No. 14733

Supreme Court of Illinois

Knisely

---

vs.

Parker

71641

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 210

J. W. Middleton & Co., Stationers, 196 Lake St.

Kinsley
vs
Parker

Chicago Post Company, Printers, 93 Washington St.

SUPREME COURT.

[redacted]

Error,

Buf. for Pl'ff in Error.

Defendants in Error.

The Defendant in Error instituted in the Superior Court of Chicago an action of replevin to recover "The dredge Nile, her machinery &c," and the Plaintiff in Error, (the Defendant in the Court below,) put in issue the Plaintiff's title to the property.

The Defendants title to the property is based upon a sale made by a Constable of Cook County in a proceeding by attachments under the act entitled "Attachments of Boats and Vessels," see Purples Statute, 1 Vol., p. 10, 7 & 8.

It was admitted that on Oct. 20th, 1860, George Kimball was the owner of the property. The Defendant gave in evidence:

1. The affidavit for the writ of attachment made before Justice D. Wolf by Daniel G. McDonald, Oct 20, 1860.

2. Attachment Bond filed with the Justice.

3. Writ of attachment issued by the Justice against the property in question, and dated Oct. 20th, 1860, and returnable Oct. 22nd, 1860.

4. Proof of service of writ by seizure of the property and return of writ.

5. Written statement of indebtedness of boat to McDonald.

6. The continuance of the case until the 1st day of November.

7. The posting of notices and return by the Constable as required by section 7, of the Act entitled, "Attachments before Justices."

8. Judgment by the Justice Nov. 1, for $65.75 and costs against the property.

9. Order for sale of property and delivery to Constable and return by Constable.

10. Appeal to Circuit Court of Cook County by George Kimbal as owner, Nov. 10.

11. Appeal bond approved by Justice.

12. Transcript filed by Justice in Circuit Court, Nov. 19.

13. Justice's Docket.

14. Affidavit of Merrits made in the case in the Circuit Court in behalf of McDonald, Dec. 19, 1860.

15. Summons issued by Circuit Court, Jan., 7, 1861, and return of same.

16. Judgment of Circuit Court dismissing appeal for want of prosecution with a procedendo to Justice.

17. Second order of sale issued by Justice dated Sept., 25, 1861, with Constable's return, and

18. Sale of the property under this order to A. J. Knisely the Defendant below.

The Court instructed the Jury that the judgment rendered by the Justice against the Dredge "Nile" and in favor of McDonald was void, and directed the Jury to exclude from their consideration all evidence pertaining to the sale of the property under this judgment.

The Justice, Constable, deputy Custodian and Clerk of the Circuit Court were examined as witnesses in behalf of the Defendant below, and their testimony is set forth in the printed abstract.

The correctness of this instruction is the question involved in this case.

It is believed that the record shows that each and every step taken in the proceeding from the commencement of the suit before the Justice, to the sale of the property, is in exact compliance with the various provisions of our Statute, concerning the attachment of Boats and Vessels and attachments before Justices; and that the only question is, whether enough appears to show that the Justice had acquired jurisdiction of the case.

We will here remark that the sale, under which Knisely claims the property, was made to him on the 26th day of October, 1861. It appears from the testimony of the Constable Keeler, that he sold the property to Knisely on the 4th of October, and made an endorsement of this sale upon the writ; but discovering before the writ was returned that notice of this intended sale had not been given for a sufficient length of time, the sale was abandoned, and he re-advertised the property and sold it on the 26th of October. This explains the erasure of what purports to be a return endorsed upon the writ. A return of an officer is the actual placing of the process in the office from which it issues ; until then he may change the endorsement, but he cannot do so afterwards without the permission of the Court.—Nelson, *et al*, *v. s.* Cook, 19 Ills. 440.

1.

Are the facts set fourth in the affidavit of McDonald sufficient to give Jurisdiction?

Section one of the Act entitled Attachments of Boats and Vessels, provides that Boats and Vessels of all descriptions *** running upon any of the Navigable Waters within the jurisdiction of this State shall be liable for all debts contracted by the owner, on account of all work done &c., on account of or towards the building, repairing &c., of such boats or vessels.

Section four of the same act provides that all Engineers, Pilots, *boatmen and others employed in any capacity* in or about the service of any such boat or vessel who may be entitled to arrearages of wages in consequence of such service, may proceed to collect such wages under the provisions of said act, and shall be entitled to all the benefits thereof—and the last clause of the first section, prefers the claims of those rendering service on the boat, to the claims mentioned in said first section.

The object of the Sections of the Statute above referred to, is to create a first lien upon any boat or vessel of any description, running upon the navigable waters of this State, in favor of any person who shall be employed in any capacity in or about the service of such boat for all arrearages of wages earned in such employment; and this lien attaches the moment the liability is incurred; and the attachment is but the remedy prescribed for the enforcement of the lien.—German, *vs.* Steam Tug Indiana, 11, Ills., 537. The Statute is therefore remedial, and should be liberally construed.—James, *vs.* Jacobs, 34 Miss., (5 George,) 269.

The third section provides that "the like proceedings shall be had as in other cases of attachment." Where the suit is instituted before a Justice of the Peace this has reference to the gengeneral attachment act before Justices.—Frink, *vs.* King, 3, Scammon 150.

And by the 6th section of the Act last referred to, it is provided that no attachment shall be abated or dismissed for want of form, if the essential matters required in this chapter be *substantially* set forth; and Justices of the Peace shall allow any amendment to be made of any affidavit writ return or bond, or allow a new affidavit or bond to be filed which may be necessary to obviate objections to the same.

To give this lien and jurisdiction to the Justice to enforce it it is only necessary that the following facts should appear:

1. That the claim in respect to amount is within the jurisdiction of the Justice.

2. That it is for wages earned by the claimant while employed in some capacity in or about the service of the boat.

3. That the service for which the wages are claimed, was rendered to or upon the boat while she was running upon the navigable waters of this State.

4. There should be an affidavit setting forth the justice of the demand.

5. A bond should be executed by the claimant as in the other cases of attachment.

It is not necessary that the facts giving jurisdiction should be stated with technical accuracy. It is sufficient if the words of the affidavit are in substantial compliance with the terms of or necessarily or properly imply the case provided for by the Statute.—Vankirk, *c. s.* Wilds, 11 Barb., 520.

Where the law authorized an attachment when the debtor "is about to convey, assign, remove or dispose of any of his property or effects so as to defraud, hinder or delay his creditors," "it was held that an affidavit alleging that the Defendant was about to convey his property so as to hinder or delay, his creditors, was equivalent to alleging fraud," "and that therefore it was not necessary to use the word defraud."—Curtiss *v* Settle, 7 Missouri; 152.

Where the cause for which an attachment might issue was that "he resides out of this State," an affidavit that the Defendant is a non-resident, was considered sufficient."—Graham, *v.* Ruff, 8, Alabama 171.

Where the Statute gave an attachment when the debtor "is removing or about to remove himself or his property beyond the limits of the State," and suit was brought against the owner and master of a steamboat, alleging that "he was about to remove the said steam-boat beyond the limits of the State," it was considered that however defective the allegation might be in stating the Defendant to be about to remove a single piece of property, yet that

it was equivalent to stating that he was about to remove himself, since, as he was master of the boat, if he removed the boat his relations to her necessarily involved his own removal.—Rungan, *v.* Morgan, 7. Hamp. 210.

The affidavit of McDonald in this case states substantially that the Dredge Nile was justly indebted to the affiant, in the sum of $65.75, and that this sum was then due and unpaid, that this indebtedness was for wages which affiant had earned as machinest and engineer *on said boat* while she was running upon the navigable waters of this State, that "said work was done," that is, that this service was rendered at the request of the owner of said boat.

From the statements made in this affidavit it clearly appears:

1. That the claim in respect to amount was within the jurisdiction of the justices.

2. That it was for wages earned by the claimant while employed in the service of the boat.

3. That the service for which the wages were claimed, was rendered *upon the boat*, while she was running upon the navigable waters of this State.

In Frink, *v. s.* King, 3 Scammon, 145, the original affidavit of claimant stated that "the Steamboat Frontier and her owners all of whom are unknown to him are indebted to him in the sum of nine hundred and sixteen dollars and nine cents upan a certain promissory note as follows: (setting forth the note,) and also for work and labor as an engineer upon said boat, subsequent to the date of the note in the amount of fifty-five dollars, making in all, with the interest on the note, the above sum of money, and which is justly due, the whole amount "being unpaid." The court at page 150, say that this affidavit was defective for the reason that it did not state that the services for which the claim was made, were rendered on the boat while she was running upon the navigable waters of this State, or that the boat was thus running. In all other respects, the affidavit was deemed sufficient.

The only ground upon which the Court below overruled the motion for a new trial was that the affidavit did not show that the services for which the claim was made were rendered upon the boat. We insist that the statement that the claim accrued to the party for wages as machinist and engineer on said "boat," and that "the work was done at the request of the owner" is substantially a statement that the services for which the wages were due, were rendered upon the boat.

2. The affidavit may be objected to because it does not state in so many words that the name of the owner of the boat is not known to the affiant, whereas the statement is that "he does not know the owner of said boat."

1. in this respect the affidavit is precisely like the one in the case of Frink *vs.* King, and no objection was made to it on that account.

2. And besides the Statute does not require that the affidavit should state that the name of the owner of the boat is not known to the affiant; it only requires that the affidavit should be made of the justice of the demand; See 2nd Section of the Act above referred to.

3. Again the Statute directs that the attachment shall be against the owner or owners if known, and the affiant states that he "does not know the owner of said boat."

4. The statement that the affiant does not know the owner of the boat as a reason why he does not proceed against such owner, is substantially a statement that he does not know the name of such owner.

4. It may be insisted that the affiiant did know the owner of the boat because he states in the affidavit that the work was done at the request of such owner.

At the time this affidavit was made it was not known whether Kimball owned the boat or not, but a person having the care and

management of the boat and who was the agent of the owner, whoever such owner might be, employed McDonald; and he could therefore properly state that the work was done at the request of the owner; his duly authorized agent having hired him. The two statements are perfectly consistent, and can very well stand together in this affidavit.

The affidavit it seems to us is sufficient.

To the form or sufficiency of the bond made by McDonald no objection is made.

2

A case then was presented to the Justice which was within his jurisdiction.

The power to hear and determine a cause is jurisdiction; it is *coram judice* whenever a case is presented which brings this power into action.—United States *vs.* Arrendono 6 Peters, 709.

A proper case being presented for the exercise of the jurisdiction of the Justice, the jurisdiction is perfect when in a personal action the process is served upon the Defendant, or in a proceeding in *rem* the property is taken into the officer's posession. It is said in Paine *vs.* Mouland, 15 Ohio, 435, that a Court acquires jurisdiction by its own process, "If the process of the Court be executed upon the person or thing concerning which the Court are to pronounce judgment, jurisdiction is acquired. The writ draws the person or thing within the power of the Court. When the Court by its process acquires the power to adjudicate upon a person or thing, it has what is called jurisdiction."

"What then gives the Court jurisdiction in a proceeding in attachment? The filing the affidavit, issuing the writ and attaching the property. The moment the writ goes into the hands of the officer he is authorized and required to seize the property. When this is done, the property is taken out of the possession of the debtor into the custody of the law."

The Justice thus having acquired jurisdiction of the cause the judgment was valid and binding until reversed, and cannot be assailed collaterally for any subsequent error or irregularity of the Court.

Says Justice Paige in Hard *vs.* Shipman, 6 Barb. 624: "If an inferior court acquires jurisdiction, but errs in exercising it, the proceedings of the court are not void, but voidable only. They may be reversed on certiorari or appeal, but are valid and binding until reversed, and cannot be collaterally assailed. It is a well-settled principle that where an inferior court has acquired jurisdiction, its proceedings will not be rendered void by any subsequent error or irregularity of the Court. In such case they are reversible but until reversed they are valid in respect to everybody. Where jurisdiction has been once gained it cannot be lost by any subsequent irregularity; *and every intendment will be made in favor of the regularity of the subsequent proceedings.*" And it was accordingly held in the above cause that a justice of the peace did not lose jurisdiction of a cause by erroneously adjourning it. Where the jurisdiction of an inferior and limited court is shown then the same presumption prevails in favor of its proceedings that does in favor of those of a superior court; and when this jurisdiction is shown the judgment of inferior and superior courts stand on the same footing and are equally and absolutely conclusive when not appealed from or when attacked collaterally. Cooper *vs.* Sunderland 3 Iowa 114.

If we are correct in the above positions then it is unnecessary to consider the question whether the subsequent proceedings before the justice were in conformity with the Statute or not. By the purchase of the property under the order for sale issued by the justice upon this judgment, the defendants below acquired a title to the property.

The subsequent proceedings were, however, in conformity to the Statute.

No one appearing for the boat on the return of the attachment the cause was continued until the 1st of November, and in

the meantime notices were prepared and delivered to the constable to be posted in pursuance of the 7th section of the Statute concerning attachments before justices of the peace. The constable swears that he posted the notices on the 22d of October. He was asked where he posted them, but this question was objected to and the objection sustained by the court on the ground that the evidence of the posting of these notices must be found in the constable's return, and that this fact cannot be proved by parol;—and it may be insisted that the constable's return does not show that these notices were posted as required by the Statute.

Our answer to this objection is—

1. That the posting of these notices was not necessary to give the justice jurisdiction of the cause. He had already acquired jurisdiction, and even if it had appeared that no notice had been posted at all, this would not have rendered the judgment void. Drake on attachments §. 447. The title of a purchaser at a sale under the judgment cannot, for such a defect, be questioned in a collateral suit. Drake on attachments §. 447 §. 448. This point was expressly decided in Paine *vs.* Mooreland, 15 Ohio 435, already cited. Such a want of notice would be a fatal defect in a proceeding to reverse the judgment, but would not avoid the effect of the judgment in a collateral suit.

2. The endorsement of the constable upon the notice returned to the justice does show the time when and the place where he posted copies as required by the 7th section concerning attachments before justices.

No objection was made to the form of the notice which was proved on the trial. The endorsement upon it is in these words—

"Returned by posting three notices in the following places, to wit: Calvin DeWolf, Esq., J. A. Hoisington and J. L. Milliken this 22d day of October, 1860. Fees, 75 cents. C. Keeler, Constable."

The date given in the indorsement of a service of process should be taken as the time of service.—Cariker *vs.* Anderson,

27 Ills. 358. And in this case, therefore, the notices were posted on the 22d, more than 8 days before the day to which the cause was continued.

Says Justice Caton in Farnsworth *vs.* Strasler, 12 Ills. 485: "*Words may be implied* in an officer's return as well as in other written evidences, where such implication is justified by what is expressed. By the same rule we find the service to have been sufficient on Frink and wife. The sheriff of Cook county returned the summons which was directed to him with the following indorsement upon the back: "Executed by reading and delivering two copies to John Frink and Harriet G. Frink this 29th day, &c." Although this return is not quite as full as the first, still it leaves no doubt as to its meaning. *We cannot understand that anything but the writ upon which the return was endorsed was executed.*"

So in this case we cannot understand that anything but copies of the notices upon which the return was endorsed were posted.

See also 2 Sch. & Lef. 555, where an endorsement was made upon a lease containing an agreement "to perfect a fresh lease." The Lord Chancellor says "the term fresh lease is to be taken as to the time to be an agreement to give a like term as that in the instrument on which it is endorsed."

The notice was sufficient, and the fact of posting and the time of posting the copies clearly appears.

So also in regard to the places where the copies were posted. The officer states in his return, "Calvin DeWolf, Esqs., J. A. Hoisington and J. L. Milliken" *as the places* where he posted these notices.

The object of stating in the return the places where the notices were posted is that the justice may know that they are in his neighborhood, and that in this particular the requirement of the Statute has been complied with.

The officer stating in his return those names as the places where he posted the notices, they must be understood as the

names of such places, and the words "offices of" may be fairly implied from the words used in this return; and as designated by naming the persons occupying such offices. They were stated in this abbreviated manner because they were well known to the justice issuing the attachment as being in his immediate neighborhood. Since these names are called *places* in the return, they must be understood as designating the offices or residences of the persons bearing these names—in other words, they must be used in the return as the names of places and not of individuals simply.

In Simins *v. s.* Kleim, Breese. 371, the return was simply, "T. R. Simms Summoned by reading," with the signature of the Sheriff and date, without stating the Christian name of Simms, or that he was the defendant named in the writ, and without stating what was read to him. Court say, "The court will infer that it is the defendant, the objection is considered frivolous."

3. When Kimball, the owner of the boat, appealed from the judgment of the justice and filed his appeal bond in the Circuit Court, he thereby waived all defects in the service or want of service before the justice; and having once waived these defects if there were any, he could not have insisted upon them if he had been the plaintiff in the court below, and if *he* could not neither could the plaintiff in the court below do so.

Swingley *v. s.* Haynes, 22 Ills. 215.

Ohio and Miss. R. R. Co. *v s.* McCutchin, 27 Ills. 9.

The case of Schooner Constitution *vs.* Woodworth 1 Scammon 511 will be cited against us on this point.

That case does not decide that an appeal does not lie from the judgment of a justice rendered under the act concerning the attachment of vessels, and it is difficult to see how it could so decide since the 58th section of the act concerning justices and constables provides that appeals shall be granted in all cases except upon judgments confessed; but simply that an appeal taken by the owner of a vessel when he did not make himself a party to the suit before the justice *is irregular*, and may be dismissed for such

irregularity upon the motion of the appellee, for the reason that it is only after he has made himself a party to the suit that he can execute the bond required by law. But this irregularity can certainly be waived by the appellee, and the suit is properly in the Circuit Court until the appellee moves to dismiss it on this ground. The appeal in this case was treated by the appellee as property taken and perfected; and was finally dismissed with a procedendo to the justice *for want of prosecution*, and not because a proper bond had not been executed.

As stated by the Supreme Court in Swingley *vs.* Haynes, 22 Ills. 216, it seems to be clear that the intention of the legislature was to vest the Circuit Court with jurisdiction by the appeal of all cases in which the justice had jurisdiction. That is certainly a very hard and unjust rule which deprives the owner of property seized under a writ of attachment of the right of appeal, when he failed to receive notice of the pendency of the suit in time to make himself a party to it, and gives it to one who has been regularly served with proces, but through negligence or wilfulness refuses to obey it, and suffers judgment to go against him without making any defense. It seems to us, with all deference to the opinion of the Court, in 1 Scammon that if the word "defendant" in section 7 of the act concerning attachments before justices, can be understood as including the owner or owners of property attached, then the word "party" in section 60 of the act concerning justices and constables can be understood as including such owner or owners.

3

The Court below erred in refusing to allow the constable Keeler to state where he posted these notices. It was competent for us to show that they were posted at public places in the neighborhood of the justice, as required by section 7 of the act above referred to, and to do this we were obliged to show ~~when~~ where they were posted.

1. Jurisdiction having been already acquired by the justice it would be competent for us to show by the constable the time when and the place where he posted the notices, independent of any return made by him, so as to show that in this particular the section of the statute last alluded to had been complied with.

2. Even if the posting of these notices was necessary to give the justice jurisdiction so as to enable him to render a judgment in the cause, the original notice cannot be regarded in the light of a process, and the statute requiring the constable to endorse upon it the time when and the places where he posted the notices is merely directory.

3. The posting of notices was a part of the proceedings before the justice, and the fact that they were so posted could be proved either by the constable himself or by the justices docket, which is always evidence of his proceedings. His docket, which was given in evidence, states that four notices were given to constable Keeler, and that they were "executed by posting three copies of them in three public offices Oct. 22, '60." This not only proves that the notices were posted, but that proof of that fact was made to the justice before he rendered judgment.

HOYNE, MILLER & LEWIS,
For Plaintiffs in Error.

210-176

Supreme Court

"

Abraham J. Knisely
Plff in error
vs
John P. Parker
Deft in error

"

Argument for
Plff in error

"

Filed May 12th 1864
L Lewis Clk

"

Hayne Miller & Lewis
for Plff in error

II.

The proceedings before the justice in this case were *coram non judice*, and void in several respects.

1. The affidavit upon which the attachment, and all the proceedings, were founded, was insufficient.

If the affidavit for an attachment before a justice, does not comply with the requirements of the statute, the subsequent proceedings are void.

Clark v. *Roberts*, Breese, 222.

The statute in question, chapter ten, furnishes relief by attachment against boats and vessels, to two classes of persons only.

The first class embraces those whose claims arise by *contract with the "owner or owners, masters, supercargoes or consignees* thereof, on account of all work done, supplies or materials furnished by mechanics, tradesmen and others, for, on account of, or toward the building, repairing, fitting, furnishing, or equipping such boat and vessels, their engines, machinery, sails, rigging, tackle, apparel and furniture." Sec. 1.

The second class comprises "all engineers, pilots, mariners, boatmen and others, employed in any capacity *in or about the service* of any such boat or vessel, who may be entitled to arrearages of wages in consequence of *such service.* Sec. 4.

The third section of the statute provides that any person, having a demand contracted as aforesaid, may have an attachment to be issued by any justice of the peace having jurisdiction thereof in any county in this State, in which such boat or vessel may be found, either against the owner or owners by their proper names, *or by the name and style of their copartnership*, IF KNOWN, otherwise against such boat or vessel by her name or description only, authorizing and directing the seizure and detention of the same, with her engine machinery, etc., *upon affidavit being made of the justice of such demand.* Sec. 3.

From the foregoing provisions it is manifest that for a party to maintain attachment, he must make an affidavit that his claim arises by reason of *work done, supplies or materials furnished for, on account of, or towards, the building, repairing, fitting, furnishing or equipping* of the boat or vessel that he seeks to attach; also, that such claim arises by reason of *contract with the owner or owners, masters, supercargoes or consignees* of such boat or vessel, in order to bring himself under the provisions of the first section of the statute. Or his affidavit must show that his claim arises from work done as an engineer, pilot, mariner, boatman or otherwise, employed in some capacity in or about the *service* of such boat or vessel, in order to bring himself within the provisions of the second section of the statute.

The affidavit must also disclose whether the party knows (not the owner or owners, but) *the proper names* of the owner or owners, or the name and style of their copartnership, in order to enable the justice to determine whether to issue the attachment against the owner or owners personally, or against the boat or vessel by *her* name or description only, as required by the third section of the statute.

The affidavit is utterly defective in all these respects.

First. The affidavit does not state that his wages accrued in consequence of work done "for, on account of, or towards, the *building, repairing, fitting, furnishing or equipping*" of the boat.

Second. The affidavit does not show that his claim arose by reason of contract with the *owner or owners, masters, supercargoes or consignees* of such boat.

It is true that he says, that "said work" was done at the request of the owner—but in the same affidavit he says *he does not know the owner.*

The statement that his work was done at the request of the owner, is contradicted and nullified by the subsequent state-

ment in the same affidavit, that he does not know the owner. For if the inducement to him to perform the work proceeded from a request which he recognized as emanating from the owner of the boat, then certainly he must have known who the owner was, but he distinctly says in the affidavit that he does *not* know the owner, which proves the former statement to be false. Hence there is no truthful averment in the affidavit, that the wages accrued by virtue of any contract.

It is clear, therefore, that the claim sought to be enforced by these proceedings does not arise under the first section of the statute; if it does, the affidavit is defective in setting it out.

Does it arise under the fourth section?

Third. The affidavit does not show that the affiant was employed in any capacity in or about the *service* of said boat.

The same reasoning applies under this as under the first section.

The affiant cannot say he was employed in or about the service of said boat, because he rendered the service at the request of the owner, when in the same breath he says he does not know the owner. And although he may have performed the work upon the boat, *non constat*, but that he may have performed it at the request of one regularly in the employ of the boat, as engineer; or of the party who built and placed in the boat the engine in the first instance; or of some other third party.

It is equally clear, therefore, that the claim sought to be enforced does not arise under the provisions of the fourth section. If it does, the affidavit is totally defective in setting it out.

Fourth. The affidavit does not disclose whether the party knows the proper names of the owner or owners or the name and style of their copartnership.

This is essential, that the justice should be advised by the affidavit, whether the names of the owner or owners are known. If they are, it becomes his duty to issue his attachment against the owners and not against the boat. If they are not known, it becomes his duty to issue the attachment against the boat by her name or description only.

And it is not enough for the affiant to say "he does not know the *owner*" — he should say he does not know the *name* of the owner. The affiant may not know the owner personally, and yet may well know who the owner is and what is his name.

The affidavit is therefore defective in this regard, in not disclosing the fact whether the names of the owner of the boat were known, so as to properly advise the justice whether to proceed against the owner or against the boat herself.

2. The proceedings before the justice were irregular in another respect.

The third section of the above statute requires that "*upon* the return of such attachment, the person or persons having demands of the description aforesaid, and for whose benefit such attachment was issued, shall file a *written declaration or statement* against such boat or vessel, by her name or description, or against the owner or owners if known as aforesaid, briefly *reciting the nature* of the demand, whether for work done, or materials, firewood, or supplies of provisions furnished, and whether at the request of the owner, master, supercargo or consignee of such boat or vessel, and that such demand remains unpaid; annexing to such declaration or statement, a *bill of the particulars* constituting such demand, in separate and distinct items.

First. There is no declaration or written statement such as is required by the foregoing provision of the statute. It does not purport to have been made by the plaintiff. It is not signed by him, or by his counsel, or any one for him.

Second. The bill of particulars that is filed, is not the declaration or written statement required by the statute, but is only the "bill of particulars" required by the statute to be annexed to the declaration.

Third. If the bill of particulars is intended to be the declaration, it is defective in not showing that the work was done *at the request of the owner.*

It simply says "*admitted by owner.*" An admission of the work having been done, after it is done, is not a request to have it done.

Fourth. The bill of particulars, if intended as a declaration, is defective also, and fails to comply with the statute, inasmuch as it omits to state that the *demand remains unpaid.*

3. The proceedings were irregular and void in another respect.

The last clause of the third section of the above statute provides as follows: "And the like proceedings shall be had in all other respects, and the like judgment and execution as in other cases of attachment."

And in the seventh section of chapter 8, entitled "Attachment before Justices," it is provided that upon the return of any attachment, "if it does not appear that the defendant has been served, and no appearance be entered by the defendant as aforesaid, the justice shall continue the case ten days, and shall immediately prepare a notice to be posted up at three public places in the neighborhood of the justice, directed to the defendant, and stating the fact that an attachment had been issued, and at whose instance, the amount claimed to be due, and the time and place of trial; and also stating that unless the said defendant shall appear at the time and place fixed for trial, judgment will be entered by default, and the property attached ordered to be sold to satisfy the same; which notice shall be delivered to the constable, who

shall post three copies of the same *at three public places in the neighborhood of the justice*, at least eight days before the day set for trial; and on or before that day he shall return the notice delivered to him by the justice *with an indorsement thereon, stating the time when and the place where he posted copies as herein required.*"

And in the eighth section of the same chapter, it is provided that "when notices shall be given of any proceedings by attachment, as required by the seventh section of this chapter, the justice shall, on the day set for trial of the cause, proceed to hear and determine the same as though process had been personally served upon the defendant."

From these sections it appears that certain things are prerequisite to any right or duty on the part of the justice to hear and determine the case, among which are that in case of no service upon the defendant in the attachment, a certain notice shall be made out and placed in the hands of the constable, who shall post *three copies of the same, at three public places in the neighborhood of the justice.* Also that the constable shall return the notice delivered to him by the justice, *with an indorsement thereon stating the time when and the place where he posted copies.*

What is the indorsement of the constable? It is as follows:

"Returned by posting three notices in the following places, to wit:
Calvin De Wolf, Esq., J. A. Hoysington and J. L. Milliken, this 22d day of October, 1860. Fee 75 cents."
"C. KEELER, *Constable.*"

This return is not only defective, but it has hardly a redeeming quality. For,

First, It does not state that any *copies* whatever of the notice handed to him by the justice, were posted at all. It says "by posting three notices"—*non constat*, but they may

have been notices of the sale of real estate, notices of adjustment of claims before a probate court, or some other notices, than copies of the one furnished by the justice.

Second. The return does not state where the notices or copies, were posted.

It says in the following places, to wit: "Calvin De Wolf, Esq., J. A. Hoysington, and J. L. Milliken."

These seem to be names of men and not of places, and unless it can be shown that Calvin De Wolf, J. A. Hoysington and J. L. Milliken are places and not men, then the return does not show that the constable posted copies of the notice handed to him by the justice "in three public places."

Again, admitting, for the sake of the argument, that these three men are three public places, still the return is defective, in not stating whether the said three public places are in the "*neighborhood* of the justice," or not.

Before the justice could acquire jurisdiction, so as to "proceed to hear and determine," it must be made to *appear by the return of the officer*, that service was had upon the defendant personally, or that copies of notices were posted in accordance with the requirements of the statute. And such not being made to appear, the proceeding and determining by the justice were *coram non judice*, and void.

Third. The return does not state when, if at all, the notices were posted. It is impossible to say, from the return of the officer, whether the "22d day of October," refers to the posting, or to the return.

Ogle v. *Coffey*, 1 Scam. 239.
Divillbis v. *Whitmire*, 20 Ill. 425.

III.

There was no error committed by the court below in sustaining the objection to the question proposed to the officer, as to "where he posted the notices?"

1. This question would not have been proper in the original proceeding before the justice. The officer might have been allowed to amend his return, but not to supply the defects of it by oral testimony. For the justice is limited in his action, not to what the facts really were, but to what the indorsement made by the officer upon the notice stated them to be. And if the indorsement does not state the requisite facts, the justice has not power to proceed to hear and determine.

2. The question asked, was not what proof was made before the justice. If the justice gave judgment, without proof that the notices were duly posted, such judgment would be void; and could not be cured or aided by showing afterwards and in another cause, that it was in fact served.

Wilson v. *Greathouse*, 1 Scam. 174.

IV.

The appeal from the judgment of the justice did not cure the defects in that judgment.

No person can appeal from the judgment of a justice of the peace rendered against a boat or vessel, unless he has made himself a party to the proceeding before the justice.

Schooner Constitution v. *Woodworth*, 1 Scam. 511.

CYRUS BENTLEY,

Attorney for Defendant in Error.

210 – 176

A. J. Kennedy
vs
J. P. Parker

Defts Brief

Filed May 13. 1864
C Leland Clk

Chicago Post Company, Printers, 93 Washington St.

IN THE SUPREME COURT

OF THE STATE OF ILLINOIS.

THIRD DIVISION, OTTAWA.

ABRAHAM J. KNISELY,
Plaintiff in Error,
vs.
JOHN P. PARKER
Defendant in Error.

ABSTRACT OF RECORD.

PAGE OF RECORD.

2 Affidavit in replevin by John P. Parker, filed Dec. 19, 1861, sets forth that affiant is the owner "of the dredge Nile, her machinery, tackel, "apparel, furniture, and all her appurtenances and property of whatsoever "description, and four mud scows," that said A. J. Knisely "has taken said "property and wrongfully detained the same."

3 Replevin writ for above described property.

4 Endorsement of service of the writ by Anthony Hesing, Sheriff of Cook county, by reading the writ to Deft. Knisely, and taking the property and delivering same to Plaintiff, John P. Parker.

Service made Dec. 30, 1861.

The appearance of the owner when it was intended curs previous defects.

5 Replevin bond, executed by John P. Parker, Thomas S. Dickerson, and Peter H. S. Vandervoort.

6 Narr. filed Dec. 27, 1861, and avers that the Defendant took the property above described, while the same was lying at the wharf on the west side
7 of the South Branch of the Chicago river.

Defts. pleas filed January 7, 1862.

8 First plea. Non cepit.

9 Second plea. Avows taking, and avers that the property was the property of the Defendant and not of the Plaintiff.

10 Plaintiff's replications filed Feb. 4, 1862, taking issue.

11 Trial record. Commenced Jan. 14, 1863.

14 Verdict of Jury, Jan. 17, 1863.

Jury find Defendant guilty—right of property in Plaintiff and assess damages at one cent—and motion for new trial.

15 Motion for new trial overruled Dec. 26, 1863. Exception taken and Defendant allowed thirty days to file bill of exceptions.

16 Bill of exceptions filed Jan. 25, 1864.

BILL OF EXCEPTIONS.

17 Admitted on the trial that at the time of the issuing of the attachment writ by C. DeWolf, Justice, in behalf of Daniel G. McDonald, Oct. 20, 1860, George Kimball was the owner of the property in controversy, and Plaintiff, to prove his title, introduced and read in evidence, a writ of attachment issued out of the Superior Court of Chicago, to the Sheriff of Cook county, at the suit of Thomas S. Dickerson, Plaintiff, against the estate of George

18 Kimball Defendant, by which Sheriff is commanded to attach ~~to~~ so much of the estate of said Kimball ~~of~~ as shall be of value sufficient to satisfy said Debt, $1,270 and costs. Dated November 15, 1860.

19 Writ returned by Sheriff. Served Nov. 16, 1860. Levied upon Defendant's right, title and interest in one small steam boat Nile, four mud scows and all the fixtures and accoutrements connected with said boat, and by reading to said Defendant.

20 Judgment in said attachment suit for $1,296 78.

Special writ of *fi. fa.* upon said Judgment to Sheriff of Cook county,
21 dated Feb. 8, 1861, against the property, described in Sheriff's return to attachment writ. Sheriff returns that he did, Feb. 18, 1861, levy upon the property described in the writ, and March 11, 1851, sold same to John P. Parker, at public vendue.

Frederick Johnson called for Plaintiff, testified as follows: I knew the
23 dredge boat Nile. In November, 1860, Mr. Kimball introduced me to Mr. Lumbard, as his Captain of the boat, (the dredge and four mud scows). Mr.
24 Lumbard told me to take charge under him; I did so. I kept her in charge about four months, until about the 15th or 16th of March. Then Mr. Lumbard came up and sold her at public auction; Mr. Parker bought her; I was at the sale.

25 Plaintiff called as a witness, Frank Lumbard, who testified as follows: I was Deputy Sheriff of Cook county during the year 1860, and in that ca-
26 pacity I received from the Sheriff in Nov. 1860, the attachment writ now shown to me, and I levied upon and took possession of the property described in my return, endorsed upon said writ. Afterwards, and on the 8th day of February, 1861, I received the Execution now shown to me being the execution above mentioned, and proceeded to advertise the property described in the Execution, according to the requirements of the statute, and on the

11th day of March, 1861, I sold the property to John P. Parker; made a bill of sale of it to him, and delivered to him the possession of it. The property attached and sold by me to Parker is the same property as that described in the replevin writ in this suit.

27 Plaintiff here rests and Defendant called Calvin DeWolf, who testified as follows: I was during the year 1860, and have since continued to be a Justice of the Peace in and for the county of Cook. I kept my office in Chicago. On the 20th day of October. 1860, the following affidavit was made before me by D. G. McDonald:

"STATE OF ILLINOIS, } ss.
"COOK COUNTY, }

"Daniel G. McDonald being duly sworn, says that the dredge Nile is "justly indebted to said McDonald in the sum of sixty-five dollars and 75 "cents, for wages as machinist and engineer on said boat while running "upon the navigable waters of the State of Illinois, and that said work was "done at the request of the owner, and that said sum is now due and un- "paid, and he does not know the owner of said boat, whereupon he prays "attachment, etc., in pursuance of the statute.

"D. G. McDONALD.

"Sworn and subscribed before me, this 20th day of Oct., A. D. 1860."

And also on the same day, said McDonald with M. Hawkins as his surety, executed and filed with me the following attachment bond in the usual form, and with the condition ~~named~~ usual in such cases:

28 I thereupon and on the same day, issued the following attachment writ against the dredge Nile:

29 Attachment writ in the usual form to any Constable of Cook county, commanding him forthwith to attach said boat, with her sails, rigging,

tackle, apparel and furniture, returnable before said Justice at his office in Chicago, on the 22d day of October, 1860, at 4 o'clock P. M. Writ dated Oct. 20, 1860. Upon which writ is the following endorsement:

McDONALD *vs.* DREDGE NILE:

30 Debt $65 75. Costs $1 37.

Served by attaching the within named boat this 22d day of October, 1860. Fees $4 00.

C. KEELER, *Constable.*

This writ was delivered to C. Keeler, who was then Constable in and for the county of Cook, which was on the return day returned by him as served, by attaching the said dredge Nile. The return upon said writ is in the handwriting of and is signed by said Keeler. Upon the return of said writ, said McDonald made and filed with me the following written statement against said dredge Nile:

DANIEL G. McDONALD: In account with dredge Nile:

To services as Engineer on said dredge from April 2d to Sept., 1860.

1860. Sept. 1, balance due.....$73 00. Admitted by owner.

By cash..... 44 00.

Balance.....$29 00.

1860. Sept. 27, 21 days' work, $1 75 per day..... 36 75.

Total amount due.....$65 75.

At the hour named in the writ on the 22d of October, the return day of

31 the writ, the case was called, and no one appearing for the dredge Nile, or in behalf of the owner, and no appearance having been entered, I continued the case until the 1st day of November then next ensuing. I immediately prepared the following notice:

Attachment notice in the form usual in such cases. Signed by the Justice and dated Oct. 22d, 1860.

32 Upon which notice is the following endorsement:

"Returned by posting three notices in the following places to wit:
"Calvin DeWolf, Esq., J. A. Hoysington and J. L. Milliken, this 22d
"day of October, 1860. Fee 75 cents.

"C. KEELER, *Constable.*"

I made out three copies of this notice and delivered to Keeler, Constable, with the original to be posted by him as required by law, prior to the day to which the cause was continued. Keeler returned the notices shown to me, with his endorsement as the same now appears thereon. On the first day of November, at the day and hour to which the cause was continued, I called the case and proceeded to hear and determine the same. C. Hawkins testified as a witness for the Plaintiff, and I gave Judgment in Plaintiff's favor for $65 75 and costs.

On the same day I made out an order for the sale of the property attached, and delivered it to C. Keeler, Constable, to be executed.

33 Order of sale in the form usual in such cases. Dated Nov. 1, 1860, and signed by Justice.

Upon which order is the following endorsement:

"Returned appealed to the Circuit Court, this 10th day of Nov. 1860.

"C. KEELER, *Constable.*"

34 The endorsement upon this order and the signature are in the handwriting of said Keeler. On the 10th day of November, 1860, George Kimball took an appeal from said Judgment to the Circuit Court of Cook coun-

to, and on the same day he, with A. J. Knisely as his surety, executed his appeal bond, which I approved on the said 10th day of November.

The following is the appeal bond:

Appeal bond, dated Nov. 10, 1860, and executed by George Kimball as owner of the dredge Nile.

35 On the 19th of November, 1860, I filed the appeal bond with the Clerk of the Circuit Court, with all the papers in the case, and a transcript of the Judgment I had given, with my certificate, under my hand and my seal as required by law.

The following is the transcript:

Transcript of Judgment referred to by the witness with Justice's certificate in due form.

36 All above papers referred to by witness, with endorsements thereon, were read to jury.

I have with me my Justice's docket which I kept at that time. The following are on my docket entries, in relation to said cause.

Docket entries referred to by witness, among which is the following entry:

"Case continued to Nov. 1, '60, at 4 P. M., with four notices to Kee-"ler, Constable. Executed by posting three copies of them in three public "offices, Oct. 22, '60," and docket read in evidence.

Afterwards I received the following precedendo issued by the Circuit Court:

Procedendo in the usual form and directing the Justice to proceed on

said Judgment in such manner as the law directs, and writ read in evidence.

39 I thereupon delivered to said Keeler the following order of sale for him to execute:

Order of sale in usual form and directing the Constable to sell the
40 property attached. Dated Sept. 25, 1861. Endorsed upon the writ is Constable Keeler's return, that he executed the writ by selling the property to A. J. Knisely. Dated Oct. 26, 1861, and signed C. Keeler, Constable.

Order of sale and return read in evidence.

The signatures to the return endorsed upon the order, is in the handwriting of said Keeler.

41 Cyrus Keeler was called by Defendant and testified as follows: I was Constable in and for the county of Cook during the years 1860 and 1861; I served the writ of attachment shown to me (writ referred to above) Oct. 20, 1860. Executed by seizing the dredge Nile; found it lying in South Branch of the Chicago river; returned it to Justice DeWolf with my return endorsed thereon as it now appears. On the same day I returned the writ I received the notice now shown to me (the notice above referred to) and also three copies to be posted as required by law. The three copies I posted up on the 22d of October, and returned this copy to the Justice with my return endorsed thereon as it now appears.

42 Question: State ~~when~~ Where you posted these notices. Question objected to. Objection sustained by the Court, and counsel for Defendant then and there excepted.

I afterwards received the attachment order of sale now shown to me (the first order above referred to). This I returned to the Justice with my return endorsed thereon as it now appears. On the 25th of Sept. 1861, I

received the second order of sale now shown me. (The second order of sale above referred to). I immediately took possession of the dredge Nile under
43 the order; advertised the sale by posting notices as required by law, (states ~~when~~ where he posted notices), and sold the dredge at the dock where the dredge was lying on the day and at the hour mentioned in the notices, being the 26th day of October, 1861, at ten o'clock A. M., to Defendant for $151, and gave him possession and a bill of sale of the property. He paid the amount of the bill, and I returned the order of sale to the Justice with my return endorsed thereon as it now appears.

44 There were five or six bidders and from fifteen to twenty persons present at the sale. I sold the boat as crier for Mr. Long, the custodian.

Oliver H. Horton being called as a witness, testified as follows:

45 I was deputy custodian and acting for the custodian at the time of the sale by Mr. Keeler. Mr. Kimball was not a resident of Chicago at the time of the sale of the boat in question by Mr. Keeler. I addressed a notice to him of the sale under the order held by Mr. Keeler, through the post office, ten days before the sale.

William L. Greenleaf was then called by Defendant and testified as follows:

Am Deputy Clerk of the Circuit Court of Cook county, and was in 1860 and 1861. Case of McDonald was appealed to the Circuit Court from Justice DeWolf, and papers and transcript with Justice's certificate filed Nov. 19, 1861. The following is the affidavit of merits which was filed in the cause, Dec. 19, 1860.

46 Affidavit of merits made by R. P. ~~Dickerson~~ Derrickson as agent, and in behalf of Kimball, dated Dec. 19, 1860, and was read in evidence.

47 Summons issued from Circuit Court in the cause read in evidence, and returned not found. Jan. 7, 1861.

48 Judgment of Circuit Court dismissing appeal for want of prosecution, with procedendo to Justice read in evidence.

Defendant rested and thereupon the Court, at request of Plaintiff's counsel instructed the Jury as follows:

49 The Jury are instructed that the Judgment rendered in favor of McDonald against the dredge Nile, under which the Defendant claims title to the property in question was void, and no legal title as against the Plaintiff in this cause, was acquired under it, and the Jury will therefore exclude from their consideration all evidence pertaining to the sale of the property by virtue of which the Defendant claims title. To the giving of which instrustion Defendant by his counsel then and there excepted.

50 Verdict of Jury for Plaintiff.

Motion for new trial overruled, and Defendant excepted.

---

51 ERRORS ASSIGNED.

1. Court erred in sustaining above objection to the question to Defendant's witness—Keeler.

2. Court erred in giving above instruction to the Jury.

3. Court erred in overruling motion for new trial.

Supreme Court 210 176

Abraham J. Kinsley
Plff in error
v. s.
John P. Parker
Deft. in error

Abstract of Record

Filed April 20. 1864
L Leland Clk

Wayne Miller & Lewis
for Plff. in error

8658

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Recd 14 pages

Pleas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the Seventh day of December in the year of our Lord One Thousand Eight Hundred and Sixty Three and of the Independence of the United States of America the Eighty Eighth

Present, The Honorable John M. Wilson Chief Justice of the Superior Court of Chicago.

Van H Higgins } Judges.
Joseph E. Gary }

Joseph Knox Prosecuting Attorney.

David T. Hammond Sheriff of Cook County.

Attest, Thomas B. Carter Clerk.

Be it remembered that heretofore to wit on the Nineteenth, day of December in the Year of our Lord One thousand eight hundred and sixtyone, John P. Parker, the plaintiff in this Cause, by his Attorneys Greene & Bentley, filed in the Office of the Clerk of the said Superior Court of Chicago, his certain Affidavit, together with a Precipe of said Attorneys; which Affidavit & Precipe are in the words and figures as follows to wit;

2

State of Illinois }
County of Cook } ss

John P. Parker being duly sworn deposes and says that he is the owner of the Dredge Nile, her machinery, tackle, apparel, furniture and all her appurtenances and property of whatsoever description, and four Mud Scows, and is entitled to the possession thereof, and that the same has not been taken for any tax, assessment or fine levied by virtue of any law of this State, nor seized under any execution or attachment against the goods and chattels of the said John P. Parker liable to execution or attachment.

That as this affiant is informed and believes one A. J. Knisely has taken said property and wrongfully detains the same - That said property is of the value of Two thousand Dollars.

Subscribed & Sworn before me } John P. Parker
this 19th day of December A.D. 1861 }
Thos. B. Carter, Clk

Superior Court of Chicago, January Term 1862

John P. Parker
vs. } Replevin
A. J. Knisely

The Clerk will please issue Writ in Replevin upon affidavit filed herewith.

Greene & Bentley
Plaintiffs Attys.

And afterwards to wit on the day and year aforesaid there issued out of the Office of the Clerk of said Court the People's Replevin Writ with the Sheriffs Return thereon which Writ is in the words and figures as follows to wit

State of Illinois,
Cook County } ss

The People of the State of Illinois to the Sheriff of said County Greeting:

Whereas John P. Parker plaintiff complains that A. J. Kniely defendant unlawfully and wrongfully has taken and does detain the following described goods and Chattels, to wit, the Dredge Nile, her Machinery, tackle, apparel furniture and all her appurtenances and property of whatsoever description & four mud Scows of the Value of Two thousand dollars.

Therefore we Command you that if the said Plaintiff shall give you bond with good and sufficient Security in double the value of the said goods & Chattels as required by law, to prosecute his suit in this behalf to effect and without delay, and to make return of the said goods and Chattels if return thereof shall be awarded, and to save and keep you harmless in Replevying said goods and Chattels, you cause the said goods and Chattels to be replevied and delivered to the said plaintiff without delay; and also that you

4

Summon the said defendant to be and appear before the Superior Court of Chicago for said County on the first day of the next term thereof, to be holden at the City of Chicago in said County, on the first Monday of January next to answer said plaintiff in the premises. And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same, together with the bond which you shall have taken from the said plaintiff as above commanded, before executing this writ. Witness Thomas B. Carter, Clerk of our said Court, and the seal thereof at Chicago in said County this 19th day of December A.D. 1861.

Seal

Tho. B. Carter Clerk

(Return)

Plaintiff having given Bond as herein annexed, I have taken the within described property, and delivered the same to the within named John P. Parker as per his receipt hereon endorsed; also served this writ by reading the same to the within named defendant A.J. Knisely this 20th day of December 1861.

Anthony C. Hesing Sheriff
by A Bruening Deputy

Received Chicago December 20th 1861 of Anthony C. Hesing, Sheriff of Cook County, the within described property.

John P. Parker

And on the day and year aforesaid there was filed, (with said Replevin Writ and attached to same) in the Office of the Clerk of said Court the Replevin Bond of said plaintiff which Bond is in the words and figures following, towit;

Know all men by these presents that we John P. Parker and Thomas S. Dickerson & Peter H.S. Vandervoort are held and firmly bound unto Anthony C. Hessing, Sheriff of the County of Cook in the State of Illinois, and to his Successors in Office, executors administrators and assigns in the penal sum of four thousand dollars, lawful money of the United States for the payment of which sum we do hereby jointly and severally bind ourselves, our heirs, executors and administrators. The Condition of this obligation is such that whereas on the 19th day of December in the year of our Lord One thousand eight hundred and sixty one the said John P. Parker sued out of the Superior Court of Chicago a writ of Replevin against A.J. Knisely defendant for the recovery of the following described goods & Chattels property, towit, The Dredge Nile, her machinery tackle, apparel, furniture, and all her appurtenances and property of whatsoever description, and 4 mud Scows. Now if the said John P. Parker, plaintiff shall prosecute his said suit to effect, and without delay, and make

6

return of the said property, if return thereof shall be awarded, and save and keep harmless the said Sheriff in replevying the said property, then this obligation to be void, otherwise to remain in full force and effect.

Witness our hands and seals this 1st day of December A.D. 1861.

John P. Parker (Seal)
Thomas S. Dickerson (Seal)
P. H. Vandervoort (Seal)

Witness
Cyrus Bentley

And, afterwards, to wit, on the Twenty seventh day of December in the year aforesaid the plaintiff John P. Parker by his attorneys Greene & Bentley filed in the office of the Clerk of said Court his certain Declaration, which is in the words and figures following to wit,

Superior Court of Chicago January Term 1862

John P. Parker
vs
A. J. Kneisely

State of Illinois
Cook County } ss

A. J. Kneisely the defendant in this suit was Summoned to answer John

P. Parker the plaintiff in this suit of a plea wherefore he took the goods and chattels of the plaintiff and unjustly detained the same against sureties & pledges &c

And thereupon the plaintiff by Greene and Bently his Attorneys complains. For that the said defendant on the seventeenth day of December A.D. 1861 in the County aforesaid at the town of Bridgeport lying at the Wharf on the West side of the South branch of the Chicago River, took the goods and chattels, to wit; the Dredge Boat "Vole" her machinery tackle, apparel furniture appurtenances, and property, and four mud Scows, of him the plaintiff of great value, to wit: of the value of two thousand dollars, and unjustly detained the same against sureties and pledges until &c to the damage of the plaintiff two thousand dollars and therefore he brings suit.

Greene & Bentley
Plaintiffs Attorneys

And afterwards to wit: on the Seventh day of January in the year of our Lord one thousand eight hundred and sixty two, said defendant A.J. Hinsely by his attorneys Thompson & Bishop filed in the Office of the Clerk of said Court his certain plea which plea is in the words & figures

8 as follows to wit

The Superior Court of Chicago, January Term A.D. 1862

State of Illinois,
Cook County - }

Abraham J. Kniseley
ads
John P. Parker } Pleas

And the said defendant Abraham J. Kniseley sued as A.J. Kniseley by Thompson & Bishop his Attorneys comes and defends the wrong and injury when &c and says that he did not take the said Dredge Boat "Nile," her machinery tackle, apparel furniture, appurtenances and property and four mud Scows in the said declaration mentioned or any or either of them or any part thereof in manner and form as the said plaintiff hath above thereof complained against him; and of this the said defendant puts himself upon the Country &c.

And by leave of the Court here for this purpose first had and obtained according to the form of the Statute in such case made and provided the said defendant by his said Attorneys well avows the taking of the said goods and chattels to wit: the Dredge Boat "Nile" her machinery tackle Apparel furniture appurtenances and property

9 and four mud Scows in the said declaration men-
tioned at the said town of Bridgeport at which &c
and justly because he says that the said goods &
Chattels, to wit: the Dredge Boat Nile, her Machinery
tackle apparel, furniture, appurtenances and property
and four Mud Scows in the said declaration mentioned
at the said time when &c were the property of the said
defendant and not of the said plaintiff as by the said
declaration is above supposed; and this he the said
defendant is ready to verify; wherefore he prays
judgment if the said plaintiff ought to have or main-
tain his aforesaid action thereof against him,
and he also prays return of said goods & Chattels
together with his costs in this behalf according
to the form of the Statute in such case made and
provided to be adjudged to him &c.

Thompson & Bishop
Attys. for Deft.

And afterwards to wit: on the Fourth day of
February in the year aforesaid, said plaintiff
by Greene & Bentley his Attorneys filed in the
Office of the Clerk of said Court his Replication
which replication is in the words and figures
following to wit:

10

Superior Court of Chicago January Term 1862

John P. Parker —
vs
Abraham J. Knisley

And the said John P. Parker plaintiff in this suit by Greene & Bentley his attorneys as to the first plea of the said defendant whereof he puts himself upon the Country doth the like.

Greene & Bentley
Plaintiffs Attorneys.

And the said plaintiff as to the plea of the said defendant by him secondly above pleaded says precludi non because he says that the said goods and Chattels at the said time when &c were the property of the said plaintiff as in said declaration alleged and this he prays may be enquired of by the Country &c

Greene & Bentley
Plaintiffs Attorneys

And the defendant doth the like
Thompson & Bishop
Defts. Attys.

11. And afterwards to wit: on the Fourteenth day of January in the year of our Lord one thousand eight hundred and Sixty three, said day, being one of the days of the January Term of said Court the following among other proceedings was had and entered of Record in said Court to wit:

John P. Parker
vs
A. J. Knisley
} Replevin

402
8658

This Cause being this day called for trial, comes said plaintiff by Wayne & Bentley his attorneys, and said defendant by Hoyne, Miller & Lewis & Thompson & Bishop his attorneys also comes and issues being joined herein it is ordered that a jury come, Whereupon comes the jury of good and lawful men, to wit: H. H. Pence, George Dedrick, A. T. Williams, John Seay, James Wilson, R Nawzig, Fred Vant, Thomas Gooder, Charles Childs, Wm W. Weston, William Nobye, Charles Buettgen who being duly elected tried and sworn to try the issues joined herein as aforesaid after hearing part of the testimony and the hour of adjournment having arrived it is ordered upon agreement of the parties that the jury separate and meet the Court tomorrow morning.

Record 11 page 605

12 And afterwards to wit, on the Fifteenth day of January in the Year aforesaid, said day being still of the said Term of said Court the following among other proceedings was had and entered of record in said Court to wit

John P. Parker
vs
A. J. Kniseley
} Replevin

402
8638

And now at this day again come the parties to this cause by their attorneys respectively as on yesterday, and the jury empanelled herein on yesterday for the trial of said cause also come and having heard further testimony and the hour of adjournment having arrived it is ordered upon agreement of the parties that the jury separate and meet the Court tomorrow morning)

Record 11 page 608

And afterwards to wit on the (16) Sixteenth day of January in the Year aforesaid, said day being still of the January Term of said Court the following among other proceedings was had and entered of record in said Court to wit:)

13
402
8658

John P. Parker
vs.
A. J. Knisely
} Replevin

Record 11 page 612

And now again come the parties to this cause by their attorneys respectively as aforesaid and the jury empanelled herein for the trial of said cause also come as on yesterday, and having heard further testimony and the hour of adjournment having arrived, it is ordered upon agreement of the parties that when the jury separate they meet the Court tomorrow morning on coming in and opening thereof.

And afterwards to wit: on the Seventeenth day of January in the year aforesaid said day being still of the January Term of said Court, the following among other proceedings was had and entered of Record in said Court to wit—

John P. Parker
vs.
A. J. Knisely
} Replevin

402
8658

And now again come the parties to this cause by their attorneys and

14 the jury empanelled herein for the trial of said Cause also come as on yesterday, and having heard all the testimony arguments of Counsel and instructions of the Court, retire to consider of their Verdict and afterwards return into Court, Submit their Verdict to Say WE the jury find said defendant Guilty and right of property in said plaintiff, and we assess plaintiffs Damages at one cent.

Record 11 page 615

And thereupon said defendant submits his motion herein for a New trial in said Cause.

And afterwards to wit, on the Twenty sixth day of December in the year aforesaid, said day being one of the days of the December Term of said Court the following among other proceedings was had and entered of Record in said Court to wit:

John P. Parker
vs
A. J. Knisely — } Motion for New trial in Replevin

332
8658

And now, again come the parties to this cause by their attorneys and this cause coming on to be heard before the Court in banc for

18

Record 14 page 78

a new trial submitted by said defendant on the Seventeenth day of January 1863, and Counsel being heard thereon and the Court being fully advised it is considered by the Court that said motion of defendant be overruled and that a new trial be refused to said defendant in said Cause.

Therefore it is considered that said plaintiff do have and retain the property replevied in said Cause and recover of said defendant one cent damages together with costs in this behalf expended and have execution.

And therefore said defendant having entered exceptions herein, it is ordered that he be allowed thirty days time to file his bill of exceptions.

And afterwards towit, on the Twenty fifth day of January in the year of our Lord one thousand eight hundred and sixty four, said day being one of the days of the January Term of said Court the following among other proceedings was had and entered of record in said Court, towit:

John P. Parker
vs
A. J. Knisley
} Motion Replevin

232
8658

16. And Now comes the said parties by their Attorneys, and on Motion Hoyne Miller & Lewis defendants Attorneys and by agreement with plaintiffs Attorney ordered that time to file bill of exceptions herein be extended one week from this day, and when filed to be filed as of this day.

And afterwards to wit on the day and year afore-said, said defendant filed in the Office of the Clerk of said Court his Bill of Exceptions which is in the words and figures as follows to wit.

17

Superior Court of Chicago — Bill of Exceptions

John P. Parker
vs
Abraham J. Knisely
} Replevin

Be it remembered that on this 14th day of January A.D. 1863, said cause came on to be tried upon the issues made therein, and the parties appearing by their respective counsel, and a jury having been duly empannelled, it was admitted that, at the time of the issuing of the attachment writ by D. Wolf, Justice, in behalf of Daniel S. McDonald, George Kimball was the owner of the property in controversy; and, thereupon the plaintiff introduced in evidence the following papers in a cause commenced in the Superior Court of Chicago by Thomas S. Dickerson Plaintiff against George Kimball, defendant.

(Attachment Writ)

State of Illinois
County Cook } ss.

The People of the State of Illinois
To the Sheriff of said County Greeting:

Whereas Thomas S. Dickerson hath complained on oath to Walter Kimball, Clerk of the Superior Court of Chicago, of Cook County, that George Kimball is justly indebted to the said Thomas

18

S. Dickerson to the amount of Twelve hundred and Seventy dollars and oath having also been made that the said George Kimball resides out of this State, so that the ordinary process of law can not be served upon him and the said Thomas S. Dickerson having given bond and security according to the directions of the act in such case made and provided:

We therefore command you, that you attach so much of the estate, real or personal, of the said George Kimball to be found in your County, as shall be of value sufficient to satisfy said debt and costs, according to the said Complaint; and such estate so attached, in your hands to secure or so to provide that the same may be liable to further proceedings thereupon, according to law, at a term of said Superior Court of Chicago to be holden at Chicago, within and for the County of Cook, on the first Monday of December next so as to compel the said George Kimball to appear and answer the complaint of the said Thomas S. Dickerson, and that you also summon as garnishee to be and appear at the said Court on the said first Monday of next, then and there to answer to what may be objected against ; when and where you shall make known to the said Court how you have executed this writ. And have you then and there this Writ.

19

Witness Walter Kimball, Clerk of our said Court and the Seal thereof at Chicago, in said County this 15th day of November A.D. 1860.

(Seal of Court)

Walter Kimball, Clerk

(Return)

By Virtue of the within writ I have levied upon the Defendant's right title & interest in and to the following described property, to wit; one Small Steam-boat Nile, 4 Mud Scows and all the fixtures & accoutrements connected with said Boats, and Served the within named defendant by reading this writ to him this 16th day of November 1860

John Gray Sheriff
By F. Lombard Deputy

(Judgment)

Thomas S. Dickerson

vs

George Kimball

Attachment

1285
5701

This day comes the said plaintiff by Cyrus Bentley his attorney and due personal service of process of Summons issued in said Cause having been had on the said defendant and being three times solemnly called in open Court, comes not nor does any person for him, but herein he makes default, which is on motion ordered to be taken, and is hereby entered of record, Wherefore the said plaintiff ought to have and recover of the said defendant his damages

Record 7 Page 78

20

sustained herein by reason of the premises, and the Court now here after hearing the allegations and proofs submitted by the said plaintiff and being fully advised in the premises assess his damages herein to the sum of One thousand two hundred & ninety six dollars and seventy eight cents.

Therefore it is considered that the said plaintiff do have and recover of the said defendant his damages of One thousand two hundred and ninety six dollars and seventy eight Cents. in form aforesaid assessed and also his costs and charges in this behalf expended and have execution therefor, and that an order issue for sale of the property attached.

$1296.78

(Execution)

State of Illinois }
County of Cook } ss

The People of the State of Illinois to the Sheriff of said County, Greeting:

We command you that of the Goods & Chattels, to wit, all the right title and interest in and to one small Steamboat Nile, 4 Mud Scows and all the fixtures and accoutrements connected with said Boats and of the other Goods and Chattels lands and tenaments of George Kimball defendant in your County, you cause to be made the sum of Twelve hundred and ninety six dollars and seventy eight Cents which Thomas S. Dickerson plaintiff lately in the Superior

21 Court of Chicago of said County at a term thereof begun and held at Chicago in said County on the first Monday of December last past recovered against the said defendant and which by the said Court was adjudged to the said plaintiff for his Damages.

And also the further sum of Seven Dollars and Ninety cents which were adjudged to the said plaintiff for his Costs and Charges in that behalf expended, whereof the said defendant was convicted as appears to us of record. And have you these Moneys ready to render to the said Plaintiff for his damages and costs aforesaid and make a Return of said writ with an endorsement thereon in what manner you shall have executed the same, in ninety days from the date hereof.

Witness Walter Kimball, Clerk of our said Court and the Seal thereof at the City of Chicago in said County, the 8th day of February A.D. 1861

Seal of Court

Walter Kimball
Clerk

(Return)

By Virtue of the annexed Writ of Execution No 3914, I did on the Eighteenth day of February 1861 Levy upon the property described in the annexed writ, also 95 Dredge Buckets. And on

the Eleventh day of March 1861, between the hours of nine in the morning and the setting of the sun of the same day at Bridgeport in Cook County (the time and place of sale having been duly advertised according to law) I did sell at public Venue to the highest and best bidder at said sale, the property levied upon as aforesaid, for the sum of Six hundred and eighteen dollars to John P. Parker $618.00.

And after deducting my fees &c on Execution 13.27
Care and expense of keeping property 299.73
I have paid the balance to Plaintiffs Attorney 305.00
$618.00

And I return the said annexed execution satisfied for the sum of Three hundred and five dollars.

A.C. Hesing Sheriff
By F. Lumbard Deputy

(Endorsed on writ)

Received of A.C. Hesing Sheriff by F. Lumbard Deputy Three hundred and five dollars to apply on the within execution, it being the amount of sale after deducting costs of keeping and selling property.

C. Bentley
Pltffs Atty.

And thereupon Frederick Johnston was called as a witness on behalf of the plaintiff, who testified as follows:

I Know George Kimball, - I Know the Dredge

Boat Nile - She was a steamboat - The first time I had any thing to do with the boat was in Nov 1860 - I took Charge of her then - Mr Kimball hired me as Captain to take her down to Mobile - There was no one in possession until he gave her to me - Mr Kimball asked me on Saturday night, if I could take up a Scow that was sunk - On Monday I went up and he told me I would find some laboring men there to help me - I set the men to work to pump out the Scow - About 12 o'clock Mr Kimball came up - Then he told me he would hire me to take the Dredge and Scow to Mobile - He told me to have them ready by the next day at one o'clock, so that the Tug could take them to Bridgeport - They were then in the Slip near Halstead St - This conversation took place near the Scow - The Tug took us to Bridgeport and locked the Dredge and Scow through the same day - Kimball came up the same night and told me to be ready to start the next morning - He told me he would get the permit for me to start when he came up - The permit was to get teams from the Canal Company to take the boats down - He got the permit but did not start that day - He had the teams already there the day after that, that is the second day - As the teams were standing ready to take her down, Mr Lumbard the Deputy Sheriff came and told me that he had to stop the boat. Mr Kimball then introduced me to Mr Lumbard as his Captain of the

24

boats – I was to go under him – Mr Lumbard told me to take Charge under him, I did so – He told me to remain in Charge until he gave me further orders – I kept her in Charge about four months – until about the 15th or 16th of March – Then Mr Lumbard came up and sold her at public Auction – Mr Parker bought her – I was present at the sale – Mr Parker went into possession of her and placed her in my charge again – I pumped them out and looked after them all – the Dredge and 4 Scows, and kept them for Mr Parker from that time until the 17th or 18th of December of that year, when Mr Knisely came and said he was going to take some of the Machinery away from there – Knisely said he believed it was his property and he was going to take it down town – I went down town & notified Mr Parker that Knisely was up there to carry off some of the Stuff – I went back immediately and saw Knisely there – He was not doing any thing at the time – There were some men there going to work – Mr Dickerson and Parker and the Sheriff came back with me – There were some men at the boats but what they were doing I do not know – Some of the boat's Chains were lying on the heel-path – The men did nothing with the things while I was there – I only stayed a few minutes – A man came up and notified me that Knisely with a lot of men was there to take the machinery from the boat – The men were there when I went down some were on the boat, and some were on the heelpath

2 5 My possession of the boat under Mr Parker ceased at that time, but parker told me to stay in possession - The Sheriff stopped Mr Knisely from taking any more of the machinery.

Being Cross Examined the said Witness testified as follows

I am a Ship Carpenter by trade and was working on Millers Yard at the time of getting the Scow up - The Dredge was fitted out in the Summer of 1860 - She was fitted up as a Dredge and went by Steam - She had a Stern Wheel, and also works to operate her machinery - There was one pony Engine near her main Engine - I do not know of my own knowledge that she was connected with the propelling wheel - I am sure there was a stern-wheel ^ She was called the Steam Dredge Nile, and her machinery went by steam - I knew Mr Dickerson - Mr Parker was his Clerk - Mr Parker told me to take charge for Mr Dickerson under him - I saw a man on the boat and asked him what he was doing - I was told by Mr Dickerson after she was sold on the same day to keep an eye out for the boat, and keep her pumped out, and keep watch of her - That I need not stay on her all the time - That is all the possession he gave me - I was working up in that neighborhood most of the time - I saw a paper hanging by one corner after it had been raining all night - but I did not know what the paper was - Don't recollect of telling Dickerson that there was to be a sale of the property.

And thereupon Frank Lumbard was cal-

-led as a Witness in behalf of the plaintiff and testified as follows:

I was Deputy Sheriff of the County of Cook during the year 1860 and in that Capacity I received from the Sheriff on the 15th day of November 1860 the attachment writ now shown to me [Here was shown to the witness the Attachment writ above set forth in the Case of Dickerson against Kimball] and by Vertue of said writ I levied the same upon and Seized and took possession of the property described in my return endorsed upon said writ. And afterwards, on the 8th day of February 1861 I received the execution now shown to me (here was shown to the witness the Execution above set forth in the Case of Dickerson against Kimball) from the Sheriff and proceeded to advertise the property described in this execution for Sale, according to the requirements of the Statute and on the 11th day of March 1861 by Vertue of that execution Sold the property as stated in my Return attached to the Execution. I Sold the property to the plaintiff John P. Parker for $ 8618 and made a bill of Sale of the same to Parker, and delivered to him the possession of the property. The property attached and Sold by me to Parker is the same property as that described in the Replevin writ now shown to me [here was shown to the witness the Replevin writ in this suit]

27

And thereupon Calvin D. Wolf was called as a witness in behalf of the defendant, and having been duly sworn, testified as follows; I was during the year 1860 and have since, continued to be a Justice of the Peace in and for the County of Cook. I kept my office ~~was office~~ in the City of Chicago. On the 20th of October A.D. 1860, the following affidavit was made before me by D. G. McDonald.

State of Illinois
Cook County } ss. Daniel G. McDonald being duly sworn says that the Dredge Nile justly indebted to said McDonald in the sum of sixty five dollars and 75 cts for wages, as machinist and engineer on said Boat while running upon the navigable waters of the State of Illinois and that said work was done at the request of the owner and that said sum is now due and unpaid and he does not know the owner of the said Boat whereupon he prays attachment &c in pursuance of the Statute.

Sworn and subscribed before me, this 20th day of Oct A.D. 1860. } D. G. McDonald

C.D. Wolf, Justice of the Peace

And also on the same day said McDonald with M. Hawkins as his surety executed and filed with me the following attachment bond.

State of Illinois
Cook County - } ss Know all men by these presents That we D. G. McDonald and M. Hawkins are held and firmly bound unto the People of the State of Illinois for the use and

benefit of the owner or owners of the Dredge Nile in the penal sum of One hundred and fifty dollars, current money of the United States, for the payment of which, well and truly to be made we bind ourselves, our heirs, executors and administrators firmly by by these presents

The Condition of the above Obligation is such That whereas the above bounden Mc Donald has, on the day of the date hereof, prayed an attachment in his favor against the above named Boat for the sum of Sixty five dollars and 75 cents, and the same being about to be sued out and returnable on the 22nd day of October A.D. 1860 before Calvin D. Wolf a Justice of the Peace, Now if the said Mc Donald shall prosecute his Suit with effect, or in case of failure therein, shall well and truly pay and satisfy the Owner or owners of said Dredge Nile in all such costs and damages as the said owner or owners aforesaid may Sustain by wrongfully Sueing said attachment, then the above obligation to be void, otherwise to remain in full force and virtue. Witness our hands and Seals this 20th day of October A.D. 1860.

D. G. Mc Donald (Seal)
M Hawkins (Seal)

I thereupon and in the same day issued the following attachment writ against the Dredge Nile,

State of Illinois } ss
Cook County }

The People of the State of Illinois, to any Constable of said County Greeting:

Whereas Daniel G. Mc Donald has Complai

29 _ed on oath before C. D. Wolf a Justice of the Peace in and for said County, that the Dredge Nile is justly indebted to the said Mc Donald in the amount of Sixty five $\frac{75}{100}$ dollars and oath having been also made that said debt is for wages as a machinist & engineer while said boat was running upon the navigable waters of the State of Illinois, and the said Mc Donald have given bond and security according to the Statute in such case made and provided. We therefore Command you to forthwith attach said Boat with her Sails, Rigging, tackle, apparel and furniture ~~&~~ to be found in your County, to satisfy said debt & Costs according to ~~the~~ said Complaint; and such Boat so attached, in your hands to secure or to provide that the same may be liable to proceedings thereon before the undersigned, a Justice of the Peace in and for the town of South Chicago in the County of on the 22nd day Oct A.D. 1860 at 4 o'clock P.M. And that you notify the Owner and owners of said Boat if found in your County, of this proceeding.

Given under my hand and seal this 20th day of Oct A.D. 1860.

Calvin D. Wolf (Seal)
Justice of the Peace

Upon which said writ is the following endorsement

Mc Donald
vs
Dredge Nile

Debt $65.75

Cost 1.37

Served by attaching the within named boat, this 22nd day of October 1860. Fees $4.00

C. Keeler, Const.

This Writ was delivered to C. Keeler who was then Constable in and for the County of Cook, — which was on the return day returned by him as served by attaching the said Dredge Nile. The return upon said writ is in the hand writing of and is signed by said Keeler. Upon the return of said attachment writ said McDonald made ~~out~~ and filed with me the following written Statement against said Dredge Nile.

Daniel G. McDonald

in account with

Dredge Nile

N. Y. owner

To Services as Engineer on said Dredge from April 2nd to Sept 1860.

1860	Sept 1st	Balance due	$73.00 admitted by owner	
		By Cash	44.	
		Balance		$29.00
"	27	21 days work at 4/- per day		36.75
		Total amt due		$65.75

At the hour named in the writ on the 22nd of October, the return day of the writ, the Case was called and no—

31 one appearing for the Dredge Nile or in behalf of the owner and no appearance having been entered, I continued the case until the first day of November then next ensuing. I immediately prepared the following notice.

Attachment Notice

State of Illinois } ss
Cook County }

Daniel C. McDonald
vs.
The Dredge Nile

Attachment for Sixty five dollars & seventy five cents before Calvin De Wolf, a Justice of the Peace in and for said County

Notice is hereby Given to the said Owner or Owners of the Dredge Nile that an Attachment has been issued by the said Justice, at the suit of the above named Plaintiff, against the personal estate of the said Defendant for the said sum of Sixty five Dollars and seventy five cents, directed to any Constable of said County; which attachment has been returned by Cyrus Keeler a Constable of said County, executed according to law; and that said Cause has been continued for trial until the 1st day of November A.D. 1860 at 4 o'clock P.M. Now unless you the said Owner or Owners of said Dredge Nile shall be and appear before the said Justice at his Office in South Chicago on the day last aforesaid, and plead to the said action, judgment by default

will be rendered against you in favor of the said plaintiff and the property attached will be sold to satisfy the same with Costs. Dated this 22nd day of October A.D. 1860

Calvin D. Wolf

Justice of the Peace

Upon which Notice is the following endorsement.

Returned by posting three Notices in the following places to wit, Calvin D. Wolf Esq, J. A. Hoisington & J. L. Milliken this 22nd day of Oct 1860. Fees 75

C. Keeler, Const.

I made out three copies of this Notice and delivered them to Keeler, Constable, with the original to be posted by him as required by law. Prior to the day to which the cause was continued Keeler returned the Notice shown to me with his endorsement as the same now appears thereon, on the first day of November at the day and hour to which the cause was continued. I called the case and proceeded to hear and determine the same. A Hawkins testified as a witness in behalf of plaintiff and I gave judgment in favor of the plaintiff for sixty five dollars and seventy five cents and costs. On the same day I made out an order for the sale of the property attached and delivered it to C. Keeler, Constable, to execute. The following is the order

State of Illinois }
Cook County } ss The People of the State of Illinois to any Constable of said County Greeting:

33 Whereas heretofore to wit: on the 20th day of October A.D. 1860 Daniel Gs. McDonald sued out before the undersigned, a Justice of the Peace in and for said County, an Attachment against the Dredge Nile and has caused said Attachment to be levied on the Dredge Nile, And Whereas, afterwards, to wit: On the 1st day of November 1860 such further proceedings were had before said Justice, as that a Judgment was rendered in favor of said Daniel Gs. McDonald & against the Dredge Nile for the sum of Sixty five dollars & Seventy five cents in a plea of Assumpsit besides costs of suit, which are endorsed thereon, and taxed at eight dollars and fifty six cents, and the property attached, ordered to be sold, for the satisfaction of said judgment and costs:

You are therefore hereby commanded, that pursuant to said judgment, and in Conformity with the Statute in such case made and provided, You proceed without delay, to make Sale of said property attached, and make said debt and costs, and make due Return of your doings hereon.

Given under my hand and Seal this 1st day of November A. D. 1860.

Calvin D. Wolf (Seal)
Justice of the Peace

Upon which said order is the following endorsement,

McDonald's vs The Dredge Nile
Debt — $65.75
Costs — 8.56

Returned appealed to Circuit Court this 10th day of Nov 1860.
C. Steeler, Constable

Fees 2.50
Notice — 75
Return 50
3.75
Steeler 8 days 16.00
3.75
19.75

The endorsement upon this order and the signature upon this endorsement are in the handwriting of said Keeler. Subsequently, and on the 10th day of November A.D. 1860 George Kimball took an Appeal from said judgment to the Circuit Court of Cook County and on the same day, he with A.J. Knisely as his surity executed his appeal bond which d approved on the said 10th day of November. The following is the appeal bond.

Know all men by these presents, that we George Kimball as owner of the Dredge Nile & A.J. Knisely of the County of Cook in the State of Illinois, are held and firmly bound unto Daniel G. McDonald in the penal sum of one hundred and fifty Dollars lawful money of the United States, for the payment of which, well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly, severally and firmly by these presents. Witness our hands and seals this 10th day of November A.D. 1860. The Condition of the above obligation is such, that whereas the said Daniel G. McDonald did on the 1st day of November A.D. 1860 before Calvin D. Wolfe a Justice of the Peace for said County of Cook recover a judgment against the above bounden George Kimball Owner of the Dredge Nile for the sum of Sixty five 75/100 dollars and costs of suit from which judgment the said George Kimball has taken appeal to the Circuit Court of the County of Cook aforesaid, and State of Illinois, Now if the said Kimball shall pro-

35 - secute his appeal with effect, and shall pay whatever judgment may be rendered by the Court upon dismissal or trial of said appeal, then the above obligation to be void, otherwise to remain in full force and effect.

Approved by me, at my office this 10th day of November 1860 — Geo. Kimball (Seal) A.J. Knisely (Seal)

C. D. Wolf, Justice of the Peace

$2.50 pd J.P.

And I thereupon, and on the 19th of November AD 1860 filed the appeal bond in the office of the Clerk of the Circuit Court together with all the papers and a transcript of the judgment I had given, with my certificate under my hand as required by law. This is the transcript (Here was shown to the witness the following transcript which was then given in evidence

Justices Fees
Doc 12½
Afid 25
Bond & Writ 75
Order 25
Court 12½
4 Notices 1.00
1 Sw 06¼
Judg 25
Order of Sale 50
Ent Appeal 25

Daniel G. McDonald vs The Dredge Nile — Attachment Demand $65.75 Oct. 20/60 Afid & Bond filed & writ issd to Keeler Const Rettle. October 22nd 60 at 4 P.M.

Ret. served by attaching the within named Boat Octob 22nd/60. Case cont. to Nov 1st 60 at 4 P.M. with 4 Notices to Keeler Const. Ret'd. by posting 3 Copies of them in 3 public Offices Octb 22/60 Novb 1/60 Case called Defts not present, wit. Sw and after hearing the Evidence, Judgment rendered in favor of Pltff and against the Deft for the Amount of

Judgment $65.75
& Costs

5.

Nov 1/60 Order of Sale iss to Keeler Const. Order re-called Nov 10/60 Geo Kimball as owner of the Dredge Nile appeals to Circuit Court with A.J. Knisely as Sec

A Hawkins

Appeal Fees paid Const Keeler 4.00 .75 3.75 Keepers fee 6.00

State of Illinois }
Cook County - } ss I Certify the foregoing is a true Transcript of all the proceedings before me in the above entitled cause from my Docket and the papers herewith transmitted to said Court, contain a full & perfect Statement of all the proceedings before me.

Witness my hand and Seal this 10th day of November A.D. 1860.

C. D. Wolf (Seal)
Justice of the Peace

Hereupon the above papers with the endorsements thereon referred to by the witness and which are above set forth were read in evidence to the jury in behalf of the defendant, to the reading of which said papers and each of them Counsel for the plaintiff objected — objection over-ruled and excepted by plaintiffs Counsel, Witness further states, I have with me my Justices Docket which I kept at that time. The following are my docket entries in relation to said Cause

Daniel G. McDonald vs The Dredge Nile } Attachment Demand $65.75 Octob 20/60 Affid & Bond filed & writ iss to Keeler Const. retbl Octob 22d 60 at 4 P.M. Ret served by attaching the within named Boat Octob 22/60 Case Cont to Nov 1st 60 at 4 P.M. with 4 Notices to Keeler Const. Ret exd by posting

3 Copies of them in 3 public offices Octob 22/60 Novb 1/60 Case called Defdt not present writ sd & after hearing the evidence, judgment rendered in favor of Plff and against the Deft for the Amount of

Judgment $65.75
& Costs

Novb 1/60 Order of Sale iss to Keeler Const Order Recalled
Novb 10/60 George Kimball as owner of the Dredge Nile appeals to Circuit Court with A.J. Knisely as Sec

That portion of the Docket referred to by the witness was put in evidence and read to the jury.

Witness further testified, Afterwards I received the following writ of Procedendo issued by the said Circuit Court.

State of Illinois }
Cook County } ss. To C.D. Wolf Esqre a Justice of the Peace in and for the County aforesaid Greeting:

Although we lately by our writ of Supersedeas commanded you that, from proceeding any further in a certain Suit then lately instituted and depending before you, between Daniel G. McDonald plaintiff and the Dredge Nile defendant wherein you had rendered judgment in favor of the said plaintiff against the said Defendant therein for the Sum of Sixty five Dollars Seventy five Cents, and Costs of Suit from which said judgment the said Defendant had duly taken an appeal to

our Circuit Court for the County aforesaid, You should entirely Supersede and desist, and all proceedings in relation thereto should absolutely suspend until the further order of our said Circuit Court. Yet, in asmuch as such proceedings have been had upon said appeal in our said Circuit Court that the said judgment by You so rendered as aforesaid, remains in full force and effect in all respects as before the taking of the said appeal, and execution of said judgment remains to be done according to law as appears to us of record.

Now therefore we Command You that without further delay You proceed on said judgment in such manner as the law directs, in all respects as if the said appeal had never been taken, our writ of Supersedeas to you thereupon before directed to the contrary thereof notwithstanding.

Witness William L. Church, Clerk of our said Court, and the Seal thereof at Chicago in said County, this second day of April A.D. 1861

(Seal)

Wm. L. Church

Clerk

The above writ was thereupon read in evidence to the jury, and Witness further stated Afterwards and on the 25th day of September A.D. 1861, I made out and delivered to the said

Keeler, Constable to execute the following order for the Sale of said Dredge Nile.

State of Illinois, Cook County } ss The People of the State of Illinois to any Constable of said County, Greeting:

Whereas Heretofore, to wit on the 20th day of October A.D. 1860 Daniel G. McDonald sued out before the undersigned a justice of the Peace, in and for said County an Attachment against the Dredge Nile and has caused said Attachment to be levied on the Dredge Nile as the property of said

And whereas afterwards, to wit on the first day of November 1860 such further proceedings were had before said justice as that a judgment was rendered in favor of said McDonald and against the Dredge Nile for the sum of Sixty five dollars and 75 cents in a plea of

besides costs of suit which ~~which~~ are endorsed thereon, and taxed at Twenty nine dollars and 6 cents, and the property attached ordered to be sold for the satisfaction of said judgment and costs:

You are therefore hereby commanded that pursuant to said judgment, and in conformity with the Statute in such case made and provided you proceed without delay to make sale of said property attached, and make said debt

40

and Costs, and make due return of your doings hereon.

Given under my hand and Seal this 25th day of September 1861.

Calvin D. Wolf (Seal)
Justice of the Peace

Upon which said order is the following endorsement:

D. G. Mc Donald
vs
Dredge Nile

Debt $65.75
Costs 29.06
Keepers Fees 10.00
advertising 75
Levi 50
Ret 50
$50.81
Pa $10
40.81
6% Commis. & 3.96
43.77

Ret ex by selling the within described property for $151 to A. Knisely by money pd to pltffs Atty Bishop & Thompson as per Receipt on Docket, Costs pd to J.P. October 26/61
C. Keeler Constable

And also an erased endorsement as follows: "Returned satisfied and money paid to plaintiffs Atty, and Costs paid October 4th 1861
C. Keeler Const

The said order of sale with the endorsement thereon was thereupon under objection by pltffs Counsel read in evidence. Witness further stated the signature to the return endorsed upon this order of sale is in the hand writing of said Keeler, said order of sale with the Constable's return endorsed thereon was returned to me by said Keeler and filed with the papers in the Case.

41 Cyrus Keeler was thereupon called as a witness in behalf of the defendant and testified as follows

I was Constable in and for the County of Cook during the years 1860 and 1861 On the 20th of October A.D. 1860, I received from Calvin De Wolf Esq a Justice of the Peace the attachment writ now shown to me (Here was shown to the witness the attachment writ set forth in the testimony of the witness D. Wolf) I executed the writ by seizing the Dredge Nile. I found it in the South branch of the Chicago River. I returned the writ to Justice D. Wolf with my return endorsed thereon as it now appears. After such seizure and by the hour named in the writ for its return on the 22d of October A.D. 1860 the same day I returned this writ I received from Justice De Wolf the notice now shown to me (Here was handed to the witness the attachment notice set forth in the testimony of the witness D. Wolf) and also three copies of this notice, to be posted up as required by law. The three copies I posted up on the 22nd of October and returned this notice to the Justice with my return endorsed thereon as it now appears.

The following question was then asked the witness for the purpose as stated by defendants Counsel of showing that the notices were in fact posted as required by law, and of explaining the Constable's endorsement of service and showing

how, and when and where the Notices were in fact posted.

State the places where you posted these Copies (This Question was objected to on behalf of the plaintiff said objection was sustained and the witness directed by the Court not to answer the Question, to which ruling of the Court in sustaining said objection the Counsel for the defendant then & there excepted) The witness further testified,

I afterwards received from Justice D. Wolf the attachment order of sale dated Nov 1st 1860 and now shown to me (Here was shown to the witness the order of sale of that date and set forth in the testimony of the witness D. Wolf) This I returned to the Justice with my return endorsed thereon as it now appears. The return is in my handwriting. Subsequently and on the 25th day of September A.D. 1861, I received from the same Justice the second order of sale bearing date on that day and which is now shown to me (Here was shown to the witness the order of sale of that date and set forth in the testimony of the witness D Wolf) Immediately upon receiving this order I took possession of the Dredge Nile by virtue of the order, and I made out three Notices or advertisements in writing setting forth the place the day and the hour for the sale of the property under this

order, and I posted three notices or advertisements up in three of the most public places in the County of Cook, I posted one in the Office of Justice De Wolf, one in the Office of the Sheriff of Cook County One on the Corner of Randolph and Wells Streets, and a fourth notice which I made out I posted on the side of the boat, I sold the property under this order on the 26th day of October A.D. 1861 at the Dock where the Dredge was lying. Each of the notices was posted ten days before the day of sale, and next preceding the day of sale, and the one posted on the boat was there at the time of the sale, I think however that notice was torn in two, I sold the Dredge at the place on the day and at the hour appointed in the notices ~~which~~ which were the Dock, where the Dredge was lying, the 26th day of October at 10 o'clock in the forenoon, to the defendant, A. J. Knisely for one hundred and fifty one dollars and gave him possession and a bill of sale of the property. He paid over the amount of the bid and I returned the order of sale to the Justice with my Return endorsed thereon as it now appears. I at first advertised the sale to take place on the 4th of October, and I then posted the notices and made the sale as I have above stated, This explains the endorsement of the return which was erased. The first time I advertised I only gave nine days notice, and then recalled the sale

44 because the notice was too short - I sold on the first notice to Mr Knisely, the same buyer as on the second, and recalled the sale because the Notice was too short - I then advertised it over again - The return was true - My impression is that it did not bring so much as at the second sale - My return is correct, on the first sale I received the money and paid it over to the attorney & Justice as stated in my return - The money was counted and put on the Custodian's Book - I do not recollect what the boat brought at the first sale - It was something like $115. or $116. or thereabouts - I discovered my mistake I think the same day I kept out my own Costs and paid the Justice his Costs - I might have supposed that Knisely was plaintiffs Attorney - Knisely thought it would hold on that sale - He did not say any thing about Dickerson's finding out about it. Knisely paid me the money for the boat and I paid it over - I posted three of the notices myself and sent the other notice by Mr Bulger to be posted on the boat I sold the boat as Crier for Mr Long - Mr Horton requested me to act as Crier - I sold her at the same place as before - There were five or six bidders, and from fifteen to thirty persons present - Something was said that Dickerson was not there - That the sale was over and he not there - Knisely rode home with me after the sale - Mr Horton erased

this return at my request – I sold on the 26th day of October 1861 – Knisely and Horton and all consented to abandon the first sale – I paid the Justices costs out of the proceeds of the second sale.

Oliver H. Horton being called as a witness testified as follows — I have heard Mr Keeler's testimony – I was Deputy Custodian and acting for the Custodian at the time of the sale by Mr Keeler of the boat in question – Mr Kimball was not a resident of Chicago at the time – I addressed a notice to him of the sale under the order held by Mr Keeler, through the Post Office ten days before the sale – I am of the impression that I discovered the defective notice – Mr Keeler said he would consult Mr D Wolf about it.

William L. Greenleaf was thereupon called as a witness on behalf of the Defendant and testified as follows: — I am Deputy Clerk of the Circuit Court of Cook County, and was in 1860 and in 1861, I have an entry in my docket of the suit of Mc Donald against the Dredge Nile. It was appealed to this Court from Justice De Wolf, and the papers with the Justices transcript and Certificate were filed in the Clerks Office Nov 19th 1860. The following affidavit was made in said Cause and is on file among the papers therein. It was filed Dec 19. 1860

46

State of Illinois } ss
Cook County }

The Circuit Court of Cook County

Daniel G. McDonald
vs
George Kimball – } Appeal

Richard P. Derickson being first duly Sworn says that he is the agent of George Kimball the defendant in the above entitled suit and that he makes this affidavit for and in behalf of said Kimball, and this affiant says that said Kimball has a good & substantial defence to said suit on its merits, and further saith not.

R. P. Derickson

Subscribed & Sworn to this 19th day of December A.D. 1860 before me –
Wm L Church Clk

The above affidavit was then read in evidence The following is the Summons issued in said cause, with the Sheriffs Return thereon

State of Illinois } ss
Cook County }

The People of the State of Illinois to the Sheriff of said County Greeting

We Command you that You Summon Daniel G. McDonald if he shall be found in Your County, personally to be and appear before the Circuit Court of Cook County on the first day of the next term thereof, to be holden at the Court.

-house in Chicago in said County, on the first Monday of January next. to answer unto the Dredge Nile on an appeal from the judgment of C D. Wolf Esquire, a justice of the Peace within said County. And have you then & there this writ with an endorsement thereon in what manner you shall have executed the same.

Witness William L. Church, Clerk of our said Court, and the Seal thereof at Chicago aforesaid this 19th day of November A.D. 1860

(Seal)

Wm L. Church, Clerk.

Upon which said writ of Summons was the following endorsement.

Jany Term 1861
D. C. McDonald
The Dredge Nile

Circuit Court of Cook County
The within named not found in my County. the 9th day of January 1861.
Fees 1 Return $ .10
A. C. Hesing Sheriff
by John Nelson Dept

The above Summons and endorsement were thereupon given in evidence to the jury.

This appeal on motion of the plaintiff was dismissed for want of prosecution, with a procedendo to the justice. The following was the final order or judgment of the Court in the Cause

1058

20143

Daniel G. McDonald
vs.
The Dredge Nile
} Appeal

This day comes the said Plaintiff by John A Bross his Attorney, and the said Defendant being now three times solemnly called in open Court, comes not nor does any person for him, but herein he fails to prosecute his appeal in this behalf Wherefore on motion of said Plaintiffs Counsel it is ordered that the appeal herein be and the same hereby is dismissed at Defendants Cost for want of prosecution, And that a procedendo issue to the Court below.

Therefore it is considered that said Plaintiff do have and recover of the of the said Defendant his Costs and Charges by him about his suit in this behalf expended and have Execution therefor.

The foregoing is all the evidence given on either side in relation to the proceedings in said attachment suit before Justice De Wolf and the sale of the property in question by virtue thereof.

Here the Defendant rested and thereupon the Court in behalf of the plaintiff instructed the jury as follows

The jury are instructed that the judgment rendered in favor of McDonald against the Dredge

99 Nile under which the defendant claims title to the property in question was void and no legal title as against the plaintiff in this Cause was acquired under it and the jury will therefore exclude from their Consideration all evidence pertaining to the Sale of the property by virtue of which the defendant claims title — To the giving of which instruction the defendant by his Counsel then and there excepted.

And thereupon the jury rendered the following verdict: "We the jury find said defendant Guilty and right of property in said Plaintiff, and we assess Plaintiffs damages at one cent."

And thereupon the Counsel for defendant entered a motion for a new trial of said Cause — the Court over-ruled said motion, to which ruling of the Court the defendant by his Counsel then and there excepted.

And for as much as the matters aforesaid do not appear of record, the defendant prays that this his bill of exceptions may be duly signed and sealed and made a part of the record of said Cause which is done this 22nd day of January A.D. 1864.

Daniel Higgins (Seal)
Judge

State of Illinois
County of Cook } ss I Thomas B. Carter Clerk of the Superior Court of Chicago within and for the County and State aforesaid do hereby certify that the above and foregoing is a full true and complete transcript of all the papers on file in my office and of all orders and judgment entered of record in said Court in a certain Cause lately pending therein on the law side thereof wherein John P. Parker was plaintiff and A. J. Knisely was defendant.

In Witness whereof I have hereunto set my hand and affixed the seal of said Court at Chicago this 1st day of March A.D. 1864.

Thomas B Carter Clerk

57

Supreme Court Third Grand Division

Abraham J Kinsley
Plff in Error

vs.

John P. Parker
Dft in Error

And now comes the said Abraham J Kinsley plaintiff in Error & Says that Wm Lewis his attorney & says that in the record and proceedings aforesaid in this cause

1. The Court Erred in sustaining the objection of the plaintiff in Error to the question to the witness Parker, as to which he protest the attachments motions. – (See page 42 of Record)

2. Court erred in giving to the jury in behalf of the plaintiff in Error the instruction above set forth

3. The Court Erred in overruling the motion of appellant below for a new trial –

Wm Lewis for plff in Error

And the said John P. Parker by his attorney comes & says that there is no Error in the record & proceedings aforesaid & prays as the appeal aforesaid to be dismissed

Cyrus Bentley
Atty of appellee

210

Supreme Court

"

Abraham J. Knisely
Plff in error

vs

John P. Parker
Deft in error

"

Transcript of Record

Filed April 20. 1864
L. Leland
Clerk

"

Boyer Miller & Lewis
for Plff in error

No #4

Daniel G. McDonald

In account with

Dredge Mile

~~[illegible]~~ N.Y. owner

To services as Engineer on said dredge
from June 2nd to Sept 1860.

1860.	Sept 1.	Balance due	$73.00.	admitted by owner.
		By Cash	44.	
		Balance		$29.00
"	27	21. days work at $1.75 per day		36.75
		Total amt due.		$65.75

2n. 143

Filed 19. Nov. 1860

No 1

AFFIDAVIT FOR ATTACHMENT OF BOATS, &c., BEFORE J. P.—Chicago Democrat, 45 La Salle Street.

STATE OF ILLINOIS, }
Cook County, } ss.

The Dredge Nyle David G. McDonald being duly sworn says that _____ justly indebted to David McDonald in the sum of Sixty Four dollars and 75 cents for Wages as Machinist & Engineer on said Boat while running upon the navigable waters of the State of Illinois and that said work was done at the request of The Owner and that said sum is now due and unpaid and ~~the said Boat~~ the said owners of the said Boat whereupon he prays attachment &c., in pursuance of the Statute.

Sworn to and subscribed before me, this 20 day of Oct A. D. 1860

D. G. McDonald

Justice of the Peace.

1837/4

S.D. 145

105

Spaulding & Willcox, 85 Randolph Street.

ATTACHMENT NOTICE.

STATE OF ILLINOIS, }
COOK COUNTY, } ss.

Daniel C. McDonald or. **Attachment** For Sixty five

Dollars, and Seventy five Cents,

the Dredge Nile. before **Calvin DeWolf,** a Justice of the Peace in and for said County.

NOTICE is hereby given to the said Owner or Owners of the Dredge Nile

that an Attachment has been issued by the said Justice, at the suit of the above named Plaintiff, against the personal estate of the said Defendant for the said sum of Sixty five

Dollars and Seventy five Cents, directed to any Constable of said County; which attachment has been returned by Cyrus Keeler a Constable of said County, executed according to law; and that said cause has been continued for trial until the 1st day of November A. D, 1869, at 4 o'clock, P. M.

Now, unless you, the said Owner or Owners of said Dredge Nile shall be and appear before the said Justice at his office in South Chicago, on the day last aforesaid, and plead to the said action, judgment by default will be rendered against you, in favor of the said Plaintiff and the property attached will be sold to satisfy the same, with costs.

Dated this 22d day of October A D., 1869.

Calvin DeWolf [L.S.]

Justice of the Peace.

18377

2 n. 143

Returned by Posting
three Notices in the
Following Places to Wit
Calvin G. Wolfenberger
P. O. Hesingtonville
J. L. Milliken's this
Vicinity Oct 1860

Fees 75

C. Keller
Const

Filed 19 Nov 1860.
Wm. Schuch
Clk