

12251

No. _____

Supreme Court of Illinois

Murphy.

vs.

Heirs of Davis.

71641  7

State of Illinois }
Fourteenth Judicial Circuit }
Jo Daviess County }

Pleas in the Circuit Court begun
and held within and for the
County of Jo Daviess aforesaid, on the second Monday of
March, in the year A.D. 1852 before the Judge of said
fourteenth Judicial Circuit, to wit: the Hon Benjamin W
Sheldon.

Wm. H. Brasley Clerk

Christopher E. Saunders Sheriff

Matthew Murphy &

Michael Foley

vs

Thomas F. Davis } Defendant

Be it remembered
that heretofore, to wit: on the 26th day of December A.D. 1851
the said above entitled Plaintiffs by their Attorney, filed in
the Clerk's Office of the Circuit Court for said Jo Daviess
County a bond for Costs, together with an affidavit &
Precipue, which said bond, affidavit and Precipue are in
the words and figures following, to wit:

Matthew Murphy & }

Michael Foley

vs

Thomas F. Davis }

State of Illinois }

Jo Daviess County }

In Circuit Court

To March Term 1852

We do hereby enter ourselves security for Costs, in this Cause
& acknowledge ourselves bound to pay or Cause to be paid
all costs, which may accrue in this action either to the
opposite party, or to any of the Officers of this Court, in pursu-
ance of the Laws of this State.

Dated this 25th day of December A.D. 1851

Wm. Johnson Real
John M. Douglass Real

Approved by me

Wm. H. Bradley Clerk

Endorsed. Filed 26th Decr 1851

Wm. H. Bradley Clerk.

State of Illinois }
Jr Davis County } In Circuit Court of Jr Davis
County

Matthew Murphy of
lawful age being duly sworn according to law, deposes and
says, That Thomas F. Davis is justly indebted to this affiant
& Michael Foley in the just & full sum of Ninety hundred
and thirty three dollars and seventeen cents, under and
by virtue of a certain Replevin Bond made & entered into by
James Dougherty, Alexis Barker, Martin Janner, Amos F.
Calver, the said Thomas F. Davis, and Caleb Patwine,
(the two last-named as securities,) on the twenty fifth day
of June A.D. 1849, in the penal sum of twenty five hund-
red and eighty dollars, payable to Robert Dr. Lang.

Sheriff of La Fayette County in the State of Wisconsin, his
Heirs, Executors, Administrators, or Assigns, jointly and
severally, said joint and several Bond aforesaid being con-
ditioned that the said Plaintiffs in said Replevin Suit in
which said Bond was made and executed should prosecute
their Suit with effect, and without delay, and if said Depen-
dants (meaning the Plaintiffs herein) shall recover judgment
against them the Plaintiffs in the Replevin Suit, to return
the same Property, if the same thing be adjudged, and
pay the said Dependents (meaning the Plaintiffs herein) all such
sums of money as may be recovered against them by the said
Dependents in said action for any Cause whatever, and the
said Plaintiffs herein aver that they the said Plaintiffs in
the Replevin Suit did not prosecute their said Suit with
effect, and did not return the same Property, and
did not and have not paid the said Dependents in
said Suit, meaning the said Plaintiffs herein, all such
sums of money as was adjudged them the said Plaintiffs
in said Replevin Suit.

And the said Plaintiffs herein aver that
on the hearing of said Replevin Suit aforesaid in which
said Bond, made on in this Cause, was executed, the
said Court in which said Suit was pending did order
& adjudge that the Dependents, (meaning the Plaintiffs herein)
have and recover of the said Plaintiffs in said Replevin
Suit, the sum of Nineteen hundred & Eighteen dollars
and ten cents, debt and damages, together with Costs
taxed at the sum of Seventy five dollars and seven cents.

and rendered judgement accordingly. Which said Amount of Nineteen hundred and Ninety three dollars and Seventeen cents, is justly due & owing at this time No part of the same having been paid: And that the said Thomas F. Davis being jointly and separately bound by said Bond herein sued on has departed from the State of Illinois, and is not a resident of said State of Illinois, but resides in the State of California, so that personal service of Process cannot be had on him and that said Thomas F. Davis has lands and property within the jurisdiction of this Court. Wherefore this affiant prays that an Attachment may issue against the Goods and Chattels, lands and tenements of the said Thomas F. Davis returnable to the next term of this Court, in conformity to Law. And further saith not.

Subscribed & sworn to before me }

this 23rd day of Dec A.D. 1857 }

Wm. H. Bradley clk }

By C. C. Ripley Depy }

Matthew Murphy

Matthew Murphy & } Attaches

Michael Foley }

vs

Thomas F. Davis }

Circuit Court of Jo
Davis County Ills

The Clerk of said Court on the
filing of the above affidavit and a Bond, will

issue an attachment, in favor of the above Plaintiffs against the Defendant for the sum of \$1993.17 directed to the Sheriff &c and returnable to the next term of said Court in an Action of Debt.

Douglas & Johnson
Plffs Atty

Endorsed

Filed Dec. 26th 1851

Wm. H. Bradley Clerk
By C. C. Ripley Secy

And afterwards to wit on the same day, to wit: on the 26th day of December A.D. 1851 the said Plaintiffs filed in said Clerk's Office an Attachment Bond, and also sent out a writ of Attachment from said Clerk's Office in said entitled Cause which said Bond & writ together with the Sheriff's return on the latter are in the words and figures following, to wit-

Know, all men by these Presents, That we, Matthew Murphy and James Carter, of the County of Jefferson and State of Illinois are held and firmly bound unto Thomas. F. Davis in the penal sum of Four thousand Dollars, lawful money of the United States, to be paid to the said Thomas. F. Davis, for which payment, well and truly to be made we bind ourselves, our heirs, Executors, and Administrators jointly and severally, firmly by these Presents Sealed with our seals, Dated this 23rd day of

December 2d. 1857.

The Condition of this Obligation is such, That whereas the above bounden Matthew Murphy has on the day of the date hereof, prayed an Attachment, at the Suit of said Matthew Murphy & Michael Foley, against the Estate of the above named Thomas F. Davis, for the sum of Nineteen hundred & Ninety three Dollars and Seventeen Cents, and the same being about to be paid out of the Circuit Court for the County of Jo Davis in the State of Illinois, returnable on the Second Monday in March next to the term of the said Court then to be holden: Now if the said Matthew Murphy and Michael Foley shall prosecute their said Suit with effect, or in case of failure therein, shall well and truly pay and satisfy unto the said Thomas F. Davis all such Costs in said Suit and such damages as shall be awarded against the said Matthew Murphy and Michael Foley their heirs, Executors or administrators in any Suit or Suits which may hereafter be brought for wrongfully suing out the said Attachment, then the above obligation to be void, otherwise to remain in full force and effect.

Matthew Murphy *E.S.*
Jo Carter *E.S.*

Taken and acknowledged before me
this 26th day of December 1857. Wm. Bradley Clerk

Endorsed

Filed 26th Dec^r 1861

Wm. H. Bradley Clerk

State of Illinois }
for Garfield County }

The People of the State of Illinois
vs the Sheriff of said County (Ex parte)
Whereas Matthew Murphy & Michael Foley Plaintiffs have Com-
plained on oath to the Clerk of our Circuit Court for the
County aforesaid, that Thomas F. Davis Defendant is justly
indebted unto the said Plaintiffs to the Amount of Nineteen
hundred and Twenty-two Dollars and Seventeen Cents. And
also that said Defendant is not a resident of the State of
Illinois, but resides in the State of California.

And the said Matthew Murphy & Michael Foley Plaintiffs
having given bond and security according to the direction
of the act in such case made and provided:

We therefore command you, that you attach so much of
the Estate, real or personal, of the said defendant to be
found in your County, as shall be of value sufficient
to satisfy the said debt and costs, according to the said
Complaint: And such estate so attached, in your hands
to secure, or so to provide, that the same may be liable
to further proceedings thereupon, according to law, at the term
of the Circuit Court of for Garfield County, to be holden in
and for the County aforesaid at Salina, in said County,
on the 2nd Monday of March next: And that you summon

the said Thomas F. Davis to appear and answer the complaint
of the said Matthew Murphy and Michael Foley Rainolds
And that you also command _____ as Garnish
to be and appear before the said Court on the said
next, then and there to answer what may be objected against
_____. When and where you shall make known to
said Court how you ^{have} executed this writ. And have
you then and there this writ.

Witness William H. Bradley, Clerk of the
Circuit Court of Jo Davis County, Ills,
and the Seal thereof, at Galena, this
26th day of December A.D. 1851
Wm H. Bradley Clerk

On the above writ is endorsed the following return, viz
I have this 26th day of December A.D. 1851
served this writ upon all the right, title and interest of the
within named Thomas F. Davis in and to the following
described Real Estate, situated & being in the County of
Jo Davis & State of Illinois, to wit: The South half
of the North East quarter and East half of the North
West Quarter of Section No (1) one Township No 28,
Twenty Eight North of Range (4) Four East, and the
West half of the North West quarter of Section (5) five
and the East half of the North East quarter of Section
(6) six in Township 28 Twenty Eight North of Range (5)
five East, and fraction of West half of the North West

quarter of Section (5) five, and the East half of the North East quarter of Section (6) Six in Township (28) Twenty Eight of Range (5) five East fraction $5\frac{3}{4}$ 100 acres the South half of the North West quarter of Section Six (6) in Township (28) Twenty Eight Range (5) five East of the South Principal Meridian, 83 $\frac{1}{2}$ 100 acres.

The East half of the North East quarter of the South East quarter of Section (3) three. Also the North West quarter of the South West quarter of Section (2) two. Also (10) ⁱⁿ acres off the West part of the North East quarter of the South West quarter of Section (2) two. Township (28) Twenty Eight Range No (4) four East (70) acres together with all the appurtenances thereto belonging
C. C. Sanders Sheriff

And afterwards, to wit: on the 8th day of March in March Term A.D. 1852 of said Circuit Court, the said Plaintiff, by their Attorney filed in said Court with the Clerk thereof their declaration against the said Defendant, and also proof of notice to the defendant by publication: Which said declaration & notice are in the words and figures following to wit:

State of Illinois	} p.	In Circuit Court
of Davis County		To November Term 1851.

Matthew Murphy	}	Matthew Murphy and Michael Foley complain of Thomas F. Davis
Michael Foley		
Thomas F. Davis		

of a plea that he tender to the said Matthew Murphy and Michael Foley the sum of twenty five hundred and eighty dollar. and of lawful money which he owes to & unjustly detains from them. For that whereas heretofore to wit: on the twenty fifth day of June A.D. 1849. Moses Dougherty, Alexis Barker, Martin Donner and Amos F Culver at the said County of La Fayette, to wit: at the County of Jo Daviess aforesaid made their plaint to the said Robert M. Long then being Sheriff of the County of La Fayette aforesaid, out of the Circuit Court in & for the said County of La Fayette of the lateing & unjustly detaining of the goods & chattels of the said Dougherty Barker Donner & Culver by the said Plaintiffs in this suit And then & there prayed the said Sheriff Robert M. Long that the said goods & chattels might be forthwith replevied by the said Sheriff and delivered to the said Dougherty Barker Donner & Culver. And thereupon the said Robert M. Long so being Sheriff of the said County of La Fayette according to the form of the Statute in such Case made and provided did take from the said Dougherty, Barker Donner & Culver, & from the said Defendant & one Caleb Potwine as two responsible sureties, a Bond in double the value of the said goods & chattels (the value of said goods & chattels having been duly appraised according to law) And the said Moses Dougherty, Alexis Barker, Martin Donner, Amos F Culver, and the said defendant

Thomas F. Davis and one Caleb Potwine on the said
28th day of June AD 1849. at the said County of
La Fayette, to wit: at the County of Jo Davis aforesaid
by their certain writing obligatory, Sealed with their
respective seals, and now to the Court here shown,
the date whereof is, to wit: the day & year last aforesaid
did jointly & severally acknowledge themselves to be held
and firmly bound unto the said Robert M. Long, as
being Sheriff of the said County of La Fayette, in the
said sum of Twenty five hundred & Eighty dollars
above demanded to be paid to the said Robert M. Long,
Sheriff as aforesaid, his heirs, executors administrators
or assigns with a Condition thereunder written that
whereas the said Moses Dougherty, Alexis Barker, Martin
Donner & Amos F. Calver, had sued out a writ of
Replevin from the office of the Clerk of the Circuit
Court in & for the said County of La Fayette, in which
the said Donner, Barker, Dougherty & Calver were
the Plaintiffs & the said Matthew Murphy & Michael
Foley the now Plaintiffs, were defendants, & which
Writ had been placed in the hands of the said
Robert M. Long Sheriff as aforesaid, for service &
the said Sheriff had taken possession of the goods
& Chattels mentioned in said Writ, & was about to
deliver the same to the said Plaintiffs, Dougherty
Barker, Donner & Calver according to the exigencies
of the said Writ. Now if the said Plaintiffs should
proceed to this said Writ of Replevin with Effect &

without delay & if the said Defendants in said writ mentioned, the now Plaintiffs in this writ should recover judgment against them the said Plaintiffs in said writ mentioned, the said Plaintiffs would return the said goods & Chattels, if return thereof should be adjudged, and pay to the said Defendants, the now Plaintiffs all such sums of money as may be recovered against them by the said Defendants in said Action for any Cause whatsoever, then the said Obligation was to be void, otherwise of force, virtue and effect.

And thereupon the said Sheriff George, afterwards to wit: on the day and year last aforesaid at the said County of Lea Fayette, to wit: at the County of Goddard aforesaid, at the prayer of the said Moses Dougherty, Alexis Barker, Martin Ganner & Amos F Calvin replied & made deliverance of the said goods & Chattels to the said Dougherty Barker, Ganner & Calvin according to the duty of his said office.

And afterwards to wit at the September term A. D. 1849 of the aforesaid Circuit Court in & for the said County of Lea Fayette, the said Plaintiffs in the Replevin suit aforesaid by Robinson & Calvin their Attorneys declared against the said Matthew Murphy & Michael Foley in the said plea of unjustly detaining their said property,

and by the said declaration, the said Plaintiffs therein by the said Robinson & Colver their Attornies Complaind against the said Matthew Murphy and Michael Foley, that they the said Murphy & Foley on the 23rd day of June A.D. 1849, at the County of Lafayette aforesaid received the goods & Chattels more particularly described in the said declaration from the said Plaintiffs in said Replevin Suit and to be delivered to the said Plaintiffs when the said Defendants in said Suit should be thereunto afterwards requested, and that said Defendants although often requested so to do, had not delivered the same to the Plaintiffs or either of them, but refused so to do, to the damage of the said Plaintiffs, of One thousand dollars & therefore they brought suit &c

And such proceedings were thereupon had in the said Court upon the said Suit that afterwards to wit: at the August term A.D. 1851. of the said Court, it was Considered & adjudged in & by the said Court that the said Defendants do have, & recover against the said Plaintiffs Seventeen hundred dollars, the value of the goods & Chattels aforesaid, And also that they recover against the said Plaintiffs as damages the Sum of Two hundred & Eighteen dollars & ten cents, which said damages & value aforesaid amount in the whole to Nineteen hundred & Eighteen dollars & ten cents

And also that the said defendants do recover against the said Plaintiffs their proper Costs & Charges by them in their defence in this behalf expended, to be taxed, & that the said Defendants have execution therefor, And the said Plaintiffs be in mercy &c

And the said now Plaintiffs in fact further say, that the said Moses Dougherty, Alexis Barker, Martin Danner, & Amos F. Culver did not prosecute their said Action with effect against the said now Plaintiffs for the detaining the said goods & Chattels, or make a return of the said goods and Chattels, or any part thereof according to the form & effect of the said condition of the said Writing obligatory, but have wholly neglected & refused & still wholly neglect & refuse so to do

Whereby the said Writing obligatory became forfeited to the said Robert M. Long, so being Sheriff of the said County of Georgia as aforesaid. And the same being so forfeited the said Sheriff afterwards to wit on the first day of October A.D. 1851 at the County of Jos. Davis aforesaid, at the request & Costs of the said Plaintiffs herein by an indorsement on the said Writing obligatory duly assigned the said Writing obligatory to the said Plaintiffs.

& the said now Sheriff H. H. Braman then & there did
the same, as by the same assignments indorsed on the
said Writing Obligatory as aforesaid, & to the Court now
here shown, the date whereof is the day & year last
aforesaid may fully appear. By means whereof an
action hath accrued to the said Plaintiffs herein
to demand & have of & from the said Defendant Thomas
H. Davis the said sum of twenty five hundred and eighty
Dollars above demanded.

And these Plaintiffs aver that said Bond paid on
in this cause was made payable to Robert Mc Long
Sheriff of Lafayette County in the State of Wisconsin
his heirs, Executors, Administrators or assigns, and the
same was assigned by the said Robt. Mc Long in the
County of Lafayette in the State of Wisconsin, and by
the terms of said Bond under the laws of Wisconsin
the same was and is assignable so as to vest the
legal interest in the assigns thereof. And the assign-
ment of said Bond as aforesaid did vest the legal
interest in these Plaintiffs under and by virtue of the
laws of Wisconsin.

(Yet the said Defendant (although often requested so
to do) hath not as yet paid the said sum of twenty
five hundred and eighty dollars above demanded
or any part thereof to the said Robert Mc Long, or
to the said H. H. Braman, before the said assignment
to said Braman or to the said Plaintiffs

And for that whereas, hereunto, to wit: on the (25th) twenty fifth day of June A.D. 1849. Moses Dougherty, Alexis Barker, Martin Donner & Amos F. Calver, did give out of the office of the Clerk of the Circuit Court in & for the County of Lafayette, in the State of Wisconsin, a certain Writ of Replevin directed to the Sheriff of said County of Lafayette, to execute, and which said Writ required the said Sheriff, on the said Moses Dougherty, Alexis Barker, Martin Donner & Amos F. Calver giving the security required by law, to cause the goods & Chattels described in said Writ, as being unjustly detained by the now Plaintiffs herein, to be replevied & delivered to the said Moses Dougherty, Alexis Barker, Martin Donner & Amos F. Calver without delay: and, to summon the said Matthew Murphy and Michael Foley to appear before the Judge of the Circuit Court in and for the said County of Lafayette, on the third Monday of September A.D. 1849. to answer the said Moses Dougherty, Alexis Barker, Martin Donner & Amos F. Calver in the premises

And the said Sheriff Robert M. Lang, being about to replevy the said property according to the requisition of the said Writ according to the form of the Statute in such case made & provided, did take from the said Dougherty, Barker, Donner & Calver and from the said Defendant Thomas F. Davis, and one Caleb Potwin

as two responsible parties, a Bond in double the value
of the said goods & Chattels so about to be replevied
as aforesaid (the value of said goods & Chattels having
first been duly appraised according to law) Which
said Bond is in the words and figures following to
wit: Know all men by these presents that ^{Moses} ~~Mr.~~ ~~xxxxx~~
Gougherty, Alexis Barker, Martin Danner, and Amos
F. Calver as Principals and Thomas F. Davis & Caleb
Patterson as Sureties are held and firmly bound
unto Robert M. Long Sheriff of Lafayette County in
the State of Wisconsin in the penal sum of twenty
five hundred and eighty dollars lawful money of the
United States, for the payment of which well and
truly to be made to the said Robert M. Long Sheriff
as aforesaid, his heirs and executors, administrators or
assigns, we bind ourselves one and each of our heirs
executors, Administrators and Assigns, jointly and severally
firmly by these presents. Signed with our hands, and
sealed with our seals this 28th day of June A.D. 1849.

The Condition of the above Obligation is such
that whereas the above bounden Moses Gougherty,
Alexis Barker, Martin Danner, and Amos F. Calver
have paid out a Writ of Replevin, issuing from
and out of the office of the Clerk of the Circuit
Court in & for Lafayette County aforesaid, in
which the said Danner, Barker, Gougherty,
and Calver are Plaintiffs, and Masters Murphy

and Michael Foley, ^{are} Defendants. which said writ has been
placed in the hands of the said R. M. Long Sheriff as
aforesaid, for service, and the said Sheriff having taken
possession of the pile of lead ore in crash dirt, mentioned
in said writ, which said pile has been duly appraised
according to law, at the sum of twelve hundred and
ninety dollars, and the said Sheriff being now about to
deliver the said pile of lead ore in crash dirt to the
said Plaintiffs according to the exigencies of the said
writ. Now if the said Plaintiffs shall prosecute their
said writ of Replevin with effect and without delay & if
the said Defendants recover judgment against them
in said action, return the same, if the return thereof
be adjudged and pay to the said Defendants all such
sums of money as may be recovered against them
by the said Defendants in said action, for any cause
whatsoever then the above obligation to be void,
otherwise of force virtue and effect -

Done in presence of	{ Moses Dougherty	Real
Benjamin Sallee witness for	{ Alexis Barker	Real
the four Principals.	{ Martin Donner	Real
Selden Trimby witness for	{ Amos F. Culver	Real
Thomas F. Davis.	{ Thomas F. Davis	Real
Robert Robinson witness for	{ Coler Patwine	Real
Patwine		

State of Wisconsin }
County of Lafayette }

Caleb Patmore being duly sworn according to law doth depose & say, that he is worth the penalty of the within Bond over and above his just debts & legal liabilities.

Sworn to and subscribed before me Caleb Patmore
this 25th Day of June A.D. 1849.

Robert Robinson Commissioner
Lafayette Co. Wis.

State of Wisconsin }
County of Lafayette }

Thomas F. Davis being duly sworn according to law doth depose and say that he is worth the penalty of the within Bond over and above his just debts and legal liabilities.

Sworn to and subscribed before me T. F. Davis
this 25th Day of June A.D. 1849.

C. C. Lockhart

Justice of the Peace

And upon which said Bond appears the following assignments: To Wit- J. H. H. Braman Sheriff of Lafayette County in the State of Wisconsin and obligee in the within Bond, in consideration of the sum of one dollar & one in hand paid by Matthew Murphy and Michael Foley, the receipt whereof is fully

acknowledgid, and in pursuance of the Statute in
such Cases made and provided, I do by these presents
assign, Transfer and absolutely vest in said Michael
Foley and Matthew Murphy, all my right, title and
interest in and to the within and foregoing Bond
October first A.D. 1857.

H. H. Praman Sheriff of
Lafayette County Wisconsin

I Robert M Long late Sheriff of Lafayette County in the
State of Wisconsin and obligor in the within Bond
in Consideration of the sum of One dollar to me in
hand paid by Matthew Murphy and Michael Foley
the receipt whereof is hereby fully acknowledged, and
in pursuance of the Statute in such Case made & provided
I do by these presents, assign, Transfer, set over, and
and absolutely vest in said Matthew Murphy and
Michael Foley all my right-title and interest to
the within & foregoing Bond.
October first A.D. 1857.

Robert M Long late
Sheriff of Lafayette County
Wisconsin

Filed in the Clerks office this 17th day of Sept 1849
Sam. G. Bugh Clerk.

And upon the execution and delivery
of the said Bond by the said Plaintiffs in the said
Replevin Suit to the said Sheriff Robert M. Long
be the said Sheriff afterwards, & wit: on the day and
year aforesaid, & wit: on the 23rd day of June A.D. 1849,
at the said County of Lafayette, & wit: at the County of
Jo Daviess aforesaid, at the prayer of the said Plaintiffs
in said Replevin Suit; replevied the said goods &
chattels and delivered the same to the said Plaintiffs
in said Suit according to the duty of his said office.

And thereupon afterwards, & wit: at the September
Term A.D. 1849, of the aforesaid Circuit Court - in & for the
said County of Lafayette, the said Plaintiffs in said
Replevin Suit, by their Attorneys filed their declaration
against the said Matthew Murphy and Michael Foley
in the said plea of unjustly detaining their said
property.

And such proceedings were thereupon had
in the said Circuit Court - upon the said Suit; that
afterwards, & wit: at the August Term A.D. 1851, of said
Court a judgment was rendered by the said Court
against the said Plaintiffs in the said Replevin Suit
& in favor of the said Defendants in said Suit; the
now Plaintiffs herein for the sum of Seventeen hundred
- ed dollars, the value of the goods & Chattels aforesaid
and the sum of Two hundred & eighteen dollars & ten
cents, Damages which said damages & value

aforsaid amount in the whole to the sum of
Nineteen hundred and eighty dollars & two cents,
And also for the Costs & Charges of the said De-
fendants in said Suit in that behalf expended.

And the said Plaintiffs (Matthew Murphy
and Michael Foley in fact further say that the
said Dougherty, Barker, Souner and Culver did not
prosecute their said Action with effect against
them, for the detaining the said goods and Chattels
nor make return the same, nor have they paid
to said Plaintiffs herein the sum of Money, or
any part thereof, ^{received} as aforsaid by the said
Murphy and Foley against the said Plaintiffs in
the said Replevin Suit, according to the form and
effect of the said Condition of the said Writing
Obligatory, but have wholly neglected and refused & still
wholly neglect & refuse so to do.

Whereby the said Bond or writing obligatory became
forfeited to the said Robert M. Long so being Sheriff
of the said County of La Fayette as aforsaid.

And the same being so forfeited the said Sheriff
afterwards, & viz: on the first day of October A.D. 1857.
at the request of the said Plaintiffs forced by an

"And these Plaintiffs aver that said Bond
sued on in this case was made payable to Robert
Mc Long Sheriff of Lafayette County in the State of
Wisconsin, his heirs executors administrators or assigns
and the same was assigned by the said Robert Mc
Long in the County of Lafayette in said State of
Wisconsin. And by the Laws of Wisconsin said Bond
was and is assignable so as to vest the legal interest
in the assignee thereof. And the assignment of said Bond
as aforesaid did vest the legal interest in these Plaintiffs
under and by virtue of the Laws of Wisconsin.

Whereby the said Bond or writing obligatory be-
came forfeited to the said Robert Mc Long as
being Sheriff of the said County of Lafayette as afo-
said. And the same being so forfeited the
said Sheriff afterwards, to wit: on the first day of
October AD 1857 at the request of the now Plaintiffs
herein by an indorsement on the said Writing
obligatory to the said Matthew Murphy & Michael
Foley according to the form of the Statute in such
Case made & provided, as will fully appear by
the same assignment indorsed on said Writing
obligatory dated the day & year last aforesaid &
now to the Court here shown. By reason whereof
& by force of the Statute in such Case made &
provided, an action hath accrued to the said

Plaintiffs herein, assignees of the said Robert M. Long so being Sheriff of the said County of La Fayette as aforesaid, to demand and have^{of} from the said Defendants Thomas F. Davis the said sum of Twenty five hundred & eighty dollars above demanded.

(Yet the said defendant (although often requested so to do) hath not as yet paid the said sum of Twenty five hundred & eighty dollars or any part thereof to the said Robert M. Long before the said assignment, or to the said Plaintiffs assignees as aforesaid.

To the Damage of the said Plaintiffs, as assignees as aforesaid of One Thousand Dollars, & thereupon they bring suit &c.

By Johnson & Douglass.
Plffs Attorneys

Endorsed

Filed March 8th 1852

Wm H. Bradley Clerk.

State of Illinois }
In Daviess County } In the Daviess County)
Circuit Court of said County &
March term A.D. 1852.

Matthew Murphy & }
Michael Foley } Attachment

vs

Thomas F. Davis } Public notice is hereby given to the
said Thomas F. Davis that a writ

of Attachment, issued out of the Clerk's office of the Circuit Court in and for the County of Jo Davis and State of Illinois at the Suit of Matthew Murphy and Michael Foley, and against the Estate of the said Thomas F. Davis, for the sum of Nineteen hundred and Ninety three dollars and seventeen cents, dated the 26th day of December A. D. 1887, directed to the Sheriff of said County to execute which said writ has been returned by the said Sheriff into the said Clerk's office, with the following being endorsed thereon, to wit: "I have, this 26th day of December A. D. 1887, levied this writ upon all the right title, and interest of the within named Thomas F. Davis in and to the following described Real Estate, situated and being in the County of Jo Davis and State of Illinois, to wit: The South half of the Northeast quarter, and East half of the North West quarter of Section No 1 one Township No 28 Twenty eight Fourth of Range 4 Four East and the East half of Section (5) five, and the East half of the North East quarter of the Northwest quarter of Section (6) Six, in Township 28 Twenty Eight North of Range 5 Five East and fraction of West half of the Northwest quarter of Section (5) five, and the East half of the Northeast quarter of Section (6) Six in Township 28 Twenty Eight of Range 5 Five East. — fraction 5, 3/100 acres, the South half of the North West quarter of

Section Six (6) in Township (28) Twenty eight, Range (3) Five East of the Fourth Principal Meridian. 83. $\frac{1}{4}$ 100 acres East half of the Northwest quarter of the Southeast quarter of Section (3) Three; Also the Northwest quarter of the Southwest quarter of Section (2) Two - Also (10) Ten acres off the West part of the Northwest quarter of the Southwest quarter of Section (2) Two Township (28) Twenty eight, Range No (4) Four East (10) acres. Together with the appurtenances thereto belonging. Now unless you the said Thomas F. Davis, shall personally be and appear before the Judge of the said Circuit Court, on the first day of the next term thereof, to be holden at the Court House in Galena on the second Monday in the Month of March next give special bail, and plead to the said Plaintiffs action Judgement will be rendered against you, in favor of the said Matthew Murphy and Michael Foley and the said Estate so attached as aforesaid, will be sold to satisfy the same with Costs. Wm. H. Bradley Clerk
Messrs Douglas & Johnson Plaintiffs Attorneys
Galena, January 6. 1852.

This to certify that the notice a copy of which is herewith annexed was published in the Galena Daily Adventurer and Northwestern Gazette a newspaper published in Galena, Illinois, four weeks successively. The first of which publication was on the Eighth day of January A.D. 1852 and the last on the Seventeenth day of February A.D. 1852.

Wm H Houghton & Co Publishers of said Paper.
Endorsed Filed March 8th 1852

Jess H. Bradley Clerk.

And afterwards & wit: on the tenth day of March A.D.
1852. in March Term A.D. 1852 of said Circuit Court
in the Record of the proceedings there in said Cause
is the following entry to wit:

Matthew Murphy &

Michael Foley

vs

Thomas G Davis

} Attachment

On motion of the Plaintiffs by
their Attorney, the Defendant is ruled by the Court
to plead within twenty days

And afterwards & wit: on the 29th day of March
A.D. 1852. the said Defendant by his attorney filed in
said Court with the Clerk thereof his answer
to the Plaintiffs declaration. Which said answer
is in the words and figures following & wit:

Matthew Murphy &
Michael Foley

vs

Thomas G Davis

} In the Jr Davis Circuit
Court. of the May Term
A.D. 1852.

And the said Defendant by

Higgins & Strother his Attorneys comes & defends the wrong
& injury when &c, and says that the said declaration
& the matters & things therein contained in manner &
form as the same are above stated & set forth, are not
sufficient in law for the said Plaintiffs to have or main-
tain their aforesaid Action there against the said de-
fendant & 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 defendant prays
judgment, & that the said Plaintiff may be barred from
having, or maintaining his aforesaid Action there against
-not him &c,
Higgins & Strother Attorneys
for Defendant

Endorsed

Filed March 21st 1852.

Wm H Bradley Clerk

And afterwards to wit: on the 14th day of May, in the
May term A.D. 1852 of said Court, in the record
of the proceedings there in said cause, is the
following entry, to wit:

Matthew Murphy & }
 Michael Foley }
 vs } Attachment
 Thomas F. Davis }

Our Motion of the defendant by
 his Attorney leave is granted him by the Court to with-
 draw his demurrer and plead.

And afterwards to wit: on the 15th day of May in said
 May Term A.D. 1852 of said Court said defendant
 by his Attorney filed in said Court his Pleas, which
 are in the words & figures following, to wit:

Matthew Murphy & }
 Michael Foley } In the 1st Davis's Circuit Court
 vs } of the May Term A.D. 1852.
 Thomas F. Davis }

No 1st Plea

And the said defendant
 comes & defends the wrong & injury when &c.
 And says that he does not owe the said sum of
 money in the said Plaintiffs declaration mentioned nor
 any part thereof in manner & form as is in said decla-
 ration alleged. And of this he puts himself upon
 the Country &c.

And P^lff doth likewise
 Higgins & Strother Atty.

And P^lff doth likewise

Douglas & Johnson Atty

No 2. Plea

And for a further plea in this behalf the said defendant says Actio Non, because he says that the said supposed Writing Obligatory in the said declaration mentioned was made & executed in the State of Wisconsin & that the same is governed by the Laws of the said State of Wisconsin. And that it is provided among other things in & by the said Laws of the said State of Wisconsin in the Revised Statutes of said State, published A.D. 1849. Chapter One Hundred & Nineteen Section Eighth 15th That "After the Sheriff has taken the property, the Plaintiff in the action or some one in his behalf shall execute a bond to the Sheriff, or other officer to whom the writ is directed, with the addition of his name of office with sufficient sureties, who shall swear that they are each worth the amount of the penalty of the Bond, over and above all debts, or who shall be accepted by the defendant, in a penalty at least double the value of the property specified in the writ: Which value shall be ascertained by the oath of one or more disinterested witnesses to be sworn and examined by the Sheriff. Such Bond shall be conditioned that the Plaintiff shall prosecute to effect & without delay, and that if the Defendant recover judgment against him in the action, he will return the same property if return thereof be adjudged & will pay to the defendant all such sums of money

as may be recovered against him by such defendant in the said Action for any Cause whatever"

And that in & by the said Statute of Wisconsin in said Chapter in the 13th Section thereof it is among other things provided "That the Sheriff shall return the writ immediately after the service thereof & shall transmit therewith the Bond to him delivered". And that by the 31st Sec. of the said Chapter of said Statute of Wisconsin it is provided that "If the property specified in the writ has been delivered to the Plaintiff and the Defendant recover judgment by discontinuance or non suit, such judgment shall be that the defendant have return of the goods & Chattels replevied, unless he shall elect to waive such return pursuant to any of the provisions hereinafter contained and also that he recover the damages sustained by him by reason of the detention of such goods & Chattels. Which Damages shall be assessed by a writ of inquiry"

And by the 32nd Sec. "Whenever a defendant shall obtain judgment by default or in any other manner, after having pleaded any matter which if admitted by the Plaintiff would be sufficient in law to entitle such defendant to a return of the property replevied he shall be entitled to the like judgment as provided in the last Section" viz in the 31st Section. And by the 33rd Section of said Chapter it is among other things provided that"

"The defendant- whenever he shall be entitled to a return of the property replevied, instead of taking judgment for such return as above provided, may take judgment, or the value of the property replevied, in which case such value shall be ascertained by the jury on trial, or by a writ of Inquiry as the case may require"

And it is further provided in & by the 37th Section of the said Chapter "Whenever judgment shall be rendered against a Plaintiff in an action of Replevin, it shall be rendered against him & the securities in the Bond given in his behalf in pursuance of the provisions of this Chapter, if any such Bond shall have been given, & execution shall issue against all with the like effect as if they had been parties to the suit"

And the said defendant avers that the foregoing are the only provisions of law concerning the said Replevin Bonds, or Writings obligatory in the said State of Wisconsin, and that by the laws of the said State of Wisconsin in force at the time of the execution of said Bonds or writings obligatory in the said declaration mentioned, the same were not & are not assignable so as to vest a right of action in the assignee thereof, nor was there any law of any kind in force in said State at the time of the execution & delivery of said Bonds or Writings obligatory, which authorized an assignment thereof so as to vest any right of action whatever in the assignee thereof.

now has there been any law in force in said State of Wisconsin since the execution of said Bond authorizing the assignment thereof so as to vest any right of action in the assignee. And this the said defendant is ready to verify. Wherefore he prays judgment.

Higgins & Brothers Atty for Def

No 3rd Plea And for a further plea in this behalf the said Defendant says Actio Non, because he says that the said judgments in the said declaration mentioned & each of them were fraudulently confessed by the said Defendant Culver with the view & design of defrauding this defendant. And that the said Culver for himself and in his character of Atty for the other Defendant in said Suit, for a consideration to him paid by the said Plaintiffs or by their procurement, did fraudulently & without the consent of this defendant, or said C. Potwine confess the said judgment with the design of defrauding this defendant & that the said property was not the property of the said Plaintiffs as the said Culver fraudulently admitted & that he the said Culver & the said Murphy & Foley well knew the same, and this the said defendant is ready to verify. Wherefore prays judgment &c.

No 4th Plea

And for a further plea in this behalf the said defendant says Actio Non. because he says that the said Defendant was only

a surety in said Bonds or Writings obligatory in said declaration mentioned, and that the Plaintiffs corruptly & fraudulently ^{agreed} ~~agreed~~, without the knowledge or consent of this defendant, & with the Plaintiffs in said Replevin suit, that they would not collect the amount of the said judgment from them or either of them until they had exhausted their remedy at law against this defendant, & corruptly agreed, without the consent of this Defendant or his knowledge, that the amount of the said judgment should be made out of the property of this defendant before any thing should be collected of the Plaintiffs in the said Replevin suit. And this the said defendant is ready to verify. Wherefore he prays judgment.

Higgins & Strother

Attys for deft.

No 5th Plea And for a further plea in this behalf the said defendant prays action non because he says that he was only a surety in said Bond or Writing obligatory in said declaration mentioned and that the Plaintiffs herein fraudulently and corruptly agreed to & with the Plaintiffs in said Replevin suit for a valuable consideration & the said Plaintiffs herein paid by the Plaintiffs in said Replevin suit (which agreement was without the knowledge or consent of the Defendant) that they would give their time

on said judgment and would not enforce the Call-
ation therey against the Plaintiffs in said Replevin
Suit until they had exhausted their remedy at law
against the defendant and until they obtained full
satisfaction on said Bond out of the said Defendant
and his property, in case the same could be done

And this the said Defendant is ready to
verify Wherefore he prays judgment

Higgins & Strother

for Deft

Endorsed

Filed May 15th 1852

Wm. H. Bradley Clerk

Martian Murphy & }
Michael Foley } In for Davies Circuit Court
vs } May Term 1852.
Thomas F. Davis }

And for a further plea in this
behalf the said Defendant says Adio non, because he
says that the said Plaintiffs heretofore, to wit on the
day of ^{Aug} 1851 in the Circuit ^{Court} of La Fayette
County in the State of Wisconsin, at the August Term
of said Court in a certain plea of Replevin recovered
judgment against the said Moses Dougherty, Alex
Barker, Martin Donner and Amos F. Culver, for

and in respect of the same identical debt and Cause of Action in the said declaration mentioned and afterward &c. writ. on that same Term the said Plaintiff by the consideration and judgment of said Court ^{recovered} ~~received~~ in the said Plea against the, said Moses Doughty, Alexis Barker, Martin Tanner and Amos F. Culver, the same identical debt & Cause of Action, the sum of 1700 dollars, the value of the goods & chattels in said Replevin Suit and 218 ⁴⁰/₁₀₀ dollars damages aforesaid, making said sum of 1918 ⁴⁰/₁₀₀ dollars as by the record and proceedings thereon still remaining in said Court more fully and at large appears. Which said judgment still remains in full force and effect, not in the least revised, satisfied or made void.

~~But~~ ^{And} the said Defendant avers that the said judgment so recovered was for the identical Cause of Action in said declaration mentioned and this he is ready to verify. Wherefore he prays judgment &c.

Wiggins & Strother

for Deft

Condoresed

Filed May 15th 1852.

Geo. H. Bradley Clerk

And afterwards to wit: on the 24th day of August A.D.
1852 in August term A.D. 1852. of said Circuit Court
the said Plaintiffs by their Attorney filed in said Court
their demands & the Defendants pleas in the words and figures
following, to wit:

Matthew Murphy & } In Circuit Court. To Saver's
Michael Foley } County Illinois. August term
vs } A.D. 1852.
Thomas F. Davis }

The said Plaintiffs by their Attorney
come & say as to first Plea of said deft. that said
plea is insufficient in law for &c. Wherefore &c.
Johnson & Douglass
attys for Pltffs

Said Defendants say that said plea is sufficient,
Wherefore they pray judgment &c
Haggins & Strother
attys for depts

And said Plaintiffs as to second plea of said
deft. come & say that said plea is insufficient in
law for said deft. &c. Wherefore &c
Johnson & Douglass attys
for Pltffs

Said defendant says that said plea is sufficient
Wherefore &c. Higgins & Strother Attys
for Dept

And said Plaintiffs as to third plea of said Dept. come &
say that said plea is insufficient in law &c. Wherefore &c.
Johnson & Douglass
Attys for Pltffs

Said Defendant says that said plea is sufficient
Wherefore &c. Higgins & Strother
Attys for Dept

And said Plaintiffs as to fourth plea of said Dept
say that said plea is insufficient in law for said
Dept &c. Wherefore &c. Johnson & Douglass
Attys for Pltff

Said Defendants say that said plea is sufficient. Wherefore &c.
Higgins & Strother Dept Attys

And said Plaintiffs as to fifth plea of said Dept
say that said plea is insufficient in law &c. Wherefore &c.
Johnson & Douglass Attys for Pltffs.

Said Defendant says that said plea is sufficient. Wherefore &c.
Higgins & Strother Attys
for Dept

And said Plaintiffs as to Sixth Plea of said
Defendant say that said Plea is insufficient in law
&c. Wherefore they pray Judgment &c.

Douglass & Johnson
Atty's of Plffs

Said Defendant says said Pleas is sufficient.
Wherefore &c. Higgins & Strother

Atty for Deft

Endorsed

Filed August 24th 1852.

Wm H. Bradley Clerk

And on the same day & wit: the 24th day of August
A.D. 1852. in said August Term of said Court in the
Record of the Proceedings thereof in said Cause, is the
following entry & wit:

Mantew Murphy &	} Attachments
Michael Foley	
vs	
Thomas F. Davis	{ The Plaintiffs by their Attorney file their demurrers to the first, second, third, fourth, fifth, & sixth, Pleas of the Defendant, and the said Plaintiffs by their Attorney move the Court to strike out parts of their declaration as surplusage, which motion is sustained by the Court and on motion of the Defendant by his Attorney, leave is granted him by the Court to file Additional Pleas.

And afterwards. & wit: on the 26th day of August
in said August term A.D. 1852 of said Court the said
Defendant by his Attorney filed in said Court his
Additional Pleas, which are in the words and figures
following & wit:

Matthew Murphy & Michael Foley vs Thomas F. Davis	} To Javiers Circuit Court To the August term A.D. 1852.
--	---

And for a further plea in this be-
half; the said Defendant says Action now because
he says that the said Bonds & Writings obligatory
in the first & second Counts of the Plaintiffs declar-
ation mentioned were executed in the State of Wisconsin
And that by the law of the said State of Wisconsin
it is among other things provided that: "Whenever
Judgment shall be rendered against a Plaintiff in
an Action of Replevin, it shall be rendered against
him and the securities in the Bond given in his
behalf in pursuance of the provisions of law, if
any such Bond shall have been given, and
execution shall issue against all, with the like effect
as if they had been parties to the suit"

And this defendant avers that the only provision
of law referred to in said law of Wisconsin is
contained in the following words.

"After the Sheriff has taken the property, the Plaintiff in the action, or some one in his behalf shall execute a Bond to the Sheriff or other officer to whom the writ is directed, with the addition of his name & Office, with sufficient Sureties who shall swear that they are each worth the amount of the penalty of the Bond, over and above all debts, or who shall be accepted by the Defendant in a penalty, at least double the value of the property specified in the writ; which value shall be ascertained by the oath of one or more disinterested witnesses, to be sworn & examined by the Sheriff. Such Bond shall be conditioned that the Plaintiff will prosecute the Suit to effect, & without delay, and that if the Defendant recover judgment against him in the action, he will return the same property, if return thereof be adjudged, & will pay to the Defendant all such sums of money, as may be recovered against him by such Defendant in the said action, for any Cause whatever."

And this defendant avers that in pursuance of said law of Wisconsin the said Bonds & Writings obligatory in said declaration mentioned, were executed & that this defendant & one Caleb Potwine became the sureties in said Replevin Bond in pursuance of said laws of Wisconsin, and this defendant avers that by the said law of Wisconsin, he became liable to have a judgment rendered against him, together with the said Plaintiff in said Replevin Suit, and one Caleb Potwine, his

cosecurity in said Replevin suit,
And the Defendant further avers, that although the
said Matthew Murphy & Michael Foley, by the said law
of Wisconsin were entitled to a judgment against the
securities in said Replevin Bond; yet that they elected
to take judgment against the principals in said Bond
& the Plaintiffs in said Replevin Suit without adding
either this defendant or the said Caleb Potwine in said
judgment, or in any manner making them parties thereto
& this defendant avers that no judgment whatever was ren-
dered in said Replevin suit against this defendant or
the said Caleb Potwine, and that by agreement made
between Amos F Culver, for himself & as Attorney for said
Plaintiffs in said Replevin suit, and said Murphy &
Foley, judgment was to be rendered in favor of said
Plaintiffs Murphy & Foley, in said Replevin suit, and
against said Culver, Dougherty, Barker & Lariman the
Plaintiffs in said Replevin suit, and was not to be
rendered against said Potwine or this defendant in said
action.

And this the said Defendant is ready to verify
Wherefore he prays judgment &c

Higgins & Strother

No 8 Plea.

And for a further plea in this behalf
the said Defendant says Action non, because he says
that the said Bonds in the said declaration mentioned

were made & delivered in the State of Wisconsin & because the said Bond is governed by the laws of Wisconsin, and that in & by the laws of said Wisconsin judgment must be rendered against the sureties in the Replevin Bond, in the action of replevin, whenever it is rendered against the Plaintiff in Replevin, & that execution should issue with like effect against all as if they had been parties in the suit.

And said Defendant - avers that the said Murphy for himself and his co-plaintiffs, said Foley did fraudulently & corruptly agree with the design of defrauding this Defendant, with Amos F. Culver one of the plaintiffs in said Replevin suit, acting for himself and as Attorney for the other Plaintiffs, but without their assent, that judgment should be rendered against said Plaintiffs, for the value of the said Personal replevin in said Replevin suit. And the said Matthew Murphy, did then & there fraudulently & corruptly agree to take judgment in said Replevin suit against said Plaintiffs therein and for the purpose of defrauding this Defendant - who was then absent in the State of California, did fraudulently & corruptly agree that he would exhaust his remedy against this Defendant, and obtain full satisfaction in said Cause on said Bond, from & out of this Defendant or his property, if this Defendant had sufficient property, out of which satisfaction could be obtained

either in the State of Wisconsin or Illinois, and this defendant avers that it was then & there well known to said Murphy & Culver that this defendant was only a surety in said Bond, and that he had sufficient property in Real Estate out of which satisfaction could be obtained, in Illinois & Wisconsin. And this defendant avers that said agreement was fraudulently & corruptly made, with intent to injure prejudice & defraud this defendant as surety as aforesaid, and that in pursuance of said fraudulent agreement said judgment in said Replevin suit was entered against the Plaintiff in said Replevin suit alone & not against the sureties in said Bond neither this Defendant nor the said Caleb Patwine against whom judgment should have been rendered to make said sureties liable according to the laws of Wisconsin, and this defendant avers that judgment was fraudulently rendered against said Plaintiff in said Replevin suit, without, at the same time being rendered against the sureties in said Replevin Bond & purposely omitted to take judgment against the other sureties in said Replevin Bond, said Caleb Patwine who then & there had sufficient property out of which said judgment could have been made, or the greater part thereof, but with a view to defraud this Defendant. No judgment whatever was rendered against said Patwine in said Replevin suit.

And this the said Defendant is ready to
verify. Wherefore he prays judgment &c

No. 9. Plea. And for a further plea in this
behalf said Defendant says Actio now, because he says
that that the said Plaintiffs fraudulently & corruptly
& with the design of defrauding this Defendant, procured
the said Amos F Culver to enter into a stipulation &
confess judgment in favor of said Murphy & Foley
and & procured, with the design of defrauding this de-
fendant admissions from said Culver which were untrue,
viz. that said mineral in said declaration, viz. said
Replevin suit mentioned was the property of said
Murphy & Foley; whereas in truth & in fact the said
mineral was not the property of said Murphy &
Foley which said Culver and said Murphy & Foley
well knew, but fraudulently, with the design of def-
-rauding your orator, the said Murphy & Foley pro-
-cured said Culver to admit. Upon which said ad-
-mission, the said judgment was rendered, & this.

Defendant avers that the said Murphy & Foley sold
all the interest which they had in & to said mineral
before said fraudulent agreement, to one Dennis Murphy
who, before said fraudulent agreement between said
Culver & Murphy & Foley replevied the said mineral
from said Culver. Barker, Dorman & Dougherty &
which said Murphy & Foley & Culver well knew, but
took the same from them, with the design of

Defrauding this Defendant did corruptly agree to
dismiss said last named suit in favor of said Jennie
Murphy & he procured said Jennie Murphy to withdraw
his replevin Bond executed by him in said last named
case, & said Culver did then & there fraudulently agree
that said property was the property of said Jennie
Murphy, which was all done with the view of defraud-
ing this Defendant & to his prejudice, whereby this
Defendant was defrauded & injured. And this the
said Defendant is ready to verify. Wherefore he
prays judgment &c

Higgins & Strother
Atty for Deft

Endorsed

Filed Aug 26th 1852

Wm. H. Bradley Clerk

And afterwards, to wit: on the 27th day of August
in said August Term A. D. 1852. of said Court the said
Plaintiffs, by their Attorney, filed in said Court their
demurrer to the 7th, 8th & 9th Pleas of the Defendant
which are in the words and figures following, to wit:

Murphy et al {

vs

Davis

} In the Circuit Court of Jo. Davis
County Illinois. August Term 1852.

And the said Plaintiffs by their Attorney
come and pay as to the Seventh plea, by the Defendant

pleaded that said plea is insufficient in law, And
they are not bound to answer the same. Wherefore
they pray judgment &c

Douglas & Johnson, Attys
for Plff

And the said Plaintiffs by their Attorney come and
say as to the eighth plea by the said Defendant
pleaded, that said plea is insufficient in law, And
they are not bound to answer the same.

Wherefore they pray judgment &c

Douglas & Johnson Plff Attys

And the said Plaintiffs by their Attys come and
say as to the ninth plea by the said defendant
pleaded, that said plea is insufficient in law, And
they are not bound to answer the same
Wherefore they pray judgment &c

Douglas & Johnson Plff Attys

Endorsed

Filed Augt 27th 1852

J^{ms} H Bradley Clerk

Refiled Nov 29th 1852

J^{ms} H Bradley clk

And afterwards, to wit: on the same day, to wit on the 27th day of August in said August Term A.D. 1852 of said Court, in the Record of the proceedings thereof in said Cause, is the following entry to wit:

Matthew Murphy &
Michael Foley } Attachment
vs

Thomas F. Davis } Now at this day came on to be heard the demurrers of the Plaintiffs heretofore filed, & the first, second, third, fourth, fifth, sixth, seventh, eighth, and ninth pleas of the defendant. Which after argument by Counsel are taken under advisement by the Court.

And afterwards, to wit on the 28th day of August in said August Term A.D. 1852 of said Court, in the Record of the proceedings thereof in said Cause is the following entry to wit:

Matthew Murphy &
Michael Foley } Attachment
vs

Thomas F. Davis } The Court having fully considered and being fully advised upon the demurrers of the Plaintiffs heretofore filed & the pleas of the defendant, sustains the same to the declaration.

and on motion of the Plaintiffs by their Attorney, leave is granted them to amend their declaration, by manday morning next.

And afterwards to wit on the 30th day of August in said August term 1852. of said Court in the Record of the Proceedings therey in said Cause is the following entry to wit:

Matthew Murphy & }
Michael Foley } Attachment

vs
Thomas F. Davis } On motion of the Plaintiffs by their Attorney the time is extended twenty days, within which ~~time~~ the Plaintiffs may amend their declaration.

And afterwards to wit: on the 21st day of September A.D. 1852 the said Plaintiffs by their Attorney filed in said Court an additional Count to their declaration, which is in the words and figures following. To wit:

" And for that whereas, heretofore, to wit on the twenty fifth day of June One thousand eight hundred and forty nine Moses Dougherty, Alexis Barker, Martin Gorman and Amos F. Culver, did sue out of the office of the Clerk of the Circuit Court in and for the County of Lafayette and State of Wisconsin, a certain Writ of Replevin.

directed to the Sheriff of said County of La Fayette, to execute
And comply with said writ requiring the said Sheriff, on the said
Moses Dougherty, Alexis Barker, Martin Gormer and Amos F.
Culver, giving the security required by law, to cause the goods
and Chattels described in said writ, as being unjustly demand-
ed by the new Plaintiffs herein to be upheld and delivered
to the said Moses Dougherty, Alexis Barker, Martin Gormer
and Amos F. Culver without delay, and to summon the
said Matthew Murphy and Michael Foley to appear before
the Judge of the Circuit Court, in and for said County of
La Fayette, on the third day of September One thousand eight
hundred and forty nine (1849) to answer the said Moses
Dougherty, Alexis Barker, Martin Gormer and Amos F. Culver
in the premises.

And the said Sheriff Robert M. Long being
about to reply the said Property according to the require-
ments of said writ, according to the form of the Statute in
such cases made and provided did take from the said
Moses Dougherty, Alexis Barker, Martin Gormer and Amos
F. Culver, and from the said defendant Thomas H. Davis
and one Robert Paterno as two responsible sureties a Bond
in double the amount or value of the said goods and Chattels
so about to be upheld, as aforesaid.

The value of said goods and Chattels (first having been
duly appraised according to Law) which said Bond is in
the words and figures, to wit:

" Know all men by these presents that we Moses Doughty, Alexis Barker, Martin Donner and Amos F. Culver as principals and Thomas F. Davis & Caleb Patwine as sureties are held and firmly bound unto Robert M. Long Sheriff of LaFayette County in the State of Wisconsin in the penal sum of twenty five hundred and eighty Dollars lawful money of the United States, for the payment of which well and truly to be made to the said Robert M. Long Sheriff as aforesaid his heirs, executors administrators or assigns are bind ourselves, one and each of our heirs executors, administrators and assigns jointly and severally firmly by these presents signed with our hands, and sealed with our seals, this 25th day of June A.D. 1849.

The Condition of the above Obligation is such that whereas the above bounden Moses Doughty, Alexis Barker, Martin Donner and Amos F. Culver have sued out a writ of replevin issuing from and out of the Office of the Clerk of the Circuit Court, in and for LaFayette County aforesaid, in which the said Donner, Barker, Doughty and Culver are Plaintiffs and Matthew Murphy and Michael Foley are Defendants, which said Writ has been placed in the hands of the said R. M. Long Sheriff as aforesaid for service, and the said Sheriff having taken possession of the pile of Lead ore in which is mentioned in the writ which said pile has been duly appraised according to law at the sum of twelve

hundred and ninety dollars, And the said Sheriff
 being now about to deliver the said pile of lead ore
 in wash dirt, to the said Plaintiffs according to the rigour
 of the said writ. Now if the said Plaintiffs shall
 prosecute their said suit of Replevin with effect, and with-
 out delay and if the said Defendants recover judg-
 -ment against them in said action, return the same
 property, if the return thereof be adjudged and pay to
 the said Defendants all such sums of money as
 may be recovered against them by the said Defendants
 in said action for any cause whatever. Then the above
 obligation to be void: Otherwise, of force, virtue and
 effect.

Done in presence of Benjamin	{	Moses Dougherty	Read
Salle witness for the four principals		Alexis Barker	Read
Seldon Quimby witness for	{	Martin Donnis	Read
Thomas F. Davis.		Amos F. Culver	Read
Robert Robinson witness for	{	Thomas F. Davis	Read
Potwine		Caleb Potwine	Read

State of Wisconsin }
 County of La Fayette }
 Caleb Potwine being duly sworn
 according to Law doth depose
 and say that he is worth the penalty of the within Bond
 over and above his just debts and legal liabilities
 Caleb Potwine

Sworn to and subscribed, before me this 25th Day of June
A.D. 1849. Robert Robinson Court Commissioner
La Fayette, Co. Wis.

State of Wisconsin }
County of La Fayette } Thomas F. Davis being duly
sworn according to law, doth
depose and say that he is worth the penalty of the within
Bond, over and above his just debts and legal liabilities.
T. F. Davis

Sworn to and subscribed
before me this 25th day of
June A.D. 1849.

O. C. Lockhart Justice of the Peace
Endorsed on the back of said
Bond. Filed in the Clerks Office this 17th day of Sept 1849
Sam. G. Bugh Clerk

And upon which said Bond appears the following assign-
ments. To Wit.

J. H. H. Braman Sheriff of La Fayette
County in the State of Wisconsin and Oblige in the
within Bond, in consideration of the sum of One Dollar
to me in hand paid by Matthew Murphy and Michael
Foley, the receipt whereof is hereby fully acknowledged
and in pursuance to the Statute in such cases made
and provided, I do by these presents, Assign, Transfer,

and absolutely vest in said Michael Foley and Matthew Murphy all my right, title and interest, in and to the within and foregoing Bond.

October First A.D. 1857. H. H. Braman Sheriff of
La Fayette County Wisconsin

I, Robert M Long, late Sheriff of La Fayette County, in the State of Wisconsin, and Obligor in the within Bond, in consideration of the sum of One Dollar to me in hand paid by Matthew Murphy & Michael Foley, the receipt whereof is hereby fully acknowledged & in pursuance of the Statute, in such cases made and provided, I do by this presents assign, transfer set over and absolutely vest in said Matthew Murphy and Michael Foley all my right, title and interest to the within and foregoing Bond.

October first A.D. 1857

Robt M Long late Sheriff
of La Fayette County, Wisconsin

And upon the execution and delivery of the said Bond aforesaid, by the said Plaintiffs in said Replevin Suit to the said Sheriff Robert M Long, he the said Sheriff afterwards, To Wit: on the day and year aforesaid, To Wit: on the Twenty fifth day of June One Thousand Eight hundred and forty nine (1849) at the said County of La Fayette aforesaid, at the prayer of the said Plaintiffs in the Replevin Suit, replevied the said Goods and Chattels and delivered the same to the said Plaintiffs

in said suit, according to the duty of his said Office.

And thereupon, afterwards, to wit at the September Term A.D. 1849 of the aforesaid Circuit Court in and for the County of La Fayette, the said Plaintiffs in said Replevin suit, by their attorneys filed their declaration against the said Matthew Murphy and Richard Foley, in the said plea of unjustly detaining their said property. And such proceedings were thereupon had in the said Circuit Court upon the said suit, that afterwards, to wit, at the August Term A.D. 1851 of said Court, a judgment was rendered by said Court against the said Plaintiffs in said Replevin suit, and in favor of the said Defendants, in said suit, the now Plaintiffs herein, for the sum of Seventeen hundred dollars, the value of the goods and Chattels aforesaid, and the sum of Two hundred and eighteen Dollars and ten cents Damages which said Damages and value aforesaid amounted in the whole to the sum of Nineteen hundred and eighteen Dollars and ten cents, And also for the Costs and Charges of the said Defendants in said suit, in that behalf expended.

And these plaintiffs aver that said Bond sued on was made and executed in the County of La Fayette in the State of Wisconsin, and that the same was assigned under and by virtue of the Laws of said State of Wisconsin, And that under and by virtue of "An Act Concerning Replevin" in the Statutes of the Territory

of Wisconsin, published by authority of the Legislative Assembly A.D. 1839, among other things therein enacted it is provided by the 35 Section of said Act aforesaid in the words following " Notwithstanding the Defendant may have proceeded under either of the two last Sections, he shall not be precluded from resorting, as the assignee of the Sheriff, to his remedy against the Plaintiff and his Sureties upon the Bond executed by them to the Sheriff.

And it is further provided by the 41 Section of said Act aforesaid in these words.

" If any writ of return, or other execution issue in favor of the Defendant in the action shall be returned unsatisfied in whole or in part, such Defendant or his representatives may have an action on the Bond executed by the Plaintiff and his Sureties to recover the value of the property replevied and the money, damages, and costs awarded to such Defendant as the case may be. And such Bond shall be assigned to such Defendant or his representatives on request."

And it is further enacted under and by virtue of said Act aforesaid, by the 32 Section of said Act in these words.

" The Defendant whenever he shall be entitled to a return of the property replevied instead of taking judgment for such return, as above provided, may take judgment for the value of the property replevied in which case such value shall be ascertained by the

jury on the trial, or by a writ of enquiry, as the Court may require. But this Section shall not apply to Cases where the property seised, has been distrained."

And these Plaintiffs aver that the said Plaintiffs in the Replevin Suit, aforesaid did not prosecute their said Suit with effect, but that judgment was rendered against them in favor of the Defendants (the now Plaintiffs herein) under and by virtue of the Laws aforesaid.

And the said Matthew Murphy and Michael Foley in fact say and assign as a breach of the condition of the Bond sued on that the said Dougherty, Barker, Donner and Culver did not or have either of them paid to the said Plaintiffs herein the said sum of money or any part thereof recovered as aforesaid by the said Murphy and Foley against the said Plaintiffs in the Replevin Suit, according to the form and effect of the Condition of the said writing obligatory but have wholly neglected, and refused so to do, Whereby the said Bond or writing obligatory became forfeited to the said Robert Mc Leary so being Sheriff of said County of LaFayette aforesaid. And the same being so forfeited the said Sheriff afterwards, & wit on the first day of October AD 1851 at the request of the said Plaintiffs herein by an endorsement thereon assigned the said Bond, or writing obligatory unto the said Matthew Murphy and Michael Foley according to the forms of the Statute in such cases made and

provided as will more fully appear by the said assign-
ment endorsed on said writing obligatory, dated the
day and year aforesaid and now to the Court here
shown. By means whereof and by force of the
Statute in such cases made and provided an action
hath accrued to the Plaintiffs herein to demand and have
of and from the said Defendant Thomas F. Davis the said
sum of Twenty five hundred and eighty Dollars above
demanded.

Yet the said Defendant although often
requested so to do hath not as yet paid the said
sum of Twenty five hundred and eighty dollars or any
part thereof to the said Robert M. Long before the
said assignment as aforesaid, or unto these plaintiffs
since. To the Damage of the said Plaintiffs as
assignees as aforesaid of One Thousand Dollars,
and wherefore they sue &c

Douglass & Johnson
Plffs Atty

Endorsed

Filed Sept 21st 1852

Wm H. Bradley clk

And afterwards, to wit on the 22nd day of November
in November Term A.D. 1852 of said Court, in the Record
of the proceedings therein in said Cause is the following entry
to wit:

Matthew Murphy & }
Michael Foley } Case

vs } The Defendant by his attorney moves
Thomas F. Davis } the Court to strike the amended declaration
of the Plaintiffs from the files, because it
was not filed within the time fixed by the ruling of the
Court.

And afterwards, to wit: on the next day, to wit
on the 23rd day of November AD 1852 in said Novem-
ber term of said Court, in the record of the proceed-
ings thereof in said Cause is the following entry, to wit:

Matthew Murphy & }
Michael Foley } Case

vs }
Thomas F. Davis } Now at this day came on to
be heard the motion of the defendant
heretofore filed by his attorney to strike from the files, the
Amended declaration of the Plaintiffs, because it was not
filed within the time fixed by the rule of the Court. Which
Motion after argument by Counsel (and the Plaintiffs by
attorney showing cause for not filing their Amended
declaration within the time required by the rule of the
Court) is overruled by the Court; to which ruling, and
decision of the Court, the said Defendant by his attorney
except.

And afterwards, to wit on the same day to wit, on
the 23rd day of November AD 1852. the said Defendant by
his Attorney filed in said Court his plea to the amended
Declaration of the Plaintiffs which said plea are in the words
and figures following, to wit:

Michael Murphy et al

v
Thomas F. Davis

In Go Davis Circuit Court

November Term 1852.

Plea to Plffs amended declaration

No 1st Plea

And for a further plea in this behalf the
said Defendant says, Actio non because he says that the
said judgment in the said Declaration mentioned, and
each of them were fraudulently caused by said Defendant
Culver with the view and design of defrauding this Defend-
ant and that the said Culver for himself and in his
character of Attorney for the other Defendants in said suit
fraudulently and without consent of this Defendant or said
Potwine caused the said judgment with the design of
defrauding this Defendant and that the said property
was not the property of the said Plaintiffs as the said
Culver fraudulently admitted, and that he the said
Culver and the said Murphy & Foley well knew the
same and this the said Defendant is ready to verify.

Wherefore prays judgment &c

Judgments fraudulently confessed

No 2nd Plea

And for a further plea in this behalf the said Defendant says Actio non. Because he says, that the said Defendant was only a surety in said Bonds or writing, obligatory in said declaration mentioned, And that the plaintiffs corruptly and fraudulently agreed without the knowledge or consent of this defendant; or Potrine, this defendants Co obligor, to and with the Plaintiffs in said Replevin suit; that they would not collect the amount of the said judgment from them or either of them until they had exhausted their remedy at law against this defendant and corruptly agreed without the consent of this defendant or his knowledge, that the amount of the said judgment should be made out of the property of this Defendant before anything should be collected of the Plaintiffs in the said Replevin suit; And this the said Defendant is ready to verify wherefore he prays judgment &c.

Agreement & delay to collect from Davis

No 3rd Plea

And for a further plea in this behalf the said Defendant says Actio non. because he says, that he was only a surety in said Bond or writing obligatory in said declaration mentioned, and that the plaintiffs herein fraudulently and corruptly agreed to and with the Plaintiffs in said replevin suit for a valuable consideration to the said Plaintiffs herein paid by the plaintiffs in said replevin suit. (which agreement was without the knowledge or consent of this defendant) that they would give them time on said judgment and

agreement to delay
would not enforce the collection thereof against the
Plaintiffs in said replevin suit until they had exhausted
their remedy at law against this Defendant, and until
they obtained full satisfaction on said Bond out of the
said Defendant and his property in case the same could
be done and this the said Defendant is ready to verify
Wherefore he prays judgment &c
4th Plea

And for a further plea in this behalf, the said
Defendants say & aver now, because he says, that the said
Plaintiffs heretofore to wit on the day of A.D. 1881
in the Circuit Court of Lafayette County in the State of
Wisconsin at the August term of said Court in a certain
plea of replevin recovered judgement against the said
Moses Dougherty, Alexis Barker, Martin Soumes, and
Amos F. Culver for and in respect of the same identical
debt and Cause of action in the said declaration men-
tioned and afterwards to wit at that same term, the
said Plaintiffs by the consideration and judgement of
said Court recovered in the said plea against the
said Moses Dougherty, Alexis Barker, Martin Soumes,
and Amos F. Culver the same identical debt and
Causes of action the sum of 1700 dollars the value of
the goods & Chattels in said replevin suit and 218⁴⁰/₁₀₀
dollars damages aforesaid making said sum of 1918⁴⁰/₁₀₀
dollars as by the Record and proceedings therein still remai-
ning in said Court more fully and at large appears.

Which said judgment still remains in full force and effect, not in the least reversed, satisfied or made void. And the said Defendant avers that the said judgment so reversed was for the identical Cause of Action in said declaration mentioned. And this he is ready to verify. Wherefore he prays judgment &c

5th Plea

And for a further plea in the behalf the said Defendant - says Actor Now, because he says that the said Bonds & Writings Obligatory in the first & second Counts of the Plaintiffs declaration mentioned were executed in the State of Wisconsin And that by the law of the said State of Wisconsin, it is among other things provided that "Whenever judgment shall be rendered against a Plaintiff in the Action of Replevin, it shall be rendered against him and the securities in the Bond given in his behalf in pursuance of the provisions of the law, if any such Bond shall have been given, and ~~and~~ execution shall issue against all with the like effect as if they had been parties to the Suit."

And this Defendant avers that the only provision of law referred to in said law of Wisconsin is contained in the following words. "After the Sheriff has taken the property, the Plaintiff in the action, or some one in his behalf shall execute a Bond to the Sheriff or other officer to whom the writ is directed with the addition of his name

of Office, with sufficient securities, who shall swear that they are each worth the amount of the penalty of Bond, over and above all debts, or who shall be accepted by the Defendant in a Surety at least double the value of the property specified in the writ which value shall be ascertained by the oath of one or more disinterested witnesses to be sworn & examined by the Sheriff. Such Bond shall be conditioned that the Plaintiff will prosecute the suit to effect & without delay and that if the Defendant recover judgment against him in the action, he will return the same property if return thereon be adjudged, and will pay to the Defendant all such sums of money as may be recovered against him by such Defendant in the said Action, for any Cause whatever."

And this Defendant avers that in pursuance of said law of Wisconsin the said Bond & writing obligatory in said declaration mentioned were executed, and that this Defendant and one Caleb Patwine became the parties in said replevin Bond, in pursuance of said laws of Wisconsin, and that this Defendant avers that by the said laws of Wisconsin he became liable to have a judgment rendered against him, together with the said Plaintiff in said replevin Suit, and one Caleb Patwine his Co-Security in said replevin Suit, And the Defendant further avers that although the said Matthew Murphy & Michael Foley by the said law of Wisconsin were entitled to a judgment against the securities on said

replevin Bond, yet that they elected to take judgment
against the principals in said bond and the Plaintiffs in
said replevin suit without adding either this Defendant
or the said Caleb Potwine to said judgment, or in any manner
making them parties thereto. & this Defendant avers that
no judgment whatever was rendered in said replevin
suit against this Defendant or the said Caleb Potwine
And that by agreement made between Amos F. Culver
for himself & as Attorney for said Plaintiffs in said
replevin suit, and said Murphy & Foley, judgment
was to be rendered in favor of said Plaintiffs Murphy &
Foley in said replevin suit, and against said Culver
Dougherty, Barker, Gorman the Plaintiffs in said replevin
suit and was not to be rendered against said Potwine
or this Defendant in said Action. And this the
said Defendant is ready to verify. Wherefore he prays
judgment &c.

6th Plea

And for a further plea in this behalf
the said Defendant says, Action now because he says, that
the said Bonds in the said declaration mentioned were made
& delivered in the State of Wisconsin, & because the the
said Bond is governed by the laws of Wisconsin. That
in and by the laws of said Wisconsin judgment must
be rendered against the sureties in the replevin
Bond in an action of replevin whenever it is rendered
against the plaintiffs in replevin, & that execution should

issue with like effect against all as if they had been parties to the suit. And said Defendant avers that the said Murphy for himself and his Co Plaintiffs said Foley did fraudulently & corruptly agree with the design of defrauding this Defendant, with Amos F. Culver, one of the Plaintiffs in said replevin suit, acting for himself, and as Attorney for the other Plaintiffs, but without their assent that judgment should be rendered against said Plaintiffs for the value of said mineral replevied in said replevin suit. And the said Matthew Murphy did then & there fraudulently & corruptly agree to take judgment on said replevin suit against said Plaintiffs therein & for the purpose of defrauding this Defendant who was then absent in the State of California did fraudulently & corruptly agree that he would exhaust his remedy against this Defendant & obtain sole satisfaction in said Cause on said Bond from & out of this Defendant or his property if this Defendant had sufficient property out of which satisfaction could be obtained either in the State of Wisconsin or Illinois. And this Defendant avers that it was then & there well known to the said Murphy & Culver, that this Defendant was only a surety in said Bond and that ^{he} had sufficient property in real Estate out of which satisfaction could be obtained in Illinois & Wisconsin, and this Defendant avers that said agreement was fraudulently & corruptly made with intent to injure prejudice & defraud this Defendant as surety as aforesaid

& that in pursuance of said fraudulent agreement said judgment in said replevin suit was entered against the Plaintiffs in said replevin suit alone & not against the sureties in said bond neither this Defendant nor the said Caleb Potwine against whom judgment should have been rendered & make sureties liable according to the laws of Wisconsin. and this Defendant avers that judgment was fraudulently rendered against said plaintiffs in said replevin suit without at the same time being rendered against the sureties in said replevin bond purposely omitting to take judgment against the other sureties in said replevin bond. said Caleb Potwine who then & there had sufficient property out of which said judgment could have been made, or the greater part thereof, but with a view to defraud this Defendant no judgment whatever was rendered against said Potwine in said replevin suit.

And this the said Defendant is ready to verify. Whereupon he prays judgment &c
7th Plea

And for further plea in this behalf the said Defendant says. Action Now, because he says that the said plaintiffs fraudulently & corruptly with the design of defrauding this Defendant procured the said Amos & Calver to enter into a stipulation to confess judgment in favor of said Murphy & Foley and procured with the design of defrauding this Defendant admissions from said Calver which were ^{untrue} & untrue viz

that the said mineral in said declaration in said
replevin suit mentioned, was the property of said Murphy
& Foley, whereas in truth & in fact the said mineral
was not the property of said Murphy & Foley which
said Culver and said Murphy & Foley well knew, but
fraudulently with the design of depriving your Orator
the said Murphy & Foley procured the said Culver to
admit, upon which said admission the said judge-
ment was rendered, & this Defendant avers that the
said Murphy & Foley sold all the interest which they
had in & to said mineral before said fraudulent
agreement, to one Dennis Murphy, who before said
fraudulent agreement between said Culver & Murphy &
Foley replevied the said mineral from said Culver,
Barker, Lounner & Dougherty, & took the same from
them which said Murphy & Foley & Culver well knew
but with the design of depriving this Defendant, did
corruptly agree to dismiss said last named suit in
favor of said Dennis Murphy and to permit said
Dennis Murphy to withdraw his replevin Bond executed
by him in said last named case, and said Culver
aid then & there fraudulently agree that said property
was the property of said Dennis Murphy, which was
all done with the view of depriving this Defendant
& to his prejudice whereby this Defendant was deprived
& injured. And this, the said Defendant is ready to verify.
Wherefore he prays judgment &c. Higgins & Strother, Attys for Dft

8th Plea

And for a further plea in this behalf the said Defendant says: And now, because he says, that the said Act of the Legislature of Wisconsin, entitled An Act concerning Replevin in the Statute of Wisconsin published by authority of the Legislative Assembly A.D. 1839 authorizing the assignment of Replevin Bonds by the Sheriff was annulled & repealed, & wit on the first day of January A.D. 1850. And has never since been re-enacted nor has any other law authorizing the assignment of Replevin Bond by the Sheriff, And said Defendant avers that the said Statute referred to in said Declaration & described above was repealed by the 157 Chapter of the Revised Statutes of the State of Wisconsin which took effect on the first day of January A.D. 1850.

And said Defendant avers that said Replevin suit was not brought to recover goods or chattels in a case where the goods replevied had been taken as a distress for rent. And this the said Defendant is ready to verify. Wherefore he prays judgment, &c.

Higgins & Strother
for Deft

Endorsed

Filed Nov 23rd 1852

Wm H. Bradley Clerk

And appeared & wit on the 29th day of November
in said November Term A.D. 1853. of said Court the said
Plaintiffs by their Attorneys replied their demurs to the 1st
2^d 3^d 4th 5th 6th 7th & 8th Pleas of the Defendant
which demurs are in the words & figures following & wit

Matthew Murphy &

Michael Foley

vs

Thomas F. Davis

In Circuit Court for Davis
County, Illinois, August Term
A.D. 1852.

The said Plaintiffs by their
Attorneys come & say as to first Plea of said Deft that
said Plea is insufficient in law for &c. Wherefore &c.
Johnson & Douglass Attys for Pltfs
Said Defendant says that said Plea is sufficient.
Wherefore they pray judgment &c.
Higgins & Strother for Deft

And said Plaintiff as to second Plea of said Deft
come & say that said Plea is insufficient in law for said
deft &c. Wherefore &c. Johnson & Douglass
Attys Pltfs

Said Defendant says that said Plea is sufficient.
Wherefore &c. Higgins & Strother Attys for Deft

And said Plaintiffs as to third Plea of said Deft
come & say that said Plea is insufficient in law &c.
(Wherefore &c.) Johnson & Douglass Attys for Pltfs

Said Defendant says that said Plea is sufficient.
Wherefore &c. Higgins & Strother Attys for Deft.

And said Plaintiffs, as to fourth Plea of said Deft. say
that said Plea is insufficient in law for said Deft. &c.
Wherefore &c. Johnson & Douglass Attys for Pltffs
Said Defendant says that said Plea is sufficient. Wherefore
&c. Higgins & Strother Attys for Deft.

And said Plaintiffs as to fifth Plea of said Deft. say that
said Plea is insufficient in law &c. Wherefore &c.
Johnson & Douglass Attys
for Pltffs

Said Defendant says that said Plea is sufficient.
Wherefore &c. Higgins & Strother Attys for Deft.

And said Plaintiffs as to sixth Plea of said Defendant say
that said Plea is insufficient in law &c. Wherefore they
pray judgment &c. Douglass & Johnson Attys of Pltffs

Said Defendant says said Plea is sufficient. Wherefore &c.
Higgins & Strother Attys for

Murphy et al } In the Circuit-Court of Jo Daviess County
vs } Illinois. August term 1862.
Davis } And the said Plaintiffs by their
Attorneys come and say as to the seventh

Plea by the Defendant pleaded, that said plea is insufficient
in law. And they are not bound to answer the same,
wherefore they pray judgment &c,

Douglas & Johnson Attys of Plffs

And the said Plaintiffs by their Attornies come and say as
to the Eighth plea, by the said Defendant pleaded that
said plea is insufficient in law. And they are not bound
to answer the same. Wherefore they pray judgment &c

Douglas & Johnson Plffs Attys

And the said Plaintiffs by their Attys come
and say as to the ninth plea by the said Defendant
pleaded, that said plea is insufficient in law. And
they are not bound to answer the same.

Wherefore they pray judgment &c

Douglas & Johnson
Plffs Attys

Endorsed

replied Nov 29th 1852

Wm. H. Bradley clerk

And afterwards, to wit on the 4th day of December, as
yet of said November Term A.D. 1852 of said Circuit Court
in the record of the proceedings therein in said cause is the
following entry, to wit:

Matthew Murphy &
Michael Foley } Case

vs
Thomas F. Davis } Now at this day came on
to be heard the demurrers of the Plaintiff
heretofore filed to the first, second, third, fourth, fifth,
sixth, seventh, and eighth pleas of the Defendant, on file
which after argument by Counsel are taken under advisement
by the Court.

And afterwards, to wit on the 9th day
of December, as yet of said November Term A.D. 1853, of said
Court, in the Record of the proceedings therey in said Cause
is the following entry, to wit:

Matthew Murphy &
Michael Foley } Case

vs
Thomas F. Davis } The Court having fully consid-
-ered and being fully advised upon
the demurrer of the Plaintiffs heretofore filed, to the eighth
plea of the Defendant, sustains the same. And the Defendant
by his Attorney moves the Court for leave to amend his plea
which leave is granted by the Court.

And afterwards, to wit: on the 14th day of March in
March Term A.D. 1853, of said Court, the said Defendant
by his Attorney filed in open Court his 8th amended plea
which is in the words and figures following to wit:

Thomas F. Davis

vs

Matthew Murphy &

Michael Foley

In Jo Daviess Circuit Court
March Term 1853.

Amended 8th Plea

And for a further plea in this behalf the said Defendant says act in now, because he says that the said Bonds & each of them in the said declaration mentioned were made, executed and delivered in the State of Wisconsin and that the same & each of them are governed by & subject to the laws of Wisconsin and because protesting that there is not now & never was any law in the State of Wisconsin authorizing the assignment of Replevin Bonds so as to vest the legal right of action in the assignee thereof. And further avers that the only law in any way authorizing or purporting to authorize the assignment of Replevin Bonds in any manner in the State of Wisconsin is contained in the General Statutes of Wisconsin published by authority of the Legislative Assembly, in the year of our Lord 1839, and is contained in the 35 Sec. Titled an act concerning Replevin, which is in the words following, to wit: "Notwithstanding the Defendant may have proceeded under either of the two last Sections, he shall not be precluded from resorting as the Assignee of the Sheriff, to his remedy against the Plaintiff & his Sureties upon the Bond, executed by them to the Sheriff"

And Also the 41st Sec. of said General Statutes of Wisconsin under the same title, which reads as follows,

"If any writ of return or other execution issued in favor of the Defendant in the action shall be returned unsatisfied in whole or in part, such Defendant or his representatives may have an action upon the Bond executed by the Plaintiff & his sureties, to recover the value of the property replevied, and the money, damages & Costs awarded to such Defendant as the case may be & such Bond shall be assigned to such Defendant or his representatives on their request"

And said Defendant avers that there is not in the State of Wisconsin & never has been any other law authorizing in any manner the assignment of Replevin Bonds. And said Defendant avers that there never was any "Writ of return" or other execution issued in favor of the said Murphy & Foley Defendants in said action of Replevin, which was returned unsatisfied, in whole or in part. And said Defendant Davis further avers that both of said Sections 38 & 41 were repealed and the whole of the said act entitled "An Act concerning Replevin" which was the only law at the time of the repeal thereof & for ten years previous thereto on the the subject of, or concerning Replevin in the said State of Wisconsin, was by the Legislative assembly of the State of Wisconsin repealed & annulled, Which said act of repeal took effect on the first day of January A.D. 1850 & long before the said Bond was assigned to said Plaintiff, Murphy & Foley. Which said act of repeal is now & ever since has been

in full force & effect in ^{the} said State of Wisconsin.

And said Defendant Davis further avers that since the repeal of said Sections 35 & 41. there never has been any law whatever enacted in Wisconsin, authorizing the assignment of Replevin Bonds, nor before that time except the said Sections 35. & 41. which were repealed as aforesaid on the first day of January 1850.

And said Defendant avers that the said Replevin suit was not brought to recover goods or chattels in a case where the goods replevied had been taken as a distress for rent; And this the said Defendant is ready to verify
Therefore he prays judgment &c.

Higgins & Wothers

Attorneys for Deft

Endorsed

Filed March 4th 1853

Wm H Bradley Clk.

And afterwards, & wit on the 15th day of March in said March term A.D. 1853. of said Court the said Plaintiff by their Attorney file in open Court by leave of the Court a double replication to the said 8th amended plea of the Defendant and file which said replications are in the words and figures following to wit:

Murphy et al

vs

Davis

} Attachment

In the Circuit Court of Jo. Daviess County
To March Term 1853.

And the said Plaintiff comes & alleges &c. And for replication
to Defendants Eighth amended plea by him pleaded says
precludi now. Because they say, admitting that the
Statute of Wisconsin was repealed and took effect on
the first day of January A. D. 1850. as in said plea ment-
ioned. Yet these plaintiffs aver that by the second section
of said repealing act mentioned in said plea it is ex-
pressly provided. That "The repeal of the acts mentioned
in the preceding section shall not effect any act done
or right accrued or established, or any proceeding suit
or prosecution had or commenced in any civil Cause
previous to the time when such repeal shall take
effect. but every such act, right and proceeding shall
remain as valid and effectual as if the provision so
repealed had remained in force."

And these Plaintiffs aver that said Bond sued on
was executed and the right accrued in a civil Cause
before said repealing act took effect and was in force
and by the express term and provisions of said repealing
act mentioned, any act done, or right accrued remai-
ned as a valid and effectual as if the provisions
so repealed remained in full force.

And of this they put themselves on the Country &c.

M. G. Johnson
Atty of Plffs

And for a second replication to said Eighth Amended
plea, they say preclude you. Because they say admitting
the 41 Section of said Statute of Wisconsin as therein
pleaded, and that there never was any writ of return
or other execution issued as therein pleaded and set forth.
Yet these Plaintiffs aver that by the 35 Section of said
Statute of Wisconsin therein pleaded and set forth that
Plaintiffs were authorized as the assignees of the Sheriff
to maintain this Suit against the Defendant on said
Bond sued on. And of this they put themselves on
the Country &c.

Endorsed

M. Y. Johnson Plffs Atty

Filed March 15th 1853

Wm. H. Bradley Clk

And afterwards to wit on the 18th day of March in
said March Term A.D. 1853. of said Court in the record of
the proceedings there in said Cause is the following entry
to wit:

Matthew Murphy &
Michael Foley

vs

Thoms. F. Davis

Attachment

The Defendants attorney suggests the
death of the Defendant on the record.

And afterwards to wit on the 31st day
of August AD 1853 in August Term AD 1853 of said Court
in the record of the proceedings there, in said Cause is the
following entry, to wit:

Matthew Murphy &
Michael Foley

vs

Thomas F. Davis

} Attachment

And now at this day comes
Higgins & Strother late attorneys for said Defendant, in his
life time, and as Amicus Curia, move the Court & ~~ask~~
to abate this Suit and to dismiss the same, and to abate
the attachment part of this Suit, and to discharge the lands
levied upon from said Attachment, on information given
the Court and for reasons on file.

The reasons referred to in said last recited entry &
the affidavit thereto attached are in the words & figures
following, to wit:

State of Illinois }
of Daviess County }

vs
In Jo. Daviess Circuit Court, August
Term AD. 1853.

Matthew Murphy &
Michael Foley

vs

Thomas F. Davis

} And now at this day come Higgins
& Strother late the attorneys for Thomas
F. Davis deceased, the Defendant in this above entitled

cause in his life time, and as Amicus Curia, inform the Court that said Thomas F. Davis departed this life on the 18th day of November AD 1852. and that on the 18th day of March AD 1853. at the March term of the Hon Court the death of said Thomas F. Davis was suggested upon the record of this Court. Wherefore they move the Court to abate the suit and to order the same to be dismissed. Also to dismiss the attachment process in the Cause and release the lands levied upon from the effect of the attachment and for Causes assign the following.

First. Because no appearance has been entered and no scire facias or other process has issued against any person whatsoever since suggesting the death of the Defendant Thomas F. Davis in this cause and the time for issuing the same has now elapsed and passed, and there has been no order of this Court substituting any person as Defendant in ^{suit in} the place of said Thomas F. Davis deceased.

2nd. Because the death of said Thomas F. Davis occurred before the March term of this Hon^{ble} Court AD 1853. and at the said March term the death of said Thomas F. Davis was suggested on the record of this Court, and that since that time no appearance has been entered in said Cause.

3rd. Because the attachment part of the suit abates by the death of said Thomas F. Davis, the sole Defendant.

For good and sufficient reasons
Higgins & Strother Amicus Curia

State of Illinois vs Davis County

Matthew Murphy & }

Michael Foley }

vs

Thomas F. Davis }

In vs Davis Circuit Court

August Term 1853.

William Fiddick

being first duly sworn deposes and says that Thomas F. Davis the Defendant in the above entitled Cause is dead and that he departed this life in the Month of November A.D. 1852, on or about the 18th day of said Month, And further saith not

William Fiddick

Subscribed & Sworn to before me
this 29th day of August A.D. 1853.

Wm H. Bradley Clerk

By E. C. Ripley Deputy

Endorsed

Filed August 31st 1853.

Wm H. Bradley Clerk

And afterwards, to wit: on the first day of September, as yet of said August term A.D. 1853. of said Court in the record of the Proceedings therein in said Cause, is the following entry, to wit:

Matthew Murphy &
Michael Foley
vs
Thomas F. Davis } Attachment

Now came on to be heard the motion & suggestion of Messrs Higgins & Strother formerly Attorney for the said Defendant in his life time, yesterday filed, to dismiss this Suit, and to abate the Attachment part of the same &c. Which after argument by Counsel is taken under advisement by the Court.

And afterwards, to wit on the 5th day of September as yet of the August Term A.D. 1853. aforesaid of said Circuit Court, in the record of the proceedings thereof in said Cause, is the following entry, to wit:

Matthew Murphy &
Michael Foley
vs
Thomas F. Davis } Attachment

The Court having fully considered and being fully advised upon the motion heretofore made & filed herein by Messrs Higgins & Strother formerly of Counsel for the deceased defendant in his life time, as Amicus Curia, to dismiss this Suit & that the Attachment part of the same abate & overrules the same, to which ruling of the Court the said Higgins & Strother except. And the Plaintiffs by their Attorney come & suggest upon the record the death of the said defendant. And on motion of the Plaintiffs by their Attorney

It is ordered by the Court that a summons issue to the heirs, devisees, executors, or administrators of the said Thomas F. Davis, and that their names be substituted upon the record as parties defendant herein, so soon as their names are ascertained, and they shall have been served with process, to all of which rulings & decisions of the Court herein, the said Higgins & Strother except

And afterwards to wit: on the 26th day of October A.D. 1853. a writ of summons issued out of the said Circuit Court in pursuance of said last above recited Order in said Cause which said writ is in the words and figures following to wit:
State of Illinois }
Jo Daviess County }

The people of the State of Illinois, to the Sheriff of Jo Daviess County, Greeting: We command you to summon Enoch Davis, the heirs, devisees, executors or administrators of Thomas F. Davis deceased, to appear before the Circuit Court of Jo Daviess County, at the next term, to be holden at Galena, on the fourth Monday of November next to answer Matthew Murphy & Michael Foley in a Suit in Attachment commenced against the said Thomas F. Davis in his life time, and have you then there this writ.

Witness William H. Bradley, Clerk of the Circuit Court of Jo Daviess County, Illinois at Galena, this 26th day of October A.D. 1853. Attest Wm. H. Bradley Clerk

Seal

On the back of said Writ, is endorsed the following return
to wit-

"None of the Defendants named within are found in this
County, this 25th Nov^r, 1853. Wm. Whigham Esq, J. D. Co. Ills.

And afterwards, to wit: on the 16th day of May in May
term of said Circuit Court A. D. 1854. The said Defendants by their
Attorney filed in open Court their demurrer to first & second
replications of Higgins to Defendant, & 8th Amended Plea, Which
said demurrer is in the words and figures following, to wit:

Matthew Murphy & Michael Foley vs Thomas F. Davis	}	In the Jr Daviess Circuit Court of the May term A. D. 1854.
--	---	--

And the said Defendant, by Van H.
Higgins his Attorney (protesting that the Court has no
right to compel an Appearance) Comes & defends the
wrong & injury when &c. And says that the said
replications, firstly & secondly above pleaded to his 8th

Amended plea & each of them are severally insufficient in law & that the matters & things therein contained as stated & set forth therein are no answer to said 8th Amended plea & the same are not sufficient for said Plaintiffs to have or maintain their action aforesaid, & said Defendant is not bound by law to answer the same. And this he is ready to verify & for Cause of demurrer shows. That replications present in material issues, severally & each of them & are insufficient, because they show no title to sue in the names of the Plaintiffs. Wherefore he prays judgment.

Endorsed

Van H. Higgins Atty for Def^t

Filed May 16th 1854
Wm H Bradley clk

And afterwards, to wit, on the 19th day of May, in said May term A.D. 1854 of said Court in the record of the proceedings therein in said Cause, is the following entry, to wit:

Matthew Murphy &
Michael Foley

vs

The heirs, devisees &c of

Thomas F. Davis deceased

Attachment

Now at this day, came on to be heard the demurrer of the Defendants heretofore filed by their attorney, to the replications of the Plaintiffs filed by their attorney to the eighth Plea of the

Defendant on file, and after hearing a part of the arguments of Counsel the further argument of Counsel is postponed until to morrow morning.

And afterwards to wit: on the next day to wit on the 20th day of May in said May term of said Court in the record of the proceedings therey in said Cause is the following entry, to wit:

Matthew Murphy &
Michael Foley

vs

} Attachment

The heirs, devisees, of
Thomas F. Davis dec^d

} Now at this day came again
the parties by their Attorneys, and

after hearing the concluding arguments of Counsel on the demurrer of the Defendants to the replications of the Plaintiffs filed by their attorney to the Defendants Eighth Plea takes the same under advisement

And afterwards to wit: on the 22nd day of May in May term 1854. of said Court, in the record of the proceedings therey in said Cause is the following entry, to wit:

Matthew Murphy &
Michael Foley

vs

} Attachment

The heirs & devisees of Thomas F. Davis dec^d

The Court having fully considered, and being fully advised upon the demurrer of the Defendants heretofore filed by their Attorney to the replications of the Plaintiffs heretofore filed to the eighth amended plea of the Defendant; sustains the same. And the Plaintiffs by their Attorney move the Court for leave to amend by adding in the writ, declaration & proceedings, the title, of Robert Long Sheriff &c for the use of the present Plaintiffs. And also ask leave of the Court to file affidavits in support of said Motion. Which said last leave so asked, is granted by the Court for them to file affidavits in support of their said Motion.

And afterwards to wit on the 24th day of August in August term AD 1854 of said Court the Plaintiffs by their Attorney filed an affidavit in said Court in the words and figures following, to wit:

State of Illinois }
Jo. Daviess County } In the Circuit Court Augth Term
AD 1854.

And now at this day comes the said Matthew Murphy and files the following affidavit in support of the motion made at the last term of this Court for leave to amend the writ, declaration and papers in a certain suit in attachment prosecuted in this Court in the name of Matthew Murphy and Michael Foley as Plaintiffs against the Heirs of Thomas F. Davis. So the same will stand Robert M. Long Sheriff &c for the use of Matthew Murphy & Michael Foley against said Defendants

And The said Matthew Murphy of the County
of La Fayette and State of Wisconsin of lawful age after being
duly sworn makes oath and states that he is one of the
Plaintiffs in said Cause, and that the Bond upon which
the above entitled Suit is brought and is prosecuted was
rightfully assigned to me and my Co Plaintiff Michael
Foley, that Robert M. Long the Oblige in said Bond named
was so nominally only, and that said Bond was executed
and delivered to said Long for the use and benefit of
myself and my Co Plaintiff aforesaid and as a security
or indemnity for lead ore mineral to us belonging, and
from us taken by virtue of a writ of Replevin issued
out of and under the Seal of the Circuit Court within
and for the County of La Fayette aforesaid, And at
the Suit of Moses Gaugherty, Alexis Barker Martin former
and Amos F. Culver, all of whom are now dead, as I am
credibly informed, and verily believe to be true, And that
each and every of whom as I am also informed and
verily believe to be true died intestate and insolvent, as
they had been for years prior to their said decease
respectively. Your affiant further states and shows to
the Court that Thomas F. Davis and Caleb Patience are
the securities on said Bond, and that said Davis
was the only one to the knowledge of this affiant that
had property within the jurisdiction of this Court,
And at the commencement of this Suit and when the
Attachment was sued out and levied in this case, said

Davis was then residing beyond the limits of the State of Illinois and resided in California, and this affiant further states that he has reason to believe, and does verily believe as soon as knowledge came to said Davis that said land mentioned in the return had been attached in this case, he immediately made, executed, and sent for Record in this County a deed for said lands so attached dating the same on the 6th day of January A.D. 1852. and having the same duly Recorded, on the 26th day of Feby 1852. by which said deed he transfers his entire interest in said lands to his Brother Enoch Davis who then was and continues to reside in England. Your affiant further states said deed was made and recorded without the knowledge of said Enoch Davis, and as this affiant verily believes without any consideration whatever, and was made solely for the purpose of defeating the recovery of your affiant's debt, and to place the property beyond any attachment. Your affiant further states said Thomas F. Davis after the attachment was sued out and levied, and after said deed was made to said Enoch Davis procured to be employed as his attorneys to defend said suit Messrs Higgins & Strocher and that said Higgins & Strocher did appear and have continued to defend said suit for said Thomas F. Davis up to ^{his} death and since then have continued to defend the same up to this time. Your affiant further states that after the death of said Thomas F. Davis, Enoch Davis came to the United States, and finding said property levied on, deeded to

him, being said Thomas F. Davis half as levied on under said writ of Attachment, he the said Enoch Davis on the 22nd day of June 1853. transferred and deeded the whole of said lands unto Bolton F. Strother one of the Attorneys then and now of Record in said Cause, and immediately returned to England where he now resides and has always resided as this affiant has been informed, and verily believes.

Your affiant further states said Enoch Davis and said Strother took said lands if any purchase ever was made by either with full notice and knowledge that said Attachment was sued out and levied long before either of said deeds was made, and that the affidavit filed in this Cause on which the Attachment issued distinctly and fully discloses the rights of these Plaintiffs and on what said suit is instituted and a recovery claimed.

Your affiant further states said Davis died intestate, and leaving no property of any name or kind to the knowledge of this affiant other than the lands attached in this suit. And if said lands was discharged from the Lien of said Attachment this affiant would be utterly deprived of his rights and unable to collect one cent of his debt from said Estate.

Wherefore he prays, that under the provisions of the Statute as the affidavit for the Attachment filed in this Cause, and on which the writ issued shows all the facts, and that Robert M. Long has

no interest but is only a nominal party and as
such should have been named as a plaintiff for the
use of this affiant. And the said Foley. And as the
same can work no surprise or injury to the said
Defendants, and if not permitted great injury and hard-
ship would result to this affiant in the absolute
loss of said demand. He therefore asks leave of the
Court to amend by inserting the name of Robt. McLong
as a plaintiff for the use of this affiant and said
Foley in the writ declaration & papers in said cause
that the ends of justice may be obtained. And that Lien
on the premises attached may be preserved, as in duty
bound &c. Matthew Murphy

Subscribed & sworn to before
me this 24th day of August AD 1854
Wm H. Bradley Clerk
By Wm R. Rowley Deputy

Condoised

Filed Aug 24th 1854.
Wm H. Bradley Clerk
By Wm R. Rowley Deputy

And afterwards to wit on the 4th day of September, as
yet of said August Term AD 1854. of said Court, in the
Record of the proceedings thereon in said cause, is the following
entry, to wit

Matthew Murphy &
Michael Foley

vs

Attachment

The heirs, devisees &c of

Thomas F. Davis dec'd

Now came on to be heard the Motion of the Plaintiffs heretofore filed by their Attorney for leave to amend by adding in the writ declaration & proceedings, the title of Robert Long Sheriffs &c for the use of the present Plaintiffs. which after argument by Counsel is taken under advisement by the Court.

And afterwards to wit on the 9th day of September as yet of said August Term AD 1854. of said Court in the Record of the proceeding therein in said Cause is the following entry to wit

Matthew Murphy &

Michael Foley

vs

Attachment

The heirs & devisees &c of

Thomas F. Davis deceased

The Court having fully considered and being fully advised upon the Motion of the Plaintiffs heretofore filed for leave to amend by adding in the writ declaration & Proceedings the title of Robert Long Sheriffs &c. for the use of the present Plaintiffs, overrules the same. To which ruling and decision of the Court the Plaintiffs by their Attorney except.

And the Plaintiffs by their Attorney move the Court for leave to file another affidavit showing notice to B. F. Strother of the character of the conveyance of the Real Estate attached herein & that the same was conveyed by Thos. J. Davis to Ernoch Davis without ^{any} good or valuable consideration. Which motion is overruled by the Court. To which ruling, the Plaintiffs by their Attorney except. And the Plaintiffs by their Attorney move the Court for leave to amend their declaration. Which motion is overruled by the Court, to which the Plaintiffs by Attorney except. And the Plaintiffs by their Attorney move for leave to amend their replications heretofore filed to the Eighth amended Plea of the Defendants. Which motion is overruled by the Court & excepted to by the Plaintiffs by their Attorney.

And on motion of the Defendants by their Attorney for judgment against the Plaintiffs. It is thereupon considered by the Court that the Plaintiffs take nothing by their writ & that the Defendants go hence without day & that the Defendants have and recover of the Plaintiffs their costs by them about their defence in this behalf expended, and that they have execution therefor. To all of which rulings and decisions of the Court the Plaintiffs by their Attorney except. And the Plaintiff Matthew Murphy by his attorney pray an appeal to the Supreme Court which is granted conditioned that he enter into Bond in the sum of One hundred & fifty dollars, with James Carter or John M. Douglass, & Madison G. Johnson as security, within sixty days from this date. And it is further ordered by the Court that the Plaintiffs have until the

first day of the next term of this Court within which
to make and file their Bill of Exceptions herein.

On the trial of the above entitled Cause the fol-
lowing exceptions were made & allowed, to wit-

State of Illinois vs Jarvis County
Matthew Murphy & {
Michael Foley { In Circuit Court - August term
vs { A.D. 1853.
Thomas F. Davis }

Be it remembered that on the 31st
day of August A.D. 1853. of the August term of said Court
the following motion was filed on behalf of the defense
in the above entitled Cause.

1st to quash the attachment part of this Suit.
2nd to abate this Suit.

Which said motion is in the
words and figures following

State of Illinois vs Jarvis County } &
Matthew Murphy & {
Michael Foley { In vs Jarvis Circuit Court.
vs { August term A.D. 1853.
Thomas F. Davis }

And now at this day come
Biggins & Strocker late the Attorney for Thomas F. Davis

deceased, the Defendant in the above entitled Cause in his
life time and as Amicus Curia inform the Court - that said
Thomas F. Davis departed this life on the 18th day of November
AD 1852. And that on the 18th day of March AD 1853. at
the March term of the Hon Court the death of said Thomas
F. Davis was suggested upon the record of this Court. Wherefore
they move the Court to abate this suit and to order the
same to be dismissed, and also to dismiss the attachment
process in this Cause and release the lands levied
upon from the effect of the attachment. And for
Causes assign the following.

1st Because no appearance has been entered and no
scire facias or other process has issued against any person
whatsoever since suggesting the death of the defendant
Thomas F. Davis in this Cause, and the term for issuing
the same has now elapsed and passed, and there has
been no order of this Court substituting any person
as Defendant in this suit in place of said Thomas F. Davis
deceased.

2nd Because the death of said Thomas F. Davis occurred
before the March term of the Hon^{ble} Court AD 1853. and
at the said March term the death of said Thomas F. Davis
was suggested on the Record of this Court - and that since
that time no appearance has been entered in said Cause.

3rd Because the attachment part of the suit abated by
the death of said Thomas F. Davis the sole defendant.

4th For other good and sufficient reasons

Higgins & Strother, Amicus Curia

State of Illinois Jo Daviess County

Matthew Murphy & 3

Michael Foley } In Jo Daviess Circuit Court

vs } August Term 1853.

Thomas F Davis }

William Fiddick being first duly

sworn deposes and says that Thomas F Davis the
Defendant in the above entitled Cause is dead and
that he departed this life in the Month of November
A D 1852 on or about the 18th day of said Month.

And further says not.

William Fiddick

Subscribed & Sworn to before

me this 29th day of August

A. D 1853. Wm W Bradley Clerk

By C. C. Roper Deputy

Endorsed.

Filed August 31st 1853.

Wm W Bradley clerk

Which said motion after argument was taken under advisement
by the Court. And afterwards, to wit; on the 5th day of
September 1853. said motion was overruled by the Court
in both Counts. To which ruling and decision of the
Court exceptions were then and there taken on behalf
of said defence in due form of law.

And afterwards to wit on said 5th day of September

the Court made the following order in said Cause

Murphy &
Michael Foley

vs

Attachment

Thomas F. Davis

The Court having fully considered and being fully advised upon the motion heretofore made & filed herein by Messrs Higgins & Strother formerly of Counsel for the deceased defendant in his life time, as Amicus Curia to dismiss this Suit & that the Attachment part of the same abate & overrules the same, to which ruling of the Court the said Higgins & Strother except. And the Plaintiff by their Attorney come and suggest upon the record the death of the said Defendant. And on motion of the Plaintiff by their Attorney, It is ordered by the Court that a summons issue to the heirs, devisees, executors or administrators of the said Thomas F. Davis, and that their names be substituted upon the record as parties defendant herein so soon as their names are ascertained, and they shall have been served with process, to all of which rulings & decisions of the Court herein the said Higgins & Strother except.

To the making of which said order and the allowance of process of summons to said parties the defence then and there excepted, and pray that this their Bill of Exceptions may be allowed, sealed and made a part of the record in the above entitled Cause,

which is done in open Court this 5th day of
September AD 1853.

Berg. R. Sheldon Clerk

Endorsed

Filed Sept 7th 1853.

Wm. M. Bradley Clerk

State of Illinois }
Jo. Daviess County } In the Circuit Court of Jo. Daviess
County Augt Term AD 1854.

Murphy et al }

vs
Davis et al } Be it remembered on this the ninth
day of September One thousand Eight-
hundred and Fifty four came on to be heard the Motion
heretofore filed by the Plaintiffs, for leave to amend the
Writ. Bond, Declaration, and other papers in this Suit
by adding the name of Robert M. Long Sheriff &c for
the use of the Plaintiffs herein. And in support of said
Motion read to the Court the following affidavit her-
etofore filed under leave of Court.

State of Illinois }
Jo. Daviess County }

In the Circuit Court Augt.
Term AD 1854.

And now at this day comes the said Matthew Murphy and files the following affidavit in support of the motion made at the last Term of this Court for leave to amend the writ, Declaration and Papers in a certain suit in attachment prosecuted in this Court in the name of Matthew Murphy and Michael Foley as plaintiffs against the heirs of Thomas F. Davis &c the same will stand Robert M. Long Sheriff vs, for the use of Matthew Murphy & Michael Foley against said Defendants

And the said Matthew Murphy of the County of La Fayette and State of Wisconsin of lawful age after being duly sworn makes oath and states that he is one of the Plaintiffs in said Cause and that the Bond upon which the above entitled suit is brought, and is prosecuted was rightfully assigned to me and my Co Plaintiff Michael Foley that Robert M Long the obligor in said Bond named was so nominally only. And that said Bond was executed and delivered to said Long for the use and benefit of myself and my Co Plaintiff aforesaid and as a security or indemnity for lead ore, mineral or no belonging and from us taken by virtue of a writ of Replevin issued out of and under the Seal of the Circuit Court within and for the County of La Fayette aforesaid, and at the suit of Moses Daugherty, Alexis Barker, Martin Forman, and Amos F. Culver, all of whom are now dead as I am credibly informed and verily believe to be true and that each and every of whom, as I am also informed and verily believe to be true died

intestate and insolvent as they had been for years prior
to their said decease respectively. Your affiant further states
and shows to the Court that Thomas F. Davis and Caleb
Putnam are the securities on said Bond and that said
Davis was the only one to the knowledge of this affiant
that had property within the jurisdiction of this Court
And the commencement of this suit, and when the
Attachment was sued out and levied in this case
said Davis was then residing beyond the limits of the
State of Illinois and resided in California. And this aff-
-iant further states that he has reason to believe and
does verily believe as soon as knowledge came to
said Davis that said land mentioned in the return had
been attached in this case, he immediately made, executed
and sent for Record in this County a Deed for said
lands so attached, dating the same on the 6th day of
January AD 1852. And having the same duly recorded on
the 26th day of Feb'y 1852. By which said Deed he transfers
his entire interest in said lands to his Brother Enoch
Davis who then was and continues to reside in England

Your affiant further states said deed was made
and recorded without the knowledge of said Enoch Davis
and as this affiant verily believes without any consideration
whatever. And was made solely for the purpose of defea-
ting the recovery of your affiant's debt, and to place the
property beyond any attachment. Your affiant further
states said Thomas F. Davis after the Attachment was

sued out and levied, and after said deed was made to said Enoch Davis procured to be employed as his Attorney to defend said Suit Messrs Higgins & Strother and that said Higgins & Strother did appear and have continued to defend said Suit for said Thomas F. Davis up to his death and since then have continued to defend the same up to this time. Your affiant further states that after the death of said Thomas F. Davis Enoch Davis came to the United States, and finding said property levied on, deeded to him, being said Thomas F. Davis half as levied on under said writ of Attachment he the said Enoch Davis on the 22nd day of June 1853. transferred and deeded the whole of said lands unto Bolton F. Strother one of the Attorneys then & now of record in said Cause. And immediately returned to England where he now resides and has always resided as this affiant has been informed and verily believes.

Your affiant further states said Enoch Davis and said Strother took said land if any purchase ever was made by either with full notice and knowledge that said Attachment was sued out and levied long before either of said deeds was made, and that the affidavit filed in this Cause on which the Attachment issued distinctly and fully discloses the rights of these Plaintiffs and on what said Suit is instituted and a recovery claimed.

Your affiant further states said Davis died intestate and leaving no property of any name or kind to the knowledge of this affiant other than

the lands attached in this suit.

And if said lands was discharged from the lien of said Attachment, this affiant would be utterly deprived of his rights and unable to collect one cent of his debt from said Estate.

Wherefore he prays, that under the provisions of the Statute as the affidavit for the Attachment filed in this Cause and on which the writ issued shows all the facts and that Robert McLeong has no interest, but is only a nominal party and as such should have been named as a plaintiff for the use of this affiant, and the said Foley

And as the same can work no surprise or injury to the said Defendants, And if not permitted great injury and hardship would result to this affiant in the absolute loss of said demand. He therefore asks leave of the Court to amend by inserting the name of Robt McLeong as a plaintiff for the use of this affiant. And said Foley in the Writ, Declaration & Papers in said Cause that the ends of Justice may be obtained, and their Lien on the premises attached may be preserved as in duty bound

He

Matthew Murphy

Subscribed & sworn to before
me this 24th day of August AD 1857

Wm B Bradley Clerk

By Wm B Bradley depy

Endorsed

Filed Aug 24th 1854.

Wm H Bradley Clerk

By Wm H Cowley Esq

Which said leave to amend, after argument by Counsel was refused by the Court, to which ruling and decision by the Court in refusing said leave to amend as aforesaid, was then and there excepted to by the Plaintiff ^{which} exceptions are allowed by the Court.

The Plaintiff then moved the Court for leave to file additional affidavits showing more fully notice to Bolton F. Strother, that said Conveyances to Enrich Davis and said Bolton F. Strother was without consideration, and made and entered into, hinder & defraud creditors and defeat this Attachment suit to which leave so asked and the filing of said affidavits the Court refused to permit.

To which ruling by the Court in refusing to let said affidavits be filed in said cause the Plaintiff then and there excepted. Which exceptions were allowed by the Court.

And on the same day in the further proceedings of said cause on the Court sustaining a Demurrer filed by the Defendants to the Plaintiff's replications to Defendants eighth plea, the plaintiff asked leave to amend said replications in conformity to the Law in such cases. Which leave to amend, so asked by the Plaintiff was refused to allow said amendment of the replications

the Plaintiffs then and there excepted and prayed that
his exceptions may be allowed, which is accordingly done
And thereupon the Court entered the following order and
judgment of dismissal

Matthew Murphy &
Michael Foley

vs

Attachment

The heirs & devisees of
Thomas F. Davis deceased! The Court having fully consid-
ered and being fully advised
upon the motion of the Plaintiffs heretofore filed for leave
to amend by adding in the writ declaration & proceeding
the title of Robert Long Sheriff, for the use of the present
Plaintiffs overrule the same. To which ruling and decis-
ion of the Court, the Plaintiffs by their Attorney except.
And the Plaintiffs by their Attorney move the Court for
leave to file another affidavit showing notice to B. F.
Sirother of the character of the conveyance of the Real
Estate attached herein & that the same was conveyed
by Thomas Davis to Enoch Davis without any good or val-
uable consideration. Which motion is overruled by the
Court. To which ruling the Plaintiffs by their Attorney
except. And the Plaintiffs by their Attorney move the
Court for leave to amend their declaration, which motion
is overruled by the Court. To which the Plaintiffs by
Attorney except. And the Plaintiffs by their Attorney

move for leave to amend their replication heretofore filed
to the eighth amended plea of the Defendants. Which
motion is overruled by the Court & excepted to by the
Plaintiffs by their Attorney, and on motion of the
Defendants by their Attorney for judgment against the
Plaintiffs. It is thereupon considered by the Court that
the Plaintiffs take nothing by their writ & that the
defendants go home without day & that the defendants
have and recover of the Plaintiffs their Costs by them
about their defence in this behalf expended, and that
they have execution thereon. To all of which rulings
and decisions of the Court the Plaintiffs by their
Attorney except. And the Plaintiff Matthew Murphy
by his Attorney prays an appeal to the Supreme Court
which is granted, conditioned that he enter into Bond
in the sum of one hundred & fifty dollars with James
Carter or John M. Douglass & Madison G. Johnson
as security within thirty days from this date
And it is further ordered by the Court that the
Plaintiffs have until the first day of the next term
of this Court within which to make and file their
Bill of exceptions herein.

To all of which rulings and decisions of
the Court in refusing to allow the amendments by inserting
the name of Robert M. Long Sheriff & for the use of
these Plaintiffs. In refusing to allow other affidavits
to be filed showing that neither Enoch Davis or Bolton

F. Strother were bona fide purchasers.

In refusing to allow an amendment of the replications in sustaining a Demurrer to them, and in dismissing said Attachment Suit and rendering judgment for Costs.

The Court did not refuse leave to file replies. but refused to give them leave to file replications unless they would state what Replications they denied to put in. The Court stated that he did not see how they could aid their mistake in the name of the Plaintiffs & would not give them leave to file their replications unless the same was done instantly or unless they would state what replications they denied to file so that the Court could determine whether it was proper to give them time to prepare the same. Which Plaintiffs declined to do.

All of which rulings by the Court at the time the same was made was then and there excepted to by the Plaintiffs and allowed and ordered to be certified, which is done.

Benj R. Sheldon Clerk

Endorsed

Left for Filing with me October 16th 1854

Wmth Bradley Clerk

Filed 27th Nov 1854

Wmth Bradley Clerk

And afterwards to wit on the 5th day of October A.D. 1854, the said Plaintiff Matthew Murphy, filed in the Clerk's Office of said Circuit Court his appeal Bond, which said Bond is in the words and figures following to wit:

Know all men by these Presents that we Matthew Murphy of La Fayette County Wisconsin, and James Carter of Galena Jo Daviess County Illinois are well, and firmly bound unto the heirs, Executors, Executors or administrators of Thomas F. Davis deceased in the penal sum of One hundred & fifty dollars current money of the United States, for the payment of which well and truly to be made, we bind ourselves our heirs Executors and Administrators jointly, severally, and firmly by these presents. Witness our hands and Seals this fifth day of October A.D. 1854.

The Condition of the above obligation is such that whereas the said Heirs, Executors, Executors or administrators of Thomas F. Davis deceased did on the Ninth day of September A.D. 1854, in the Circuit Court in and for the County of Jo Daviess and State of Illinois recover a judgment in an Attachment Suit therein pending against the above bounden Matthew Murphy and one Michael Foley for the sum of Six dollars and ten cents costs, from which said judgment of the said Circuit Court the said Matthew Murphy has prayed for and obtained an appeal to the Supreme Court of said State of Illinois

Now if the said Matthew Murphy shall duly prosecute
his said Appeal with effect and shall moreover pay
the amount of the judgment, costs, interest and damages
rendered, and to be rendered against him, in case the
said judgment shall be affirmed in the said Supreme
Court, then the above obligation to be void, otherwise
to remain in full force and virtue.

Matthew Murphy Esq
Jas Carter Esq
Taken & entered into before me }
at my Office in Galena this }
5th day of October AD 1854. }
Jas H Bradley Clerk

Endorsed

Filed Oct 5th 1854

Jas H. Bradley Clerk

State of Illinois
Jas. D. Campbell

I William A. Bradley,
Clerk of the Circuit Court in and for said
County, do hereby certify the foregoing transcript
to be a true and perfect copy from the
Record of all the proceedings which have been
had in said Court in the Case of Matthew
Mumphy & Michael Foley against the Heirs
& devisees of Thomas P. Davis et al.

In testimony whereof I have
hereunto set my hand and affixed
the Seal of said Court at my
Office in Galena in said County
this 20th day of March A.D. 1855
Attest William A. Bradley Clerk

24,780 words 24 78
envelope 35
\$25.13

Rec^d fees for transcript from p^{gs}
Galena May 11th 1855
for W. A. Bradley
J. C. Lockwood

Mathew Murphey et al

The heirs & assigns &c of
Thos F Dams dec^d

In the Supreme Court
of the State of Illinois
Third Grand Division

June Term A D 1855

On Appeal

And now at this day comes
the said Mathew Murphey, and says there is manifest
Error in the Records and proceedings, in the above
entitled Cause. And shows to the Court the
following

1st Because said Court erred in refusing
to allow amendments to be made. By adding
the name of Robert M Long Sheriff &c who sues
for the use of Mathew Murphey and Michael
Foley Plaintiffs

2nd The Court erred in dismissing
said Cause, and entering Judgment for Costs
against the Plaintiff

3 The Court erred in sustaining the
defendants Demurrer to the plaintiffs first Rep
lication to defendants Eighth amended plea

4th The Court erred in sustaining the
defendants Demurrer to the plaintiff Second Rep
lication to defendants Eighth Amended plea

5th The Court erred in dismissing said
suit and entering Judgment. When there was
seven pleas undisposed of by the Court

6th The Court erred in refusing leave to
file additional affidavits showing the character of
the purchase by B. F. Strother Esq^r, of the lands
attached herein -

7th And for other reasons apparent on the

face of the Record & proceedings herein
Wherefore he prays said Judgment
may ^{be} enquired into reversed and remanded in
pursuance to Law

Johnson & Douglass
Plffs Advs

~~Matthew~~ ⁴ Murphy

Matthew, ex. d. T. F. Davis

Record

Filed June 16. 1855.
H. Ciland Clerk.

Mathew Murphey and } Sup Court Third
Michael Foley } Grand Jurors
vs } of Illinois

Heirs Executors Administrators
and devisees of Thomas Darrs dec'd } on Writ of Error
from So Darrs Co

Madison G Johnson of
lawful age after being duly sworn makes oath
and states that he has examined in the Probate
Court of So Darrs County and there never has
been any Executor or administrator appointed
for said Estate and none now exists to the knowledge
or belief of this Affiant. That the only heirs & devisees
of said deceased is his brother Enoch Darrs who
is now and always has resided in England and
who transferred his interest in the lands attached
to Bolton & Brother one of the Attorneys of Records
And therefore no process can be served on the heirs
Executors Administrators and devisees

Wherefore they pray an order of publication
in pursuance to Law

M G Johnson

Subscribed Sworn to
before me this 16th
July 1856

Wm M. Mitchell

Clk. for Darrs County Circuit Court
Culman Illinois

Murphy
vs
Heirs of Davis
Affidavit

Filed Feb. 25, 1856

L. Leland Clerk
by J. B. Rice Deft

STATE OF ILLINOIS,

Supreme Court,

ss.

The People of the State of Illinois,

To the Sheriff of the County of *Jo Daviess* - 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 *Jo Daviess* - county, before the Judge there, of, between *Matthew Murphy* impleaded with *Michael Foley* plaintiffs - and the *Heirs, Devizes, executors or administrators of Thomas H. Davis* decd. -

defendants, it is said that manifest error hath intervened, to the injury of the said *Murphy*

as we are informed by *his* 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 *Heirs, devizes, executors or administrators of Thomas H. Davis* decd.

that *they* 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 *2nd* Monday in *June* next, to hear the records and proceedings aforesaid, and the errors assigned, if *they* 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 *defendants*

notice, together with this writ.

Walter B. Seates
WITNESS, the Hon. ~~*Samuel H. Treat*~~, Ch. of Justice of our said Court, and the Seal thereof, at Ottawa, this *24th* day of *July* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*five*.

L. Seland

Clerk of the Supreme Court.

Leland Clerk
By J. B. Rice Depy

I can find no other Occurrences
beginning on Commencement of the
British Warred Jan 21st 1812
the British may Count
his Arm is therefore returned
not ordered

July 16th 1816 Wm W. B. B. B.
Church of St. James, C. W. B.

Matthew Murphy
& Michael Foley
Heirs & devisees of
Thomas Davis

Supreme Court
June Term 1856

John H. Higgins being
duly sworn says that the said
Matthew Murphy & Michael Foley
are both citizens & residents of
the State of Wisconsin and were
at the time of entry and the writ
of error in this case & that they
are not residents of the State of
Illinois & further says not

Subscribed & sworn to before -

John H. Higgins

Me this 12th day of June A.D. 1856.

Leland Clerk
B. H. Rice Deputy.

The plaintiff in error will
take notice that on the foregoing
affidavit the dependence in error
will move to dismiss this writ
of error for want of a bond for
costs in pursuance of law -

John H. Higgins for
Def. in error.

Matthew Murphy
et al —
Hans of Davis

Affidavit.

Filed June 12, 1856
L Leland
Clerk

Matthew Murphy }
 & Michael Foley } Appell from
 H }
 Hays & Leary of }
 Thomas H Davis }

And now at this
 time comes the said appellee
 & moves the court to dismiss the
 appeal because the
 judgment does not relate
 to a free hold nor amount to
 twenty dollars & exclusive of
 costs & because the judgment
 is for costs only -

Higgins, Beckwith
 & Shorthall atty
 for appellee

40

Matthew Murphy
equal
P

Heirs & Devisees
of Deceased -

Motion to
dismiss appeal

Filed July 10. 1855
Clerk's Off.

Clk Sup Court

Enclosed find \$5.00, file Records
and write us when the Court convenes

Douglas & Johnson

Galena June 13/53

STATE OF ILLINOIS,

Supreme Court,

ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the county of *Jo Davis* 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 *Jo Davis* — county, before the Judge thereof, between *Matthew Murphy implr. &c.*

plaintiff, and *Heirs, Devisees, Executors or administrators of Thomas H. Davis decd.* —

defendants, it is said manifest error hath intervened, to the injury of the aforesaid *plaintiff* 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 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 Monday of 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* **SAMUEL H. TREAT**, Chief Justice

of our said Court, and the Seal thereof, at Ottawa, this *24th* day of *July* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*six*.

A. Leland Clerk of the Supreme Court.

Matthew Murphy

vs
Harris & T. H. Davis

Writ of Error

Filed July 24, 1855.
L. Island Ct.

L. Island Ct. of the Supreme Court.

Murphy et al

vs
Darrs Heirs decesses to

In the Sup Court
at Olean
July Term 1855-

And now at this day
comes the said Murphy et al
And moves the Court for leave
to withdraw the Record filed in this
Cause And that the same may
be filed and for a Writ of Error and
a Supersedeas in said

Douglas & Johnson,
Atty. for

Murphy et al

~~151~~ 40

Murphy et al
25

Darr Hess to

Motion to withdraw

Recd for amt of
Error & Supersedas

Fishes July 23^d 1855
R. Nelson Ch.

Don't know
March 23

[Handwritten notes:]

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[illegible]

41 104 134

Matthew Murphy

vs

Heir of J. F. Davis

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12257

1856