

11947

No.

Supreme Court of Illinois

Schwab~~x~~

vs.

Gingerich, Garnishees

71641 7

Peoria

John Schwabs

John Gingerich Garnishees
vs.

36

11947

1852

Peoria

Be it remembered, that heretofore, to wit, on the eleventh day of July in the year of our Lord one thousand eight hundred and fifty, there was filed in the office of the clerk of the circuit court in & for Peoria county in the State of Illinois an appeal Bond in the words & figures following to wit,

appeal Bond. Know all Men by these presents, that we John Lingrich & James M. Webster as principal and Charles Peters surety are held and firmly bound unto John Schnab in the penal sum of Two Hundred dollars lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs and administrators, jointly and severally, firmly by these presents. Witness our hands and seals this 8th day of July 1850. The Condition of the above Obligation is such, that whereas the said Schnab did, on the 29th day of June 1850 before David Maxwell a Justice of the Peace for the county of Peoria, recover judgment against the above bounden Lingrich & Webster for the sum of Eighty one ³⁴/₁₀₀ dollars, from which Judgment the said Lingrich & Webster have taken an appeal to the circuit court of the county of Peoria aforesaid and State of Illinois --- Now if the said Lingrich & Webster shall prosecute their appeal with effect and shall pay whatever Judgment may be rendered by the court upon dismissal or trial of said appeal, then the above obligation to be void otherwise

to remain in full force and effect.

[Approved before me at } John Gingrich [23]
my office this eleventh day of } James Mc Webster [33]
July 1850. Jacob Gale, clerk } Enslow Peters [22]

Whereupon the clerk of said court issued out of said court under the seal thereof a Supersedeas and a Summons which with the returns thereto are as follows to wit:

Supersedeas -

The People of the State of Illinois, To The Sheriff of Teoria County Greeting; Whereas on the 29th day of June last before David Maxwell a Justice of the Peace within and for the said county of Teoria John Schrab recovered Judgment against John Gingrich and James Mc Webster for the sum of eighty one dollars and thirty one cents from which Judgment the said Gingrich & Webster have appealed to the Circuit Court in and for the said county of Teoria and has entered into bond, with security according to the statute in such case made and provided, We therefore command you forthwith to give notice thereof to the said Justice and also to the constable in whose hands an execution or other process may be in relation to said action, that they are enjoined to stay and suspend all further proceedings in relation thereto, until the said Circuit Court shall otherwise order and direct and make return thereof, with your doing herein, on or before the first day of the term of the said court, to be held at Teoria, within and for the county of Teoria, on the 4th Monday of August next. Witness Jacob Gale, clerk of our said court and the seal thereof, at Teoria, this eleventh day of July in the year of our Lord one thousand eight hundred and fifty.

[23]

Jacob Gale, clerk.

which was returned by said Sheriff endorsed as follows, to wit,
State of Illinois, Peoria County, ss: Served the within notice
by reading the same to the within David Maxwell,
July 13th 1850. William Compser, Shff T.C.
By C. Cleveland, Depty.

Summons - The People of the State of Illinois, To the Sheriff of
Peoria County, Greeting: We command you to summon
John Schwab if he may be found in your county, to appear
before our circuit court on the first day of the term
thereof, to be held at Peoria, within and for the said
county of Peoria, on the 4th Monday of August next
then and there in our said court prosecute his suit
against John Gingrich & James M. Webster lately appeal-
ed from before David Maxwell one of the Justices of the
Peace of said County and make return of this writ
with an endorsement of the time and manner of
serving the same, on or before the first day of the
term of the said court to be held as aforesaid, wit-
ness Jacob Gale, clerk of our said court and the
seal thereof, at Peoria, this eleventh day
[L.S.] of July in the year of our Lord one thou-
sand eight hundred and fifty.
Jacob Gale, clerk.

which summons was returned by said Sheriff endorsed as follows, to wit,
State of Illinois, Peoria County, ss: Served the within writ
by reading the same to the within named John Schwab,
July 13th 1850. Wm Compser Shff T.C.
By C. Cleveland, Depty.

And afterwards on the nineteenth day of July A.D. 1850 there was filed in the office of said clerk a certified transcript of the proceedings in said cause before the said Justice of the Peace and all the process and papers in said cause in said suit before the said Justice of the Peace, which are in the words & figures following to wit:

J. P. Transcript. John Schwab vs Augustus Schultz
This suit is brought on a note for \$77.69, capital issued on the 29th day of June A.D. 1850 returnable on the 5th day of July at 10 o'clock if special bail be entered - given to A. R. Kidwell, Constable. The parties appeared in court and after hearing all the proofs & allegations the court recorded Judgment in favour of Plaintiff. Demand \$77.69
1.37
79.06
25
79.31

Judgment entered the 29th day July A.D. 1850. Execution sworn out the 29th day July A.D. 1850. Execution returned no property found in my county to levy upon. A. R. Kidwell Const. The Plaintiff swore out a garnishes upon John Lingrick & James Mc Webster. The defendants appeared in court and confessed that they owed Augustus Schultz the above demand.

Demand \$79.31

Costs \$2.00
\$81.31
50
81.81

Judgment entered the 29th day of June A.D. 1850
Appeal taken to the Circuit Court.

State of Illinois, Teoria County, D. I the subscriber a Justice of the Peace, in and for said county, do certify, that the above Transcript and the papers annexed contain a full and perfect statement of all the proceedings and of the Judgments before me in the above entitled cause. Dated this 19th day of July A.D. 1850. David Maxwell. J. P.

note or demand =

Due John Schwab or ordre one hundred dollars \$100⁰⁰ with interest from date, Teoria Sept 11/1847. Aug Schultz.
F. Sammelroth.

afft for capias =

State of Illinois, Teoria County, John Schwab vs Augustus Schultz.
Before David Maxwell Esq, - John Schwab the plaintiff in the above suit being first duly sworn deposes and says, that there is danger that the debt or claim owing to him by said defendant will be lost unless said defendant be held to bail as said defendant is an unsettled person and liable to remove from this county and State any time and the said plaintiff believes that said defendant is about to leave for Europe thereby depriving him the said plaintiff of collecting his debt or demand. John Schwab.

[Subscribed and sworn to before me]
this 29th day of June A.D. 1850
David Maxwell J.P. }

J. P. capias =

State of Illinois, The People of the State of Illinois,
Teoria County, ss: To any constable of said county, Greeting.
You are hereby commanded to take the body of Augustus Schultz and bring him forthwith before me unless special bail be entered and if such bail be entered you will then command him to appear before me at Teoria on the 5th day of July at 10 o'clock A.M. to answer the complaint of John Schwab for a failure to pay him a certain ^{demand} not exceeding \$100 and hereof make due return as the law directs:
Given under my hand and seal this 29th day of June 1850.
David Maxwell.

return =

Served the within capias by bringing the body of the within Augustus Schultz into court this 29th of June 1850. A.R. Kidwell, Const.

afft for fi: fa:

State of Illinois, Peoria County.
John Schwab, Before D. Maxwell Esqr Justice of
vs the Peace in and for said county.
Augustus Schultz. Judgment \$77.69. Costs 1.37 1/2.
Personally appeared before me the subscriber a Justice
of the Peace in and for said County John Schwab,
the above named Plaintiff and upon his oath according
to law says that he has just and reasonable ground to
believe and does believe that the amount of the Judg-
ment which he recovered against the above named
Augustus Schultz will be lost unless execution be
issued forthwith against the personal property of said
defendant and further deponent saith not.
[Subscribed & sworn to before me] John Schwab.
this 29th day of June A.D. 1850. {
David Maxwell, J.P. }

J.P. fi: fa:

State of Illinois, The People of the State of Illinois:
Peoria County, ss: To any constable of said county. Greeting:
We command You, that of the goods and chattels of Augustus
Schultz in your county, you make the sum of seventy seven
dollars and sixty nine cents debt and one dollar and
sixty two cents cost (with interest at the rate of six per
cent, per annum from the 29th day of June 1850 when Judg-
ment was rendered) which John Schwab lately recovered
before me in a certain plea against the said Augustus
Schultz and thereof make return to me within seventy days from
this date. Given under my hand and seal; this 29th day
of June 1850. David Maxwell [Seal] J.P.

return -

The within Execution returned no property found in my county
upon which to levy this 29th of June 1850. A.M. Kidwell. Const.

afft for garnishee
process

State of Illinois, Peoria County, ss: John Schwab vs Augustus Schultz.
Judgment before Justice of the Peace of said County,
for debt \$77.69 Interest and cost \$2.12 1/2 = \$79.82
Personally appeared before the subscriber one of the Justices
of the Peace of said County John Schwab plaintiff above
named, who, after being duly sworn doth say, that the
above named defendant has no property within the knowl-
edge of this affiant in his possession liable to execution
and that said affiant has just reason to believe that John
Gingrich & James M. Webster hath effects of the said
Augustus Schultz in their hands and further saith not.
Wherefore he prays that a Garnishee Process may issue
against the said John Gingrich & James M. Webster
pursuant to the laws of this state. John Schwab.
[Sworn to and subscribed before me this 29th day of
June 1850. David Maxwell JP]

J. P. garnishee process.

State of Illinois The People of the State of Illinois
Peoria County, ss: To any Constable of said County, Greeting:
Whereas on the 29th day of June in the year of our Lord 1850
John Schwab recovered a Judgment before me against Augustus
Schultz for the sum of seventy nine dollars and sixty three
cents, besides costs of suit and whereas execution against
said defendant in said judgement has been returned by the
proper officer, "No property found;" and whereas John Schwab
Plaintiff in the above cause has made affidavit before
me that the said defendant has no property within the
knowledge of said affiant in his possession liable to
execution and also that such affiant has just reason
to believe that John Gingrich & James M. Webster is indebt-
ed to the said Augustus Schultz or hath effects in their
hands of said Schultz: These are therefore to command

You that you summon the said John Gingrich & James M. Webster forthwith to appear before me, at my office in Teona to show cause why Judgement should not be entered and execution issued against them for the amount of the debt and costs aforesaid and make return hereof forthwith:
Given under my hand and seal at Teona this 29th day of June 1850. David Maxwell J.P. [seal]

return -

Served the within garnishee by reading the same to John Gingrich and James M. Webster this 29th of June 1850. A. V. Kidwell, Const.

And afterwards on the sixth day of September A.D. 1850 the said garnishees Gingrich and Webster filed their answer in said cause which is in the words and figures following, to wit:

garnishees answer -

John Schwab

vs Appeal, Garnishee process.

John Gingrich & James M. Webster, Garnishees of Aug Schultz.
James M. Webster & John Gingrich, Garnishees in the above entitled cause say that at the time of the service of the garnishee process herein on them they had not in their hands & possession any goods, effects or credits of the said Augustus Schultz, nor have they since had, nor have they now, unless the court shall so adjudge upon the following statement of facts, to wit: In or about the eighteenth day of June last, these respondents bought of the said Schultz a lot of Groceries & other personal property and agreed to pay him therefor the sum of three hundred dollars and paid him at that time one hundred dollars in cash and gave him their joint notes four in number of \$50 each for the security of the payment of said said two hundred dollars, payable as herein after stated, to wit:

one in two months, one in three months, one in four months & one in five months from date & from the time of said sale. Respondents also say, that before the service of the Garnishee process herein on them two of said notes had been assigned & transferred to Abraham McReland and as they believe he then was and afterward continued to be the legal & bona fide holder thereof & the other two were transferred & assigned to William Dunn as respondents are informed & believe were so transferred & assigned before they became due & payable & that at the time of the service of the process herein they believe he said Dunn was the legal & honest holder thereof. — upon the said notes the following payments have been made, to wit: that payable in two months has been fully paid by said Ginery and on that payable in five months said Ginery has paid twenty five dollars, these payments were made \$25 to said McReland as the assignee & holder of two of said notes & \$50 to said Dunn & such assigned & the first was paid to avoid the the costs & expense of a suit on the note. At the time of the sale aforesaid said Shultz gave a receipt to respondents in the words & figures following, to wit:

"Recd of Messrs James M. Webster & John Ginery the summe of one hundred dollars in cash and two hundred dollars in notes in full for grocery & stock belonging to the same (signed) Aug Shultz Peoria June 18/1850" These Respondents have had no other dealings with the said Shultz whereby they became in any way indebted to said Shultz before or at the time of the said service or the rendition of the Judgment herein by the Justice of the Peace, these

Respondents therefore pray that they may be hence
discharged & for their costs herein

[Subscribed & sworn to } James M. Webster
before me this 6th day of } John Gingrich
September A.D. 1850. }
Jacob Cole, clerk

And afterwards on the same day at a term of said circuit
court then in session,

The garnishees by Peters & Blakeley their attorneys
entered a motion that they be discharged upon their
answers filed.

Proceedings at a Circuit Court begun and held at the
Court House in the City of Peoria in and for the County of
Peoria in the State of Illinois on the first Monday of
March in the year of our Lord one thousand eight hun-
dred and fifty two, it being the first day of said month,
Present the Honorable William Kellogg Judge of the
Tenth Judicial Circuit in the State of Illinois to wit:

Thursday March 4th A.D. 1852.

trial - John Schwab

vs

Appeal from J.V.P.

Augustus Schultz - on garnishee process to
James M. Webster & John Gingrich.

This day came the
plaintiff by Norman W. Purple his attorney and alleged
that the said John Gingrich has not discovered the
true amount of debts due from him to the defendant
and the said James M. Webster having devised all indebtedness to the said Augustus Schultz
Augustus Schultz, it is ordered by the court with the
assent of the plaintiff that the said James M. Webster
be discharged from answering further herein and it is
ordered that a jury be empanelled to enquire what is
the true amount due from said John Gingrich to said

Augustus Schultz, whereupon came a Jury of twelve good and lawful men, to wit: Alpheus Richardson, John H. Peirce, Eliphalet Coleman, Robert M. Turner, Anderson Grimes, George Brooks, George Turner, John Lombard, Bazaleed Washburn, Samuel S. Glasgow, Lewis C. Vandergrift and A. G. Stone who were duly chosen and sworn to enquire what is the true amount due from said John Gingrich to the said Augustus Schultz and a true verdict give according to evidence. - The Plaintiff entered a motion to dismiss the appeal in this cause and the court being fully advised in the premises overruled said motion. - The said John Gingrich by Winslow Peters his attorney entered a motion to dismiss this cause, on consideration whereof the court overruled said motion, the Jury having heard the evidence retired to consider of their verdict.

Friday March 5th A.D. 1852,

Verdict -

John Schwab,

vs

Appeal from S.P.

Augustus Schultz - on garnished process to John Gingrich.

This day came the Jury empannelled in this cause on yesterday and upon their oaths aforesaid do say, We of the Jury do find that there is nothing due from the said John Gingrich to the defendant Augustus Schultz, whereupon the plaintiff entered a motion to set aside said verdict and for a new trial because the verdict is against law and evidence.

Monday March 8th A.D. 1852.

John Schwab,

vs

On appeal from S.P.

Augustus Schultz on garnished process to John Gingrich.

This day came

judgment.

on to be heard the motion of the Plaintiff to set aside the verdict of the Jury herein and for a new trial in this cause and the court being fully advised in the premises overruled said motion, therefore it is considered that the said John Gingrich go hence without day and have and recover of the said John Schwab his costs and charges by him about his defense in this behalf expended and that execution issue therefor.

And afterwards on the 13th day of March A.D. 1852, the plaintiff filed a Bill of exceptions in said cause which is in the words and figures following, to wit.

Bill of exceptions =

John Schwab

vs

John Gingrich Garnishee
of Augustus Schultz.

} In the Circuit Court of Peoria County
March Term A.D. 1852.

Be it Remembered that upon the trial of this cause the Plaintiff to maintain the issue on his part against the said garnishee called Frederick Worst who testified that after the service of the garnishee process in this cause on said Gingrich the said Gingrich on the ~~said~~ same day of the service admitted to him three times during the afternoon of said day that he owed Augustus Schultz Twenty dollars besides the notes of fifty dollars each, which he and Webster owed to the said Augustus Schultz and that no note had been given for said twenty dollars and said Plaintiff would be sure of that at all events, that this was after the said Plaintiff and said Gingrich had been together on that day to the Justices office to see about said suit, here the plaintiff rested.

The defendant then called David Maxwell Esq the Justice of the peace before whom the said original cause & garnishee process

was tried, who testified that Gingenrich and Webster the garnishees in the suit of Plaintiff against Schultz, both appeared before him and admitted that they owed the said Schultz the amount of two fifty dollar notes which they had given him and the said Witness also stated that the said Gingenrich admitted and stated that they owed the said Schultz the sum of Twenty dollars besides the said notes and both the said Gingenrich & Webster consented that the Justice should enter Judgment against them for the amount of the Judgment of Schwab vs Schultz &c.

The Defendant then called a witness who testified that at some time before the service of the garnishee process in this cause but when he cannot remember distinctly the said Schultz let Gingenrich have a bed and afterwards took it back again. Deft also called St. Kidwell as a witness who testified that he was the constable who served the processes in this case upon the original deft & upon the garnishees that the summons upon the deft Schultz was served & returned, the Judgment rendered & an Execution issued & returned & immediately thereupon the garnishee process herein was sued out, that witness took it & went to the place of business of Gingenrich in the lower part of the town of Teoria near the bridge and there served the process upon him & Webster & that he & they immediately came back to the Justice, when the Judgment was rendered against them as garnishees. The said Gingenrich on the trial of this cause offered to read in evidence to the Jury the sworn answer of said Webster & himself filed in this cause which is in the words and figures following, to wit:

This evidence was objected to by the Plaintiff & excluded by the court & said Gingenrich by his counsel excepted to the

decision - Gingrich then offered to prove to the Jury that at a former term of the court, he was, under the order of the court examined & answered orally as a garnishee in this cause & that he then stated the same facts as contained in the answer aforesaid & in reply to an interrogatory propounded to him orally by the plaintiff stated that he had bought a bed of said Schuetz for twenty or twenty five dollars and that on the day of the service of the garnishee process, but before it was served on him Schuetz had been & got the bed & carried it to Mr. Atterlands where it had been sold & he Gingrich had not seen any thing of it afterwards, to the introduction of this evidence the Plaintiff objected & the same was ~~made~~ excluded by the court & the left Gingrich excepted to the decision - It appeared from the testimony of the first witness that the place where the conversation was had as testified by him was at Schwabs place of business above the foot of Main street about half a mile distant from where the process was served on Gingrich, It was also proved or admitted that after the Justice had rendered the Judgment against the garnishees & after the two fifty dollar notes had become due William Dunn, the assignee & holder of said notes commenced suits against the said Gingrich & Webster before McRoy a Justice of the Peace that they appeared to defend those suits, but the Judgment was rendered against them upon the notes which had since been paid. This was all the material evidence in the cause.

The Jury found a verdict for the defendants, the counsel for Plaintiff entered a motion for a new trial for the following reasons; because the verdict is against

law and evidence. The Court overruled the motion for a new trial and the counsel for the Plaintiff then & there excepted & requested the court to seal this bill of exceptions which is done.

Wm Kellogg [Seal]

State of Illinois
Peoria County for

I Jacob Gale clerk of the Circuit Court in and for the county of Peoria in the State of Illinois do hereby certify, that the foregoing is a full, true and complete transcript from the records of all the proceedings in a certain cause in said Court wherein John Schwab is Plaintiff and John Gingrich as garnishee on judgment against Augustus Schultz is defendant, as the same remain of record and on file in my office -

In witness whereof I hereto set my hand and the seal of said Court at my office in Peoria this eleventh day of May in the year of our Lord one thousand eight hundred and fifty two.

Jacob Gale, Clerk.

Clerk's fees: for transcript
Est. V. ad to do.

\$4.25 -
25 - }

\$4.50

Received of John Schwab by R. W. Purple
above fees. June 18th 1852 -

Jacob Gale, Clerk.

Georgia
John Schwab

A2

John Gutzwiller gausler 44

Record Sept. of Enns

Filed June 12th 1852.
V. Veland Clerk.

John Deane
as
John Bircham Hamble
of Arguable Doubt
And now come the said Plaintiff
and says that in the Record and proceedings aforesaid and
in the petition of the defendant aforesaid there is men-
tioned that in this Court, said Court Clerk
1st in determining said Plaintiff's motion for a
writ that

State of Illinois, set.

WRIT OF ERROR—FREE TRADER PRINT.

The People of the State of Illinois,
To the Clerk of the Circuit Court for the County of *Peoria* — 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 *Peoria* -county, before the Judge thereof, between *John Schwab*

plaintiff — and *John Guirick gamishu*
of *Augustus Schultz*

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

as we are informed by *his* complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distintly 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 *2^d Mandy in June next.* — ~~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. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Ottawa, this *12th* — day of *June* — in the year of our Lord one thousand eight hundred and fifty *two*.

L. Ireland Clerk of the Supreme Court.

Peoria
John Schwab
as
John Gunderick Garnish
Mit of error

Filed June 12, 1852.
L. Deland Clk.