

No. 13158

Supreme Court of Illinois

Tuttle

vs.

Wilson

71641  7

STATE OF ILLINOIS,
SUPREME COURT.

Third Grand Division.

No. 215.

1860

Tuttle

75

Wilson

12158

SUPREME COURT OF ILLINOIS.

Third Grand Division, }

APRIL TERM, A. D. 1860.

NELSON TUTTLE, et al,

v s.

JOHN L. WILSON.

} POINTS FOR DEFENDANT
IN ERROR.

I.

The affidavit upon which the *ca. sa.* issued was radically defective, not being within the requirements of sec. 15, art. 13 of constitution, and sec. 1, chap. 60 of revised statutes. The affidavit does not state either expressly or by implication, that the defendant in the writ, either had or refused to surrender "lands, tenements, goods or chattels," or any other property subject to seizure on execution, or which could be applied in satisfaction thereof. It merely sets forth, that "Theile has refused and still does refuse to surrender his property and estate in satisfaction of said execution." The terms "property and estate" do not necessarily include "lands, tenements, goods or chattels," or any other species of property liable to seizure on a *fi. fa.* A man's "property and estate" may consist exclusively of notes and accounts, and other mere closes in action.

It is only where the defendant in the writ, has property of a nature to be seized on a *fi. fa.* which he "refuses to surrender in satisfaction of the execution," that he is liable to imprisonment within the spirit and intent of this statute and the constitution.

Nor has this Court made any decision adverse to this view. To be sure in *Fergus vs. Hoard*, 15 Ills. 357, it was held with a good deal of hesitation, and by a divided Court, that an affidavit alleging in the very words of the statute, that the defendant in the writ "has refused to surrender his estate, *lands and tenements, goods and chattels, for the satisfaction of an execution,*" was sufficient as necessarily involving a statement that he had such "lands and tenements, goods and chattels," liable to seizure which he refused to surrender; but after the stringent rule laid down in *Stafford vs. Law*, 20 Ills. 152, and *Gorden vs. Frizzel*, *id.* 291, that the affidavit to be sufficient must by "facts therein stated and circumstances detailed," show a case within the statute and the constitution, we assume that this Court will rather incline to limit than extend the case of *Fergus vs. Hoard*, in the decision of new cases, and to hold the affidavit in the case at bar sufficient, would be going much further than that case—indeed it was conceded by the plaintiff's counsel in the Court below, that this affidavit is insufficient within the decisions of this Court.

II.

If the affidavit was not a compliance with the statute and the constitution, the *capias* based thereon, and upon which Theile was arrested and escaped, was void, not avoidable merely, but *absolutely nul and void*: this is no longer an open question in this state; in *Stafford vs. Law*, 20 Ills. 152, which was a precisely analogous case, the language of the Court is that "while the writ was good as a summons it was *void as a capias*" for the defendants, but like all other *void* process which is regular on its face, it would *protect* the officer executing it," &c.; and in the case of *Gorden vs. Frizzel* above, which was precisely this case, being an action of debt against the officer for an escape, the affidavit in that case, being set forth in the writ, the writ was held void on its face, and therefore no protection even to the officer; and Mr. Justice Breese, in delivering the opinion, says "the Court in the first place when

objection was made to its (the writ) going to the jury, should have excluded it, and, when requested, should have told the jury that it was a *void process*."

III.

If the *ca. sa.* was *void*, the sheriff was not bound to obey it; and an escape under such *void* process, can afford no ground for this action: this the plaintiff's counsel has conceded in his written points, and such is unquestionably the law; indeed the two cases in 20 Ills. above quoted, decide this question also; the first an action against the bail upon his bond is analogous, the bail having the defendant in the writ in his friendly custody, and being "*jailer pro tempore*," in the language of the book, §(7 John's reps. 146, 155 and 156,) an action against him upon his bond for not having the prisoner forth coming, is precisely analogous to an action of debt against the sheriff for an escape of the prisoner, and the other being an action against the officer for an escape—is this case precisely. Whether the defective affidavit be recited in the writ so as to make it void on its face or not, makes no difference, except that if it be fair on its face, though void in fact, it will afford a protection, a shield, to the officer; but in either case the plaintiff can acquire no rights under it, nor make it the foundation of an action in any form whatever.

Lord Raymond 775-

Sherley vs. Wright, Salkeld's reps. 700.

Lane vs. Chapman, 11 Adolph & Ellis 966.

Howard vs. Crawford, 15 Georgia 423.

Albee vs. Ward, 8 Mass. 79—13 Wend. 46—16 Wend. 562—1

Hill, (N. Y.) 118. — 3 Barb Sup Ct Reps (N. Y.) 17

Equih v. Halt 2 Modern R 29. — 1 Freeman R 193

FARWELL, SMITH & THOMAS,

Attorneys for Defendant in Error.

^{215.}
Supreme Court
Nelson Tuttle
et al

by
John S. Wilson
Plaintiff in
Error

Filed Apr 28. 1860
Leland
Clerk

Donnell Smith
Defendant
Att'y

Note. As there are now pending several suits in different Courts of the 3rd Division against Sheriffs and the W S Marshall involving precisely the same questions presented by the Record in this case, several gentlemen of the bar have desired to submit briefs in the case, which will be filed herewith.

Your Honors are respectfully requested to examine all of the arguments presented, and so far as you may deem proper, to dispose of all the questions necessarily arising herein, as a large number of cases are depending upon the result of this.

Very Respectfully

John Clark

Attorneys & Counsel
for Plfs in Error.

Supreme Court.

Nelson & Tuttle & Co }
John^{vs} S. Wilson } Error from Superior Court of
Chicago.

Brief for the Plaintiff in Error.

This is an action of debt against the defendant as sheriff of Cook County, for an escape under final process, issued upon an affidavit which is good by the decision of *Quinn vs Board* 15 Ill R 357. The defendant plead the affidavit in his second and fifth pleas, and alleged that "by means of which defects and insufficiencies of which said affidavit, the said writ of capias ad satisfaciendum, because and was and is wholly unauthorized and void." To these pleas the plaintiff demurred, and the Court below overruled the demurrer, and this is the only error assigned, which we propose to examine.

I.

The affidavit is sufficient.

II.

Whatever may be the present decision on the sufficiency of the affidavit, at the time of the alleged escape, June, A.D. 1857, it was held to be sufficient upon the authority of the decisions of this Court; And the defendant in execution could not have been discharged on a habeas corpus; And the Sheriff must, if he had examined the affidavit, have been satisfied of its sufficiency. This is an after-thought of the Sheriff, if possible to escape the effects of his wrongful acts.

III.

The process being on its face regular and issued from a superior Court of general jurisdiction, unless it be absolutely void, the officer is bound to obey it, and is liable for an escape if he refuses; If it is merely voidable, however erroneous it affords him no justification.

IV.

Hence, the entire question presented is embraced in two propositions.

First, If the writ was merely voidable, not void, the defendant cannot justify an escape on the ground of any irregularity or defects in the proceedings,

And second, The mit in this case was not void, and therefore the sheriff at his peril failed to execute it.

A careful examination of all the authorities will sustain the list of the above propositions, and it is thought that no controversy can be maintained on the point. It was not only mis-controversied below but has been assumed and maintained by Counsel for defendant with great ability throughout.

A reference to the following among the almost numberless cases will be sufficient on that point, viz;

If the mit be absolutely void, he need not obey it; if merely voidable he must obey it.

1 Salk 273.

2 Balst. 256.

1 Leon 3.

Breese 284.

1 Scam 200.

3 W. Law 97

Cro Ej 576.

8. Mend 545.

1. Besey 195.

1 Cowen 644.

8. Cowen 192.

Such a mit. will protect the officer in serving it and he must obey and cannot go behind the mit for an excuse for a failure.

5. Mend 171.

13 All 22

24. Bend 485.
12. Bend 496.
3 Barb 19
7 Blackf 371.
1. Gill & John 409.
13 Mass 287.
8 Metcalf 103.

6. Bond 367.
2. Cowen 473.
1. Cowen 644,
4. Blackf 330.
34. Maine R. 220.
7. Metcalf 260.

And cases without number holding the same law, a large number of which are cited in the argument of Messrs Shumway, Waite & Town filed herewith and in which this part of the case is treated of at length. & it is believed that no part of the above proposition will be in the least controverted by counsel for defendant in error, such has been his ground hitherto and such are all the authorities.

But the parting point in the case is, that Defendants Counsel insists that the Writ in this case was void, absolutely void, And not simply voidable.

This position the Counsel takes, as founded upon the clause of our State Constitution relating to imprisonment for debt, And the authority of the case of Stafford vs Low 20 Ell 152.

And which in reality is the only color of authority for such a position.

The language, of this Court in that case, which it is claimed affords foundation for a doctrine totally at variance with all other authority, and but for which this case would not now be in this Court; was as follows, "While the writ was good as a summons, it was void as a *capias* for the defendants; but like any other void process which is regular on its face, it would protect the officer executing it as he need look no further than to the writ." 20 Ill. 152.

Here, it is insisted by counsel for the defendant, this Court has expressly decided that a *casu* issued upon an insufficient affidavit is void, absolutely void, and invalid and is the same as no process, whatever,

It would seem as though it were not very difficult, in all fairness, to treat the language of this Court in that case in a different light, and to say that the word void was there used as it very often is, in all books of authority in the sense of voidable, although not strictly correct.

The word void as applied to process is often used in a qualified sense, as one that is good for some purpose, bad for others, so good as to be valid when assailed collaterally, but so erroneous as to be insufficient in a direct proceeding to set it aside; And it requires but a single glance to see that the Court in this very case used it in that sense, "While the writ was good as a summons it was void (not valid) as a capias for the defendants". Here it was good for one purpose, but not good for another.

A. Void process is good for no purpose, it does not protect the officer, It gives no power and need not be obeyed by either the party or the officer.

We think it apparent that this Court in the case cited intended only going the length here indicated and used the word void in the sense of voidable, or in the qualified sense as above stated. And we say this for two reasons; 1st That a contrary conclusion is not necessary & 2nd It would be at variance with all other authority, for if this Court designed to say that such a writ was absolutely void, in the full and unqualified sense

of that word, as claimed by counsel for the Defendant; then (with all deference we must say that it was certainly erroneous as a review of the authorities will show, And as this case must turn on the question whether that writ was void or voidable, we propose to call attention to some of the authorities on that point.

In all this we assume the insufficiency of the affidavit, (which by no means we grant) concerning that this is the important question in this case as it undoubtedly is by far.

The case in 1 Scam 200. decides the identical question, that a ca sa issued upon an insufficient affidavit is not void but voidable. Reynolds vs. Corp & Cairns R 26).

It is decided in a large number of cases that a ca sa issued without a judgment is void, but if there be a valid judgment, then the writ is not void, but may be voidable for any error or irregularity in issuing it.

3 Cairns R 26).

1 Cowen 309.

8 Wend 545.

1 Cowen 644

A ca, sa, issued on a document

Judgment is not void, but voidable.

8 Cowen 193.	2 Nils 82
40. Conn Law R. 707	7 And 388
Barnes 197. 206 & 213.	1 Salt 273

It is decided that it constitutes no defence, that the ca sa issued without a previous fi fa in 13 Johns 378. St 528 & 8 Cowen 192.

He will cite but three other cases as we think they will settle the disputed ground of this case.

In the case of Hutchinson v Brand 5 Selden 208. which was an action for an escape against a sheriff who refused because of some supposed error in issuing the writ, the Court speaking of the state of facts, under which only an execution could issue says, "The recital of
" then in the execution is not required
" by the Code. If these facts did not exist,
" the remedy was by motion to set aside
" the execution or by an action against
" the party who thus improperly abused
" the process of the Court;
" The Sheriff was always justified by
" process regular on its face, and was of
" Courts bound to execute it.

"It being issued by a Superior Court of
"general jurisdiction the authority of
"the Court to award it was presumed
"and the Sheriff disobeyed it, at his
"peril—"

Be cite next the case of Miller vs.
Brinkerhoff 4 Ohio Rep 120. Which
we regard as sufficiently in point
to settle the debatable ground in
this case, although it will be remem-
bered that in that case the process
was issued by a justice of the Peace,
and was the process of an inferior Court
in which respect it was unlike the
case at bar.

In that case Bronson Chf, said;
"When certain facts are to be proved to a
"Court of special and limited jurisdiction
"as a ground for issuing process, if there
"be a total defect of evidence as to any
"essential fact the process will be declared
"void in whatever form the question may
"arise.

"But when the Proof has a legal tenden-
"cy to make out a proper case, in all its
"parts for issuing the process, then although
"all the proof may be slight and incon-
"clusive, the process will be valid, until

"Set aside by a direct proceeding for that
"purpose, In one case the Court acts, with
"authority, in the other it only errs in judg-
"ment upon a question properly before it
"for adjudication, In one case there is
"a defect of jurisdiction, in the other there
"is only an error of judgment. Want
"of jurisdiction makes the act void, but
"a mistake concerning the just weight
"and importance of evidence only makes
"the act erroneous, and it will stand
"good until reversed.

In the next case (which we cite
that of *Rash vs Whitney* 4 Mich (Sibbs)
R 498, the Court decide that a certain
process was issued upon insufficient
proof, the mere belief of the party ap-
plying for the writ, that such proof
was not sufficient, and that the pro-
cess was therefore erroneously issued
by the justice, but by no means void,
that there was some evidence, but
not sufficient evidence, and upon
the authority of the case last cited from
4th of Denio, with other authorities, they
hold that the writ was not void.

For that case the question was con-
sidered very elaborately by the Court

And is decisive of the point, as applied to process from an inferior Court of Special and limited jurisdiction, And if such be the rule in such case, then a-fortiori, the like must be the rule as applied to a Superior Court of general jurisdiction, the process of which issues regularly under seal.

This is as far as we propose to discuss the questions involved in the case at bar. It was our desire to review orally all the authorities bearing on the case, but other counsel have discussed the major part of the case in the printed brief filed, which renders a farther review unnecessary.

We submit then,
1st That the affidavit is good, and was sufficient.

2nd That however it may be held now it was in June A.D. 1857 held to be good.

3rd That all the authorities (and they are without number or conflict) hold that unless the process be absolutely void a sheriff when sued for an escape cannot justify on the ground of any

error or irregularity in issuing the writ. +

4th That the process in the case at bar was not void in any correct sense (whatever, and was only voidable, (if we admit the insufficiency of the affidavit) - And can afford the Sheriff no grounds of defense.

That such is the law there can be no doubt upon an examination of all the authorities. That such should be the case must be apparant to any one who will consider the impropriety under a practice such as ours, where execution runs to any County in the State however distant, of allowing the Sheriff to clothe himself with judicial robes and decide upon the validity of the process or the sufficiency of the affidavit upon which it issues before he obeys its commands. His duty is and should be to obey - And the writ does and should protect him.

John H. Clark

Atty & Counsel for
Plf in error.

Supreme Court.

Nelson Cuttle Etal

vs.

John L. Wilson.

NP 2 15.

Argument for
Plffs in Error.

Hebra Clark
Attys & Counsel.

SUPREME COURT OF ILLINOIS.

Third Grand Division, }

APRIL TERM, A. D. 1860.

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I.

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It is only where the defendant in the writ, has property of a nature to be seized on a *fi. fa.* which he "refuses to surrender in satisfaction of the execution," that he is liable to imprisonment within the spirit and intent of this statute and the constitution.

Nor has this Court made any decision adverse to this view. To be sure in *Fergus vs. Hoard*, 15 Ills. 357, it was held with a good deal of hesitation, and by a divided Court, that an affidavit alleging in the very words of the statute, that the defendant in the writ "has refused to surrender his estate, *lands and tenements, goods and chattels, for the satisfaction of an execution,*" was sufficient as necessarily involving a statement that he had such "lands and tenements, goods and chattels," liable to seizure which he refused to surrender; but after the stringent rule laid down in *Stafford vs. Law*, 20 Ills. 152, and *Gorden vs. Frizzel*, *id.* 291, that the affidavit to be sufficient must by "facts therein stated and circumstances detailed," show a case within the statute and the constitution, we assume that this Court will rather incline to limit than extend the case of *Fergus vs. Hoard*, in the decision of new cases, and to hold the affidavit in the case at bar sufficient, would be going much further than that case—indeed it was conceded by the plaintiff's counsel in the Court below, that this affidavit is insufficient within the decisions of this Court.

II.

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objection was made to its (the writ) going to the jury, should have excluded it, and, when requested, should have told the jury that it was a *void process*."

III.

If the *ca. sa.* was *void*, the sheriff was not bound to obey it; and an escape under such *void* process, can afford no ground for this action: this the plaintiff's counsel has conceded in his written points, and such is unquestionably the law; indeed the two cases in 20 Ills. above quoted, decide this question also; the first an action against the bail upon his bond is analogous, the bail having the defendant in the writ in his friendly custody, and being "*jailer pro tempore*," in the language of the books (7 John's reps. 146, 155 and 156,) an action against him upon his bond for not having the prisoner forth coming, is precisely analogous to an action of debt against the sheriff for an escape of the prisoner, and the other being an action against the officer for an escape—is this case precisely. Whether the defective affidavit be recited in the writ so as to make it void on its face or not, makes no difference, except that if it be fair on its face, though void in fact, it will afford a protection, a shield, to the officer; but in either case the plaintiff can acquire no rights under it, nor make it the foundation of an action in any form whatever.

Smith v. Holt 2 Moden R 29. 1 Theem R 193
Sherley vs. Wright, Salkeld's reps. 700. Lord Raymond 775
Lane vs Chapman, 11 Adolph & Ellis 966. 4 Genio 119
Howard vs. Crawford, 15 Georgia 423.
Albee vs. Ward, 8 Mass. 79—13 Wend. 46—16 Wend. 562—1
Hill, (N. Y.) 118. 3 Barb Sup Ct Rep (N. Y.) 117

FARWELL, SMITH & THOMAS,

Attorneys for Defendant in Error.

275
Supreme Court
Nelson Tuttle
et al

by
John S. Nelson
Plaintiffs for Debt
in Error

Filed Apr 28, 1860
Lidell
Clerk

Daniel Smith
& Son
attys

United States of America
State of Illinois Cook County

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 Sixth
day of February in the year of
our Lord Eighteen hundred and
Sixty and of the Independence of
the United States of America
the Eighty fourth.

Present

The Hon John M Wilson Chief Justice
of the Superior Court of Chicago
Vernon Higgins and Grant Goodrich Judges
Carlos Haverly Prosecuting Attorney
John Gray Sheriff of Cook County
Walter Kimball - Clerk

Attest

2.

Be it remembered that heretofore to-wit, on the twenty sixth day of April A.D. Eighteen hundred and fifty nine there was filed in the Office of the Clerk of the Superior Court of Chicago the following Precipe for a Summons to issue in this cause to-wit;

Superior Court of Chicago
June Term AD 1859

Nelson Tuttle	}	Debt \$800.
William G Hibbard		
Frederick Tuttle &		
George M Gray		Damages \$500.
vs		
John S Wilson		

Will the Clerk please
issue a Writ of Summons in the above cause
and oblige.

Yours &c

Wm H Clark

Whereupon to-wit, on the said twenty sixth of April AD Eighteen hundred and fifty nine there issued out of the Clerk's Office of said Superior Court the Peoples writ of Summons which together with the Sheriff's return endorsed on the same, are in the words and figures following to-wit

State of Illinois
County of Cook & S.S.

The People of the State
of Illinois. - To the Sheriff of said County:
Greeting. We Command you that you
Summon John L Wilson in he shall be found in
your County personally to be and appear before the
Superior Court of Chicago of said County on the first
day of the next term thereof, to be holden at the Court
House in the City of Chicago, in said County, on the
first day of the next term thereof; to be holden at
the Court House in the City of Chicago, in said
County on the first Monday of June next to
answer unto Nelson Tuttle, William G Hibbard
Frederick Tuttle & George M Gray, in a plea that
he render unto the said Nelson Tuttle et al
their debt in the Sum of Eight Hundred dollars
which he owes to and unlawfully detain from
the said Tuttle et al to the damage of said
Plaintiffs as they say in the Sum of Five
Hundred Dollars.

And have you then and there this writ,
with an endorsement thereon in what manner
you shall have served the same.

Witness Walter Kimball, Clerk of our
said Court, and the seal thereof at the
City of Chicago in said County this 26th
day of April, 1859.

(Signed) Walter Kimball Clerk

Seal

4 Served by reading to the within named John
L Wilson April 26th 1859.

John Gray Sheff

By Atkelson Deputy

And thereafter to wit on the twenty seventh
day of May A.D. Eighteen hundred and fifty
nine the plaintiffs by their Attorney filed in
the Clerks' Office of said Superior Court of Chicago
their Certain Declaration which is in the words and
figures following to wit;

Superior Court of Chicago
June Term A.D. 1859

Nelson Tuttle, William G. Hibbard, George
M Gray, and Frederick Tuttle Copartners under
the firm name and style of Tuttle Hibbard & Co
plaintiffs in this Suit by Helen Helark their
Attorneys Complain of John L Wilson Defendants
of a plea that he owes to the said Plaintiffs the
Sum of Eight Hundred dollars which he owes to
and unjustly detains from them; For that
Whereas the said Plaintiffs heretofore to wit on the
tenth day of April A.D. Eighteen hundred and
fifty seven in the Cook County Court of Common
Pleas in and for the County of Cook and State
of Illinois before the Honorable John M Wilson

Judge of the said Court by the Judgment and Consideration of the said Court, recovered against one Anthony A Theile the Sum of Seven hundred and thirty three dollars and nine cents which was then and there adjudged by the said Court to the said Plaintiffs for their damages which they had sustained by reason of the nonperformance of certain promises and undertakings before that time made by the said Anthony A Theile unto the said Plaintiffs, and the further Sum of six dollars and sixty cents for their Costs and Charges by them in and about their said Suit in that behalf expended whereof the said Anthony A Theile was convicted as by the Record and proceedings thereof still remaining in the said Court of Common Pleas more fully and at large appears.

And thereupon the said Plaintiffs say that afterwards to wit; on the first day of June in the year aforesaid, at the County of Cook aforesaid for having execution of the said Judgment they sued and prosecuted out of the said Court of Common Pleas a certain Writ of the People called a Capias ad Satisfaciendum upon the said Judgment against the said Anthony A Theile to the Sheriff of Cook County aforesaid, by which said Writ, it was Commanded the said Sheriff that he should take the said Anthony A Theile if he should be found in the said County.

6.

and him safely keep, so that the said Sheriff might have his body before the said Court in thirty days from the date of said Writ, to satisfy the said Plaintiffs' their damages and costs aforesaid inform aforesaid recovered, and that the said Sheriff of said County should have then that Writ; and which said Writ afterwards and before the said return thereof to wit; On the day and year last aforesaid at the County aforesaid was delivered to the said John S. Wilson Defendant who then and there and from thenceforth until at and after the return day of the said Writ, was Sheriff of the said County of Cook to be executed in due form of Law.

By virtue of which Writ and of the endorsement made thereon, by the Clerk of the said Court the said Defendant John S. Wilson as being Sheriff of the County of Cook aforesaid afterwards and before the return day of said Writ to wit; on the day and year last aforesaid at said County took and arrested the said Anthony A. Phil by his body and then and there by virtue of the said Writ and of the endorsement aforesaid, had and detained him in his Custody from thence until the said Defendant as being Sheriff of Cook County aforesaid afterwards to wit; on the eighth day of August in the year aforesaid, and before the return day of said Writ. at the County aforesaid without the leave or license, and against the Will of the said Plaintiffs.

7- Suffered and permitted the said Anthony A Theile to escape and go at large and the said Anthony A Theile did then and there escape and go at large wheresoever he would out of the custody of him the said Defendant; he the said John L Wilson so then being Sheriff of the County of Cook aforesaid; and the said Sum of money mentioned in the said Writ as aforesaid being then and there still wholly unpaid and unsatisfied to the said Plaintiffs at the County of Cook aforesaid. - Whereby an action hath accrued to the said Plaintiffs to demand and have of and from the said Defendant the sum of Seven hundred and forty one dollars and nine cents part of the sum above demanded.

And Whereas also afterwards; to wit on the same day and year first aforesaid in the Cook County Court of Common Pleas in and for the County of Cook and State of Illinois before the Honorable John L Wilson, the Judge of the said Court by the Judgment and Consideration of the said Court the said Plaintiffs recovered against one Anthony A Theile the further Sum of Seven hundred and thirty nine dollars and sixty nine cents which was then and there adjudged by the said Court to the said Plaintiffs as well for their damages which they had sustained on account of the nonperformance by the said Anthony A

Theile of certain promises and undertakings by him made unto the said Plaintiffs, as for their Costs and Charges by them in and about their suit in that behalf expended whereof the said Anthony A Theile was convicted, as by the Record and proceedings thereof still remaining in the said Court of Common Pleas more fully and at large appears.

And the said Plaintiffs say that thereupon afterwards to wit; on the first day of June in the year aforesaid at the County of Cook aforesaid for having execution of the said Judgment they sued and prosecuted out of the said Court of Common Pleas a certain Writ of the people called a capias ad Satisfaciendum upon the said Judgment against the said Anthony A Theile directed to the Sheriff of Cook County aforesaid by which said Writ it was commanded the said Sheriff that he should take the said Anthony A Theile if he should be found in the said County and him safely keep so that the said Sheriff might have his body in ninety days from the date of the said Writ to satisfy the said Plaintiffs the damages and costs aforesaid in manner aforesaid recovered and that the said Sheriff of said County should have then that Writ with an endorsement thereon in what manner he should have executed it.

And which Writ afterwards and before the

9- return day to wit: on the day and year last
aforesaid at said County was endorsed by the
Clerk of the said Court, by which said endorsement
the said Sheriff was directed what Sum of
money he should Collect and receive in Satisfac-
tion and payment of the said Judgment, and was
then and there delivered to the said John L. Wilson
Defendant, who then and there and from thenceforth
until at and after the return day of the said Writ
was Sheriff of the said County of Cook to be
executed in due form of Law.

By virtue of which said Writ and of the
endorsement made thereon by the Clerk of the
said Court the said Defendant John L. Wilson
Solemnly Sheriff of the County of Cook aforesaid
afterwards and before the return day of the said
Writ to wit: on the day and year last aforesaid
at said County took and arrested the said Anthony
A. Thiele by his body and then and there by
virtue of the said Writ and of the endorsement
aforesaid had and detained him in his Custody
from then and until the said Defendant Solemnly
Sheriff of Cook County aforesaid afterward
to wit: on the eighth day of August in the
year aforesaid and before the return day of the
said Writ at the County aforesaid without the
leave or licence and against the Will of the said
Plaintiffs suffered and permitted the said Anthony

to escape and go at large; and the said Anthony
 at the did then and there escape and go at large
 whereever he would out of the Custody of him the
 said John L. Wilson so then being Sheriff of the
 County of Cook aforesaid; - and the said sum
 of money mentioned in the said Writ as aforesaid
 being then ^{at that} wholly still unpaid and unsatisfied to
 the said plaintiffs to wit at the County of Cook
 aforesaid.

Whereby an action hath accrued to the
 said plaintiffs to demand and have of and from
 the said Defendant the sum of Seven hundred
 and forty one Dollars and nine cents other part
 of the said sum above demanded.

Yet the said Defendant (although often
 requested so to do) has not as yet paid the said
 sum of Eight Hundred Dollars above demanded
 or any part thereof to the said Plaintiffs, but
 so to do hath hitherto wholly neglected and
 refused and still does refuse to the damage of
 the said plaintiffs of Two hundred dollars
 and therefore they bring suit &c.

(Signed)

Wm Clark
 Plaintiffs Atty

And thereafter to wit; on the seventh day
 of June A.D. Eighteen hundred and fifty nine

11.

the defendant by his attorneys filed in the Office of the ~~said~~ Superior Court of Chicago his certain Demurrer to the plaintiffs declaration which is in the words and figures following to wit: -

Superior Court of Chicago

John L. Wilson

vs

Wilson Tuttle
William G. Hibbard
Frederick Tuttle &
George M. Gray -

of the June

Term A.D. 1854

And the said Defendant by Farwell Smith & Thomas his Attorneys comes and defends the wrong and injury when &c and says that the said declaration and the matters therein contained in manner and form as the same are above stated and set forth are not sufficient in law for the said plaintiffs to have or maintain their aforesaid action thereof against the said Defendant, and that he the said Defendant is not bound by law to answer the same. - and this he is ready to verify.

Wherefore by reason of the insufficiency of the said Declaration in this behalf the said

the said Defendant prays Judgment, and that the said plaintiffs may be barred from having or maintaining their aforesaid action thereof against him &c.

Farwell Smith & Thomas
Defts Attys

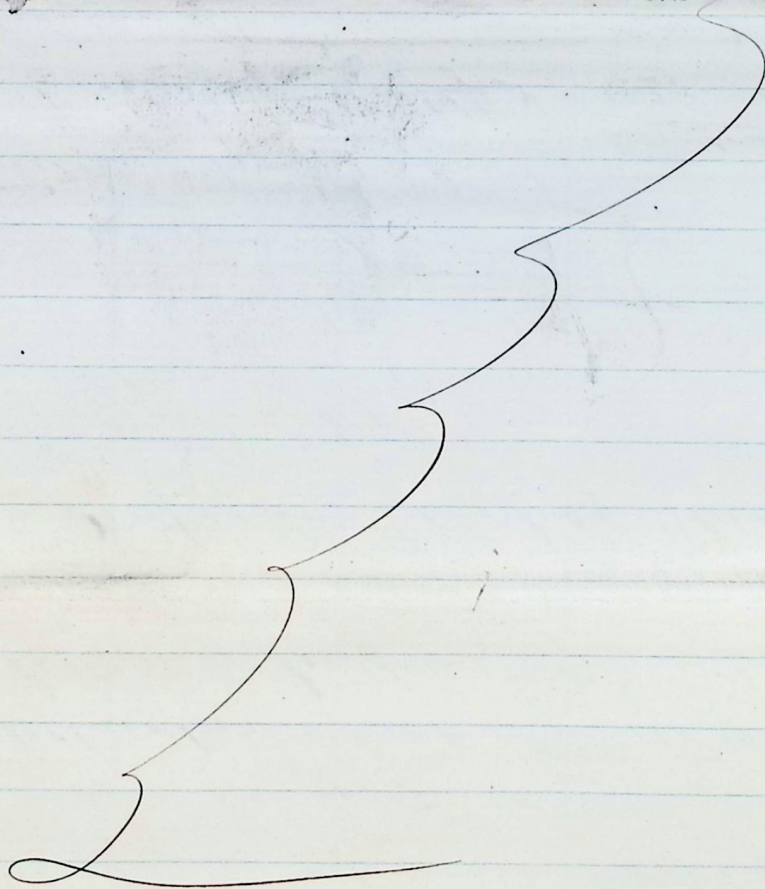
And afterwards to wit on the fourth day of January in the year of our Lord One thousand eight hundred and Sixty. said day being one of the days of the January Term of the Superior Court of Chicago. the following among the proceedings was had and entered of Record in said Court to wit.

Nelson Tuttle, William G
Hibbard, Frederick Tuttle &
George M Gray
vs.
John L Wilson

Debt.

This day comes said plaintiffs by Nelson & Clark their Attorneys, and said defendant by Farwell Smith & Thomas his Attorneys also comes and counsel being heard on defendant's demurrer to plaintiff's declaration in this cause, and due deliberation being thereupon had, and the premises fully understood it appears to the Court that the demurrer herein pleaded in bar is not sufficient in law to bar said plaintiffs from having and maintaining their action against said Defendant. The Demurrer is therefore overruled, with leave to the defendant to plead over by January 15th instant.

And afterwards to wit: on the fourteenth
day of January in the year of our Lord One
thousand eight hundred and Sixty



the defendant by his Attorneys filed in the Office of the Clerk of said Superior Court of Chicago his certain Plea to the plaintiffs declaration which is in the words and figures following to wit;

Superior Court of Chicago of the June Term A.D. 1859

John L. Wilson
ad
Nelson Tuttle
William G. Hubbard
Frederick Tuttle &
George Ell Gray
his attorneys
Thomas Cornes and defends the wrong and injury when he can say he does not owe the said sum of money above in said plaintiffs declaration demanded or any part thereof in manner and form as the said plaintiffs have above thereof complained against him and of this the said Defendant puts himself upon the country &c.

And the said Defendant by Farwell Smith &

And for a further plea in this behalf as to the first Count of said declaration the said Defendant says that the said plaintiffs ought not to have or maintain their aforesaid action thereof against him because he says that the affidavit upon which the writ of

Capias ad Satisfaciendum in said first Court mentioned was issued, did not comply with the Statute in such Case made and provided and with the Constitution of the State of Illinois and was and is ^{wholly} ~~totally~~ insufficient in Law, and was and is in substance and effect following to-wit:

Cook County Court of Common Pleas

Nelson Tuttle
William G Hibbard
George M Gray
Frederick H Tuttle

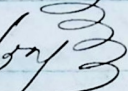
(vs)
Anthony A Theile

State of Illinois
Cook County ss

Nelson Tuttle being duly sworn says that he is one of the Plaintiffs in the above suit and further says that on the tenth day of April A D Eighteen hundred and fifty seven at the April term of the said Court, the said plaintiffs recovered a judgment against said Defendant Anthony A Theile in said Cause for the sum of Seven hundred and thirty three dollars and nine cents with the costs of suit taxed at Six dollars and Sixty cents and Execution was issued on said judgment on the thirtieth day of May of said year directed

and delivered to the Sheriff of said County which said Execution said Sheriff by John H Dart his deputy has returned wholly unsatisfied and this affiant says that said Anthony & Theile has refused and still does refuse to surrender his property and Estate in satisfaction of said Execution and further says not.

(Signed)

Sworn & Subscribed  Nelson Tuttle
to before me June 1/57 
C D Welf J. P.

by means of which defects and insufficiency of which said Affidavit the said ^{writ of} Capias and Satisfaciendum became and was and is wholly unauthorized unlawful and void and this the said Defendant is ready to verify.

Wherefore he prays Judgment if the said plaintiffs ought to have or maintain their aforesaid action thereof against him &c.

And for a further plea in this behalf as to the 1st Count of said plaintiffs' declaration said defendant says that said plaintiffs ought not to have or maintain their aforesaid action thereof against him because he says said plaintiffs with intent fraudulently wrongfully and unlawfully to imprison the said Anthony & Theile after the rendition of the judgment in said first Count mentioned

to wit: on the thirtieth day of June in the year of our Lord One thousand eight hundred and fifty seven at, to wit: the County of Cook aforesaid the said plaintiffs sued out of a Writ of *Fieri facias* upon said judgment directed to the Sheriff of said County of Cook and delivered the same to ^{one} John H Dart (who was then and there a deputy Sheriff of said County of Cook.)

And thereupon then and there well knowing that the said Theile had no property within said County of Cook, - liable to execution directed the said Dart without the knowledge of said Defendant to proceed with said Writ of *Fieri Facias* and demand of said Theile that he turn out property upon said Writ for the satisfaction thereof and that he immediately there after return the said Writ of *Fieri Facias*, and the said Dart pursuant to the said directions of said plaintiffs and by means thereof and without the knowledge of the said Defendants, thereupon immediately proceeded with said Writ and demanded of the said Theile that he surrender property to satisfy the said Writ, at ^{to wit} the County of Cook aforesaid, and the said Theile upon such demand being made did not wrongfully refuse to surrender his Estate lands tenements goods or Chattels, for the satisfaction of said Writ, but on the contrary thereof thereupon then and there

informed the said Dart, that he said Theile had no property; and the said plaintiffs by Helen Clark their Attorney duly authorized by them afterwards, and before the return day of said Writ. to wit; on the first day of June in the year aforesaid by a direction in writing indorsed upon said Writ directed the said Dart forthwith to return said Writ, and the said Dart thereupon immediately before the return day of said Writ pursuant to said direction and in consequence thereof, and without the knowledge of said defendant to wit; on the said first day of June returned said Writ with a return endorsed thereon in substance and effect following to wit;

I have demanded payment of the within named Anthony A Theile on the within execution or that he surrender property to satisfy the same he has failed to do either, say he has no property to surrender. - None found; I therefore return this execution no part satisfied the first day of June 1857 by order of Jeff. H. H.

John L Wilson Sheriff

Fees 1 Return 10

by John H Dart. Deputy

And said Defendant avers that no writ of fieri facias was issued upon said judgment other than the Writ aforesaid and no demand was made of said Theile previously to the issuing of the Writ of Capias ad Satisfaciendum in

said first Court mentioned that he Surrender his Estate Lands tenements goods or Chattels for the satisfaction of said Writ of *Tieri Facias* other than the demand aforesaid made by said Dart, and said Defendants say that at the time of the aforesaid demand the said Theile had not in fact any Estate Lands tenements goods or Chattels within said County of Cook liable to Execution.

And said Defendant avers that the said plaintiffs well knowing the premises and well knowing that said Theile had not wrongfully refused to Surrender his Estate Lands tenements goods or Chattels for the satisfaction of said *Tieri facias*, and well knowing that said Theile at the time of the aforesaid demand had not in fact any Estate lands tenements goods or Chattels within the said County of Cook liable to execution and well knowing the return which the said Dart then made to said Writ of *Tieri Facias* after such return to wit, at the said time when &c in said first Court mentioned, with intent falsely wrongfully and unlawfully to imprison the said Theile sued out the said Writ of *Capias ad Satisfaciendum* in said first Court mentioned upon the false and fraudulent pretense ^{allegation} and ground that the said Theile had refused to Surrender his Estate Lands tenements goods and

and Chattels for the satisfaction of said Writ of *Pieri Facias*, and upon no other pretence alleged or ground.

By means of the premises the said Writ of *Capias ad Satisfaciendum* in said first Court mentioned, and the imprisonment of said Thiele by virtue thereof became and were wholly fraudulent unlawful and void and ^{this} the said Defendant is ready to verify.

Wherefore he prays Judgment if the said plaintiffs' ought to have or maintain their aforesaid action thereof against him &c.

And for a further plea in this behalf as to the said first Court of said declaration said Defendant says that said Plaintiffs' ought not to have or maintain their aforesaid action thereof against him because he says that before the issuing of the said *Capias ad Satisfaciendum* in said first Court named to wit; on the thirtieth day of May in the year aforesaid at to wit; the County of Cook aforesaid the said Plaintiff sued out a Writ of *Pieri Facias* upon the said Judgment in said Court named directed to the Sheriff of said County, and thereupon delivered the said last mentioned Writ to one John H Datz (who was then and there a Deputy Sheriff of said County) and without the knowledge of said Defendant directed the said Datz to demand of

said Theile that he turn out property upon said
 Fieri Facias for the Satisfaction thereof, and that
 he thereupon after such demand forthwith return
 the said Fieri Facias, and the said Dart thereupon
 proceeded with said Writ, and demanded of
 said Theile that he turn out property for the
 Satisfaction thereof, and said defendant says that the
 said Theile upon such demand being made did
 not wrongfully refuse to Surrender his Estate land
 tenements goods or Chattels for the Satisfaction
 of said Fieri Facias, but on the Contrary ^{thereof} stated
 to and inform said Dart that he had no property
 with which to satisfy the same, and the said Defendant
 says that the said Plaintiffs by their Attorneys
 Helen & Clark after such demand, and before the
 return day of said Fieri facias to wit, on the first
 day of June in the year aforesaid, by a written
 direction endorsed upon said Fieri Facias directed
 said Dart to return said Writ, forthwith and
 the said Dart thereupon, upon the said first day
 of June and before the return day thereof pursuant
 to such direction and by reason thereof and without
 the knowledge of said Defendant returned the said
 Writ of Fieri Facias with his return endorsed
 thereon in substance & effect as follows to wit: -

I have demanded payment of the within
 named Anthony St Theile or the within execution
 or that he Surrender property to satisfy the

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same. He has failed to do either, say he has
no property to Surrender. None found & therefore
return this Execution no part satisfied the first
day of June 1857 by order of Jeff Atty.

John L Wilson Sheriff

1 Return 10

by John H Dart Deputy

And said Defendant avers that no other
Writ of Fieri Facias then as aforesaid was issued
on said Judgment and no demand except as
aforesaid was made of said Theile that he
Surrender his Estate lands tenements goods or
Chattels for the satisfaction of said Fieri Facias
and the said Theile at the time of such demand
had not in fact any estate lands tenements
goods or Chattels within said County of Cook
liable to Execution.

And said Defendant avers that
said plaintiffs' after the return of said Fieri
Facias to wit at the said time when he in said
first Court mentioned wrongfully and unlawfully
sued out the said Capias ad satisfaciendum there-
named upon the false pretence allegation and
ground that said Theile had wrongfully refused
to Surrender his Estate lands tenements goods
and Chattels for the satisfaction of said fieri
facias and upon no other pretence allegation or
ground.

By means of the premises the said

Writ of Capias ad Satisfaciendum in said first Court named and the imprisonment of the said Anthony Atchile by virtue thereof became and were wholly unauthorized, unlawful and void and this the said Defendant is ready to verify.

Wherefore he prays Judgment if the said plaintiffs ought to have or maintain their aforesaid action therein against him &c.

And for a further Plea in this behalf as to the second Count of said Declaration the said Defendant says, that the said Plaintiffs ought not to have or maintain their aforesaid action thereof against him because he says that the affidavit upon which the Writ of Capias ad Satisfaciendum in said second Court mentioned was issued, did not comply with the Statute in such Case made and provided, and with the Constitution of the State of Illinois, and was and is wholly insufficient in Law, and was and is in substance and effect following to wit;

Cook County Court of Common Pleas

Nelson Tuttle

William G. Hibbard

George M. Gray

Frederick Tuttle.

(24)

Anthony A Theile
 State of Illinois
 Cook County. - } ss

Nelson Tuttle

being duly sworn says that he is one of the Plaintiffs in the above Suit and further says that on the tenth day of April A.D. Eighteen hundred and fifty-seven at the April Term of the said Court the said Plaintiffs recovered a judgment against said Defendant Anthony A Theile in said Cause for the sum of seven hundred and thirty three dollars and nine cents with the Costs of suit taxed at six dollars and sixty cents Execution was issued on said judgment on the thirtieth day of May of said year directed and delivered to the Sheriff of said County which said execution said Sheriff by John Mc Darb his Deputy has returned wholly unsatisfied and this affiant says that said Anthony A Theile has refused and still does refuse to surrender his property and Estate in satisfaction of said Execution and further says not.

(signed)

Sworn & Subscribed Nelson Tuttle
 to before me June 1/57

(signed)

C. D. Noel, J. P.

By means of which defects and insufficiencies of which said affidavit the said Writ of *Capias* and *Satisfaciendum* became and was and is wholly unauthorized unlawful and void and this the said Defendant is ready to verify.

Wherefore he prays Judgment if the said plaintiffs ought to have or maintain their aforesaid action thereof against him &c.

And for a further Plea in this behalf as to the second Count of said plaintiffs declaration, said Defendant says that said Plaintiffs ought not to have or maintain their aforesaid action thereof against him; because he says ^{said} ~~the~~ plaintiffs with intent fraudulently wrongfully & unlawfully to imprison the said Anthony ~~Ch~~ Theile after the rendition of the Judgment in said Second Count mentioned to wit; on the thirtieth day of June in the year of our Lord One thousand eight hundred and fifty Seven at to wit; the County of Cook aforesaid the said plaintiffs sued out a Writ of *Fieri Facias* upon said Judgment directed to the Sheriff of said County of Cook and delivered to one John Darr (who was then and there a Deputy Sheriff of said County of Cook) and thereupon then and there well knowing that the said Theile had no property within said County of Cook

liable to execution directed the said Dart, without the knowledge of this Defendant to proceed with said Writ of Fieri Facias and demand of said Thiele that he turn out property upon said Writ for the Satisfaction thereof and that he immediately thereafter returned the said Writ of Fieri Facias and that the said Dart pursuant to said directions of said Plaintiffs and by means thereof and without the knowledge of said Defendant immediately proceeded with the said Writ and demanded of the said Thiele that he surrender property to satisfy said Writ at to wit, the farm of Cook aforesaid, and the said Thiele upon such demand being made did not wrongfully refuse to surrender his Estate Lands, tenements, goods or Chattels for the Satisfaction of said Writ but on the contrary thereof thereupon there and there informed the said Dart that he said Thiele had no property, and the said Plaintiffs by Helm & Clark their Attorney duly authorized by them afterwards and before the return day of said Writ to wit. on the first day of June in the year aforesaid by a direction in writing indorsed upon said Writ directed the said Dart forthwith to return said Writ and the said Dart thereupon immediately before the Return day of said Writ pursuant to said directions and in consequence thereof, and of

without the knowledge of said Defendant; to-wit: on the first day of June returned said writ with a return endorsed thereon in substance and effect following to-wit: -

I have demanded payment of the within named Anthony et Theile on the within execution or that he surrender property to satisfy the same, he has failed to do either, say he has no property to surrender. - Consequently I therefore return this Execution no part satisfied the first day of June 1857 by order of Myself Atty.

(Signed) John L Wilson Sheriff
by John H Dart Deputy

The Return to

and said defendant avers that no Writ of Fieri Facias was issued upon said judgment other than the Writ aforesaid and no demand was made of said Theile previously to the issuing of the Writ of Capias ad Satisfaciendum in said Second Court mentioned that he surrendered his Estate lands tenements goods or Chattels for the Satisfaction of said Writ of Fieri Facias other than the demand aforesaid made by the said Dart and said Defendant says that at the time of the aforesaid demand the said Theile had not in fact any Estate Lands tenements goods or Chattels within said County of Cook liable to Execution and said defendant avers

that the said Plaintiffs' well knowing the premises and well knowing that said Theile had not wrongfully refused to Surrender his Estate lands tenements goods or Chattels for the Satisfaction of said Writ of Fieri Facias and well knowing that the said Theile at the time of the aforesaid demand had not in fact any Estate Lands tenements goods or Chattels within the said County of Cook liable to Execution and well knowing the return which the said Dart had made to said Writ of Fieri Facias after such return to wit: at the said time when &c in said second Count mentioned with intent falsely wrongfully and unlawfully to imprison the said Theile sued out the said Writ of Capias ad Satisfaciendum in said second Count mentioned upon the false and fraudulent pretence allegation and ground that the said Theile had refused to Surrender his Estate lands tenements goods and Chattels for the Satisfaction of said Writ of Fieri Facias and upon no other pretence allegation or ground.

By means of the premises the said Writ of Capias ad Satisfaciendum in said second Count mentioned and the imprisonment of said Theile by virtue thereof became and was wholly fraudulent unlawful and void; and this the said defendant is ready to verify, wherefore he prays Judgment if the said plaintiff ought to have or

maintain their aforesaid action thereof against him
 &c.

And for a further Plea in this behalf
 as to the said second Count of the said declaration
 said defendant says that the said Plaintiffs
 ought not to have or maintain their aforesaid
 action thereof against him because he says
 that before the issuing of the *Capias* & *Satisfac-*
-tum in said second Count named *twit*, on the
 thirtieth day of May in the year aforesaid at
twit, the County of Cook aforesaid the said
 plaintiff sued out a Writ of *Fieri Facias* upon
 the said Judgment in said Count named directed
 to the Sheriff of said County and thereupon delivered
 the said last named Writ to one John McDart
 (who was then & there a Deputy Sheriff of said
 County) and without the knowledge of said defendant
 directed the said Dart to demand of said Theile
 that he turn out property upon said *Fieri Facias*
 for the Satisfaction thereof, and that he thereupon
 after such demand forthwith return the
 said *Fieri Facias* and the said Dart thereupon
 proceeded with said Writ and demanded of
 said Theile that he turn out property for the
 Satisfaction thereof, and said Defendant
 says that the said Theile upon such demand
 being made, did not wrongfully refuse to
 Surrender his Estate lands tenements goods or

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Chattels for the satisfaction of said Fieri Facias. - But on the contrary thereof stated to and informed said Dart that he had no property with which to satisfy the same and the said Defendant says that the said Plaintiff by their Attorney Helm & Clark after such demand and before the return day of said fieri facias to wit; on the first day of June in the year aforesaid by a written direction endorsed upon said fieri facias directed said Dart to return said writ forthwith, and the said Dart thereupon upon the said first day of June, and before the return day thereof pursuant to such direction and by reason whereof and without the knowledge of said Defendant returned the said writ of fieri facias with his return endorsed thereon in substance and effect as follows to wit:

I have demanded payment of the within named Anthony A. Thiele on the within execution or that he surrender property to satisfy the same; He has failed to do either, says he has no property to surrender. - None found I therefore return this Execution no part satisfied the first day of June 1857 by order of Plff Atty
(Signed) John Wilson Sheriff

Ret 1 Return 10

by John H. Dart Deputy

And said Defendant avers that no other writ of Fieri Facias than as aforesaid

was issued on said Judgment and no demand except as aforesaid was made of said Theile that he Surrender his Estate lands tenements goods or Chattels for the Satisfaction of said Fieri Facias and that said Theile at the time of such demand had not in fact any Estate lands tenements goods or Chattels within said County of Cook liable to execute.

And the said Defendant avers that said plaintiffs' after the return of said Fieri facias to wit: at the said time when &c in said Second Court mentioned wrongfully & unlawfully sued out the said Capias ad Satisfaciendum therein named upon the false pretence allegation & ground that said Theile had wrongfully refused to surrender his Estate lands tenements goods and Chattels for the Satisfaction of said Fieri facias and upon no other pretence allegation or ground.

By means of the premises the said Writ of Capias ad Satisfaciendum in said Second Court named and the imprisonment of the said Anthony A Theile by virtue thereof became and was wholly unauthorized unlawful & void and this the said Defendant is ready to verify.

Wherefore he prays Judgment if the said plaintiffs ought to have or maintain their

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aforesaid action thereof against him &c
(Signed)

Farwell Smith & Thomas
Deft Attys

And thereafter to wit, on the seven tenth
day of January A.D. Eighteen hundred and
sixty the plaintiffs by their Attorneys aforesaid
filed in the Clerks office of the said Superior
Court of Chicago their Certain Demurrer to
the Pleas of the Defendant heretofore filed
in this Cause which is as follows to wit;

Superior Court of Chicago
January Term A.D. 1860

Nelson Tuttle et al

vs
John L. Wilson

And the said Plaintiff
by Helin & Clark their Attorneys come and
asto the said Pleas of the said Defendant by
him 2^{ndly} 3^{rdly} 4^{thly} 5^{thly} 6^{thly} and 7^{thly} above
pleaded and asto each and every of the said
Pleas say that the said Pleas and each and
and the matters and things in each ^{every} ~~containing~~
every of them contained are not sufficient in
law in manner and form as therein and thereby
pleaded and set forth to preclude the said

plaintiffs from having or maintaining their
aforesaid action thereof against him the said
Defendants and this the said Plaintiffs are ready
to verify &c Wherefore they pray Judgment &c

Nelson Clark
Atty

And thereafter also on the said seventeenth
day of January A.D. Eighteen hundred and
sixty, the defendant by his attorneys aforesaid
came and filed in the Clerk's Office of said
Superior Court his certain Joinder in demurrer,
which is as follows to wit

Superior Court of Chicago

John L Wilson
ads

Nelson Tuttle
William G Hibbard
Frederick Tuttle &
George ell Gray
And the said
Defendant says
that the said plea
by him Secondly
thirdly fourthly fifthly sixthly and seventhly
above pleaded and each and every of them
are sufficient in Law to bar and preclude
the said plaintiffs' from having or maintain-
ing their aforesaid action thereof against him
the said defendant, and the said defendant is

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ready to verify and prove the same when where
and in such manner as the Court here shall
direct and award.

Therefore inasmuch as the said Plaintiff
has not answered said Pleas nor either of them
nor hitherto in any manner denied the same
the said Defendant prays judgment, and that
the said Plaintiff may be barred from having
or maintaining their aforesaid action thereof
against him said Defendant &c

(Signed)

Farwell Smith & Thomas
Deft's Attys

And afterwards to wit at the February Term
of said Superior Court aforesaid to wit; on the
seventeenth day of February the following
proceedings in this Cause was had and entered
of Record herein to wit; -

Nelson Tuttle
William G Hibbard
Frederick Tuttle and
George M Gray

Debt

(vs)
John L Wilson

And now again
comes the parties to this Cause by their respective
Attorney as aforesaid and Counsel being heard

on plaintiff's Demurrer to defendants 2, 3, 4, 5, 6 and 7th pleas herein pleaded and due deliberation being thereupon had and the premises being fully understood the Court sustains the Demurrer to said 3, 4, 6 & 7th pleas and overrules the Demurrer as to said 2 and 5 pleas of said Defendant. And said Plaintiff elects to stand by his said Demurrer to defendants second & fifth pleas.

Therefore it is considered that said defendant do have and recover of the said plaintiff his costs about his defense in this behalf expended & have execution therefor.

State of Illinois
Cook County ss

I Walter Kimball Clerk
 of Superior Court of Chicago within and for
 the County of Cook and State of Illinois; Do
 hereby certify the above and foregoing to be a
 full true and perfect transcript of the papers
 now on file in my Office together with the
 order entered of Record in said Court in
 a certain Suit therein wherein Nelson Feltz
 and others are plaintiffs and John L
 Wilson is Defendant.



In testimony whereof I have
 hereunto set my hand and affixed
 the seal of said Court at Chicago
 in said County the seventh day
 of March A.D. Eighteen hundred
 and Sixty. Walter Kimball Clerk

Superior Court of Chicago
State of Illinois.

O'Kelton Tuttle et al

vs

John L Wilson

Record

\$9⁰⁰ Helen Clark

Supreme Court of the State of ^{Illinois}
 April Term A.D. 1860 -

Nelson Tuttle	} Error to the Superior Court of Chicago
William G. Hubbard	
George M. Gray &	
Fredrick Tuttle	
vs	
John L. Wilson	

And now comes the said Plaintiffs
 in error by Helm & Clark their
 Attorneys and say that there
 is error manifest in the Judgment
 in the above cause and in the
 record of the proceedings thereof -
 and for particular causes
 or grounds of error, assign
 the following viz -

- 1st That the said Superior Court
 erred in overruling the demand
 of the said Plaintiffs in error to
 the said 2^d and 5th Pleas of
 the said Defendant in error.
- 2^d That the said Superior Court, erred
 in not sustaining the said Demand

of the said Plaintiffs to the said
2^d and 3th Pleas of the said
Defendant.

3^d That the said Superior Court
erred in giving Judgment upon
the said Demurrers against
the said Plaintiffs, whereas the
said Judgment should have
been in favor of the said Plaintiffs.

Delun & Clark -

And now comes the said Defendant
in error and says there is no
error in the Judgment aforesaid
as alleged by the said Plaintiffs
in error, and this he is ready to
verify - 40

Harrell Smith & Thomas
attys for Deft

Supreme Court

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Wilson Tuttle et al
vs Plessin error

John L. Wilson
vs Plessin error

Error to Superior Court
of Chicago

Record vs.

Filed April 18, 1860
L. Leland
Clerk

Atchue & Clark
#5. p.