sum of five hundred dollars paid of said judgment in the words and figures following to wit:

Assignment For and in consideration of legal services rendered me and money advanced by A.P. Field and Daniel M. Hall, I do hereby for and in consideration aforesaid, sell, transfer and assign five hundred dollars of a judgment I obtained against James Love for the sum of eight hundred dollars which I recover in the Circuit Court of Saint Louis County at the April Term of said Court - A.D. 1846, and I do hereby

authorize and direct the Sheriff or any other officer empowered to collect said judgment to pay over and account to the said Field and Hall for the amount of Five hundred dollars out of said judgment, Witness my hand and seal this 25th day of May A.D. 1846

(Signed) Arthur Fairfield, (Seal)

It was admitted that the instrument had never been filed in the cause or among any of the papers thereof, and that it had never been exhibited to said Love prior to the return of the writ of execution issued in said case of Fairfield vs Love and this was all the testimony offered by said Field and Hall. The counsel for Love referred to but did not formally read any part of the record ~~thereof~~ ^{the} proceedings thereby fore had in said cause, of Fairfield vs Love. The same were not read being familiar to the Court. And said counsel objected first to the Court entertaining said motion of Field and Hall at all — and secondly to the sufficiency of the evidence to warrant the interference of the Court. The Court took the whole matter under advisement. The said Love on Monday 30th November 1846 made an affidavit in the words and figures following,

Field and Hall assignees of Arthur Fairfield

James Love } motion for execution notwithstanding
 } the satisfaction of execution and
judgment — James Love being duly sworn says
on his oath that he was first informed of the pendency of the above entitled motion on the morning of Saturday last. That he was informed by counsel that in their opinion the matter could not be disposed of by motion and he also was informed that Messrs Field and Hall would rely upon Charles Collins, S. M. Bowman and Hugh Larky to prove that said affiant had notice of the assignment of part of said

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judgment to said Field and Hall that he relied upon the fact that he never had had notice of said assignment and he knew that none of the persons above named would depose that he had. That he was surprised by the production of John H. Deek as a witness. That said Deek is a man of notoriously infamous character, that he has been indicted for perjury in the Circuit Court of St. Louis County, to wit, in the year 1834, that he then fled from the State and remained absent until the indictment was discontinued by a *non* prosequitur, that in the year 1833 he was indicted in the same Court attesting a forged bank bill, that affiant can easily prove by numerous and respectable witnesses that said Deek is not a credible witness, and that he wishes to have the opportunity of making this fact appear before a jury, Affiant denies positively, explicitly and without reserve that he ever had directly or indirectly notice or knowledge of the assignment of any part of the judgment obtained against him by Fairfield to Field and Hall. He understood from various sources that the chief difficulty in settling with Fairfield arose from said Fairfield being guided very much by the advice of his Counsel, and that his Counsel were much opposed to a settlement or compromise of the matter but this was all that he heard on the subject, or the substance of all. He never heard that Field and Hall had any line, assignment or separate interest in, of or to the said judgment, that the only conversation he ever had with Deek since the said judgment was obtained against him took place at or near the corner of 3rd & Pine Streets on or about the tenth day of July 1846 on which occasion the said Deek approached said affiant & told him that he

wanted to talk with him about the cutting of some wages that Field was a lawyer in the case and that Field was a very fine man, and that the said Field and he (Deek) wanted to talk with him about it; That Field had told him (Deek) that he did not wish to inquire said affair. In all which affiant replied that he did not know any thing more of the matter than the dead, and this was all that was said & this was the only occasion on which affiant had any conversation on the subject with said Deek for affiant avoided said Deek not wishing to be seen in company with a person whose character was so bad, and he would have been particular in saying nothing to him respecting his business matters.

James Love

Sworn to and subscribed before me this 2^d Dec. 1846

John Kulanek Clerk

Which was handed to the Judge of said Circuit Court on the first or second day of December 1846 and before the determination of said Motion of said Field & Hall, afterwards took on the 17th day of Dec. 1846 and before said Court had decided said motion the following affidavit & Motion of Joseph Murphy

Affidavit Arthur Fairfield }
vs } In the St Louis Circuit Court, Joseph
of Joseph James Love } Murphy on oath says, that at the Nov.
Murphy Term A.D. 1845 of the St Louis Circuit Court the said
plaintiff Arthur Fairfield instituted a suit against
this affiant Nicholas Turman and others in an action
affidavit of trespass that subsequently the said Fairfield instituted
another suit against James Love in which latter case
a judgment by default was rendered at the last term
of this Court, and this affiant further says that both
of said suits were instituted for the same cause

of action - and this affiant further says that previous to the order made and satisfaction acknowledged by said Fairfield on the execution issued on the judgment against said Love, an arrangement was made by and between said Fairfield and Love and this affiant and his Co defendants in the other suit aforesaid, that all of said defendants should contribute to satisfy the judgment against said Love and that Fairfield should discontinue the suit against this affiant and his Co. defendants and this affiant states that this arrangement was carried out and that when it was so done he had no notice that Messrs Field & Hall attorneys in the case against said Love had any assignment of or lien on said judgment against said Love. Neither had he any notice that a motion was pending to vacate the order and satisfaction made on the execution issued on said judgment against said Love, until after it had been argued and submitted to the Court

Joseph L. Murphy,

Gavorn to and subscribed before me this 11 Dec 1846

Jno Rowland Clerk

Arthur Fairfield }
 vs. }
 James Love } Joseph Murphy and files his affidavit, and by his attorneys moves the Court to be heard in a matter now depending undecided, where in A.P. Field and D.H. Hall claiming to be assignees of Arthur Fairfield of a part of the judgment had in the above entitled cause have moved the Court to award execution on said judgment, and to vacate the entry of satisfaction on an execution issued on said

St Louis Circuit Court, of the 4th April Term A.D. 1846, And now comes

judgment made by said plaintiff,

1st Because said plaintiff had previous to the institution of the above suit - instituted another suit - against him the said Murphy and others for the same cause of action and that said Murphy and his Co. defendants contributed to pay and satisfy said judgment - obtained by said Fairfield against said Love in the above entitled cause,

2^d Because said Murphy had no notice or knowledge of said Fairfield having ever assigned to said Field and Hall any portion of said judgment - against said Love at any time before the same was ordered to be satisfied.

3^d That said Murphy had no notice that said motion was made to award execution and to vacate the entry of satisfaction made on said execution,

4th Because he will be prejudiced thereby or exposed to be prejudiced if the entry of satisfaction is vacated, and the writ of execution removed for the amount of said judgment or any part thereof, he the said Murphy having contributed to satisfy the execution in the case of Fairfield vs Love for the purpose of settling the whole matter pending between said Fairfield and said Love & affiant & others.

S. M. Bowman for
J. Murphy

Was filed and submitted to said Court; Afterwards on the ninth day of January 1847 the Court allowed the motion of said Field and Hall; on the twelfth day of January 1847 the said Love filed a motion for rehearing in the words and figures following

Motion to In the matter of Field & Hall

set aside Claiming as assignees of Fairfield

allowance
of execution

vs.

James Love

On motion of Field & Hall for
issue of execution notwithstanding

satisfaction entered by Fairfield on the former writ. The said James Love by his attorney comes and moves the Court here to set aside the allowance of an execution to said Field & Hall against the said James Love for the following reasons

1st Because it appears from the affidavit filed by said Love that he was surprised by the testimony of said Deeks and that the said Love was prepared to show that said Deeks was infamous as a witness & for the other reasons stated in said affidavit

2^d Because there is no testimony that said Love knew of said assignment to Field and Hall

3^d Because the allowance of said execution is against Law

4th Because the allowance of said execution is against evidence

5th Because there were other parties interested in said allowance to wit, the said Fairfield & also John Murphy Nicholas Jirman & Peter Jirman and as stated in the affidavit

6th Because the Court proceeded to enquire respecting the fact of notice of said assignment to said Love summarily without notice served on said Love, without notice to the other parties about herein named, and without the intervention of a jury

J. Palk & Th. J. Bassett

Attorneys for James Love

And when said motion came on to be heard to wit; on the eighth day of February 1849, the counsel of said Love informed said Court that since filing said motion, they had ascertained that Mr. Field had taken a transcript of the record and proceedings in said case of Fairfield vs Love, to the Circuit Court for Madison County Illinois together with an affidavit of said Fairfield that the amount of said and costs was due to him said Fairfield from said Love, which transcript and affidavit were filed in the

Circuit-Court for Madison County Illinois on the 29th day of May
1846 by said Field as attorney for said Fairfield and they
asked to be permitted to show the same by competent testimony
But the Court refused to permit said Love (in St. Louis Circuit
Court) to introduce any evidence of said facts to which refuse
the said Love excepted. Said Love also offered to show
that said Duke was not a credible witness, and also that
said Love had no notice of the said assignment, to said Field
and Hall by said Fairfield of the judgment in the case of
Fairfield vs Love prior to the return of said writ of execution
But the Court refused to hear any testimony touching said facts
on the ground of the incompetency of such evidence, touching
the motion for a rehearing now before the Court
to which refusal the counsel of Love at the time excepted
Said counsel of Love then read over the affidavits and
motions in said cause filed (see pages 9, 10, 11, 12, 13, & 14)
and the said Field and read the affidavit of said Field
and Hall also filed in said cause, The Court refused to
reconsider the said case and overruled the motion of said
for the rehearing of the said Field and Hall for the vacating
of the satisfaction entered on the execution and the allowance
of an alias execution against said Love in favor of said
Field & Hall, as assignees of said Fairfield, To all which
rulings, decisions and judgments of said Circuit Court, the
said Love by his counsel excepted and presented this bill
of exceptions & prayed that the same might be signed and
made a part of the record & it is done

John M. Hunt.

State of Missouri }
County of St. Louis } 3/13

J. John Buland Clerk of the Circuit Court
within and for the County aforesaid, do certify the foregoing to
be a true and complete transcript of the record and proceedings

as fully as the same remain in my office, in the case of
Arthur Fairfield against James Love

L. S.

In testimony whereof I have hereunto affixed
the seal of said Court and subscribed my
name at office in the City of St. Louis this
4th October 1848

Jose Roland Clerk

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Supreme Court Missouri

October Term, 1848

James Love

vs

Arthur Fairfield

} Error to St. Louis Circuit Court.
} Now on this 12th day of Nov. 1848 came
} the parties aforesaid by their respective
} Attorneys and submit this cause to the Court upon their
} written arguments,

March Term 1850

James Love

vs,

Arthur Fairfield

} Error to St. Louis Circuit Court
} Now at this day come again the parties
} aforesaid by their respective Attorneys and the Court here
} now being sufficiently advised of and concerning the prem-
} ises, do consider and adjudge that the judgment aforesaid
} in favor aforesaid by the said Circuit Court, rendered
} be reversed, annulled and for naught held and esteemed
} and that the said Appellant be restored to all things

which he has lost by reason of the judgment aforesaid: and it is further considered by the Court that the said cause be remanded to the said Circuit Court for further proceedings in conformity to the opinion of the Court herein delivered

State of Missouri Ls

I, William B. Stark, Clerk of the Supreme Court of the State of Missouri, at St. Louis, do certify that the within and foregoing is a full, true, and perfect transcript of the records and proceedings of the said Supreme Court in a cause lately pending in said Court in which James Love was defendant in error and Arthur Fairfield Deft. as the same appears from the files and records of my office

Seal

Witness William B. Stark Clerk of our said Supreme Court, at St. Louis, with his private seal, there being no official seal yet provided, at Office in the City of St. Louis this 8th day of April A. D. 1851

W. B. Stark, Clerk

And Afterwards To wit on the 18th day of March A.D. 1857, was filed in the above entitled cause, a Transcript from the Records of the Supreme Court of the State of Missouri, in words and figures, as follows To wit

"The State of Missouri vs

The State of Missouri, To the Judge of the St. Louis Circuit Court in said State, Greeting

Where as, in the record and proceedings in a certain cause lately pending, in the St. Louis Circuit Court wherein Arthur Fairfield was plaintiff and James Love defendant, in an action of trespass, manifest error hath intervened to the great damage of the said defendant, as by his complaints, we are informed

Now we being willing that the error if any there be, should be corrected and full and speedy justice done to the parties aforesaid in that behalf, Command you, that you send to us certified under your seal, the records and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court; so that we may have them before us at our Supreme Court to be begun and held at ^{the City of} Jefferson, in the County of Cole in said State on the third Monday in October 1848 next so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein for correcting the error, what of right and according to Law ought to be done

Witness Hampton L. Boon, Clerk of our said Supreme Court at office in the City of Jefferson the tenth day of September in the year of our

L. S.

Lord One thousand eight hundred and forty eight

Th. L. Boon

State of Missouri }
County of St. Louis }
In obedience to the within writ I have

withe transmit a true and complete transcript of the record and proceedings in the within named case of Fairfield vs. Love

In testimony whereof I have to set my hand and affix the seal of said Circuit Court at office in the City of St. Louis, this fourth day of October One thousand eight hundred and forty eight

Geo. Buland, Clerk,

Messrs. Field & Hall

Gentlemen, Take notice that I have sued out a writ of error in the case of Fairfield vs. James Love, returnable to the third Monday being the sixteenth day of October 1848, which is the next session or term of the Supreme Court of the State of Missouri

That J. Casutt Atty for

James Love

Recd. a copy hereof this fourth day of October 1848.

Field and Hall

Personally on this eighteenth day of October 1848 in open Court appeared Thomas J. Casutt, who being duly sworn deposite and saithe that on the fourth day of October 1848 he served the above notice on said Field and Hall defendants in error, by leaving with them a copy thereof at St. Louis Mo. That said Field and Hall are the defendants in error, claiming the beneficial interest of said judgment of Fairfield and Love, and that they, the said Field and Hall are Attorneys at law, partners in

business and that the signature of the acknowledgement of the receipt of a copy of said notice is in the handwriting of said Hall whose name is David A. Hall, made in presence of said deponent, and further deponent saith not.

Thomas J. Garrett

Subscribed & sworn to in open Court: the 18th Oct. 1848

J. L. Boon, Clerk.

State of Missouri }
 County of St. Louis } Be it remembered that heretofore, to wit, on the twenty third day of March eighteen hundred and forty six, there was filed in the office of the Clerk of the Circuit Court, within and for the County aforesaid a declaration which is in the words and figures following, to wit-

State of Missouri }
 County of St. Louis } Circuit Court April Term 1846
 Declaration Filed and Hall complains of James Love of a plea of trespass, for that the said defendant heretofore to wit, on the first day of April in the year One thousand eight hundred and forty with force and arms to wit, at the County aforesaid unlawfully seized and took certain four wheeled waggons and four wheeled carriages of the said plaintiff to wit, twenty four wheeled waggons and twenty four wheeled carriages of great value to wit, of the value of three thousand dollars and three and three cut-sawed and broke in pieces and destroyed said waggons and carriages of said plaintiff where by the said plaintiff lost the sale, benefit and use and was deprived of all the advantages which might and would have accrued and arisen to him otherwise therefrom at to wit, the County aforesaid

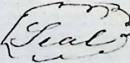
And also for that the said defendant heretofore to wit: on the day and year last aforesaid at the County aforesaid with force and arms unlawfully seize and took certain other four wheeled waggons and four wheeled carriages of the said plaintiff to wit: twenty four wheeled waggons and twenty four wheeled carriages of great value to wit: of the value of three thousand dollars and these and these destroyed and rendered worthless said waggons and carriages of said plaintiff where by said plaintiff lost the sale and benefit and use and was deprived of all the advantages which would otherwise have arisen and accrued to him therefrom. And also for that defendant heretofore to wit: on the day and year last aforesaid, to wit: at the County of St. Louis aforesaid with force and arms unlawfully took and seized certain other four wheeled waggons and four wheeled carriages of the said plaintiff to wit: twenty four wheeled waggons and twenty four wheeled carriages of great value to wit: of the value of three thousand dollars, whereby the said plaintiff lost the sale and benefit and use and was deprived of all the advantages that would otherwise would have arisen and accrued to him the said plaintiff therefrom and other wrongs to the said plaintiff thus and there did against the peace and to the damage of the said plaintiff of the sum of five thousand dollars and therefore he brings his suit

Filed and State Attys for plaintiff

County of St. Louis of ^{the} State of Missouri

To the Sheriff of St. Louis County Greeting

We command you to summon James Love if he be found in your County that he be and appear before the Judge

of our Circuit Court on the first day of the next Term thereof, to be held at the City of St. Louis within and for the County of St. Louis, on the third Monday of April next, then and there to answer unto Arthur Fairfield of a plea of trespass to the damage of said plaintiff, five thousand dollars, And have you then and there this writ,  Witness John Rutland Clerk of our said Court with the seal thereof hereto affixed at office in the City of St. Louis the 23rd day of March in the year of Our Lord eighteen hundred and forty six

John Rutland Clerk

Sheriffs Return Executed this writ in the County of St. Louis this 24th day of March 1846 by reading it and the declaration to James Love the within named defendant

William Millburn Sheriff
by B. Dowling Deputy

April 28th 1846, Now at this day comes the plaintiff by his Attorney and the defendant although demanded comes not, but makes default, nor hath he pleaded to this action as is said, wherefore said plaintiff ought to recover against him, but because it is unknown to the Court what damage the plaintiff has sustained by reason of the premises in his declaration mentioned it is ordered that enquiry thereof be made at the next term of this Court.

Monday April 11th 1846

Arthur Fairfield } Trespass

vs. } Now at this day comes the plaintiff
James Love } by his Attorneys and thereupon comes
also a jury to wit, Robert Dickerson, Calvin Magraw, John Finney, Ezekiel Day, J. H. Muller, Daniel Murphy, B. Clement, Charles S. Martin, A. C. Crane, A. N. Green, S. W.

Childs and J. P. Doan twelve good and lawful who being duly elected tried and sworn, well and truly to inquire in to and assess the plaintiffs damages herein upon their oaths aforesaid, say that they assess the plaintiffs damages by him sustained by reason of the premises in his declaration mentioned, at the sum of eight hundred dollars. Therefore it is considered by the court that the plaintiff recover of the defendant his damages aforesaid in form aforesaid by the jury assessed together with his costs and charges in this behalf expended and have thereof execution

County of St. Louis, Sed. The State of Missouri

To the Sheriff of St. Louis County, Greeting

Whereas Arthur Fairfield on the ~~fourteenth~~ day of May eighteen hundred and forty six at our Circuit Court before our Judge thereof recovered against James Love the sum of eight hundred dollars for his damages by him sustained by reason of the premises in his declaration mentioned and also the sum of twelve dollars for his costs and charges in that behalf expended, which to the said Arthur Fairfield were adjudged as appears to us of record.

These are therefore to command you, that of the goods and chattels, lands and tenements of the said James Love of your bailiwick, you cause to be made the aforesaid damages and costs, and that you have the same before the Judge of our said Court on the third Monday of November next to render to said Arthur Fairfield the damages and costs aforesaid and that you certify to our said Judge how you execute this writ (Seal) Witness John Rutland Clerk of our said Court at St. Louis the sixteenth day of May in the year of our Lord one thousand eight hundred and forty six

John Rutland Clerk, C. C.

No goods chattels or real estate belonging to the defendant found in my County whereon to levy and make the within damages and costs on any part thereof up to this 20th of August 1846

William Milburn Sheriff
By Henry B. Bell, Deputy

The Sheriff of the County of St. Louis will please return this writ satisfied in full, St. Louis October 28th 1846

Arthur Fairfield

By order of the plaintiff above writteth this writ, is returned satisfied in full — costs paid by defendant October 28th 1846 Samuel Conway Shff. By Henry B. Bell Deputy filed 28th November 1846

Arthur Fairfield for the use of }
A. P. Field and D. N. Hall } Judgment at the April }
as } Term 1846 }
James Love } And now at this day

comes the said A. P. Field and D. N. Hall and moves the Court to award execution on the judgment against said defendant and to vacate the entry of satisfaction on the execution by Fairfield for the following reasons
1st That said Field and Hall had an assignment of five hundred dollars by the said Fairfield before said satisfaction was entered on said execution
2nd That said defendant knew that the said Field and Hall had an interest in said judgment at the time he settled the same with Fairfield

A. P. Field for Field and Hall

Saturday January 9th 1847

Arthur Fairfield } This cause came on to be heard
as } on the motion of A. P. Field and
James Love } D. N. Hall to award execution of

judgment in the case and to vacate the entry of satisfaction on said execution made by the plaintiff and thereupon after the argument of counsel and hearing of evidence the Court doth order and adjudge that the entry of satisfaction on said judgment made by said plaintiff be and the same is hereby vacated so far as regards the claim of the said Field and Hall, to the amount of five hundred dollars and that execution for the said sum of five hundred dollars upon said judgment for the benefit of said A. P. Field and D. S. Hall assignees of said judgment to that amount, and it is further ordered that the motion of the said James Murphy to be heard herein be and the same is hereby overruled.

In the matter of }

Arthur Fairfield }

vs

James Love }

In the St. Louis Circuit Court, November Term 1846. Motion of A. P. Field & D. S. Hall claiming as assignees of Fairfield for allowance of execution against James Love and praying that the entry of satisfaction on the execution be vacated.

Be it remembered that at the hearing of this motion upon said in the above entitled cause, the said Field & Hall read the motion and offered to give evidence under their statement and motion and in support of the same.

The Court asked if James Love were present and thereupon Thomas L. Gantt stated that he attended on the part of said Love who was then present in Court & had accidentally heard on the morning of that day (which was Saturday Oct. 28th 46 the motion day in said Court) that there was such a motion & had desired him said Gantt to attend to the same and that he said Gantt as counsel for said Love objected to the irregularity of the proceedings and for

particular objection thereto, stated that all the parties interested in said motion and its determination were not before the court and could only be brought before the court by bill of equity. Said Love who had been subpoenaed as witness also John W. Deek were both present in court at the hearing of the motion. The court decided to hear such testimony as might be offered and thereafter to decide upon the law and the facts of the case: to which said Love by his counsel excepted. Said Field and Hall read an affidavit of A. P. Field made in the words & figures following to wit;

State of Missouri }
County of St. Louis }
Alexander P. Field & D. N. Hall being duly sworn on their oath say that on or about the first day of May eighteen hundred and forty six, one Arthur Fairfield assigned and transferred to them five hundred dollars of a judgment obtained by said Fairfield as plaintiff against James Love as defendant for the sum of eight hundred dollars at the April Term of the Circuit Court of St. Louis County State of Missouri for the year eighteen hundred and forty six, that said assignment was for a valuable consideration being for legal services rendered to said Fairfield before that time and for money paid by said Field & Hall on account of said Fairfield and at his request and by his direction, that said assignment that said assignment was an instrument executed by said Fairfield under his hand and seal, that said James Love defendant had notice and full knowledge of said assignment to these affiants, that after the said assignment was fully known to the said Love, he, the said Love, contrived and intending as they believe to cheat and defraud them

of their ^{said} interest in said judgment procured the said Fairfield to enter satisfaction of the whole of said judgment upon the records of this Court; that the said interest of these affiants is yet wholly and entirely unsatisfied and unpaid

A. P. Field

Sworn to and subscribed before me this 28th November 1846

John Rutland Clerk

And then called as a witness John H. Deck (who was unknown to said Counsel of Love) and who was sworn and testified as follows in substance, that some time in August 1846 deponent had had a conversation with Mr. Love about the judgment which Fairfield had obtained against him, and that this conversation took place near the corner of Third and Vine Streets which was in the neighborhood of the shop of said Love who is by trade a blacksmith. That in this conversation the deponent told said Love that said Field & Hall had an assignment from Fairfield of five hundred dollars of the said judgment. That he said deponent had no interest in said judgment at the time he testified. That he had an interest in it which he sold to Field & Hall.

S. M. Bowman was next called in support of the motion, who testified that about the 10th day of last October Fairfield & Love came to the office of witnesses, they stated to witnesses that they had been trying to settle, Fairfield said that he was willing to settle with Love for he did not believe that Love had cut up his swaggs, and he did not want to hurt Love. Love said he could settle the judgment but Field & Hall the Attorneys were unwilling to settle. Love wished to have it settled and thought it a hard case as he never done anything against Fairfield in his life &c. Fairfield said Field & Hall had an interest in the

judgment but he said he supposed he could find it with them. This was the substance of their conversation, the precise words witness does not recollect. The arrangement between Fairfield & Love by which satisfaction of judgment was entered &c. was made after this time and while witness was at New Orleans. The Office of witness is on the same floor of Dupes, Field & Hall. Love said he did not know them well. Love had his shop at the time nearly opposite City Hotel, about 3 squares from office of witness

Cross examined, Defendants counsel asked witness whether any thing was said at the time witness testified to about Field & Hall having an assignment of said judgment against Love or any part thereof. Witness answered there was nothing said about an assignment. Witness did not know that they had an assignment. Love was at witness office twice or perhaps three times, but not often - The said Field & Hall then produced and read a document purporting to be an instrument of assignment to them of the sum of five hundred dollars, parcel of said judgment in the words and figures following, to wit,

For and in consideration of legal services rendered me and money advanced by R. P. Field and Daniel N. Hall I do hereby for and in consideration aforesaid sell transfer and assign five hundred dollars of a judgment I obtained against James Love for the sum of eight hundred dollars which I recovered in the ^{Circuit} Court of St Louis County at the April Term of said Court A. D. 1846 and I do hereby authorize and direct the Sheriff or any other officer empowered to collect said judgment to pay over to and account to the said Field & Hall for the amount

of five hundred dollars out of said judgment,

Witness my hand & seal this 30th day of May A.D. 1846
Arthur Fairfield Seal

It was admitted that the instrument had never been filed in the cause or among any of the papers thereof and that it had never been exhibited to said Love prior to the return of the writ of execution issued in said case of Fairfield vs. Love and this was all the testimony offered by said Field & Hall

The counsel for said Love referred to but did not formally read any part of the record of the proceedings theretofore had in said cause of Fairfield vs. Love The same were not read being familiar to the Court And said counsel objected first to the Courts entertaining said motion of Field & Hall at all - and secondly to the sufficiency of the evidence to warrant the interference of the Court. The Court took the whole matter under advisement, The said Love on Monday 30th November 1846 made an affidavit in the words & figures following

Arthur Fairfield }

vs

James Love

} Motion for execution notwithstanding
the satisfaction of execution & judgment

James Love being duly sworn says on his oath that he was first informed of the pendency of the above entitled motion on the morning of Saturday last.

That he was informed by counsel that in their opinion the matter could not be disposed of by motion and he was also informed that Messrs Field & Hall could rely upon Charles Collins, S. M. Dawson and Hugh Lacey to prove that said affiant had notice of the assignment of part of said judgment to said Field & Hall - That he relied upon the

fact that he never had had notice of assignments, and he knew that none of the persons above named would depose that he had. That he was surprised by the production of John H. Deek as a witness. That said Deek is a man of notoriously infamous character. That he has been indicted for perjury in the Circuit Court of St. Louis County to wit in the year 1834 That he then fled from the State & remained absent until the indictment was discontinued by a *nolle prosequi*. That in the year 1833 he was indicted in the same Court for uttering a forged Bank Bill. That affiant can easily prove by numerous and respectable witnesses that said Deek is not a credible witness and that he wishes to have the opportunity of making this fact appear before a jury.

Affiant claims positively, & explicitly and without reserve that he ever had directly or indirectly notice or knowledge of the assignment of any part of the judgment obtained against him by Fairfield to Field & Hall. He understood from various sources that the chief difficulty in settling with Fairfield arose from said Fairfield being guided very much by the advice of his Counsel and that his Counsel were much opposed to a settlement or compromise of the matter, but this was all that he heard on the subject or the substance of all. He never heard that Field & Hall had any claim, assignment or separate interest in, or out of the said judgment. That the only conversation he ever had with Deek since the said judgment was obtained against him, took place at or near the corner of 3^d & Pine Streets on or about the tenth day of July

1846 on which occasion the said Deek approached said affiant and told him that he wanted to talk with him about the cutting of some wagons, that Field was a lawyer in the case and that said Field was a very fine man, and that the said Field and he (Deek) wanted to talk with him about it. That Field had told him (Deek) that he did not wish to injure said affiant. To all which affiant replied that he did not know any thing more of the matter than the dead, and this was all that was said & this was the only occasion on which affiant had any conversation on this subject with said Deek for affiant avoided said Deek not wishing to be seen in the company with a person whose character was so bad, and he would have been particular in saying nothing to him respecting his business matters.

James Love.

Sworn to and subscribed before me this 2^d Dec. 1846

John Buland Clerk

Which was handed to the Judge of said Circuit Court on the first or second day of December 1846, and before the determination of said motion of said Field & Hull - Afterwards, to wit, on the twelfth day of December 1846 and before said Court had decided said motion the following affidavit and motion of Joseph Murphy }
Arthur Fairfield } In the St. Louis Circuit Court Joseph
vs. } Murphy on oathe says that at the November
James Love. } Term A.D. 1845 of the St. Louis Circuit Court
the said plaintiff Arthur Fairfield instituted a suit against James Love this affiant Nicholas Fineman and others in an action of trespass, that subsequently the said Fairfield instituted an other suit against James Love in which latter cause a judgment by default was rendered at the last term of this Court, and this affiant further says that previous

to the order made and satisfaction acknowledged by said
Fairfield on the execution issued on the judgment against
said Love, an arrangement was made by and between said
Fairfield & Love, and this affiant and his Co. defendants
in the other suit aforesaid, that all of said defendants should
contribute to satisfy the judgment against said Love, and
that Fairfield should dismiss the suit against this affiant
and his Co. - defendants - And this affiant stated that
this arrangement was carried out, and that when it was
so done, he had no notice that Messrs Field and Hall
Attornies in the case against said Love had any assign-
ment of or lien on said judgment against said Love

Neither had he any notice that a motion was pending
to vacate the order and satisfaction made on the execution
issued on said judgment against said Love, until after
it had been argued and submitted to the Court

Joseph L. Murphy,

doorn to and subscribed before me this 11th December 1846

pro Richard Clark

Arthur Fairfield }

Motion of

vs

Joseph

James Love }

Murphy

St. Louis Circuit Court. 6th of the April Term
A. D. 1846. And now comes Joseph
Murphy and files his affidavit and by his Attornies moves
the Court to be heard in a matter now depending and un-
decided where in A. P. Field & D. H. Hall claiming
to be assignees of Arthur Fairfield of a part of the
judgment had in the above entitled cause have
moved the Court to award execution on said judgment
and to vacate the writ of satisfaction on an execution
issued on said judgment made by said plaintiff

1st Because said plaintiff had previous to the institution of the above suit - instituted another suit against him the said Murphy and others for the same cause of action and that said Murphy and his co. defendants contributed to pay and satisfy said judgment obtained by said Fairfield against said Love, in the above entitled cause

2^d Because said Murphy had no notice or knowledge of said Fairfield ever having assigned to said Field & Hall any portion of said judgment against said Love at any time before the same was ordered to be satisfied.

3^d That said Murphy had no notice that said motion was made to award an execution and to vacate the entry of satisfaction made on said execution

4th Because he will be prejudiced thereby or exposed to be prejudiced if the entry of satisfaction is vacated, and the writ of execution renewed, for the amount of said judgment or any part thereof, he the said Murphy having contributed to satisfy the execution, in the case of Fairfield vs Love for the purpose of settling the whole matter pending between said Fairfield & said Love, and affiant to others

S. M. Bowman for
J. Murphy

Was filed and submitted to said Court.

Afterwards on the ninth day of January 1847 the Court allowed the motion of said Field & Hall. On the twelfth day of January, 1847 the said Love filed a motion for rehearing in the words & figures following

Motion to	In the matter of Field & Hall	} On the motion of Field & Hall for issue of execution not withstanding satisfaction
set aside	Claiming as assignees of Fairfield	
allowance of	vs.	
execution	James Love.	

entered by Fairfield on the former writ

The said James Love by his Attorney comes and moves the Court here to set aside the allowance of an execution to said Field and Hall against the said James Love for the following reasons

1st Because it appears from the affidavit filed by said Love that he was surprised by the testimony of said Duck and that the said Love was prepared to show that said Duck was infamous as a witness - and for the other reasons stated in the ^{said} affidavit

2^d Because there is no testimony that said Love knew of said assignment to Field and Hall.

3^d Because the allowance of said execution is against law

4th Because the allowance of said execution is against evidence

5th Because there were other parties interested in said allowance, to wit; The said Fairfield and also John Murphy, Nicholas Tierman & Peter Tierman & as stated in their affidavit

6th Because the Court proceeded to inquire respecting the fact of notice of said assignment, to said Love summarily without notice to the other parties about herein named and without the intervention of a jury.

J. Polk & Th^o J. Gault

Attorneys for James Love

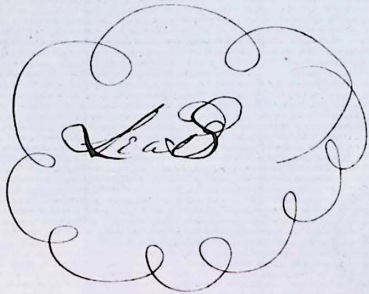
And when said motion came on to be heard, to wit; on the eighth day of February 1847 the counsel of said Love informed said Court that since filing said motion, they had ascertained that Mr Field had taken a transcript of the record and proceedings in said case of Fairfield vs. Love to the Circuit Court of Madison County Illinois together with an affidavit of said Fairfield that the amount

of said judgment & costs was due to him said Fairfield from
said Love which transcript and affidavit were filed in the
Circuit Court for Madison County Illinois on the 29th May
1846 by said Field as Attorney for said Fairfield, and
they asked to be permitted to show the same by competent
testimony, But the Court refused to permit said Love (in
said St. Louis Circuit Court) to introduce any evidence of
said facts, to which refusal the said Love excepted,
Said Love also offered to show that said Deek was not
a credible witness, and also that said Love had no notice
of the ^{said} assignment to said Field and Hall by said Fairfield
of the judgment in the case of Fairfield vs Love prior to
the return of said writ of execution, But the Court refused
to hear any testimony touching said facts on the ground
of the incompetency of such evidence, touching the motion
for a rehearing now before the Court to which refusal
the Counsel of Love at the time excepted, Said Counsel
of Love then read over the affidavits & motions in said
cause filed, (see pages 9, 10, 11, 12, 13, & 14) and the said
Field and Hall read the affidavit of said Field and Hall
also filed in said Cause - The Court refused to reconsider
the said case and overruled the motion of said Love
for the rehearing of the of said Field and Hall for the
vacating of the satisfaction entered on the Execution -
and the allowance of an alia, execution against
said Love in favor of said Field & Hall as
assignees of said Fairfield - To all which ruling,
decisions and judgments of said Circuit Court
the said Love by his Counsel excepted and presented
this Bill of Exceptions & prayed that the same might
be signed & made a part of the record & it is done

John M. Krum

State of Missouri }
 County of St. Louis }

I John Ruland Clerk of the
 Circuit Court within and for the County
 aforesaid do certify the foregoing to be a true
 and complete Transcript of the record
 and proceedings as fully as the same remain
 in my office; in the case of Arthur Fairfield
 against James Love



In Testimony whereof I have
 herewith affixed the seal of
 said Court and subscribed
 my name at office in the
 City of St. Louis this 4th
 October 1848

John Ruland
 Clerk

State of Missouri Set

Be it remembered that on the sixth
 day of October in the year of our Lord One
 Thousand Eight Hundred and Forty eight
 there was filed in the office of the Clerk of
 the Supreme Court of the State of Missouri
 a transcript of the records and proceedings
 in the case of Arthur Fairfield against
 James Love in the St. Louis Circuit Court
 of which the foregoing is a true copy

And afterwards To wit: On the twelfth day

of November in the year of Our Lord One
Thousand Eight Hundred and forty nine
the following proceedings were had -

James Low } Supreme Court, Missouri
vs } October Term 1849.
Arthur Fairfield }
Error to St Louis Circuit Court

Now at this day came the parties aforesaid
by their respective attorneys and submit their
cause to the Court, for its decision upon
their written arguments

And afterwards, to-wit on the
twenty second day of March in the year of our
Lord One Thousand Eight Hundred and Fifty
were had the following proceedings

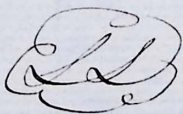
Supreme Court Missouri
James Low } March Term 1850
vs } Error to St Louis Circuit Court
Arthur Fairfield }

Now at this day came the parties
aforesaid by their respective attorneys and the
Court here being sufficiently advised of and
concerning the premises, do consider and
adjudge that the judgment aforesaid, in form
aforesaid by the said Circuit Court rendered

be reversed, annulled and for naught held and
 Esteemed, And that the said appellant be restored
 to all things which he has lost by reason of
 the judgment aforesaid; And it is further
 considered by the Court that said Cause be
 remanded to the said Circuit Court for further
 proceedings in conformity to the opinion of this
 Court herein delivered

State of Missouri - Et

I William B. Starke
 Clerk of the Supreme Court of the State of
 Missouri at St. Louis, certify that the
 foregoing is a full true and perfect copy
 of the Transcript of the record and proceedings
 in the case of Lane, Son against Arthur
 Fairfield, in error to the St. Louis Circuit
 Court



Witness my hand and private
 seal (there being no seal of Court
 yet provided) at office in the
 City of St. Louis, the Twenty
 fourth day of March A.D. 1857

W B Starke
 Clerk

I William B Napton Presiding Justice of the
Supreme Court of the Supreme Court of
California, do certify that the foregoing attestation
by W B Starke Clerk of said Court of the
transcript of the record in the Cause of James
Lowe vs Arthur Fairfield is in due form of Law

W B Napton

And afterwards to wit on the 31 day of August 1858 the defendant James J. McJilton one of the defendants herein filed his separate answer to the complainants bill in the above entitled cause which answer is in words and figures as follows, to wit;

To the Honorable William H. Underwood Judge of the Second Judicial Circuit now sitting as Chancellor in and for the County of Madison in said Circuit

The several answers of James J. McJilton one of the defendants in the bill of complaint of James Love complainant against this defendant and Arthur Fairfield, Alexander P. Field and David M. Hall, Andrew Miller, John Glasgow and William Hoadly Administrators of John Duncan deceased defendants.

The defendant James J. McJilton by publication, not confessing all or any of the matters and things in the complainants said bill to be true in such manner and form as there in stated and alledged as to all the relief prayed by the said bill and as to all the discovery thereby prayed, save and except so much thereof as is within said defendants own knowledge and belief and which is hereinafter stated and set forth.

And the said James J. McJilton alleges and sets forth to be true that so much of the said complainants bill which relates to the suit between Arthur Fairfield and James Love in the St. Louis Circuit Court in which said suit judgment was obtained against said James Love on the 11th day of May eighteen hundred and forty six in favor of said Arthur Fairfield for the sum of

Eight hundred dollars with interest and cost of suit, and that which relates in said complainant's bill to the issuing and returning of the Execution on said judgment, satisfied by the order and direction of the said Arthur Fairfield on the 28th day of October 1848 to the Sheriff of St. Louis County and also the return on said execution by said Sheriff of ~~the~~ said on the 20th day of August 1848 of "Nulla bona" This defendant knew nothing about at the time of the purchase of said judgment against said complainant of and from said Alexander P. Field and David N. Hall as aforesaid.

And the said defendant further states and alleges that he was wholly ignorant of a motion being made by said Field & Hall in the St. Louis Circuit Court to vacate the entry of satisfaction of the Execution issued on the judgment in the case of said Arthur Fairfield against said complainant to the extent of five hundred dollars assigned by the said Arthur Fairfield to the said Field & Hall and also that said defendant was at the time of the purchase of ~~the~~ said judgment wholly ignorant that a writ of Error had been granted in the St. Louis Circuit Court to the Supreme Court of the State of Missouri on motion of said Field & Hall to set aside the entry of satisfaction on said execution made by said Sheriff of St. Louis County on the order of said Arthur Fairfield as aforesaid. And that the said defendant was wholly unacquainted and ignorant of all the matters and things stated and alleged in said complainant's bill of complaint relating to the case of said Arthur Fairfield against said James Lee and all the proceeding had there on in any courts in the State of Missouri, and that said defendant purchased said judgment from said Field & Hall after judgment

had been obtained and execution issued and levied upon the land Mention and described as being sold to said defendant in said complainants bill of complaint - on an attachment granted and issued out of the Clerk's Office of the Circuit Court of Madison County Illinois against complainants Land aforesaid and as set forth and described in said complainants bill of complaint

And said defendant further states and alleges that the allegations in said complainants said bill of complaint in relation to said defendant's having knowledge of complainants prosecuting his said writ of Error in the Supreme Court of the State of Missouri for the purpose of reversing said judgment as therein alleged and set forth in said bill of complaint and that said defendant had full knowledge of all of these facts said defendant purchased said Land as sold by the Sheriff of Madison County State of Illinois on said judgment and Execution as aforesaid, to be absolutely unfounded in truth and in fact

And that the said defendant further states and alleges that on or about the 17th day of April in the year eighteen hundred and forty nine, Joshua Wilcox as agent of said defendant sold two thousand lots in the City of St. Louis to said David N. Hall for the price and sum of four thousand dollars as aforesaid received and took the said judgment against the said James Love and in favor of the said Child and Hall assignees of the said Author Fairfield in part payment as cash for said Houses and lots aforesaid in good faith without doubting but what the said judgment had been obtained legally and honestly against said complainant in said Circuit Court in

the State of Missouri, and that said defendant does honestly and candidly believe that said judgment was obtained by due course of law and that without any fraud on the part of the said Another Fairfield or the said Alexander P. Field and the said David M. Hall as assignees of said Fairfield and that said defendant attended said sale under said judgment and Execution aforesaid and that being the best bidder at said sale of the real estate listed upon by said Sheriff of Madison County under and by virtue of said Execution issued on said judgment, became the purchaser of said real estate described in said complainant's bill of complaint for the price & sum of six hundred and twenty nine dollars, which said Sheriff of Madison County aforesaid gave to said defendant a certificate of purchase under his hand & seal dated on the 28th day of April A.D. 1849 and that on the said certificate of sale as aforesaid said Sheriff endorsed and acknowledged in writing that he had received of and from the said James J. McFittens, defendant as aforesaid the sum of thirty six dollars and ninety five cents being the balance in full of all the costs in said cause, which said certificate bears date at Edwardsville April 28th 1849, and is asked to be taken as a part of this answer and is here to annex
Marked "A"

And said defendant further states and alleges that said David M. Hall one of the defendants in said complainant's bill of complaint instead of being wholly insolvent as is stated and set forth in said bill is entirely solvent and full worth the amount of money mentioned and stated in said bond, mentioned in said bill of complaint and that said David M. Hall owns and possesses

in his own name and right a large amount of real Estate in the City of St. Louis unincumbered. which said property said defendant has good reason to believe and does believe that it is worth the full sum of ten thousand dollars. And said defendant further says that he has good reason to believe and does believe that the other securities to said bond as aforesaid are solvent and responsible for any damage that said Complainant may sustain by reason of the prosecuting of the said writ of attachment being levied upon the said real estate aforesaid.

And the said defendant further states that said Complainant after having had a fair and adequate remedy at Law files his said bill against the said defendant and others and asks to be admitted to litigate the rights which have already been decided in the proper tribunals, and as this defendant verily believes with no other view than to deprive the said defendant to the title to the said real Estate mentioned ^{and} described in the said Complainant's bill of complaint which the said defendant purchased without any knowledge or notice of the matters and things contained in the said Complainant's bill of complaint, all which this defendant is ready to over prove and maintain as this Honorable Court shall direct and prays to be hence dismissed with his costs and charges in his behalf most wrongfully sustained

James T. McJilton

And at the time and place above mentioned I proceeded
to sell said property, for cash — And that James T.
McJilton being the highest and best bidder became the
purchaser thereof, at the sum of Six hundred and
twenty nine dollars, Being Two hundred and fifty one
dollars for each of the South West quarter of Section Eight
to the North West quarter of Section Seventeen and one
hundred twenty seven dollars for the West half of the
South East quarter of section Eight as above described
And that the said James T. McJilton will be entitled
to a deed for the same, after the expiration of fifteen months
from the date hereof, unless it shall be redeemed according
to Law Given under my hand, this 28th day
of April A. D. 1849

A. Miller } Sheriff of Madison Co.
 } Illinois

\$629—

Rec^d of James T. McJilton Esq. Thirty six dollars and
ninety five cents it being the balance in full of all
the costs in the within entitled cause.

Edwardsville April 28th 1849

A. Miller Sheriff. M. Co.

And after wards to wit on the 31 day of August 1850 the
defendants ^{A. P. Field & D. N. Hall} ~~James T. H. J. H. J. H.~~ of the defendants herein, filed
their separate answer to the complainants bill in the above
entitled cause, which answer is in words and figures
as follows, to wit-

The joint answer of Alexander P. Field and David N.
Hall to the bill of complaint of James Love to Honorable
William H. Almonstred, Judge of the Second Judicial
Circuit sitting as Chancellor in and for the County of Madison
State of Illinois,

Alexander P. Field and David N. Hall saving and
reserving to themselves all and all manner of exception
and objection to the manifold imperfections & inconsistencies
of the said complainants bill of complaint, for
answer to so much thereof as they are advised it is material
for their answer, making answer say, that it is true
as stated in complainants bill that Arthur Fairfield
obtained a judgment in the Circuit Court of St. Louis
County in the State of Missouri for the sum therein
mentioned and that execution issued therein, but
as to the return of the Sheriff on the written order of said
Fairfield to said Sheriff on the date thereof if any,
these defendants know nothing further than the statement
of complainants bill; that it is true that these defendants
filed their motion in said St. Louis Circuit Court to
enact execution against the said complainant and to vacate
the entry of satisfaction on the execution aforesaid
but whether solely for the reasons stated in complainants

bill, these defendants do not now recollect what evidence
 having the knowledge of said Complainant of the assignment
 to these defendants by Fairfield before and at the time of
 said pretended settlement was heard on said motion
 and the same was allowed by said Court and execution
 ordered to issue against said Complainant; that it
 is true that a writ of attachment was issued from
 the Circuit Court of Madison County in the State of Ill-
 inois for the sum assigned by said Fairfield to these
 defendants and that the same was levied upon a
 tract of land as the property of the Complainant
 but the same as described in Complainant's bill, these
 defendants do not know or now recollect, and that
 said writ was regularly and legally conducted to
 final judgment against said Complainant in said
 Circuit Court of Madison County and that said cause
 was taken by said Complainant to the Supreme Court
 of Illinois and there upon full hearing in all things
 affirmed as to the judgment below but on what par-
 ticular day these defendants do not now recollect
 what the land and real estate seized under the
 attachment aforesaid was sold by the Sheriff of said
 County of Madison but on what day these defendants
 do not now recollect to one James J. McFilton of the City
 of St. Louis and State of Missouri that said McFilton
 bought the said judgment of these defendants and paid
 therefor the full value of the same, to wit, about the sum
 of six hundred dollars; that the said sum was not paid
 by said McFilton, in cash, but said judgment was
 received by him for that amount in part payment
 for a horse and lot sold by him to these defendants.

in the City of St. Louis aforesaid, that it is not true as
alleged in the Complainant's bill, that said Mr. Jettens
had any notice whatever of the proceedings in said judg-
ment in said assignment to these defendants or of any
~~pretended~~ rights of said Complainant, that these defen-
dants do not know the amount for which said land
was sold, nor when the time of redemption of the
same expires; that the said Complainant prosecuted
a writ of Error from the Circuit Court of St. Louis County
to the Supreme Court of Missouri, and at the March
Term 1850 of said Supreme Court, said judgment
of the St. Louis Circuit Court was by said Supreme
Court, reversed, and the same remanded to said
Circuit Court for further proceedings where the same
is now still pending and subject to trial and verdict in said
Court at a future time thereof; that the said Com-
plainant did consent and agree to the assignment
of the said five hundred dollars of said judgment to these
defendants; that it is not true as alleged by the said
Complainant, that he is wholly innocent of the acts
charged against him in the declaration of said Fair-
field, nor is it true that he was never served with
process to appear and answer to the same, but that
said process was served on him by the Deputy Sheriff
of St. Louis County to whom he was personally known, in
the presence of a witness, nor was he ignorant of the
proceedings against him as alleged until said judg-
ment was obtained, but soon after the serving of
said process left said City of St. Louis and continued
absent for a long time, wholly neglecting and postponing
the same under the impression that his co-defendant
would answer for him to said action and sustain

the burden and expense and the mistaken security
 which the general belief of his insolvency and our general
 ignorance of the possession of any property by him to answer
 to any judgment against him. These defendants deny
 and say it is not true that said complainant and
 one Joseph Murphy or any one else made an arrangement
 to settle up and did settle up said judgment with said
 Fairfield, nor was the same paid to said Fairfield or to
 any one else for him, and these defendants deny the
 fact to be that no money or valuable consideration was
 paid to said Fairfield to procure from him the said
 entry of satisfaction of said judgment unless it may
 have been a mere nominal sum with which the latter
 to defend these defendants of their just claim; that it
 is not true that at the time of the pretended payment
 and settlement of the judgment aforesaid with said
 Fairfield, the said complainant knew nothing about
 the assignment of a part of said judgment to wit the
 sum of five hundred dollars to these defendants, but this
 fact such assignment was then well known to said com-
 plainant, then and long before, and that said complain-
 ant was fully informed of said assignment by said
 Fairfield, who refused for some time to yield to the threats
 and solicitations of said complainant by reason of said
 assignment by him to these defendants, of said sum
 of five hundred dollars, and these defendants further say,
 that a full knowledge of said assignment was communi-
 cated to the said ^{complainant} ~~complainant~~ ^{before} ~~before~~ said pretended settle-
 ment from other sources, and that he well knew said
 judgment was not the property of said Fairfield at
 the time of said settlement as pretended, and that

said

pretended settlement and payment was not in good faith, but for the purpose and with the design of defrauding these defendants of what the said complainant will know to be their just right and debt, that it is not true that these defendants sued out the said writ of attachment from the Circuit Court of Madison County for the purpose of imposing upon or harassing the said complainant but solely to secure their just and honest debt — that the land sued on under said attachment was the only property of any kind that said complainant was known to possess and the only source from which these defendants could make their debt; that they further feared and had good reason to apprehend that unless said land was so seized by attachment, that said complainant would sell or in some way dispose of the same so as further and to further defraud these defendants; ^{said} Now had these defendants at the time of swearing out ~~the~~ attachment any knowledge or notice of the taking of said cause to the Supreme Court of Missouri; now was said cause so taken there till many months (to wit on the 16th Sept. 1848) after the swearing out of said attachment would the said complainant intend at that time to take said cause to said Supreme Court but was stimulated so to do, by the unexpected levy upon said land which he supposed he was not known to possess, That these defendants do not now know or recollect whether said Mr. Jilton at the time of purchasing said judgment knew of the appeal of said complainant to the Supreme Court of Missouri, but they do not believe him acquainted with any of the facts charged if with that. That it is not true, that said Field and Hall are wholly insolvent, and they are wholly ignorant of the

insolvency of said Cameron, and of the estate of said
 American, if such be the fact, but that such is the fact
 they deny, These defendants further deny the right of the
 Court to appoint a receiver as prayed in said complain-
 ants bill or to allow or desire redemption of the said land
 as prayed, or to restore or enjoin the making, asking or
 receiving of a deed for the land aforesaid, or from col-
 lecting and making the judgment aforesaid or en-
 joying fully the fruits of their just and honest claim, or
 to annul or vacate the sale of said land, These defendants
 further say that said judgment of the Madison Circuit
 Court and of the Supreme Court of Illinois is perfect
 and valid, and the sale thereunder perfect and valid
 and has conveyed away all the title and interest of said
 Complainant in the same, But the reversal of the said
 judgment of the said Circuit Court of St. Louis County
 in the State of Missouri by the Supreme Court of
 said State of Missouri cannot now be set up or
 used to annul, reverse or in any way impair the
 judgment of said Circuit Court of Madison County
 in the State of Illinois and of the Supreme Court
 of Illinois; that the pendency of the writ of error
 in the Supreme Court of Missouri at the time of the
 attachment in said Circuit Court of Madison County
 was not pleaded in restraint of said writ nor was
 delay or injunction asked of said Complainant
 although he appeared to said writ in attachment
 and made answer of other matters there to, that he
 is precluded by such failure and neglect from availing
 himself of the same, now in this form; These defendants
 further say that their said debt and claim is a

just and meritorious one, and which has cost them its full value; that said Complainant well knew of all the facts of the assignment of said five hundred dollars by said Fairfield to these defendants, and contrived the said pretended settlement and payment to defraud these defendants, and that he in fact paid nothing to said Fairfield, to procure said entry of satisfaction save only perhaps a merely nominal sum to enable him to secure to consideration and payment and thus better accomplish his cheat, that said Fairfield is wholly insolvent and unable in any valuable or pecuniary manner to make good said assignment to these defendants or any part thereof - therefore these defendants pray that the bill of complaint of said Complainant may be dismissed, and the injunction heretofore granted in this cause be forever dissolved and vacated and these defendants and all others in this cause may go hence with their reasonable costs and expenses in this behalf expended and that said Complainant may be enjoined, restrained from further prosecuting this his suit until the final determination of the said cause still pending in the Circuit Court of St. Louis County in the State of Missouri aforesaid, so remanded there for further proceedings by the Supreme Court of said State of Missouri as aforesaid and so as in duty bound will ever pray

David M. Hall

And afterwards To wit on the day of August
A.D. 1850 Complainant herein filed his repli-
cation to answers of Defendants filed, which
Replication is in words and figures, as
follows; To wit:

James Love

^{vs}
James T. Mc Gilton and others

The said Complainant not confessing to
the truth of the said answers but denying
the same, says that the facts set forth
in his said Bill of Complaint are true,
which he is ready to prove and maintain
when & where this Hon Court shall direct

J. D. Gillespie

Solicitor for Complt

And afterwards To wit on the 31st day
of August A.D. 1850 another and further
order of Court was made and entered
of Record in this Cause - which order
is in words and figures as follows
To wit:

James Love

^{vs}
Arthur Fairfield Etal

Injunction

On Motion this cause is set for hearing on
Bill, Answers, Replication and Evidence
And it is ordered that the same be continued

And afterwards Lovick: on the 31st day of
March A.D. 1857, another and further order
of Court was made and entered of record
in the above entitled cause; which
Order is in words and figures as follows
Lovick:

James Low
as
Arthur Fairfield

Injunction & C

This day comes the Complainant by his
Solicitors and suggests to the Court the death
of David N Hall one of the Defendants
and this cause is continued

State of Illinois
Madison County

Pleas of Record in the
Circuit Court of said County, in the Case
of James Love vs Arthur Fairfield and others
Judge William H Underwood presiding -

Be it remembered that on the 26th day of
April A.D. 1857. James Love Complainant, filed
his Bill of Complaint in the Circuit Court in
and for the County of Madison State of Illinois
against Arthur Fairfield and others Defendants
which Bill was filed on the Chancery side of
said Court and is in words and figures
as follows to wit:

"To the Honorable William H Underwood
Judge of the Second Judicial Circuit, now sitting
as Chancellor in and for the County of Madison
in said Circuit - Humbly Complaining -
sheweth unto Your Honor James Love Your Orator,
of the City of St Louis and State of Missouri

that on the 11th day of May in the year of Our Lord One Thousand Eight Hundred Forty six at a term of the Circuit Court in and for the County of St. Louis and State of Missouri held at the City of St. Louis in said County One Arthur Fairfield of said City County and State recovered a judgment by default against your Orator for the sum of Eight Hundred Dollars and Costs of suit, and that on the 16th day of May A.D. 1846, five days after the date of the rendition of said Judgment an Execution was issued out of the Clerks Office of said Circuit Court upon said Judgment in favor of the said Arthur Fairfield, and against your Orator. And that afterwards To wit; on the 20th day of August A.D. 1846, said Execution was returned by the Sheriff of said County, endorsed "Nulla Bona" Nothing made on said judgment up to that date; but that afterwards on the 28th day of October A.D. 1846 by a written order from the said Arthur Fairfield the Plaintiff in the said Execution the Sheriff made an additional return upon said Execution as follows - "By Order of the Plaintiff above above written this writ is returned satisfied in full - Costs paid by Deft, Oct 28th 1846

Saml Conway Shff
By Henry B Belt Depty

Your Orator would further represent unto Your Honor, that Alexander P Field and David N Hall on the 9th day of January AD 1847, filed their Motion in said Circuit Court to award Execution on the Judgment against Your Orator as aforesaid, and to vacate the Entry of Satisfaction on the Execution by Fairfield founded on the following Reasons -

1st: That said Field and Hall had an Assignment of Five Hundred Dollars by the said Fairfield before said Satisfaction was entered on said Execution -

2nd: That Your Orator knew that the said Field and Hall had an interest in said Judgment at the time he settled the same with said Fairfield the Plaintiff in the said Execution - Which said Motion coming on to be heard. And the said Circuit Court after hearing evidence in support of said Motion and being sufficiently advised of and concerning the said premises, allowed said Motion and ordered that said Entry of Satisfaction, as to the Five Hundred Dollars assigned by the said Fairfield to the said Hall and Field be set aside and that Execution issue in the name of the said Fairfield for the use of the said Field and Hall against Your Orator for the sum of Five Hundred Dollars - To all of which, The said

James Love your orator by Thos. J. Faunt his attorney
objected at the time and filed his Bill of Exceptions
to the opinion of the said Court and that on the
12th day of January A.D. 1847 Your Orator by his
Counsel filed a Motion for a rehearing upon
Reasons filed and afterwards Lovit: on the
8th day of February A.D. 1847 the said Circuit
Court overruled the same - To all which
Defendant excepted and tendered his bill
Exceptions which were duly signed by the
Judge of said Circuit Court, all which
Matters and things will more fully appear
by Record reference to the record of said
Court hereto attached and prayed to be
taken as a part of this bill of Complaint
Your Orator would further represent unto
Your Honor that on the 28th day of March
A.D. 1847 the said Alexander P. Field and David
N. Hall under the name of Arthur Fairfield
sued out of the Clerks office of the Madison
County State of Illinois Circuit Court upon
an affidavit setting forth the fact that
Your Orator was justly indebted to them in
the sum of Five Hundred Dollars the amount
of said Judgment as aforesaid made by
the said Circuit Court of St. Louis County
State of Missouri, a writ of attachment directed
to the Sheriff of said County of Madison and
State of Illinois against the Lands and
Tenements goods and Chattels of your

Orator in said County and State - And that the same was tried upon the following described tracts of land as the property of your Orator lying and being in the County of Madison and State of Illinois, and known, designated and described as follows To wit: The South West Quarter of Section Eight and the West Half of the South East Quarter of Section Eight and the North West Quarter of Section Seventeen in Township No Five North of Range No Seven West, and that on the 29th day of November AD 1847, the said Alexander P Field & David N Hall in the name of the said Arthur Fairfield filed in the Clerks office of said Circuit Court his declaration in debt founded upon said Judgment as aforesaid, and that afterwards To wit: on the 22nd day of March AD 1848 at the August Term of said Circuit Court your Orator moved said Circuit Court to quash the writ of Attachment issued herein for reasons filed among which were the following -

That the said Field & Hall were the actual Plaintiffs in this suit, and that they claimed a portion of said judgment and asked to split up said original judgment into different parts and the said Circuit Court after consideration overruled the same, to which decision

Defendant Excepted - And that afterwards
Lowit; on the 28th day of August A.D.
1848 the parties to said suit being ready for
trial - the same was tried by the Court
And the said Court after hearing evidence
and argument of Counsel rendered a Judg-
ment against Your Orator for Five Hundred
Dollars Debt and Sixty Nine Dollars & nine
cts damages - Whereupon Your Orator prayed
an appeal to the Supreme Court of the State
of Illinois which was allowed - All which
Matters and things will appear by reference
to the papers on file and Orders of the said
Circuit Court -

Your Orator would further
represent unto Your Honor that on the 16th
day of October A.D. 1848 Your Orator filed
his appeal bond in the Clerks office of
said Circuit Court, and the Record of the
proceedings of the said suit was sent to
the Clerk of the Supreme Court of the State
of Illinois at Springfield And that at
the December Term A.D. 1848 of the Supreme
Court of the State of Illinois a decision
was made by said Court affirming the
decision of the Court below which will
appear by reference to the decision of
said Court in 5th Gelman - Page

Your Orator would further represent unto
Your Honor that the Sheriff of Madison

County Illinois in pursuance of a special Execution directed to him on the 28th day of April A.D. 1849 proceeded to make sale of the Land and Real Estate attached, and the same was sold and struck off to one James T. McMillton of the City of St. Louis and State of Missouri, whom your Orator makes defendant herein, and alleges and charges the facts to be that the said McMillton bought the said Judgment of the said Field and Hall and your Orator does not know whether he paid any thing for the same or not but calls upon him to show how and in what manner the same was paid if at all, and purchased in the said Land sold as aforesaid as assignee of the said Field & Hall having full notice and knowledge of proceedings herein and of the rights of your Orator in the premises - said Real Estate being sold as follows:

"	The South West 2d Sec 8. T. 5. N. R. 7. W.	2.57
"	West half South East 10-	1.29
"	North West 2d 17-	2.57

Making for said land attached the sum of \$ 6.31 and that on said day Andrew Miller whom your Orator makes Defendant herein Sheriff of said Madison County State of Illinois Executed a Certificate of purchase of said Real Estate to the said James T. McMillton as assignee of the said Alexander P. Field and David N. Hall and that the time of Redemption of the said Land as

to Your Orator expires on the 28th day of April
A.D. 1857 - Your Orator would represent unto Your
Honor that he prosecuted a writ of Error in
the Cause of Fairfield for use of Field & Hall
against him to the Supreme Court of the State
of Missouri on the 10th day of September A.D. 1848
upon the Order of said Court as aforesaid,
and that afterwards to wit: at the March
Term A.D. 1850 a hearing was had upon said
writ of Error prosecuted upon the Order of the
Circuit Court of St. Louis Co. Mo. as aforesaid
and a decision was made by said Court at
that time reversing, annulling and for naught
holding and esteeming the judgment rendered
by the said Circuit Court and that your
Orator be restored to all things which he has
lost by reason of the said judgment -

All which will more fully and at large appear
by reference to the order of said Supreme Court
a certified copy of which is herewith filed -

Your Orator would further represent unto
Your Honor and avers and charges the facts to
be that he is wholly innocent of the acts
charged against him in the declaration of
said Fairfield in the original action brought
in the St. Louis Missouri Circuit Court and
that he was never served with process to appear
and answer thereto although it appears by the
return of the Sheriff that he was served and
Your Orator can only account for it on the

Supposition that he was personated by some
 other individual - And your Orator avers and
 charges the facts to be that he knew nothing of the
 proceedings until judgment was rendered
 against him and that finding the judgment
 against him and deeming that it would
 be better for him to pay or compromise the
 same and for the purpose of avoiding litigation
 and the expenses of a law suit he together with
 one Joseph Murphy and others made an arrange-
 ment with said Fairfield by which said Fair-
 field was to dismiss a suit which he had insti-
 tuted against said Joseph Murphy and others
 and which was the same cause of action as
 the one against your Orator and they were
 to settle up the said judgment against your
 Orator - and your Orator alleges and charges
 the facts to be that the said judgment was
 settled up and paid to the said Arthur Fair-
 field the plaintiff in the execution and a
 written order was given by him directing the
 said execution to be returned as satisfied
 in full - your Orator would further aver
 that at the time of the payment by him of the
 said judgment to the said Fairfield he
 knew not anything in regard to the assignment
 of a part of the said judgment to the said
 Alexander P Field and David N Hall as
 aforesaid, nor did the said Arthur Fairfield

say anything to your Orator relating to the said
assignment to the said Field & Hall but your Orator
paid the same in good faith believing that the same
was the property of the same Arthur Fairfield, the
person who had obtained the said Judgment.
Your Orator alleges and charges the facts to be
that the said Field and Hall sued out the writ
of Attachment against the Real Estate of your
Orator situated in Madison County Ills for the
purpose of harassing and impressing upon your
Orator, the said Judgment of Vacation having
been obtained on the 12th day of January AD
1847, and the said writ of Attachment being
sued out after the Clerks office of said Circuit
Court of Madison County Illinois on the 18th
day of March AD 1847, the said Field and
Hall having full notice and knowledge
of the facts of your Orator taking the said
Case to the Supreme Court of the State of
Illinois for the purpose of having a final
decision in regard thereto. And that the said
Judgment obtained against your Orator
upon the said erroneous judgment of the
Circuit Court of St. Louis County State of
Illinois and the sale made therein has
greatly injured and harassed your Orator.
Your Orator alleges and charges the facts to
be that the said James T. M. Dillon the
assignee of the said Field and Hall purchased
the said Real Estate sold by the Sheriff as

aforesaid well knowing the fact of your Orators
 rights in the premises, and of his prosecuting
 his writ of Error in the Supreme Court of
 the State of Illinois for the purpose of
 reversing said judgment assigned to him as
 aforesaid and that he purchased said
 Land with a full and complete knowledge
 of all of these facts -

Your Orator would
 further represent unto your Honor that the
 said Alexander P. Field and David N. Hall
 are wholly insolvent and that also John G.
 Cameron be of the securities to the bond filed
 by the said Field and Hall upon which the
 attachment was issued is also worthless as
 your Orator believes and that John Duncan
 the other security upon said bond has departed
 this life, and your Orator believes that his
 Estate is insolvent, and that letters of
 Administration were granted to one William
 Hadley upon said Estate by the probate
 Court of Madison County Illinois, whom
 your Orator prays may be made Defendant
 herein - But inasmuch as your Orator is
 without remedy or relief in a Court of
 Law and can only obtain adequate
 relief in a Court of Chancery where such
 matters and things are cognizable your
 Orator prays your Honor that a subpoena
 in Chancery may be issued out after

clerk's office of the Circuit Court of Madison
County Ills. Commanding the said Defendants
Arthur Fairfield, Alexander P Field, David
N Hall, James T. M. Gilton and Andrew
Miller, John G Cameron & William Hadley
Administrator of the Estate John Duncan
Dec^d to be and appear before this Honorable
Court at the August Term thereof AD 1850
to be holden at the Court House in the Town
of Edwardsville to answer this bill of
Complaint as fully and specifically
as if specially interrogated thereto -

But as
this Bill of Complaint is filed for other pur-
poses than a discovery the oath of the said
Defendants to their answers is hereby waived
and as your Orator is desirous that that which
is right and just in the premises should
be done, he prays that your Honor would
appoint the Clerk of the Circuit Court of
Madison County Illinois or some other person
as a Receiver to receive the amount of the
said Judgment and interest thereon up to
the 28th day of April AD 1850 subject to
the decision of this Honorable Court in
this cause and if the decision of the said
Court be in favor of your Orator that the
said sum of money be paid back to your
Orator - but if the same be decided in favor
of the said Defendants that the same be

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paid over to the said James T. McElton as
assignee of the said Field and Hall and
that the said payment be considered as
a Redemption of the said Real Estate within
the said twelve months as prescribed by
Law and that upon the said deposit
being made with the said Receiver that
your Honor would grant an injunction
herein restraining and enjoining the
said Defendants or either or any of them
their agents, Attorneys or Solicitors from
asking or demanding, receiving, or delivering
a deed for said Real Estate under the said
sale as aforesaid until a decision of
this Cause by this Honorable Court and
the rights of the parties herein be established
and that upon a coming in of the answers
of said Defendants herein and upon a
hearing of this Cause upon Bill Answers
and Testimony that your Honor would
make a Decree herein that the said
Defendants or either or any of them their
agents Attorneys Solicitors &c be perpetually
enjoined from interfering with or in any
manner attempting to collect the said
Judgment in the Madison Circuit
Court State of Illinois against your
Orator for the sum of Five Hundred Dollars
Sebb and Sixty Nine Dollars and Nine
Cents Damages rendered the August Term

AD 1848 of said Court, And that the Sale
made upon said Judgment by the Sheriff of
Madison County Illinois and all the pro-
ceedings therein be annulled, vacated,
and held and esteemed and held for
nought and that the said Miller be forever
enjoined from making a deed to any per-
son under said Sale and that the title to
the said Real Estate attached as afore-
said be vested in your Orator against
the claim or claims of the said Defendants
arising out of the said judgment as
aforesaid -

Your Orator prays that Your
Honor would grant such other and
further relief in the premises as to Equity
belongs and the exigencies of his case
requires, and as in duty bound he
will ever pray &c

J. D. Gillespie
Sole Compt.

And afterwards. To wit on the day of August
AD 1850 An Order of Court in the above entitled
Cause, was made and entered of record; which
Order is in words and figures as follows. To wit:

And afterwards to wit at the September term A.D. 1857 of said Circuit Court another and further order and decree was made and entered of record in said Court which order and decree in words and figures as follows, to wit-

James Love

vs.

Arthur Fairfield

here insert the other names

And now at this day comes the said Complainant by J. D. Gillespie his solicitor and it appearing to the Court that the Defendants Andrew Miller & William Gladky Administrators of John Dineen dec'd had been duly served with process in this cause and the Defendants Arthur Fairfield Alexander P. Field David N. Hall John G. Cameron James L. McJilton having been duly and legally notified of the pendency of said suit by publication of notice in a public newspaper printed in Madison County Illinois and a subpoena having been duly issued directed to the Sheriff said County commanding these to appear and answer the bill filed in said cause which was duly returned by said Sheriff, endorsed that said Defendants were not found in ~~said~~ County, and the said Defendants having been ruled at a former term of this Court to answer the said bill and the said Defendant Alexander P. Field & David N. Hall having answered in pursuance of said rule and the said Defendant James L. McJilton having interposed his disclaimer to said bill which after argument thereon was overruled and he having

thereupon ~~filed~~ his answer to said bill and the said
Defendants Andrew Miller William Hadley administrators
as aforesaid and Arthur Fairfield having failed to
plead answer or demurr to said bill pursuant to the
requirements of said rule, and the said bill as to
them having been taken for confessed and the death of the
said David N. Hall having been suggested and the ap-
pearance of his administrators
having been entered by Davis & Edwards his solicitors
and the cause having been set for hearing upon
Bill answers replication exhibits & proofs and the court
having now heard arguments of counsel thereon and
duly considered the same Orders and decrees that
the said Arthur Fairfield Alexander P. Field
James T. McFilton and the administrators of the
said David N. Hall died and each of them, and
their and each of their agents, attorneys, solicitors
and all other persons acting under, by or through
their authority be, and they are hereby perpetually
enjoined from proceeding or attempting to proceed
in the collection or enforcement of the said judg-
ment recovered by the said Alexander P. Field
and David N. Hall under the name of Arthur
Fairfield for their use against the said James Low
at the August term of the Circuit Court of Madison
County Illinois A.D. 1848 for the sum of five hundred
dollars debt and sixty nine dollars and nine
cents damages together with costs of suit and
also that the said James T. McFilton and all
persons acting by or under him or by his direction

or at his instance be perpetually enjoined from asking
demanding or receiving a deed or any conveyance
what ever for the South West quarter and the
west half of the South East quarter of section No
Eight and the North West quarter of section No
seven all in Township No Five North Range seven
west of the Third principal meridian the same
as devised upon by virtue of said will of Sime Tucker
mentioned in said bill and that the levy there on
and sale thereof and all proceedings there under
by virtue of and resulting from or by said judg-
ment be set aside vacated and for naught held
and estopped and that the said Andrew Miller
and all other persons be and they are hereby perpet-
ually enjoined from making executing or delivering
any deed or deeds or other conveyances for the said
lands or any part thereof or any interest therein
by virtue of said levy sale or other proceedings
under the same to the said James T. McFilton or
any person for him and that the said James Love
be restored to all his right title and interest in
said land as if no such proceeding attachment
judgment levy or sale had taken place Also
that the said James Love shall have the right
to demand and have of and from the said
William T. Brown the sum of
dollars deposited with him as special receiver
by order of the judge of the court made in granting
the injunction in said cause It is further
decreed that the said Defendants Alexander P. Field

and the said Administrator of this said, David N. Hall
did pay the costs of this suit, the latter in due course
of administration,

Whereupon the said Defendant James T. McPilton
prayed an appeal to the Supreme Court of the State
of Illinois which was allowed upon his entering
into bond in the penal sum of two hundred dollars
conditioned as the law directs with Nathaniel
Buckmaster as his surety, within sixty days from
the rendition of this decree it was agreed by and
between the said McPilton & Love that the record in
this case may be taken to and heard in the Supreme
Court at Springfield Illinois at the next term
thereof

And afterwards to wit on the seventeenth day of
October A.D. 1851 the Defendant McPilton filed an
appeal bond here in with Nathaniel Buckmaster
as security which bond is in words and figures
as follows to wit:

Know all men by these presents that we James T. McPilton
and Nathaniel Buckmaster are held and firmly bound
unto James Love in the penal sum of Two hundred dollars
to the payment whereof well and truly to be made, we
bind ourselves our Executors and administrators jointly
and severally firmly by these presents, sealed with our
seals and dated this eightth day of October A.D. 1851

The condition of the above obligation is such, that whereas at the September Term A.D. 1857 of the Madison County Circuit Court, a Decree was rendered by said Court in favor of the above mentioned James Love in a certain Cause in Chancery wherein said Love was Complainant and Arthur Fairfield James T. M. Gilton, John H. Rankin Executor of D. M. Hall were Defendants and against the said Defendants for Costs of suit; from which said Decree the said James T. M. Gilton prayed an Appeal to the Supreme Court of the State of Illinois, which was granted on Condition that said M. Gilton would within sixty days from the date of said Decree enter into and file in the Clerks office of said Madison County Circuit Court a bond in the penal sum of Two Hundred Dollars conditional according to Law with Nathaniel Buckmaster as Surety. Now if the said James T. M. Gilton shall duly prosecute his said Appeal, and well and truly pay all Costs which may be awarded against him in case the aforesaid Decree shall be affirmed by the Supreme Court aforesaid - then this obligation to be null and void - otherwise it shall remain in full force and virtue

In presence of }
James W. Smith }

James T. M. Gilton (Seal)
N. Buckmaster (Seal)

State of Illinois
Madison County

I hereby Certify the foregoing Exemplification to contain a full, true and complete copy of the record and proceedings in the case of James Love against Arthur Fairfield and others. as the same is now of record and on file in the Clerks office of the Circuit Court of said County

In Testimony whereof I have hereunto signed my name and affixed the Seal of said Circuit Court at office this 9th day of December A.D. 1857

W. J. Brown
Clerk

James P. McJilton

James Love

Assignment of error

And the said Appellant comes and says that in the record and proceedings aforesaid and also in the rendition of the decree aforesaid, there is manifest error in this to-wit; that the decree aforesaid in form aforesaid rendered, was rendered in favor of the said James Love and against the said appellant, when by the law of the land the same should have been rendered in favor of the said Appellant and against the said Love, for which said error and other errors apparent on the aforesaid record, the said appellant prays that the decree aforesaid may be reversed, set aside, and held for nought.

Levi Davis

Atty for Appellant

Grounds in error

I believe for complete

James T. Milton

"
James Love

14167

App

Filed Jan'y 18th 1852.