

12778

No. _____

Supreme Court of Illinois

Harroun et al

vs.

Tuttle

71641  7



Alvin Harrison 21

vs 9

David N. Tuttle

9

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

~~No. 4.~~

9

1859

98

12778

Supreme Court of the
State of Illinois

Suit of Error to
Kane County Illinois

Alvin Harmon & Lydia Harmon
his wife & Sarah Tomlinson wife of
Delazon Tomlinson Deceased. Mary
Tomlinson Knick wife of William Knick
William Knick. George Tomlinson &
Phoebe Tomlinson heirs of
Delazon Tomlinson Deceased

Scire Facias to
Arrest
Mortgage.

vs.
David A. Fattle

The above entitled suit is to
be dismissed as to the heirs of Delazon
Tomlinson Deceased, the same having
been settled.

Given August 31. 1858

George A. Tomlinson
Phoebe Tomlinson
Mary Tomlinson
wife of Wm. Knick

Moore 9
Hanson at al
at
J A Tuttle
apt to dis

Filed April 27. 1859
Leland
clerk

United States of America
State of Illinois

Pleas before the Hon Isaac G
Wilson Judge of the Thirtieth Judicial Circuit
State of Illinois at a Term of Kane County
Circuit Court began and holden at the Court
House in Geneseo in said County on the Tenth
day of November in the year of our Lord
One Thousand Eight Hundred & fifty one

Present the Hon Isaac G Wilson Judge
Phineas W Platt State Attorney
Guthrie Dearborn Sheriff

Attest
Charles B. Bell
Clerk

Be it remembered that on the
twenty first day of July A.D. 1851 David A
Suttle by Jones & Eastman his attorneys, filed
in the office of the Clerk of this Court at Geneseo
in the said County of Kane a certain security
for costs, precept and indenture of mortgage
the said above mentioned security for costs is
in the words and figures following to wit:

Super costs" Kane County Circuit Court, State of Illinois
David A Suttle August 1st 1851

"
" Min. Harmon, Lydia Harmon his wife Sci. et al
" Sarah Tomlinson wife of George Tomlinson deceased
" Henry Tomlinson, George Tomlinson &
" Phineas Tomlinson, heirs of George Tomlinson
" deceased

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

Dated this 21st day of July 1851
" H. B. Moore "

Entered on the back as follows:

" Filed July 21st 1851. Charles B. Wells Clerk "

The said above mentioned precept was and
is in the words and figures following to wit.

Precept " State Circuit Court State of Illinois
" David A. Hulle

" vs Sci. Ga.

" John Harmon

" Lucia Harmon his wife

" Sarah Tomlinson wife of Delagen Tomlinson deceased

" Mary Tomlinson

" George Tomlinson } heirs of Delagen Tomlinson

" Thos. Tomlinson } deceased

" Clerk of the Peace

" County Circuit Court Pease & Co. Sci. Ga.

" in accordance with the above entitled writ and

" the accompanying mortgage "

" July 21st 1851 "

" Jones & Eastman "

" Atty for Plff "

Entered on the back as follows

" Filed July 21st 1851. Charles B. Wells Clerk "

The said above mentioned

Indenture of Mortgage was and is in the
middle and follows following to wit:

Mortgage

" This Indenture made this twenty
" ninth day of August, in the year of our Lord
" one thousand eight hundred and forty nine
" Between Delano Hamilton & Marah his wife, Alice
" Hammon & Lydia his wife of Pembroke in the
" County of Tennessee and State of New York, of the
" first part, and David Little of Buffalo in the
" County of Erie of the second part, Witnesseth; that the
" said party of the second part, for and in consideration
" of the sum of six thousand dollars to them in hand
" paid by the said party of the second part, the receipt
" whereof is hereby confessed and acknowledged, have
" granted bargained, sold, released, conveyed and
" confirmed and by these presents do grant, bargain
" sell release, convey and confirm unto the said party
" of the second part, and to his heirs and assigns
" forever, All that certain tract of land, situate lying
" and being in the town of Seneca, County of Hamilton
" in the State of Illinois and described as follows viz:
" Commencing at a point in the East side of River
" Street, on the West side of State River when the North
" side of Hamilton Street, would intersect the same,
" thence running Southward on River Street, sixty (60)
" feet, thence Easterly at right angles with River
" Street to State River, thence Northerly along said
" River, to a point where a line drawn perpendicular
" with River Street at the place of beginning would
" intersect the same about sixty (60) feet, then as
" Westerly to the place of beginning with the privilege
" of drawing and using one thousand square in the
" adjoining water, to be taken out of the dam at

" Hence on the West side of Fox River, said water to
" be measured where the same is let on to the wheels
" provided always, and it is expressly understood, that
" said party of the second part, have not the right to
" obstruct the passage of the water through said premises,
" but said party of the first part, have the right and
" privilege at any time hereafter to continue the race
" through said premises for hydraulic purposes
" or otherwise by incanation,

" I have and to hold, the above
" foregoing premises, to the said party of the second
" part his heirs and assigns, to the sole and only proper
" use benefit and behoof, of the said party of the second
" part his heirs and assigns forever. Provided always and
" these presents are upon this express condition that if the
" said party of the first part, their heirs executors ad-
" ministrators or assigns shall pay to the said party
" of the second part his heirs or assigns the sum of six
" thousand dollars for advances already made and to
" be made at this date, in three, four, five, and six
" months from this date, and shall pay off and satisfy
" all other advances that said party of the second part
" may make to, or liabilities that he, his heirs or assigns
" may hereafter incur for or on account of said party
" of the second part according to the condition of a
" certain bond or writing obligatory, bearing date
" date hereunto, executed by the said party of the first
" part, to the party of the second part as a collateral
" security. Then these presents and the said bond or
" writing obligatory shall cease and be null and void
" in all case of non payment of the said sum of six
" thousand dollars in three four five and six months
" from the date hereof and of all other advances said
" party of the second part may make to or liabilities

" that he or his heirs or assigns shall or may incur for
 " or on account of said party of the second part by
 " drafts, notes or acceptances money or otherwise
 " or any part thereof at the time above limited for the
 " payment thereof, then and in such case, it shall and
 " may be lawful for the said party of the second part
 " his heirs executors, administrators or assigns, and
 " the party of the first part, do hereby empower and
 " authorize the said party of the second part his heirs
 " executors, administrators or assigns, to grant bargain
 " sell, release and convey the said premises with the
 " appurtenances at public auction or vendue - And
 " on such sale, he, make and execute to the purchaser
 " or purchasers, his or their heirs or assigns forever, good
 " ample and sufficient deed or deeds of conveyance
 " in the law; pursuant to the Statute in that case
 " made and provided - rendering the surplus monies
 " (if any there should be) to the said party of the first
 " part, their heirs executors or administrators, after
 " deducting the costs and charges of such vendue and
 " sale as aforesaid.

" On witness whereof the said party of the first
 " part have hereunto set their hands and
 " Seals the day and year first above written

" Sealed and delivered	" A. Tomlinson	" Seal "
" in presence of	" Sarah Tomlinson	" Seal "
" Edgar L. Dibble	" Abner Harriman	" Seal "
" A. C.ordin	" Lydia Harriman	" Seal "
" Lucius Thatcher		
" Hanson Coven		

Entered on which are the certificates of acknowledgment
 together with the names & signatures following to wit:
 " Quesset County N. H. on this 29th day of August 1849
 " Silas Tomlinson and Sarah his wife Urban Whelan

" to the individuals described in and who executed
" the within mortgage came before me and severally
" acknowledged that they executed the same. And the
" said Sarah on a private examination before me apart
" from her husband acknowledged that she executed
" the said mortgage freely and without compulsion of her
" husband.

" According to justice of the peace for said County
" State of New York
" Seneca County Clerk's Office &c.

" I certify that. According to the within
" the annexed instrument in writing was proved or ack-
" nnowledged was at the time of taking the same a Justice
" of the peace in and for said County duly authorized to
" take the same; and that I am well acquainted with
" hand writing, and verily believe that the signature
" to said certificate is genuine, and that the annexed
" deed is executed and acknowledged according to the
" laws of this State.

" In witness whereof I have hereunto set my
" hand and affixed my official seal at Katonah
" in said County this 11th day of Sept. 1849
" J. C. Holden Clerk
" Seneca County &c.

" On the 30th day of August 1849
" John Harrison & Lydia his wife born & known
" to be the individuals described in and who executed
" the within mortgage and before me and severally
" acknowledged that they executed the same; And
" the said Lydia on a private examination before
" me apart from her husband acknowledged that
" she executed the mortgage freely and without
" any compulsion of her husband.

" According to justice of the peace for said County

" State of New York }
" Seneca County Clerk's Office }
"

" Certify that Lucius Thatcher
" before whom the annexed instrument in writing
" was passed or acknowledged was at the time of taking
" the same a Justice of the Peace in and for said County
" duly authorized to take the same; and that I am
" well acquainted with his hand writing and really
" believe that the signature to said certificate is
" genuine and that the annexed deed is executed
" said acknowledged according to the laws of this State
" The witness whereof I have hereunto set
" my hand and affixed my official
" Seal at Watford in said County this
" 1 day of Sept. 1849
" J. B. Holden Clerk."

Enclosed on the back thereof as follows to wit:
" This mortgage was Recorded Sept. 29th 1849
" at 11 o'clock A.M. in Book 13 of deeds at pages
" 118, 119, 120

" E. H. Swarthout Recorder of Seneca County
" and on which said mortgage there is annexed a
" certificate in the words and figures to wit:
" I hereby certify and acknowledge that I have
" this day made a settlement with David W. Shuttle
" and find there is now due him on this mortgage
" the sum of nineteen hundred forty four and 4/100
" dollars and that we have no effect whatever to that
" amount, this being a settlement of all common
" accounts between the late firm of Sarsaparilla Embury
" & D. W. Shuttle together with all the stipulations and
" requirements of the within mortgage and accompanying
" and the said 1944. ⁴⁰ Nineteen hundred forty four
" before to draw interest from this date until paid

" at the rate of seven per cent per annum.

" Signed for myself and all others whom this

" mortgage duly concern

" Buffalo July 5. 1831

" Alvin Harrison

" Sundrying partner of

" Harrison & Combs

Endorsement of filing on the back in the
words and figures following to wit

" Filed July 21st 1831. Charles B Wells Clerk,

And thereupon after reading & on the
21st day of July a writ of Scire facias was
issued by the said Clerk in the words & figures following to wit:

Sci fa " State of Illinois } The People of the State of
" Kane County } Illinois to the Sheriff of said County
" Greeting

" Whereas it is witnessed by a certain Indenture
" or deed made the 29th day of August A.D. 1829 between
" Delazon Lombison and Sarah his wife Alvin Harrison
" and Lydia his wife of Pembroke County of Sussex
" and State of New York of the first part and David
" St Lutte of Buffalo in the County of Erie of the
" second part that the said party of the first part
" for the consideration therein named did grant bargain
" sell and convey unto the said party of the second part
" and to his heirs and assigns forever all the following
" described property to wit: Commencing at a point on
" East side of Rice Street on the West side of Fox River
" where the North side of Hamilton Street would intersect
" the same, thence running Southwesterly on Rice Street
" sixty feet (60); thence easterly at right angles with
" Rice Street to Fox River. Thence Southwesterly along said
" River to a point where a line drawn perpendicular

" with River Street at the place of beginning would in-
" tersect the same about thirty feet from the West side
" to the place of beginning, with the privilege of drawing
" and rising One thousand Square inches of running
" water to be taken out of the dam at Seneca on the
" East side of Lake River, said water to be measured
" where the same is let on to the wheels, Provided always
" and it is expressly understood, that the said party
" of the second part, has not the right to obstruct
" the passage of the water through said premises;
" But the said party of the first part have the right
" and privilege at any time hereafter to continue the
" race through said premises for Hydraulic purposes
" or otherwise by excavation. We have And to hold the
" same together with all and singular the tenements
" hereditaments and appurtenances thereto belonging
" or in any wise appertaining, and also all the estate
" interest and claim whatever in law as well as in
" equity, which the party of the first part had in and
" to the premises thereby conveyed unto the said party
" of the second part, and to their heirs and assigns
" forever and to their only proper use benefit and
" Provided however, and said indenture or deed be,
" upon this express condition that if the said party
" of the first part, their heirs Executors or administrators
" should ever bring any cause to be paid unto the
" said party of the second part, or his heirs, executors
" administrators or assigns the sum of six thousand
" dollars, in Three, Four, Five and six months from the
" date thereof and for other indebtedness which might
" accrue as expressed in said indenture or deed then
" and in that case said indenture or deed was to be
" absolutely null and void, all of which by said
" indenture or deed signed by the names and sealed

" with the seals of the party of the first part, duly
" acknowledged and recorded in said County of Kane
" in and to the produced will more fully and at large
" appear; And whereas it has been represented to us
" by the said party of the second part that default
" has been made in the payment of the said sum of
" Six thousand Dollars at the time the same was due
" and payable according to the conditions of said indenture
" or deed, and whereas the said sum was made payable
" by instalments and the whole of said instalments
" having become due and payable,

" You are therefore commanded to
" make known to said Sarah Tomlinson wife of said
" Delazon Tomlinson, Alvin Harrison & Lydia his
" wife, Mary Tomlinson, George Tomlinson and
" Eliza Tomlinson heirs of Delazon Tomlinson deceased
" if to be found in your County that they be and appear
" before the Circuit Court, of said County of Kane, on
" the first day of the next term thereof to be holden
" at the Court House in Geneva on the second Monday
" of August next to show cause if any they have why
" judgment should not be rendered against &
" them for the amount of money due on said
" mortgage together with all costs and charges
" which may be by virtue of said indenture or
" deed and to do and perform all and singular those
" things which the Court shall then and there com-
" mand in this behalf, and make due return of this
" writ.

" (S. S.) Witness Charles B. Hall, Clerk of
" said Court and the seal thereof at
" Geneva this 2^d day of July A.D. 1860
" Charles B. Hall
" Clerk

On which said writ of *Scire facias* is the
return in the words and figures following to wit:
" I personally served by reading to the within
" named John Harrison July 24th 1851, Delaney
" Tomlinson Sarah Tomlinson & Lydia Harrison
" not found in my County

" Luther Scarborough "

" Sheriff of Kane Co "

Enclosed in the back is following to wit:
" Filed July 28th 1851

" Charles B Wells Clerk "

And afterwards on the said 28th
day of July 1851 an alias *Scire facias* was
issued in the words & figures following to wit:

Alias *Scire fac.* " State of Illinois
" Kane County ss The People of the State of
" Illinois to the Sheriff of said County
" Greeting:
" Whereas it is witnessed by a certain Indenture
" or deed made the 29th day of August A.D. 1849 between
" Delaney Tomlinson and Sarah his wife; John Harrison
" and Lydia his wife of Lamborn County of Seneca
" and State of New York of the first part, and David
" A. Tuttle in Buffalo in the County of Erie of the
" second part; that the said parties of the first part,
" for the consideration therein named did grant
" bargain sell and convey unto the said party of
" the second part, and to his heirs and assigns forever
" all the following described property to wit Commencing
" at a point on the East side of Erie River Street on
" the West side of 2nd St River where the North side of
" Hamilton Street would intersect the same, thence running
" Southerly on Erie Street sixty feet (60) thence Easterly

" at right angles with Oliver Street to East River, thence
" Northerly along said River to a point where a line
" drawn perpendicular with River Street at the place
" of beginning would intersect the same about sixty
" feet 60; thence Westerly to the place of beginning with
" the privilege of drawing and using One Thousand
" Square inches of running water, to be taken out of
" the dam at Seneca on the West side of East River
" said water to be measured where the same is let on
" to the wheels. Provided always and it is expressly
" understood, that the said party of the second part,
" has not the right to obstruct the passage of the water
" through said premises but said party of the first part
" have the right and privilege at any time hereafter
" to continue the Race through said premises for
" Nautical and other purposes or otherwise by excavation
" Trench and to hold the same together with all
" and singular the tenements, hereditaments, privileges
" and appurtenances, thereto belonging or in any
" wise appertaining; And also all the estate interest
" and claim whatever in law as well as in equity
" which the party of the first part had in and to the
" premises thereby conveyed unto the said party of the
" second part, and to their heirs and assigns forever
" and to their only proper use benefit and behoof
" Provided however, and said indenture or deed
" was upon this express condition that if the said party
" of the first part their heirs executors or administrators
" should well and truly pay or cause to be paid unto the
" said party of the second part or his heirs executors ad-
" ministrators or assigns the sum of six thousand dollars
" in three four years, and six months from date thereof
" and for all other moneys which might accrue
" as expressed in said indenture or deed then and

" in that case, said indenture or deed must be absolutely
" new and void, all of which by said Indenture or
" deed signed by the names and sealed with the seals
" of the party of the first part duly acknowledged
" and recorded in said County of Hanc in Court to be
" produced will more fully and at large appear,
" And whereas it has been represented to us by the said
" party of the second part that default has been made
" in the payment of the said sum of six thousand
" Dollars, at the time the same was due and
" payable according to the conditions of said indenture
" or deed; And whereas the said sum was made payable
" by instalments, and the whole of said instalments
" having become due and payable,

" (You are therefore commanded here-
" tofore to make known to said Sarah Simlinsen,
" wife of said Delazon Simlinsen Alvin Harron
" and Lydia his wife, Mary Simlinsen George
" Simlinsen and Piche Simlinsen heirs of Delazon
" Simlinsen deceased if to be found in your County that
" they be and appear before the Circuit Court of said
" County of Hanc on the first day of the next term thereof
" to be holden at the Court House in Seneca on the
" second Monday of November next to show cause if
" any they have why judgment should not be
" rendered against them for the amount of money due
" on said mortgage with all costs and charges which
" may be by virtue of said deed or indenture and to do
" and give all and singular those things which the
" Court shall then and there consider in this behalf
" and make due return of this writ.

" Witness Charles H. Wells, Clerk of said Court and
" the seal thereof of Seneca this 28th day of July
" A.D. 1837 Charles H. Wells Clerk

On which said writ of Alias Scire facias there
is the following return,

"Personal service on the within named
" Alvin Harrison by said writ October 8. 1857, Delago
" Lemlyson & Sarah Hamilton & Lydia Harrison
" not found in my County

" Luther Dearborn "

" Sheriff of Kane County "

Entered on the back as follows to wit;

" Filed Aug. 6. 1857 C. B. Wells

And afterwards to wit
on the 16th day of August A.D. 1857. the same being
one of the days of said term of said Court of the
August term after of the following among other
proceedings were had to wit

David A. Dault

} Sci fa

Alvin Harrison et al

} suit continued
with alias to those not served

And afterwards to wit on
the 20th day of November 1857. the same being
one of the days of said Court of the November
term thereof the following among other proceedings
were had to wit

David A. Dault

} Sci fa

Alvin Harrison Lydia Harrison
Sarah Mary Gump & Phets Hamilton

this day comes
the plaintiff by Jones & Co. to answer his attorney and

it appearing to the Court that two writs had been returned
not found. The defendants were thus times solemnly called
comes not nor any one for them but mass default therein
which is ordered by the Court to be entered of record
and that the plaintiff have judgment by default against
the defendants and of costs against the mortgaged premises
deducted from this suit being founded upon an instrument of
conveyance for the payment of money only. It is further
ordered by the Court that the clerk apportion the damages and
the clerk having subsequently reported as due from the
defendants to the plaintiff the sum of two thousand &
sixty five ²⁵/₁₀₀ Dollars. It is therefore considered by the
Court that the plaintiff have & recover from the defendants
the sum of Two thousand & sixty five ²⁵/₁₀₀ Dollars this costs
in this suit expended have special Execution to sell the
mortgaged premises which are described as follows. Commencing
at a point on the East side of Fox River Street on the west side
of Fox River where the N. line of Hamilton Street would intersect
the same thence running Southerly on River Street 60 feet thence
Easterly at right angles with River Street to Fox River thence
Northerly along said River to a point when a line drawn
perpendicular with River Street at the place of beginning
would intersect the same about 60 feet thence Easterly to
place of beginning with the privilege of drawing & using
one thousand & six hundred inches of running water to be taken
out of the dam at Genoa on the west side of Fox River said
dam to be measured where the same is let on to the wheels?
Provided always and it is expressly understood that said party of the
second part has not the right to obstruct the passage of the
water through said premises out said part of the first part
have the right & privilege at any time hereafter to continue
the race through the said premises as authorized by
Excavation.

State of Illinois
Kane County

I Luther Dearborn Clerk of
the Circuit Court in and for said County and
State aforesaid do hereby certify that the copy of ^{the process pleadings &} foregoing
is a full perfect & complete copy of all papers apper-
taining to the foregoing entitled cause & of all proceedings
had & entered of record therein as appears from the
files & records of said court

Witness my hand Seal of said Court at Mazon
in said County this 3rd day of April
A D 1856

Luther Dearborn
Clerk

Alvin Harmon & Lydia Harmon
his wife, and Sarah Somlinson
and Mary Finch (formerly Dean,
Somlinson) and William Finch
her husband & George Somlinson & Phoebe
Somlinson Minors by their next friend
William Finch — Plffs in Error

Supreme Court
State of Illinois

vs.

David H. Tuttle, Defendant in Error

And now comes the said Defendants
in the foregoing record mentioned and suggest that
since the rendition of the said Judgment the
said Mary Somlinson has intermarried
with one William Finch, and that the
said George Somlinson and Phoebe Som-
linson are Minors, and wish to prosecute
a writ of Error upon said Judgment
by the said William Finch as their
next friend —

and the said parties pray
that a writ of error may issue for and in
behalf of the parties as stated in the
entitling of this process, Plffs in Error, &
that the said David H. Tuttle may
be duly summoned and that the said
Judgment may be by the said Supreme
Court reversed.

And the said Plaintiffs in error by
James W. & B. B. B. their Attorney assign for
Error in the said Record the following —

Finch

That there was no suggestion of the
death of Delazon Somlinson one of the parties

equors in said Mortgage, and the said
Writs of sci. fa. were improperly directed
against the Children of the said Tomlinson.

Second -

The 2^d sci. fa. was issued before the
return term of the first one, and no
term of Court intervened between the issuing
of the same.

Third

A 3^d sci. fa. was issued after
the continuance of the August term.

Fourth -

There is no return, of said
writs as to Mary, George, & Phebe Tomlinson.

Fifth -

The Court erred in rendering
the said Judgment, having no jurisdiction
over the said Children of Deacon
Tomlinson nor of Lydia, Harroon or
Sarah Tomlinson and no Guardian ad
litem was ever appointed for said
Minor. - Nor was any Executor or Adminis-
-trator of the said Tomlinson made a party
to said Suit -

Alvin Harroon

Lydia Harroon

Sarah Tomlinson -

and William Finch

Mary Finch

and George Tomlinson &

Phebe Tomlinson

by H. William Finch

their next friends

Newsmouth & Burgess

Attys for plffs in error

I do hereby enter myself security for costs
for the said plaintiffs in error, in the
prosecution of the writ of error above
prayed for, and acknowledge myself
bound to pay or cause to be paid all
costs which may accrue therein either
to the said Daniel M. Tuttle or to any
of the officers of said court.

May 26th 1856.

Wm. Finch

74 35
Alvin Harroon and
27 as
David W. Tuttle

Record

Filed May 28, 1856.
Leland Clerk

STATE OF ILLINOIS,

Supreme Court,

ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the county of *Kane* 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 *Kane* county, before the Judge thereof, between *David N. Tuttle Plaintiff & Alvin Hurron & others* ~~defendants~~

~~plaintiff, and~~

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

as we are inform-

ed by *their* complaint, 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 plea, 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 *Second Monday in June* 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. *Walter B. Scates* Chief Justice
SAMUEL H. TREAT,
 of our said Court, and the Seal thereof, at Ottawa, this *28th* day of *May*
 in the Year of Our Lord One Thousand Eight Hundred and Fifty-Six

L. Leland
 Clerk of the Supreme Court.

By J. B. Rice Deputy

27

84-21
Alvin Harroun et al

vs
David N. Tuttle

Writ of Error

Filed May 29 1892
Leland Olsen

Alvin Warren et al
Plff in error } Error to Kane
as } County
David N. Little
Def in error }

State of Illinois Let
J. F. Farnsworth
being duly sworn doth depose and
say that the said Defendant,
David N. Little is a non resident
of the State of Illinois, but resides
in the City of Buffalo, County
of ~~Wm~~ Erie, & State of New York.

Shown to & subscribed J. F. Farnsworth
before me this 25th
day of June A.D. 1856
L. Seland Clerk
By J. B. Rice Deputy

Alvin Barron
Etal 21

vs
David V. Tuttle

App^t of Non Residence

Filed June 21st 1856
L. Leland
Clerk

STATE OF ILLINOIS, }

Supreme Court, }

ss.

The People of the State of Illinois,

To the Sheriff of the County of Kane

Greeting:

BECAUSE in the record and proceedings, and also in the rendition of the judgment of a plea which was in the circuit court of Kane county, before the Judge thereof, between David N. Tuttle Plaintiff & Alvin Harroun & others

Defendant, it is said that manifest error hath intervened, to the injury of the said Defendants

as we are informed by their complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the state of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said David N. Tuttle

that he be and appear before the Justices of our said Supreme Court, at the next term of said court, to be holden at Ottawa, in said state, on the Second Monday in June next, to hear the records and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said court shall order in this behalf; and have you then there the names of those by whom you shall give the said Tuttle

notice, together with this writ.

Walter B. Treat
WITNESS, the Hon. Samuel H. Treat, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 28th day of May in the Year of Our Lord One Thousand Eight Hundred and Fifty-six.

L. Leland

Clerk of the Supreme Court. By J. B. Rice Deputy

Alvin Harrison Ad
21 vs
David N. Tuttle

Sci fa.

Filed June 23, 1856
Leland
Clerk

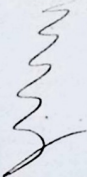
Admit due service of the within writ of
Scire facias on me

State of Illinois, Sup. Court -

Alvin Harrow Et al

vs

Tuttle



J. F. Farnsworth being duly
sworn deposes and saith that the
said defendant in error Tuttle
is not a resident of the State of Illinois, but
resides at the City of Buffalo, State of
New York - And further saith not -
Subscribed before me }
this 3rd day of April A.D. 1857 } J. F. Farnsworth
Julius Humbard }
Notary Public

Harrow

as

In the ~~27~~

21

affidavit

Filed Apr. 4. 1887

L. Lewis
Clerk

STATE OF ILLINOIS, }

Supreme Court, }

ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the county of *Marshall* 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 *Marshall* county, before the Judge thereof, between *William Rankin*

plaintiff, and *James A. Smith*

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

as we are informed by *his* complaint, 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 plea, 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 *second Monday* in June 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. *Walter B. Keates* ~~SAMUEL H. TREAT~~, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *8th* day of *July* in the Year of Our Lord One Thousand Eight Hundred and Fifty-six

L. Deland
Clerk of the Supreme Court.
By J. B. Price Deputy

James A. Smith
vs ~~24~~ 9
William Rankins
Writ of Error

This writ of error is
to operate as a superse-
deas & as such is
to be obeyed by all
concerned.

L. Leland
Clerk
By J. B. Rice Deputy

Filed July 2. 1866

L. Leland
Clerk

SUPREME COURT, STATE OF ILLINOIS.

ALVIN HARROUN AND LYDIA HARROUN,
His wife. SARAH TOMLINSON.
et. al. Plaintiffs in error,

vs.

DAVID N. TUTTLE, Defendant in error.

ABSTRACT OF RECORD.

1st. Precipe filed in the Kane Circuit Court, July 21, 1851, in these words and figures.

"David N. Tuttle,"

vs.

"Alvin Harroun and Lydia Harroun, his wife; Sarah
Tomlinson, wife of Delazon Tomlinson, deceased; "*sci. fa.*"
"Mary Tomlinson, George Tomlinson, Phebe Tom-
linson, heirs of Delazon Tomlinson, deceased."

"Clerk of the Kane County Circuit Court, please issue a scire facias in accordance
with the above entitled suit, and the accompanying mortgage."

"JONES & EASTMAN,"

"July 21, 1851."

"Att'ys for Plaintiffs."

2d. Security for costs, entitled in same manner, in usual form, signed by A. B. Moore, and filed same time as precipe.

3d. Mortgage executed by Delazon Tomlinson and Sarah, his wife; Alvin Harroun and Lydia, his wife, of Pembroke, Genesee County, New York, to David N. Tuttle, of Buffalo, New York, bearing date Aug. 29th, 1849, duly acknowledged and recorded Sept. 29th. 1849, in the recorder's office of Kane County, which mortgage is in the usual form, and conveys premises in Kane County, Illinois, to secure indebtedness therein mentioned.

4th. Writ of scire facias, issued July 21st. 1851, to the sheriff of said Kane Co. which, after reciting material parts of the mortgage, directs the sheriff to "make known to said Sarah Tomlinson, wife of said Delazon Tomlinson, Alvin Harroun and Lydia, his wife; Mary Tomlinson, George Tomlinson, and Phebe Tomlinson, heirs of Delazon Tomlinson, deceased, if to be found in your county, that they be and appear before the Circuit Court of said County of Kane, on the first day of the next term thereof, to be holden at the Court House in Geneva, on the second Monday of August next, to show cause, if any they have, why judgment should not be rendered against them for the amount of money due on said mortgage, together with all costs and charges which may be by virtue of said indenture or deed, and to do and receive all and singular those things which the court shall then and there consider in this behalf, and make due return in this writ."

Signed and sealed by Charles B. Wells, Clerk of said Court, July 21, 1851, on which sci. fa. is the return in these words and figures, viz:

"Personally served, by reading, to the within named Alvin Harroun, July 24th. 1851; Delazon Tomlinson, Sarah Tomlinson, and Lydia Harroun not found in my county."

Signed "LUTHER DEARBORN,"

"Sheriff of Kane Co."

Endorsed on back, "filed July 28th. 1851."

"CHARLES B. WELLS, Clerk."

5th. An alias scire facias, issued on the 28th day of July, 1851, precisely like the first, except that in the command to the officer are the words "you are therefore commanded, *as heretofore*, to make known, etc." and that it is made returnable to "the next term thereof, to be holden at the Court House in Geneva, on the second Monday of November, next, etc."

~~Harroun~~ ³⁵ ~~vs~~ ²⁸
vs ~~5~~
Little

Filed June 23, 1838
L. Leland
Clerk

On this writ of sci. fa. is this return:

"Personally served on the within named Alvin Harroun, by reading, Oct. 8th. 1851, Delazon Tomlinson and Sarah Tomlinson, Lydia Harroun not found in my county."

"LUTHER DEARBORN,"

"Sheriff of Kane Co."

Endorsed on back. "Filed Aug. 6th. 1851.

C. B. WELLS."

6th. A continuance as follows:

"And afterwards, to-wit: on the 16th day of August, 1851, the same being one of the days of said term of said Court, of the August term thereof, the following, among other proceedings, were had, to-wit."

"DAVID N. TUTTLE,

vs.

"ALVIN HARROUN, et. al.

} Sci. Fa."

"Suit continued with alias to those not served."

7th. On the 20th of November, 1851, at the November term of said Court, judgment of foreclosure was rendered against Alvin Harroun, Lydia Harroun, Sarah, Mary, George and Phebe Tomlinson, and against the premises described in the mortgage, for the sum of two thousand and sixty-five dol. and twenty-five cents, (2065.25).

The entitling of judgment record is in these words, viz.:

DAVID N. TUTTLE,

vs.

ALVIN HARROUN, LYDIA HARROUN, SARAH,
MARY, GEORGE AND PHEBE TOMLINSON.

} Sci. Fa."

"This day comes the plaintiff, by Jones & Eastman, his attorneys, and it appearing to the Court, that two Nihils have been returned not found, the defendants were three times solemnly called, came not, nor any one for them, but make default herein, which is ordered by the Court to be entered of record, and that the plaintiff have judgment, etc."

SUPREME COURT, STATE OF ILLINOIS.

ALVIN HARROUN AND LYDIA HARROUN,
His wife. SARAH TOMLINSON.
et. al. Plaintiffs in error,

vs.

DAVID N. TUTTLE, Defendant in error.

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"Alvin Harroun and Lydia Harroun, his wife; Sarah Tomlinson, wife of Delazon Tomlinson, deceased; Mary Tomlinson, George Tomlinson, Phebe Tomlinson, heirs of Delazon Tomlinson, deceased." "sci. fa."

"Clerk of the Kane County Circuit Court, please issue a scire facias in accordance with the above entitled suit, and the accompanying mortgage."

"JONES & EASTMAN,"

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~~£~~ 135 \ ~~£~~ 4

Harrison

vs

Little

Filed June 23. 1838

L. L. Leland
Clerk

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"ALVIN HARROUN, et. al."

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