No. 14466

Supreme Court of Illinois

Herring

vs.

Quimby et al

71641

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division

No. 38

Herring
vs
Lumbyo

1863

14466

Chicago Nov 16 1861.

Clerk of Supreme Court

Ottawa.

Enclosed I send you the Records and bonds for Supersedeas in the Herring case, which were sent to you some weeks since with the request that you hand them to Judge Caton. At the conclusion of the record is an order of Judge Caton for a Supersedeas; will you therefore issue writ of Error & Supersedeas immediately. We enclose you fee $5.00 as former letter.

Yours &c

Kelly & Kales

46 Herring 38
v
Dunnby's

Precipe

Filed Nov. 17. 1861
L. Leland
Clerk

Know all men by these presents that we James W. Herring and Edmond Aiken are held and firmly bound unto Benjamin F. Quimby and Joseph H. Low in the sum of Fifteen Hundred dollars of lawful money of the United States for the payment whereof well and truly to be made we hereby jointly and severally bind ourselves and our respective heirs executors administrators and assigns firmly by these presents. Witness our hands and seals this 23 day of October A.D. 1861.

The Condition of the foregoing obligation is such that whereas at the June Term 1861 of the Circuit Court of Cook County, holden at the Court house in the City of Chicago, County of Cook and State of Illinois the said Benjamin F. Quimby and Joseph H. Low by the judgment of said court recovered a certain judgment for the sum of One Thousand dollars damages, besides their costs in that behalf, in a plea of Trespass on the case; And whereas the said James W. Herring is about to sue out a writ of Error from the Supreme Court of the State of Illinois, on said judgment and the record and proceedings therein, And whereas he is desirous that said writ of Error when sued out should operate as a supersedeas in said suit and upon the judgment therein recovered as aforesaid,

Now therefore if the said James W Herring shall pay the said judgment and all costs interest and

damages, in case the said judgment shall be affirmed; and in case the said James W. Herring shall duly and faithfully prosecute said writ of error, then this obligation shall be null and void: otherwise the same shall remain in full force and effect—

James W. Herring
E Aiken

State of Illinois
Cook County } ss:
City of Chicago }

Edmund Aiken of said County, being first duly sworn says he is the surety named in the foregoing obligation that he is worth more than ~~fifteen hundred~~ five thousand dollars and upwards over and above all his debts and liabilities; that he is a free-holder and owns in his own right unincumbered real estate ~~situate in the State of Illinois~~ of more than the value of Fifteen Hundred Dollars.

Subscribed and Sworn to before me
this 2 day of ~~October~~ November A.D. 1861

E Aiken

Norman Williams Jr.
Notary Public

16 Ills 38

Supreme Court of Illinois

James W Herring

v

Benjamin D Smith
et al

Bond for Supersedeas

Filed November 17th 1861
Leland Hills

King & Kales
Attys for Plff in Error

Jameson & Morse, Printers, Chicago.

SUPREME COURT OF ILLINOIS.

JAMES W. HERRING, Plff. in Error,
vs.
BENJAMIN F. QUIMBY and JOSEPH H. LOW, Defts. in Error.

Error to the Circuit Court of Cook County.

Abstract of Record.

Rec. p. 1 This was an action on the case brought by the defendants in error against the plaintiff, to the September term, 1860, of the Circuit Court of Cook County.

2 Summons bearing teste the 12th day of July, 1860, in the usual form, was sued out in said action. This writ was afterwards, and on the 5th day of October, 1860, returned into court by the sheriff, with his
3 endorsement that the defendant was not found.

Afterwards, to wit, on the 5th day of October, 1860, the defendants in error, by their attorney, filed their declaration in said cause. The
3, 4, 5, 6 declaration contains two counts, one in case, and the other in trover, for taking and converting, &c., certain goods and chattels of Quimby and Low, to wit, a wooden and frame building and its fixtures and appurtenances, placed and standing upon a certain lot in Chicago.

7 Afterwards, at the January term, 1861, of the court, the case was continued, with order for *alias* process of summons to issue. And afterwards, on the 17th day of May, 1861, an *alias* summons was issued in the usual form, directed to the sheriff of Cook county, and returnable the 4th Monday of May then next.

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"Served, by reading to the within named defendant, the 17th day of May, 1861. ANTHONY C. HESING, Sheriff.
By JOHN A. NELSON, Deputy."

Afterwards, to wit, at the June term of said court, to wit, on the 6th day of July, the said court made an order in said cause, setting forth that due personal service of summons had been had on said Herring, that he was called in open court, and came not, nor any one for him, but therein made default, which, on motion, was then ordered to be taken and entered of record, and that therefore said plaintiffs ought to have and recover of said defendant their damages therein sustained. And thereupon it was ordered that a jury come to assess said plaintiffs' damages therein, thereafter.

And afterwards, on the 11th day of July, 1861, a jury was empanelled, and after hearing evidence and the instructions of the court, retired, and found the defendant guilty, and assessed the plaintiffs' damages at one thousand dollars.

And the court thereupon rendered judgment against said Herring therefor, together with costs.

ERRORS ASSIGNED.

1. That said Circuit Court erred in ordering the default of said Herring to be taken and entered against him.

2. That said court erred in rendering said judgment against said Herring.

3. That said Circuit Court erred in not rendering judgment in favor of said Herring.

4. That said Circuit Court erred in rendering its said judgment against said Herring, in this, that said Herring was then and there entitled to a judgment in his favor, as in case of a non-suit; and said Circuit Court should then and there have rendered judgment in his favor and against said Quimby and Low accordingly.

5. That said judgment is in other respects informal and erroneous.

KING & KALES,
Attorneys for Plaintiff in Error.

STATEMENT OF THE CASE.

This suit was commenced by a summons made returnable to the September term, 1860, of the Circuit Court of Cook County; but the declaration was not filed therein till the 5th day of October, 1860, only three days prior to the commencement of the October term of said court. Several months after the declaration was filed, the plaintiff in error was served with a *pluries* summons in said cause, and on his failing to appear in court to defend the suit, his default was entered, and judgment rendered against him. The plaintiff in error now insists, that inasmuch as the declaration was not filed ten days before the commencement of the October term, 1860, that the court, instead of rendering a judgment against him, should have rendered a judgment in his favor, as in case of a non-suit.

105 38

Supreme Court

James M Herring

v

Benj. F. Grimley

et al

Abstract & Points.

Filed April 23. 1862

L. Leland

Clerk

King & Kales

Pltffs Attys

STATE OF ILLINOIS,
SUPREME COURT, } ss. The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Cook Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Cook County, before the Judge thereof, between Benjamin F. Quimby and Joseph H. Low

plaintiffs and James W. Herring

defendant, it is said manifest error hath intervened, to the injury of the aforesaid defendant

as we are informed by this complainant and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this nineteenth day of November in the Year of Our Lord One Thousand Eight Hundred and Sixty one

L. Leland

Clerk of the Supreme Court.

by J. B. Nies Deputy

46 Wood 105

James W. Herring

No. vs.

Benjamin F. Bunnby et al.

WRIT OF ERROR.

This writ of error is made a supersedeas & as such should be obeyed by all concerned

L. Leland Colonel
& J. A. Rice Deputy

FILED November 19th A. D. 1861

L. Leland

by J. A. Rice Deputy Clerk.

Jameson & Morse, Printers, Chicago.

SUPREME COURT OF ILLINOIS.

JAMES W. HERRING, Plff. in Error,
vs.
BENJAMIN F. QUIMBY and JOSEPH H. LOW, Defts. in Error.

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3, 4, 5, 6 declaration contains two counts, one in case, and the other in trover, for taking and converting, &c., certain goods and chattels of Quimby and Low, to wit, a wooden and frame building and its fixtures and appurtenances, placed and standing upon a certain lot in Chicago.

7 Afterwards, at the January term, 1861, of the court, the case was continued, with order for *alias* process of summons to issue. And afterwards, on the 17th day of May, 1861, an *alias* summons was issued in the usual form, directed to the sheriff of Cook county, and returnable the 4th Monday of May then next.

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By JOHN A. NELSON, Deputy."

Afterwards, to wit, at the June term of said court, to wit, on the 6th day of July, the said court made an order in said cause, setting forth that due personal service of summons had been had on said Herring, that he was called in open court, and came not, nor any one for him, but therein made default, which, on motion, was then ordered to be taken and entered of record, and that therefore said plaintiffs ought to have and recover of said defendant their damages therein sustained. And thereupon it was ordered that a jury come to assess said plaintiffs' damages therein, thereafter.

And afterwards, on the 11th day of July, 1861, a jury was empanelled, and after hearing evidence and the instructions of the court, retired, and found the defendant guilty, and assessed the plaintiffs' damages at one thousand dollars.

And the court thereupon rendered judgment against said Herring therefor, together with costs.

ERRORS ASSIGNED.

1. That said Circuit Court erred in ordering the default of said Herring to be taken and entered against him.

2. That said court erred in rendering said judgment against said Herring.

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4. That said Circuit Court erred in rendering its said judgment against said Herring, in this, that said Herring was then and there entitled to a judgment in his favor, as in case of a non-suit; and said Circuit Court should then and there have rendered judgment in his favor and against said Quimby and Low accordingly.

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~~46~~ 105 ~~38~~

Supreme Court

James W. Herring
v
Benj F. Quimby
et al

Abstract & Points

Filed Ap 23. 1862
L. Leland
Clerk

King & Kales
Pl'ffs Attys

Jameson & Morse, Printers, Chicago.

SUPREME COURT OF ILLINOIS.

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46 105 38

Supreme Court

James W. Herring

v

Benj F. Dunning et al

Abstract & Points

Filed Apl 23. 1862

L Leland
Clerk

King & Kales
Attys

~~Herring~~ ~~Opinion of the Court delivered by~~
~~At~~ delivered the opinion of the Court.
~~Term~~ Mr. Chief-Justice Eaton

~~Eaton C.J.~~ This action was commenced in the September Term, 1860. The declaration was filed but three days before the October term which was the next succeeding term. The first summons was returned in October not served. The cause was continued from term to term, till the 6th of July, which was in the June term, 1861, when a default was taken. In the mean time, ~~on the 4th of May~~ an alias summons was issued, returnable to the May term, which ~~on the 2nd day~~ was served on the defendant. The complaint is, that the Court should have non-suited the plaintiff instead of defaulting the defendant. This is the statute relied upon: "If the plaintiff shall not file his declaration, together with a copy of the instrument of writing or account on which the action is brought, in case the same be brought on a written instrument or account, ten days before the Court at which the summons or copies is made returnable, the Court, on motion of the defendant, shall continue the cause as

the cost of the plaintiff, unless it shall appear that the suit was commenced within ten days of the sitting of the court, in which case the cause shall be continued without cost, unless the parties shall agree to have a trial. And if no declaration shall be filed ten days before the second term of the court, the defendant shall be entitled to a judgment as in case of non suit. The plaintiff in error relies upon the last clause of the statute to show that the court should have nonsuited the plaintiff instead of defaulting the defendant.

In Collins v. Tuttle, 24 Ill., 623, we have already decided, that under the first member of the statute quoted, the defendant need not appear in Court and make a motion for a continuance of the cause, but that if he does not appear it is the duty of the court to continue it under the general order, but without giving costs to the defendant. This would seem to reduce the inquiry to the question, what Event is referred to, after which the second term shall occur, ten days before which the declaration shall be filed. There can be no doubt that

~~that~~ the same court is referred to in the last clause as in the first, which requires the declaration to be filed ten days before the first term of the court to have a continuance. That court is the issuing of the Summons or copias. The language is "ten days before the term at which the Summons or copias is made returnable." What precept is here referred to? Is it the ~~original~~ first precept in the cause, though that may not be served, or is it the one which is actually served on the party, though that be an alias or pluries or subsequent writ? We may apply the language to either, and should apply it to the one which will best subserve the object of the statute, for we may safely assume that that was the one intended by the legislature. In Downey v Smith, 13 Ill. 671, we said: "The object of the statute is to hasten proceedings and not allow a plaintiff to keep a defendant attending on court, from term to term, without apprising him of the nature of the complaint against him." If this be the object of the law, and this will not be contested, then beyond all question, the precept referred to is the

one which is served on the defendant -
No fitter case than ~~this~~ the one at bar could be found
to illustrate this. The action was com-
menced to the September term. Three
days before the next, the October term,
the declaration was filed. The writ which
was served on the defendant, was ~~[illegible]~~
returnable to the May term following,
the January term having intervened, and
~~the~~ default was not taken till the
June term following. Now what delay
or inconvenience could have accrued
to the defendant because the declaration
was not filed ten days before the October term,
when he was not required to appear and
answer it till the May following? None,
of course. It may be said that he might
have heard of the pendency of the action
and entered his appearance, and thus hasten
the proceeding. He might have entered
his appearance even at the first term, and
if desirous of seeing the declaration
the Court in its discretion might have
ordered the plaintiff to file the declar-
ation in a reasonable time. But all these
x speculations are vain and foreign to ~~foreign to~~
the inquiry, for they do not teach us
which ~~that the~~ writ is intended

by the statute. That we must learn by studying the object and purpose of the statute, and those we have seen are best subserved by taking the one upon which the adjudgment is brought into Court, and hence this declaration was filed in time.

The judgment is affirmed

~~The whole Court concurring.~~

Judgment affirmed.

35-46-15

Herring
vs.
Grumby

Opinion
Carter

Recorded B. 12 P. 137

Jameson & Morse, Printers, Chicago.

SUPREME COURT OF ILLINOIS.

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KING & KALES,
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446 105 38

Supreme Court

James W. Haring

v

Benj. F. Thurby

Def't

Abstract of Points

Filed April 23, 1842

J. Leland

Clerk

King & Kales

Pltff's Attys

Supreme Court of Illinois

Third Grand Division

Benjamin F. Linsley et al April T. 1863

Joseph H. Low

Defendants in Error

James W. Hering

Plf. in Error

Argument for Defts. in Error

Suit was commenced to Sept. T. 1860. Declaration filed to Oct. T. 1860 thereby within ten days of commencement of term. - Two Summons were issued and returned "not found" and Defendant finally served with process to the May Term 1861 & Default & judgment, June Term '61.

The abstract states as to the first Summons that it was returned into Court Oct. 5th '60 - The Court will notice that the date of the return was August 31st '60, though the writ did not happen to be filed until Oct. 5th.

Plaintiff in Error insists that judgment as in case of a nonsuit should have been rendered against

Defendants in Error (Plaintiffs below) because their declaration was not filed ten days before the second term after suit was commenced although the record shows that the writ was not brought into Court until the fourth term -

The point presented calls for a construction of the 8th Section of the practice act

Rev. Stat. 1845 Chap. 83 § 8

Scates' Statutes p. 255 Tit. Pleading

The Statute says that "if no declaration shall be filed ten days before the second term of the court, the defendant shall be entitled to a judgment, as in case of a non-suit -"

The first question is what is the reason of the rule?

"The object of the statute" says Trumbull J. in Downey v Smith, 13 Illinois 671 on p. 673, "is to hasten proceedings, and not allow the Plaintiff to keep a defendant attending on Court four terms to term without apprising him of the nature of the

complaint against him.

This, which it is submitted, is the real object of the statute, is obviously fully attained by the construction that it applies & is intended to apply only to cases where there has been service of process.

The Plaintiff is not keeping the Defendant dancing attendance upon the Court from term to term "without apprising him of the nature of the complaint against him" when defendant is not served and not before the Court at all.

It does not "hasten" proceedings any to file a declaration against a party who may never be brought in to answer it.

But in addition to these considerations it is to be noted that the declaration in the case at bar was filed to the Second term of the Court but within the ten days. We have just seen why the Statute was framed & the object & the requisition of the

declaration to the second term, let us inquire why ~~the~~ declaration ~~are~~ required to be filed ten days before &c ?

"There was certainly some object in requiring the declaration to be filed ten days before the term, and that object could only have been to give that time to the defendant, to determine whether he has a defence to the declaration and to prepare to make it."

Collins v Tuttle, 24 Ill. 623
Caton, C.J. on p. 624

This accurately states the reason & so much of the rule even being considered it will be at once perceived that it can only apply where the defendant has been brought before the Court by service of process.

We have then established:
Firstly That so far as the Statute requires the declaration to be filed to the Record term of the Court, this requisition was met by the fact in this case that the declaration was so filed and further that the reason of the rule is only applicable where there has been service

Secondly That so far as the Statute requires the declaration to be filed ten days before the term, that the object is to enable the Defendant to prepare his defence and it is absurd to say that it has any application where the Defendant is not before the Court -
And cessante ratione, cessat lex

II.

Apart from the reason of the rule the argument is fortified by reference to Common Law Authority
In 1 Tidd's Practice p. 418 Chap. 17 we find it stated that "except against attorneys & prisoners

the declaration can not be delivered or filed absolutely, until the Defendant has appeared, and put in and perfected Special bail, when necessary, or filed Common bail, or an appearance has been entered, or Common bail filed for him by the Plaintiff according to the statute" &c, &c

And the whole discussion in the Chapter cited shows that the rule of our Statute made as it is for the convenience of the Defendant and the dispatch of business applies solely when the Defendant has been served with process and has some standing in Court so as to be entitled to proceed coercively against the Plf.

III.

By the first part of S 8 a Defdt. is entitled to a continuance unless declaration & copy of instrument or account be filed "ten days before the Court at which the summons or capias is made returnable &"

This within the rule laid

1 1 1 1

down in Collins v Tuttle (2 & 2d.) does not necessarily mean the original summons but the summons on which service is had as the ten days is merely a matter of convenience to Defts. So when the latter part of the section speaks of the "second term of the Court" it does not necessarily mean the ~~second~~ but one term of the Court next after commencement of the suit but may mean the "second term" after service

IV.

The inconvenience of the appeal rule is apparent.

The decision which Plff. in Error asks for covered about half the principle recovered within the last five years

V

The Plff. in Error (Defts. below) was brought into Court at the May Term 1861. The declaration was filed at the Oct. T. 1860 The Defendants were not entered

until the June term 1861.

The declaration was on file the October Term '60, January Term '61, May Term '61 & most of the June Term '61 ~~of~~ default.

VI

The abstracts and printed "point" of Plaintiff in Error presents no other question for discussion. If there are any others they have not been indicated to us nor have we been able to find them.

We submit that the judgment should be affirmed.

Melville W. Fuller
Counsel for Defts. in Error

~~46~~ 38

Supreme Court of Ill.

Benj. F. Quinby
et al

vs

James W. Heming

No 38

Argument for
Defendants in
Error

Filed May 8. 1863
Leland
Clk

M. M. Fuller
Counsel

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable George Manierre Judge of the Seventh Judicial Circuit of the State of Illinois, and sole presiding Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof begun and held at the Court House in the City of Chicago, in said County, on the second Monday, (being the eighth day) of July in the year of our Lord One Thousand Eight Hundred and sixty one and of the Independence of the said United States the eighty fifth

Present, Honorable George Manierre Judge of the 7th Judicial Circuit of the State of Illinois.

Carlos Haven States Attorney.

Anthony L. Herring Sheriff of Cook County.

Attest, William L. Church Clerk.

Be it remembered that heretofore to wit on the twelfth day of July in the year of Our Lord One thousand Eight hundred and sixty. There was filed in the Court aforesaid a certain Praecipe, in words and figures following, to-wit

State of Illinois } ss
Cook Circuit Court }

In September term A.D. 1860

Benjamin F. Ziemby and Joseph H. Dow } Action
James W. Herring } Trespass on the Case
Damages $ 2000.—

The Clerk of said Court will please issue a summons in an action entitled as above returnable to September term next of our said Court. Chicago July 12. '60 J. W. Chickering pff Atty

And thereupon to=wit on the same day and year last aforesaid there was issued out of and under the seal of said Court the peoples writ of Summons directed to the Sheriff of said County to Execute in words and figures following to=wit

State of Illinois } ss
County of Cook }

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

We Command you that you Summon James W. Herring 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 September next to answer unto Benjamin F. Quimby and Joseph H. Carr in a plea of Trespass on the Case to the damage of the said plaintiffs as is said in the sum of Two thousand dollars, And have you then and 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 Twelfth day of July A.D. 1860

Seal

Wm L. Church Clerk

And afterwards to=wit on the 5th day of October in the year last aforesaid said writ was returned into the Court

v

Page 3. aforesaid, by said Sheriff. Endorsed as follows. to-wit

"The within named defendant not found in my County the 31. day of August 1860, return 10

John Gray Sheriff,
By Wm P Gray Depty"

And afterwards. to-wit. on the 5th day of October in the year last aforesaid, said plaintiffs by their attorney filed in said Court their certain declaration. in words and figures following. to-wit —

"State of Illinois }
Cook County } ss In Circuit Court
Oct Term A.D. 1860

Benjamin F. Quimby and Joseph Nelson, plaintiffs in this suit by J. N. Chickering their attorney complain of James W. Herring, defendant in this suit summoned &c. of a plea of trespass on the Case

For that whereas the said plaintiffs before and at the time of the committing of the grievances hereinafter next mentioned, were the owners and proprietors of divers goods and chattels to-wit, a certain wooden and frame building and its fixtures and appurtenances, placed and standing upon a part of lot number ten of Block number four in fractional section number fifteen addition to Chicago, which said part of the lot is the piece

Pag. 3.

thereof bounded as follows. Commencing at a point twenty-five & one third feet South of the north east Corner of said lot, and running thence east eighty feet, thence South twenty-five & one third feet, thence west Eighty feet, thence north twenty-five & one third feet to the place of beginning - of great value to-wit, of the value of two thousand dollars, and which said goods and Chattels have been and were before then let to him to one William Fordham for a certain time then to come and unexpired, and the same were then in the possession of the said William Fordham under and by virtue of the said letting, to-wit at the County aforesaid to-wit on the 1st day of July A.D 1860.

Yet the said defendants well knowing the premises, but contriving and wrongfully and unjustly intending to injure, prejudice and aggrieve the said plaintiffs in their interest and property in the said goods and Chattels, and to deprive them of the benefit and advantage thereof, while the said plaintiffs so were the owners & proprietors of the said goods and Chattels and while the same were so let to and in the possession of the said William Fordham as aforesaid, to-wit on the day and year and at the County aforesaid, wrongfully and unjustly seized and took and appropriated to his own use and deprive the said plaintiffs of the said goods & Chattels, and thereby the said plaintiffs have been and are greatly injured, prejudiced & aggrieved

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of their estate + interest in the said goods and Chattels to=wit. at the County aforesaid

And also for that whereas the said plaintiffs heretofore to=wit. on the day and year last aforesaid to=wit. at the County aforesaid were lawfully possessed as of their own property of certain other goods and Chattels. to=wit. a certain wooden or frame dwelling house and building and its fixtures, out buildings and appurtenances of great value to=wit. of the value of two thousand dollars and being so possessed the said plaintiff afterwards to=wit. on the same day + year as last aforesaid to=wit. at the County aforesaid casually lost the said last mentioned goods + chattels out of their possession and the same afterwards to=wit. on the same day and year as last aforesaid to=wit. at the County aforesaid came into the possession of the said defendant by finding

Yet the said defendant well knowing the said last mentioned goods and Chattels to be the property of the said plaintiffs has not yet delivered the same nor any part thereof to the said plaintiffs although often requested so to do, and hath hitherto wholly refused so to do, and afterwards to=wit. on the day and year last aforesaid at the County aforesaid Converted and disposed of the same to his own use

And also for that

whereas. the said plaintiffs before and at the time of the Committing of the greviances hereinafter mentioned were the owners and proprietors of certain other goods and Chattels to=wit. a certain frame or wooden building & dwelling house. out houses ~~and~~ fixtures and appurtenances. placed and standing upon that part of lot number ten of Block number four (4) of fractional section number fifteen addition to Chicago. bounded as follows. Commencing at a point twenty=five and one third feet south of the north west corner of said lot. and running thence east eighty feet. thence south twenty=five and one third feet. thence west eighty feet. thence south twenty=five and one third feet to the place of beginning. of great value to=wit of the value of two thousand dollars. yet the said defendants well knowing the said last mentioned premises. but contriving and wrongfully and unjustly. intending to injure and aggrieve the said plaintiffs of their interest in the said last mentioned goods and Chattels. and to deprive them of the benefit and advantage thereof while the said last mentioned goods and Chattels were owned by the said plaintiffs. to=wit. on the day and year last aforesaid and at the County aforesaid. wrongfully and unjustly seized and took and appropriated to his own use and benefit and deprived the said plaintiffs of the said last mentioned goods and Chattels

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and thereby the said plaintiffs have been and are greatly injured prejudiced and defrauded of their rights and interest in the said last mentioned goods and Chattels. to-wit. at the County aforesaid

Wherefore the said plaintiffs say that they are injured and have sustained damage to the amount of Two thousand dollars. and therefore they bring suit &c

J. W. Chickering
Pff's Atty

And afterward. to-wit. on the ~~Seventeenth day of May~~ Twenty first day of January in the year of Our Lord One thousand Eight hundred and sixty one the same being one of the days of the January Term of said Court. the following proceedings among others were had and entered of record. to-wit

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"Benjamin F. Quinby and Joseph O. Low
James. W. Herring
} Case

On motion this order is continued with order for alias process of summons. to issue against the defendent

And afterward. to-wit. at the Seventeenth day of May in the year last aforesaid there was issued out of and under the Seal of said

Court. the People writ of alias summons. directed to the Sheriff of said County to execute. in word and figure. following. to=wit—

"State of Illinois } ss
County of Cook }

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

We Command you as we have. many times before that you summons. James. W. Herring 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 Fourth Monday of May next to answer unto. Benjamin F. Quinby. & Joseph H. Bonn in a plea of Trespass on the Case to the damage of the said plaintiffs as is said in the sum of two thousand dollars, and have you there this writ. with an Endorsement thereon, in what manner you shall have Executed the same

Witness William S. Church Clerk of Our said Court. and the seal thereof, at Chicago aforesaid the Seventeenth day of May A.D. 1861

Seal

Wm S. Church clerk

And afterwards. to=wit. on the Sixth day of July in the year last aforesaid. said alias writ. was returned into

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Page 8 the Court aforesaid, by said Sheriff endorsed as follows. to-wit,

"Served by reading to the within named defendant the 17th day of May 1861.

Fees service 50. Mile 10. return 10 = 70 ct. Paid by pltffs atty

Anthony C. Hesing Sheriff

By John A Nelson Deputy"

And afterwards, to-wit at the June Term of said Court, to-wit, on the Sixth day of July in the year last aforesaid, the following proceedings among others, were had and entered of record, to-wit

"Benjamin F. Quimby and Joseph C. Dow
19660 James W. Herring } Case

This day Come the said plaintiffs by J. W. Chickering their attorney, and due personal service of process of summons issued in said Cause, having been had on the said defendant, and he being now three times solemnly Called in open Court, Comes not, nor does any person for him, but herein he makes default, which on motion is ordered to be taken and entered of record; wherefore said plaintiffs ought to have and recover of the said defendant their damages herein sustained by occasion of the premises and thereupon it is ordered that a jury Come to Enquire of and assess said plaintiffs damages

herein hereafter.

And afterwards. to=wit. at the July term of said Court. to=wit. on the Eleventh day of July in the year last aforesaid, the following proceedings. among others, were had and entered of record. to=wit

"Benjamin F. Quinby and Joseph A. Scoon } Case

19680 James W. Herring }

This day again came said plaintiffs by their aforesaid attorney, and the default of the said defendant having been heretofore taken and entered of record. to=wit on the 6th day of July instant, and an order having then been entered for a writ of enquiry, it is now ordered that a Jury come to enquire of and assess said plaintiffs damages herein. Whereupon came the Jurors of a Jury of good and lawful men to=wit. Charles Appel Lucas Buckley. John. M. Weltner. O. D. Broadway. W. B. Scram Peter Blactendorf. Henry Simcott. A. to. Van Brunt. S. F. Wade. John. Powers. and William Yelverton. T. to. Sedgard who being duly elected. tried and sworn diligently to Enquire of and a true assessment make of said plaintiffs damages herein. (if any), and after hearing the evidence adduced by the plaintiffs. and instructions from the Court. retire to Consider of their verdict, and afterwards return into Court and say

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We the Jury find the defendant guilty, and assess the plaintiffs damages by reason of the premises to the sum of One thousand dollars —

Therefore it is considered by the Court that said plaintiffs do have and recover of the said defendant their damages of one thousand dollars in form as aforesaid by the Jury aforesaid assessed. together with their Costs and Charges by them about their suit in this behalf Expended, and have execution therefor

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State of Illinois, }
COUNTY OF COOK. } s. s.

I, **WILLIAM L. CHURCH,** Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of All papers and proceedings in a certain cause lately pending in said Court on the Common Law side thereof, wherein Benjamin F. Trinity Edwards are plaintiffs and James W. Herring defendent

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our said Court at Chicago, this 7th day of October A. D. 18 65

Wm L Church Clerk.

Supreme Court of Illinois

James or Herring plff in Error

v

Benjamin F Duinby & Joseph H Low deffs in Error

And now comes the said plaintiff in Error by King & Kales his attorneys and on the foregoing record assigns the following Errors to wit:

1st That the said Circuit Court erred in ~~rendering~~ ordering the default of said Herring to be taken and entered against him

2d That said Circuit Court erred in rendering said judgment against said Herring

3d That said Circuit Court erred in not rendering judgment in favor of said Herring.

4th That said Circuit Court Erred in rendering its said judgment against said Herring in this, That said Herring was then and there entitled to a judgment in his favor as in case of a non-suit, and said Circuit Court should then and there have rendered judgment in his favor and against said Duinby & Low accordingly.

5th That said judgment is in other respects informal and Erroneous

King & Kales Attys and
of Counsel for plff in Error

Set a supersedeas issue; bond $1500
Edmund Aiken Sheriff
I D Caton

State of Illinois
In Supreme Court

James B Herring
Plaintiff in Error
vs
Benjamin F Quinby &
Joseph A Low
defendants in Error

Error to the Circuit Court of Cook County

And now comes Benjamin F Quinby one of the above named defendants in Error & says that in the record and proceedings aforesaid there is no error, but that the same are in all things right, just and proper wherefore he prays that the judgment aforesaid may be in all things affirmed

J. M. Bickering Atty
for B F Quinby
one of the defendants in
Error

Supreme Court

Hennigs

v.

Ludwig et ux.

Joinder in Error

Chicago Feby 28th 1863

To J. D. Chickering Esq
Canandaigua N.Y.

Sir

You are authorized to enter my appearance as solicitor in a cause pending in the Supreme Court State of Illinois wherein James D. Fleming is plaintiff in error and Benjamin F. Lemly Sheriff &c are defendants in error submit the cause for hearing

Yours &c
Joseph H. Bates

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Supreme Court of Illinois

James W. Herring
Plff in error

v

Benjamin F. Quinby Etal
Defts in error

Record. & Assignment of Errors

Filed November 9th 1861

L. Leland Clk
per J. B. Rice Deputy

SUPREME COURT OF ILLINOIS—THIRD GRAND DIVISION.

APRIL TERM, A. D., 1863.

H. D. JAMIESON,

vs.

ASIA PAGE,
MARANDA PEASE, and
DUSTAN MILLETT.

BRIEF OF DEFENDANTS.

The objection that there was no return of the summons as to Dustan Millett and Harriet P. Jamieson, is disposed of by the Statute.

Sess. Laws, Feb. 12th, 1857, *p.* 51.
Scates Stat., 164.

The objection that the affidavit of non-residence is not preserved in the record, is not well taken.

Tibbs v. *Allen*, 27*th Ill.*, 125.

The objection that there is no proof to support the decree, is equally groundless. The master's report of the facts found before him supports the decree, and the bill was taken for confessed, which is sufficient of itself to support the decree; in such case it is not necessary to preserve the evidence in the record.

GLOVER, COOK & CAMPBELL,
Defendants' Attorneys.

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Jamesin al,

vs

Page et als

Defts. Brief

Filed May 6. 1863.

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Clk.