No. 13012

Supreme Court of Illinois

Born

---

vs.

Staaden

71641

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division

No. 103.

1860

Barr

vs

Trader

1302

STATE OF ILLINOIS. } ss.
SUPREME COURT,

The People of the State of Illinois,

To the Clerk of the Superior Court of Chicago for the County of Cook Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Superior Court of Chicago in Cook County, before the Judge thereof, between Balthasar Born

plaintiff, and Nicholas Hauden garnishee of Michael Hambrecht

defendant, 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 first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 16th day of March in the Year of Our Lord One Thousand Eight Hundred and Sixty.

L. Leland

Clerk of the Supreme Court.

G. J. O'Brien Dep'y

103

Bathasar Born

No. vs.

Nicholas Strauder
garnishee

WRIT OF ERROR.

FILED March 16th A. D. 1860

L. Leland

Clerk.

Balthasar Born

v.

Nicholas Staaden
Garnishee of
Michael Hambrecht

In the Supreme Court
of State of Illinois
Of April Term 1860

Error from the Superior
Court of Chicago

Assignment of Errors

The Court erred in discharging the garnishee in above cause and rendering Judgment against plaintiff for costs.

1. Because garnishee admits in his answer he is indebted to Hambrecht in the sum of $613.00 on a Building contract ~~and in $100 in Liquor due on demand~~ and in $11. ~~for extra work~~.

2. Because he does not claim to be discharged from the payment of $88.00 and the $11. to the plaintiff in this proceeding.

3. Because the only excuse he makes to be discharged from the amount of $613. due on the Building contract in the first

answer is that on the 15th day of September 1859 over two months after service of garnishee process he was served with some kind of a notice (without stating what) that Hambrecht had assigned said Building contract to O. Lupsch and that assignment purported to be acknowledged before a Justice Robinson of Cook County on May 25th 1859

4. Because the only excuse he makes in addition to the one above in his second answer is that on the 4th day of October 1859 the said Lupsch as assignee brought an action against him in the name of Hambrecht in the Superior Court of Chicago on said contract, which according to answer of garnishee was before any other payment than those already made by him had become due thereon.

5. Because the said order of discharge of garnishee and the Judgment thereon is contrary to the facts set forth in his answer.

6. Because said discharge & Judgment rendered in said cause

by the Court is contrary to law —

S. A Irvin
atty for Plff.

It is hereby stipulated by and between the said Plaintiff and the said garnishee that the judgment of the Superior Court of Chicago is erroneous in this that a judgment should have been entered against said garnishee for the sum of nineteen dollars. to wit for Eight dollars in liquor. and eleven dollars for extra work. admitted to be due by the garnishee as in the assignment of errors recently set forth. and that the judgment should be in so far reversed —

S. A Irvin
atty for Plff
Monroe & Spencer
Att's for Garnishee

And now come the said garnishee Nicholas Haaden by his attorneys Monroe & Spencer & says there is no error in said record except that mentioned in said stipulation, & he. We further waive all objection to the non-filing of record & mis-assignment of errors pursuant to rule &c.

Monroe & Spencer.
Att's for garnishee

The said defendants say that
there is no Error in the judgment
and proceeding of said Circuit
Court —

Brown & Jenson
Defts Attys

United States of America
State of Illinois Cook County, ss.

Pleas before the Honorable the Judges of the Superior Court of Chicago within and for the County of Cook and State of Illinois at the regular term of said Superior Court of Chicago begun and holden at the Courthouse in the City of Chicago in said County and State, on the first Monday being the sixth day of February in the year of our Lord Eighteen hundred and sixty and of the independance of the United States the eighty fourth.

Present the Honorable John M Wilson
Chief justice of the Superior Court
of Chicago. Van H. Higgins and
Grant Goodrich Judges.
Carlos Haven prosecuting Attorney
John Gray Sheriff of Cook County.

Attest
Walter Kimball Clerk.

Be it remembered that heretofore to wit. on the first day of July in the year of Our Lord one thousand eight hundred and fifty nine. Balthasar Bonn by S. A. Ironside his Attorney. filed in the office of the Superior Court of Chicago. a certain affadavit. which is in words and figures as follows. to wit.

State of Illinois } In the Superior Court of
County of Cook. ss. } Chicago of the July term ad 1859.

Balthasar Born
vs
Michael Hambrecht }

Balthasar Born first being duly sworn on his oath deposes and says that he lately recovered a judgement in the Cook County Court of Common Pleas of said County and State against the said Michael Hambrecht for the sum of Five hundred and fifty eight & 82/100 Dollars, and seventeen and 70/100 Dollars costs of suit, and that an execution has lately been issued on said judgement and returned by the Sheriff of Cook County no property found. that the said Michael Hambrecht has no property, within the Deponents knowledge, in his possession, liable to execution. that Deponent hath just reason to believe and does believe that one Nicholas Staaden is indebted to said Michael Hambrecht, and hath effects in his hands belonging to said Hambrecht, wherefore he prays that a garnishee summons may issue to said Staaden in pursuance of the statute in such case made & provided

Subscribed and sworn
before me this 1st day of July 1859 } B. Born
Walter Dunlap Clerk

And afterwards to wit on the day and year aforesaid there issues out of the office of the clerk of said Court the Peoples writ of summons, which writ with the Sheriffs return thereon is in words and figures as follows to wit.

State of Illinois }
County of Cook. } ss.

The People of the state of Illinois to the Sheriff of said County greeting.

We command you that you summon. Nicholas Staaden if he shall be found in your County. personally to be and appear before the Superior Court of Chicago of said County. on the first day of the next term thereof. to be holden in the Court House of in the City of Chicago in said County. on the first monday of July. next to answer unto Baltasar Brom as Garnishee of Michael Hambrecht. him and there to answer. as to the rights. credits. choses in action. Effects. Estate. Property or money in his hands. belonging to the said Michael Hambrecht. And have you then and there this writ. with an endorsement thereon in what manner you shall have executed the same.

Witness. Walter Kimball Clerk of said Court. and the Seal thereof at the city of Chicago. in said county. this 1st day of July. A.D. 1859.

(L.S.)

Walter Kimball Clerk.

Garnishee,

Served by reading to the within named Nicholas Staaden the 1st day of July 1859.

I am Gray Sheriff by A Steinhaus Depy.

And afterwards to wit on the fifth day of September in the year aforesaid. said Balthasar Born filed by his Attorney aforesaid in the office of the clerk aforesaid certain Interrogatories in words and figures as follows to wit,

State of Illinois } In the Superior Court of Chicago
Cook County, } of the September term 1859.

Balthasar Born,
vs
Nicholas Staaden
Garnishee of.
Michael Hambrecht. } Interrogatories to be answered by Nicholas Staaden Garnishee of Michael Hambrecht.

Int. 1 Did you make and enter into a contract with said Michael Hambrecht to build and get for you a House or Building or to do any portion of the work thereof on North Clark Street in City of-

Balthasar Born

v.

Nicholas Staaden
Garnishee of
Michael Hambrecht

In the Supreme Court
of State of Illinois
Of April Term 1860

Error from the Superior
Court of Chicago

Assignment of Errors

The Court erred in discharging the garnishee in above cause and rendering Judgment against plaintiff for costs:

1. Because garnishee admits in his answer he is indebted to Hambrecht in the Sum of $613.00 on a Building contract ~~and in $800.00 in liquor due on account~~ and in $11. ~~for extra work~~.

2. Because he does not claim to be discharged from the payment of $613.00 and the $11. to the plaintiff in this proceeding.

3. Because the only excuse he makes to be discharged from the amount of $613. due on the Building contract in the first

answer is that on the 15th day of September 1859 over two months after service of garnishee process he was served with some kind of a notice (without stating what) that Hambrecht had assigned said Building contract to one Lupsch and that assignment purported to be acknowledged before a Justice Robinson of Cook County on May 25th 1859

4. Because the only excuse he makes in addition to the one above in his second answer is that on the 4th day of October 1859 the said Lupsch as assignee brought an action against him in the name of Hambrecht in the Superior Court of Chicago on said contract, which according to answer of garnishee was before any other payment than those already made by him had become due thereon.

5. Because the said order of discharge of garnishee and the Judgment thereon is contrary to the facts set forth in his answer.

6. Because said discharge & Judgment rendered in said cause

Chicago or elsewhere, before the service of the Garnishee process you served in said cause, if so where and fully, the consideration terms and conditions of said contract.

2nd Int.

If in answer to said foregoing interrogatory you say there was such contract. State at the time of service of Garnishee process herein upon you what if any part of such contract was performed by said Hambrecht, and how much had you at that time paid him on said contract. (if any) and has said Hambrecht since said service continued to work under said contract, if so has he in part or wholly performed said contract. if in part what part, and what sum was due on said contract from you to him. when Garnishee service was served upon you. and what sums or sum have since become due and how and when and what is the balance if any. now due from you to said Hambrecht.

2nd 3. Had you at the time of service of Garnishee process herein upon you. or have you since had in your possession custody. charge or control any lands. tenements. goods. chattels. money credits or effects or any of them belonging to said Michael Hambrecht, or in which he was or is

in any wise interested. If so state fully what lands, tenements, goods, Chattels moneys credits &c or effects,

2nd, Were you at the time of the service of said garnishee process upon you, or have you since become indebted to Michael Dambrecht, in any way, if so state how and in what amounts or am ounts,

S. A. Irons Dep. Attorney for Barr,

And afterwards to wit on the sixteenth day of September in the year aforesaid. Nicholas Staaden by his Attorneys Munroe and Spencer filed in the office of the clerk of said court, his answers in words and figures as follows to wit,

State of Illinois
Cook County } ss.

Balthasar Barr
vs
Nicholas Staaden
Garnishee of
Michael Dambrecht.

Superior Court of Chicago September Term, A.D. 1859.

The answer of Nicholas Staaden to the interrogatories filed in said cause. In answer to the first interrogatory, the said defendant, Staaden answers and says, That on the Eleventh day of April A.D. 1859. this defendant Staaden made and entered into an agreement with said Michael Hambrecht to erect a house or store on North Clark St. No 219 in said Street in the City of Chicago, in and by which said contract or agreement, said Staaden agreed to pay said Hambrecht four hundred dollars when the roof of said building was covered. Three hundred and forty five dollars when the work should be entirely completed and accepted by the architect. Three hundred dollars three months after the work was completed and accepted by the architect, and Three hundred six months thereafter said completion and acceptance by the architect. The said Hambrecht agreeing to do all the Carpenter work, roofing and painting, furnishing lumber glass locks &c. and agreeing to do all the work necessary to the erection of the building except the mason work. the Iron posts in front of building the plastering and putting in the gas and water pipes, in said Building. It was further contracted and agreed, that if the said

Building was not completed by the fifteenth day of July. then said Hambrecht was to forfeit and deduct from the aforesaid summons named as his compensation for doing said work two dollars per day for each and every day during which said building should remain incomplete and unaccepted by the Architect.

And the said Straaden in answer to the second interrogatory says. That at the time of the service of the garnishee process. the said building was only partially completed. the roof was on. some painting was done in some of the rooms, some but not all the windows were in. and further the said Straaden says. that at the time of the said service of ~~the~~ garnishee process he had paid said Hambrecht at least six hundred dollars. on said contract. said Straaden further answers. that since said service of Garnishee process. said Hambrecht has continued to work with frequent interruptions until the present time that said work was only in part performed at the time of said service of garnishee summons. and the same is not yet complete nor accepted by said architect, and that it is impossible to state the amount due on said contract at the time of said service of

Garnishee summons, neither can the said Straaden now state the amount due said contract by reason the unfinished state of said building, but is of the opinion that the amount will be between five and six hundred dollars.

And the said Straaden in answer to the third interrogatory, says that he cannot state whether or not, he has had at the time of said service of Garnishee summons, any moneys, credits, lands, tenements, goods, chattels or effects, or property in his hands or whether he was in any wise indebted to said Hambrecht, but refers to the answer thereto before made, to the second interrogatory, which is a full and complete answer to said third interrogatory

And the said Straaden further says, that on the thirteenth day of September AD 1859, a notice of the assignment of said contract by Hambrecht to one August Lupsch, on the first day of May 1859, Before D. C. Robinson a justice of the peace of Cook County Illinois, was served upon him and he required, to make all payments and settlements with August Lupsch. And the said Straaden further in answer to the fourth interrogatory refers to the answers heretofore made.

to the second and third interrogatories. Which are a full answer to the said fourth interrogatory.

Nicholaus Staaden

Sworn and subscribed before me this 16th day of September A.D. 1859.
Walter Kimball Clerk.

And afterwards to wit on the fifth day of October in the year aforesaid, said Born by his attorney aforesaid filed in the office of the clerk of said court, his exceptions to the answers of said Staaden which is in words and figures as follows to wit.

In the Superior Court of Chicago.
Of the October term. A.D. 1859.

Balthasar Born
vs.
Nicholas Staaden
Garnishee of M. Hambrecht

Garnishee.

Exceptions taken by the said plaintiff to the insufficient answer of Nich Staaden. Garnishee of Michael Hambrecht.

1 For that said Staaden does not fully and fairly & wittingly set out in his answer to the first interrogatory the terms consideration and conditions between him and Hambrecht referred to in that interrogatory. that a copy of said contract if in writing & in his possession or power. (or if not in writing and in his possession or power, those facts should have been stated, should have been attached to his answer, so that the court might inspect it and construe it.

2. For that said Staaden in answer to the second interrogatory. does not fully and fairly state what work had been done by Hambrecht at the time of the service of Garnishee process. herein and the exact amount then paid, by said Staaden to said Hambrecht, but states these answers evasively, that said Staaden does not, in answer to said interrogatory state what if any amount was due on said contract from him to Hambrecht, at the time of service of Garnishee process. Whether Hambrecht continued the work after that date, and if so what part of the work, he did after that time. and what sum or sums have become due therefor. nor does he state the bal-

ance due at the time of answering.

3. That Answer of Staaden to this interrogatory is evasive and not complete.

4th *

5th. And that Plaintiff says that said answer of the said Staaden is altogether evasive and insufficient in other respects patent on the face of said answer, and said Plaintiff prays the court, that said garnishee may be required to put in a full fair and perfect answer to the interrogatories propounded to him therein, without delay.

S. A. Irons Atty
for Plff.

* Must answer to former interrogatory as well as to new matter.

And afterwards to wit on the Eighteenth day of October in the year aforesaid Nicholas Staaden by his Attorneys aforesaid, filed in the office of the Clerk of said court, his further answer in words and figures as follows to wit,

Balthasar Penn
vs.
Nicholas Staaden
Garnishee of M. Hambrecht.

Superior Court
of Chicago
October Term, A D
1859.

The further answer of Nicholas Staaden in the above entitled cause to the interrogatories filed therein and the exceptions to the answer of said Staaden so far as the same are intelligible to said Staaden. The contract entered into between said M. Hambrecht, on the 11 day of April 1859 A.D. And this defendant for answer exclusive of the specifications, and the four drawings or plans referred to in said specifications is as follows to wit,

"Articles of agreement, made on the 11 day of April 1859 A.D. in the City of Chicago Cook County State of Illinois, between N. Staaden party of the first part and M. Hambrecht party of the second part, both of the city of Chicago, Witnesseth that for and in consideration, of the sum of thirteen hundred and forty five dollars, to be paid by the party of the first part N. Staaden to M. Hambrecht party of the second part, in the manner hereinafter mentioned, M. Hambrecht party of the second part, will finish all carpenter work, painting and glazing to the above said Building and in consideration of the plans and specifications as before said furnish all materials for the sum of Thirteen hundred and forty five dollars payable as.

follows, After the roof is covered ($400) four hundred dollars and three hundred and forty five dollars ($345) after finishing of the buildings ($300) three hundred dollars, three months after the house is finished, and the balance of three hundred dollars ($300) three months after the third payment. M. Hambrecht will build the whole work as said before in best workmanlike manner, and compose the same of such materials as are herein particularly specified, it shall be expressly understood between the parties, that M. Hambrecht shall have finished the whole building and work to the fifteenth day of July next 1858 of two dollars ($2) for each day payable to N. Staaden.

The time that

In witness whereof the parties hereto set their hands and seals the day and year above written,

Witness
I. I. Colver Jr.
I. H. Staaden

"M Hambrecht"
"Nicolas Staaden"

And for a further answer to the record interrogatory this defendant says at the time of the service [illegible] - mike process, he had paid said Ha[illegible] four hundred and and fifty dollars, for lumber to put into said buildings. One hundred and twenty

six dollars 46/100 dollars in liquors before the service of process, being delivered in Barre at wholesale prices and in all making five hundred seventy six & 46/100 dollars. And this deponent says that at the time of service of said process, the said building was in an unfinished state, in process erection the roof was on, and most of the joice were up, and put in, but this defendant cannot state with any certainty or approximately, what was then done or what relative proportion of the contract had been performed. This defendant further says, that since the filing of the first answer, he has made a calculation of the amount due with the architect, heretofore, to wit, the 27th day of September 1899 A.D. that at that time the building was unfinished, as to the roof the skylight and other parts of the building, that it was then and there agreed by and between said architect, and said defendant, and so estimated by said architect, that there was still due from this defendant on said contract $613.00 from which was to be deducted. The damages in consequence of said defendant breaking not having performed his contract at the

time agreed on, and not having completed his work by the 15th day of July 1859, And this defendant says that after deducting the amount of damage, by reason of said delay there remains due on said contract, $46 70/100 the same being payable when by the terms of the contract it becomes due. This defendant also says that he owes said Hambrecht, Eight dollars to be paid in liquor on demand, and eleven dollars for extra work. The first debt of Eight dollars having accrued to said Hambrecht, by trade in other matters than the house-contract. And this defendant further answering says, that on the fourth day of October 1859, suit in the name of Wm Hambrecht for the use of August Lupeck it is claimed the said contract has been assigned, was commenced in this Court, for the recovery of the money still due on said contract that service has been had on this defendant in said suit, and that the said suit is still pending, the summons being returnable to the November term of this Court, This defendant further says, that it was further estimated and decided by said architect, that only $13 66/100 is now due

~~that another payment~~ that ajn other payment will be all
of all due on the 23 day of Decr 1859, and that the
last payment will be on the 23 day of March 1860,

Sworn to and subscribed before me
This 14 day of October 1859,
Walter Kimball Clerk Nicholas Staaden Junr,

And afterwards to wit, on the twenty second day of
February in the year of Our Lord one thousand eight
hundred and sixty, said day being one of the days of
the february term, of said court, the following among
other proceedings was had and entered of Record, in said
County to wit,

Balthasar Born,
vs,
Nicholas Staaden Garnishee
Michael Hambrecht,
This day comes said Plaintiff by Irvin and Adams his At-
torneys and said Garnishee Nicholas Staaden also comes
and issue being joined, in answer of said Garnishee upon
agreement of parties made now here in open Court, this
Answer submitted to the court, On answer of said Garnishee
for trial without intervention of Jury, And the court now here
and after hearing evidence and being fully advised, finds
issues for said Garnishee Nicholas Staaden, And it is on

dered he be discharged. Therefore it is considered, said Garnishee Nicholas Staaden to have and recover of said plaintiff his costs, about his defence expended and have Execution,

State of Illinois
County of Cook } ss.

I, Wallace Kimball Clerk of the Superior Court of Chicago, in and for said County, do hereby certify that the above and foregoing is a full and true Transcript of all the papers and pleadings on file in my office, and of the proceedings and Judgment entered of Record in said Court in a certain case wherein Balthasar Born is Plaintiff, and Michael Hambuckt, defendant.

In testimony whereof I hereunto subscribe my name, and affix the Seal of said Court, at the City of Chicago, in said County this 15th day of March 1860.

Wallace Kimball Clerk

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Balthasar Born

vs

Nicholas Staadeg
garnishee of
Michael Hambrecht

Transcript of Record

Filed March 16 1860
L. Leland
Clerk

$11.50 fees paid
W Kimball
Clerk

STATE OF ILLINOIS, } ss.
SUPREME COURT, }

The People of the State of Illinois,

To the Sheriff of the County of Cook Greeting:

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Superior Court of Chicago Cook County, before the Judge thereof, between Balthasar Born

plaintiff, and Nicholas Staaden garnishee of Michael Hambricht

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

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 Nicholas Staaden

that he be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if ~~he~~ he shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Nicholas Staaden

notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 16th day of March in the Year of Our Lord One Thousand Eight Hundred and Sixty.

L. Leland

Clerk of the Supreme Court.

by J. B. Rice Deputy

472 Cook Co.

Balthasar Born

No. vs.

Nicholas Staaden garnishee of Michael Hambuch &c.

SCIRE FACIAS.

FILED ..... A. D. 186

Clerk.

Served by reading to the within named Nicholas Staaden this 23rd day of March 1860

John Gray Shff

1 Service 50
Mileage 10
Return 10
70

By A. Mc. Kinney Dep'ty

Pd by atty

Printed by Jameson & Morse, 14 La Salle Street, Chicago.

IN THE SUPREME COURT

OF THE STATE OF ILLINOIS.

APRIL TERM, A. D. 1860.

BALTHASER BORN,

vs.

NICHOLAS STAADEN,
GARNISHEE OF
MICHAEL HAMBRECHT.

PLAINTIFF'S POINTS AND BRIEF.

1. Garnishee's answers to be construed strongly against him, because incomplete and evasive.

2. That though evasive, his answers admit an indebtedness on Sept. 27, 1859, on the building contract, of $613.00.

And the sum of $8.00 in liquor on demand.

And, also, the sum of $11.00 for extra work.

3. That Garnishee having once been charged, he must show enough to discharge himself. The *onus* of so doing is upon him. *McCoy vs. Williams*, 1 *Gilm.* 584.

4. How does he undertake to do this?

1. By setting up the legal effect of the contract—by stating Hambrecht was to forfeit $2.00 per day for every day building was unfinished after July 15, '59.

2. By stating architect had estimated damages, and that after deducting them there was but $467 due on contract.

4. But the Court will observe by reference to contract set out in Garnishee's second answer, that the part of it in reference to the forfeiture is unintelligible, and being so, the Court can but disregard it.

5. But should the Court attempt to construe that part of the contract, in other words, conclude it is intelligable, then, *quere*, is it simply a penalty or stipulated damages?

6. I contend it is clearly a penalty, if so, Garnishee should have shown the extent of the damage occasioned by the delay. Not having done this, he can claim nothing thereby.

7. But I contend, as the contract price of house was $1345.00, and he has paid but $576, the balance due on the contract is actually $769.

8. That although his answers state that house is unfinished, yet it is not stated what is to be done.

9. That the fact Garnishee had architect, on Sept. 27, 1859, estimate what was done on contract, shows that he knew or might have known, what remained to be done on house, and his not answering fully in that respect is an evidence of want of candor—it is an evasion.

10. The next method by which Garnishee seeks to discharge himself is that on the 13th day of September, 1859, (just three days before answer filed,) and two and a half months after service of process, he was served with a notice of what purported to be an assignment of said building contract by Hambrecht to one August Lupsch--same purporting to have been acknowledged May 25, '59.

11. To this I reply, in first place, that the answers show it a fraud. The contract was made April 11, 1859. The assignment purports to be made May 25, 1859. By the contract, payments were to be made as work progressed. These were made to the extent of $576, before service of process, to Hambrecht, without objection by the assignee.

12. In the next place, I contend that the assignment of a chose in action before service of process of garnishment, but without notice of the fact given to the garnishee, until after such service, but before answer, does not discharge the garnishee.

In England, I believe, the decisions are uniform that notice of an assignment of chose in action given after service of process of garnishment comes too late. *See Ryall vs. Rolle*, 1 *Atk.* 165. *Jones v. Gibbons*, 9 *Ves.* 410. *Dearle vs. Hall & Loveridge*, 3 *Russ.* 1, 22, 28 & 29. *Lord Bacon's Maxims of Law*, *max.* 16.

In that maxim Lord Bacon says: "If you omit to give notice" (to the debtor) "you are guilty of the same degree and species of neglect as he who leaves a personal chattel, to which he has acquired a title, in the actual possession and under the absolute control of another person."

The same doctrine is fully established in this country in the following cases: *Judah v. Judd*, 5 *Day* 534; *Bishop v. Holcomb*, 10 *Com.* 444; 14 *Id.* 141, 20 *Id.* 395 & 73; *Ward v. Morrison*, 25 *Verm't* 593; *Barney v. Douglass*, 19 *Verm't* 98; *Richards v. Griggs*, 16 *Missouri* 416; *Clodfeldt v. Cox*, 1 *Sneed* 330.

Nor does the pendency of an action by the assignee of a chose in action in name of assignor, commenced after service of garnishee process, and while garnishee can plead the garnishment, discharge him. *Foster v. Dudley* 10, *Foster* 463, *Trombly v. Clark*, 13. *Verm't* 118, *Bingham v. Smith*, 5 *Alab.* 651, *Wallace v. McConnell*, 13 *Pets.* 151.

Again, there is nothing in garnishee's answer to show Hambrecht indebted to Lupsch, to whom it is alleged the contract is assigned. This should appear, according to decision of this Court, in case of the *People, &c. v. M. Y. Johnson* 14 *Ills.* 342.

Finally, the judgment of the Court below is erroneous, because garnishee admits two items of indebtedness, one of $8 and another of $11, independent of the building contract, and which it is not claimed has been assigned.

S. Irwin
Atty for Pltff

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Bonn
vs
Staaden

Pltff Brief

Filed May 1. 1860
L. Leland
Clerk

Printed by Jameson & Morse, 14 La Salle Street, Chicago.

IN THE SUPREME COURT

OF THE STATE OF ILLINOIS.

APRIL TERM, A. D. 1860.

BALTHASER BORN,

vs.

NICHOLAS STAADEN,
GARNISHEE OF
MICHAEL HAMBRECHT.

ABSTRACT OF THE RECORD.

2

Affidavit of plaintiff for garnishee, sworn to and filed in the superior court of Chicago, on the 1st day of July, A. D. 1859.

Affidavit sets forth, that plaintiff lately recovered a judgment in the Cook county court of common pleas, against Michael Hambrecht, for the sum of $558.82, and $17.32 costs of suit.

That an execution had been issued on said judgment, and returned by the sheriff of Cook county, "no property found."

That said Michael Hambrecht has no property within deponent's knowledge, in his posession, liable to execution—that the deponent hath just reason to believe, and does believe, that one Nicholas Staaden is indebted to said Hambrecht, and hath effects in his hands belonging to said Hambrecht, and praying writ of garnishment against said Staaden.

3

That in pursuance of said affidavit, a garnishee summons was issued, dated July 1st, 1859, returnable on the first Monday of July, 1859.

4-

That said garnishee summons was duly served on said Staaden, on the said 1st day of July, 1859, by the sheriff of Cook county, Ill.

586

That at the September term, A. D. 1859, of said superior court of Chicago, and on the 5th day of September, 1859, plaintiff caused interrogatories to be filed in said court for said Staaden to answer as garnishee aforesaid.

That by said interrogatories, plaintiff asked and required the answer of Staaden in substance, to the following:—

1. Whether he had entered into a contract with said Hambrecht, to build and erect for him a house or building, or to do any portion of the work thereof, in the city of Chicago or anywhere else, before service of writ of garnishment. If so, to state terms and conditions of contract.

2. That if he answered that he did enter into such contract, then to state at date of service of garnishee summons what part of the contract was performed—and how much he had paid Hambrecht on contract (if any,) and has said Hambrecht, since said service, continued to work under said contract—if so, has he in part, or wholly performed said contract—if in part, what part, and what sum was due when he was served, and what sum or sums have became due, and how, and when, and what is the balance now (then) due from him to said Hambrecht.

3. If he had, at time of service of process herein, upon him, or has he since, had in his possession, custody, charge or control, any lands, tenements, goods, chattels, moneys, credits or effects, or any of them belonging to said Hambrecht, or in which he was any way interested—if so, to state the same fully.

4. If he was, at the time of the service of process herein, or has he since become indebted to Michael Hambrecht in any way—if so, how, and in what amount or amounts.

7-8-9-10

That to said interrogatories the said Nicholas Staaden filed his answer in said superior court, on the 16th day of September, 1859.

That said answer substantially sets forth the following, as the facts:

1. That garnishee did, on the 11th day of April, 1859, enter into a contract with said Hambrecht, to build him a house or store in the city of Chicago, whereby garnishee was to pay him $400 when roof on house, $345 when work entirely completed and accepted by architect, $300 three months after work accepted, and $300 six months after completion and acceptance of work—that Hambrecht was to do all the carpenter work of house, roofing and painting, and was to furnish lumber, glass, locks, etc. —that in fact, he was to do all the work on house, except mason work, plastering, and furnishing gas and water pipes, and iron posts for front of

house—that building was to be completed by the 15th day of July—that for every day after that period that building remained uncompleted, Hambrecht was to forfeit two dollars.

2. That at time of service, said building partially completed, the roof was on, some painting done, some, but not all, the windows were in—that he had then paid Hambrecht at least $600—that after service of process, Hambrecht continued to work with frequent intermissions, till date of answer—that house was not then completed, nor was it accepted by architect—that it was impossible to state amount due on contract at time of service or then, by reason of unfinished state of building, but garnishee was of opinion that the amount would be between $400 and $500.

3. Said garnishee also says, in answer to 3d interrogatory, that he cannot state whether at the time of the service of garnishee process, he had any moneys, credits, lands, tenements, goods, chattels, or effects, or property in his hands, or whether he was in any wise indebted to said Hambrecht or not—but refers to answer to 2d Int. as a full and complete answer to 3d Int.

He also says in connection with his answer to 3d Int., that on the 13th day of September, 1859, he was served with notice of what purported to be an assignment of said contract by Hambrecht, to one August Lupsch—that said assignment purported to be acknowledged May 25th, 1859, before justice Robinson of Cook county.

In answer to 4th Int. he refers to answer to 3d Int. as his answer thereto.

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To this answer said plaintiff filed his exceptions, in said superior court, on the 5th day of October, 1859, which are in substance, as follows:

1. That Staaden does not fully and fairly answer 1st Int., but evades same—that he does not fully set out terms and conditions of contract—that if in writing, he should set out a copy thereof in his answer, or excuse himself for not so doing.

2. That in answer to 2d Int., he does not fully and fairly state what work had been done at time of service of garnishment, and the exact amount paid—that he does not state amount due Hambrecht at time of service of process—that he does not state specifically what part of the work Hambrecht done after service, and what sum or sums since have become due—what part of the work was to be done when he answered, and the exact balance then due.

3. That his answer to 3d Int. is evasive and incomplete.

4. That his answer to 4th Int. is equally evasive and incomplete.

5. That said answer is in other respects, patent on the face of it, insufficient and incomplete.

13-14-15-16
17—

That said garnishee, without any order of court disposing of said exceptions, consented to, and did further answer make, which was filed in said superior court on the 18th day of October, A. D. 1859, and which is in substance as follows:

1. That garnishee and said Hambrecht did enter into a contract in writing for building house mentioned in first answer herein—that it is dated April 11th, 1859, and that exclusive of specifications and plans, it is in following words, (setting it out) which is substantially as stated in 1st answer, except that the contract does not in fact, provide that Hambrecht shall forfeit $2 for every day house remains unfinished after July 15.

2. That at time of service of garnishee process, he had paid Hambrecht $450 for lumber to put in building, and $126 in liquor, making in the aggregate $576, that at said time roof was on house and most of the joists were up—but that he cannot state with certainty, or approximate to what was then done or the relative portion done.

That since filing of first answer, he has with architect, made calculation of amount due on the 27th day of September, 1859—that at that time building was unfinished as to the roof, sky-lights and other parts.

That amount then found to be due, by garnishee and architect, to Hambrecht on contract, and which is still due, is $613, from which he claims a deduction for delay in house not being completed by time agreed on in contract.

That after deducting amount of damage which he claims, there is still a balance due on contract of $467, payable as by terms of contract.

Garnishee further states that he owes Hambrecht in addition, and on a separate trade, $8 to be paid in liquor on demand, and $11 for extra work.

Also, that on the 4th day of October, 1859, suit was commenced in superior court of Chicago, in the name of said Hambrecht, for use of August Lupsch against said garnishee, for the recovery of money due on said contract.

That it was decided by architect that there was only $13.66 due Oct. 14th, 1859, on contract, to Hambrecht—that another payment would become due, December 23d, 1859, and the last payment, March 23d, 1860.

That afterwards, to wit: on the 22d day of February, 1860, the said cause was submitted to the said court on answers, without intervention of jury, by agreement of parties—and the said court, upon consideration thereof discharged garnishee, and judgment was rendered against plaintiff for costs.

Then follows assignment of errors.

E. W. Brackett
S. A. Irwin
attys for Plff

Assignment of Errors—

1— The Court erred in discharging the garnishee in said Cause and rendering judgment against plaintiff for costs—

2— Because the only Excuse he makes to be discharged from the amount of $13.66 due on the Buildings in the first answer is that on the 13 day of September 1859 over the process of the Service of Garnishee process herein served with some kind of a notice (written) stating that Hambrecht had assigned said Building Contract to one Kupsch and that assignment purported to be acknowledged before a Justice Robinson of Cook County on Nov 25 1859

4- Because the Judgment of dismissal of said Garnishee is contrary to law under the facts set forth in his answer - that the Judgment should have been rendered for plaintiff in sum of $615

E H. Brackett
J A Swan —
Pltfs Atty

103-25

Filed May 3rd 1880
R. Leland
Clerk

Supreme Court of Illinois—Third Grand Division

APPIL TERM, A. D. 1860.

BATHAZAR BORN,
vs
NICHOLAS STAADEN,
GARNISHEE OF
MCHAEL HAMBRECHT.

DEFENDANTS POINTS AND BRIEF.

The answer of garnishee, which has not been controverted, admits an indebtedness to the defendant, Hambrecht, in the suit, below of nineteen dollars, and the same also admits an indebtedness of $467, to the equitable owner of a building contract originally made between the garnishee and said Hambrecht, but assigned, on the 25th day of May, 1859, as the garnishee Stader, is informed, by a notice served upon him Sept. 13th, 1859, about ten weeks after the service of process to one August Lupsch, and also, by the institution of a suit in said Superior Court of Chicago, in the name of said Hambrecht, for the use of said August Lupsch, on said building contract. It is admitted that the Superior Court erred in not rendering judgment against said garnishee, for the sum of nineteen dollars.

But as to the garnishee's liability to the plaintiff on the building contract, after notice of assignment, the counsel for the garnishee insist.

The Common Law adjudicates upon rights, only after personal service.

Chitty's Gen. Prac., 3 Vol., 141.
4 Blackstone, 283.
Oakley vs Aspinwall, 4 Comstock, 520.

The statute (vide Scates, et al, Comp'l, page 549) provides no mode to make a pretended or actual assignee of a debt garnisheed, a party to the garnishee suit, either by actual or constructive service, so that as a *quasi in rem* proceeding, it is not decisive of or binding upon the rights of the assignee, Lupsch.

The Superior Court of Chicago discharged the garnishee, as otherwise the garnishee would be exposed to a second judgment for the same debt in the suit already pending against him, at the instance of the assignee, Lupsch, since under the constitution, judgment in the present suit can be no bar to said suit in favor of Lupsch.

IV. It is a sufficient defence to the garnishee, if he, any time before judgment, brings an assignment of the debt garnisheed to the attention of the Court.

Smith vs Wright, 6 Blackford, 550.
Wakefield vs Martin, 3 Mass. 558.
Dix et al vs Cobb et al, 4 Ib., 509.
Stevens vs Stevens, 1 Ashmead 190.
Waters vs Washington Insurance Co., 1 Clark, (Iowa) 412.

V. The answer not being disproved, the garnishee, as to the building contract should be discharged, for it not only does not appear that he is indebted to Hambrecht, but the answer shows the indebtedness to the assignee Lupsch.

VI. With regard to the English authorities cited by plaintiff: Royal vs Rowles, and Jones vs Gibbons, are cases of bankruptcy, turning upon the peculiar wording of an act of Parliament, viz: 21 James 1, Dearl vs Hall, and Loveridge vs Cooper are not cases involv-

ving the respective rights of an assignee of a chose in action, and a garnishing creditor, where notice of the assignment, although prior to, is given after garnishment, but between different assignees of the same fund, by contract with the same assignor, where the assignee, second in point of assignment, was first in point of notice thereof, to the debtor, and the assignee first in point of time, was guilty of gross laches, resulting in injury to the second assignee. They decided that the second assignee held on the principle that as between two innocent persons, he should suffer who has enabled a third party to perpetrate a fraud upon the other. The question was treated as *res nova*, although in Cooper vs Fenimore, 3 Russell 60, it had been decided that notice was not necessary to complete an assignment of a chose in action, and recognized between two assignees of the same fund, from the same assignor, that the equities being equal, and neither assignee having the legal title, even when the second assignee had first given notice of the assignment to the debtor, the first assignee held as against the second on the familiar principle, *prior in tempore, potior in jure.* The earlier decision of Cooper vs Fenimore, (although reported in the same volume of Russell,) has been more generally followed in the United States, vide Muir vs Schenck, 3 Hill, 228, and the other list of cases, first cited in this argument, under head—notice not necessary to complete assignment. The dictum of Dearle vs Hall, that notice to the debtor of an assignment of the debt, is as essential as delivery to the sale of chattels was carried into a direct adjudication in Woodbridge vs Perkins, 3 Day, 364, and then followed by the other American decisions, cited in plaintiff's argument. Where the equities are equal, in the absence of legal title, *prior in tempore potior in jure*, is the general rule in equity; and there is nothing in the English cases, cited by plaintiff, to constitute them exceptions to the general rule, unless it be that the laches of the 1st assignee was so great as to amount to a constructive fraud on the second assignee.—The American cases, cited by plaintiff, seem to have adopted the rule of the necessity of notice of assignment to the debtor to complete the

same, as an easy and practical one to avoid litigation, upon conflicting equities, rather than as an old rule of law, sanctioned by authority.

VII. Notice to the debtor is only necessary to charge him with the duty of paying to the assignee without which a payment to the assignor by virtue of process against him, would be good.

Story on Conflict of Laws, § 396.

VIII. A garnishing creditor after judgment is not a bona fide purchaser for value, and is not, like a garnishing creditor before judgment, entitled to be so considered by virtue of the statute. The assignee for value certainly has a superior equity to a garnishing creditor;—but a garnishee has a still greater equity, in requiring that the assignee and the garnishing creditors should fight out their own law-battles at their own expense, without exposing him to the risk of being compelled to pay the same debt twice.

MONROE & SPENCER,

Counsel for Garnishee.

103-75

Born

in

Staaden

Depts. Brief

Filed May 1, 1875

L. Leland

Clerk

Supreme Court of Illinois—Third Grand Division

APPIL TERM, A. D. 1860.

BATHAZAR BORN,
vs
NICHOLAS STAADEN,
GARNISHEE OF
MCHAEL HAMBRECHT.

DEFENDANTS POINTS AND BRIEF.

The answer of garnishee, which has not been controverted, admits an indebtedness to the defendant, Hambrecht, in the suit, below of nineteen dollars, and the same also admits an indebtedness of $467, to the equitable owner of a building contract originally made between the garnishee and said Hambrecht, but assigned, on the 25th day of May, 1859, as the garnishee Stader, is informed, by a notice served upon him Sept. 13th, 1859, about ten weeks after the service of process to one August Lupsch, and also, by the institution of a suit in said Superior Court of Chicago, in the name of said Hambrecht, for the use of said August Lupsch, on said building contract. It is admitted that the Superior Court erred in not rendering judgment against said garnishee, for the sum of nineteen dollars.

But as to the garnishee's liability to the plaintiff on the building contract, after notice of assignment, the counsel for the garnishee insist.

I. Notice to the debtor of an assignment of the debt, is not necessary to complete the same as to third parties; and such notice cannot add to its validity.

The United States vs Vaughan, 3 Binney, 394.
Stevens vs Stevens, 1 Ashmead, 390.
Bohland vs Cleveland, 1 Mason, 474.
Warren vs Copelin, 4 Metcalf, 594.
Wakefield vs Martin, 3 Mass. 558.
Dix et al vs Cobb etal, 4 ib. 509.
Wood vs Partridge, 11 ib. 488.
Littlefield vs Smith, 17 Maine, 327.
Muir vs Schenck, 3 Hill, 228.
Walters vs Washington Ins. Co., 1 Clark (Iowa R.) 412.

Hence, if the assignment to Lupsch was not fraudulent, it being prior in time to the service upon garnishee Staaden, the plaintiff reached nothing by his garnishment of the proceeds of the building contract.

Foster vs Sinlsler & Freestee, 4 Mass. 450.
Story on Conflict of Law, sec. 396, and cases cited.
Muir vs Schenck, 3 Hill, 228.

II. If fraudulent, the garnishing creditor should assume the burden of contesting the assignment with the pretended assignee, and not ask for judgment against the garnishee, until the decision of such contest.

Smith vs Wright, 6 Blackford, 550.
Craiton vs Clark, 11 Alabama, 787.

III. The assignee, Lupsch, after notice to his debtor, Staaden, of the assignment to him, of the building contract, cannot be deprived of his property in said debt, except by law.

Vide Constitution, Article 13, sec. 8.

The Common Law adjudicates upon rights, only after personal service.

Chitty's Gen. Prac., 3 Vol., 141.
4 Blackstone, 283.
Oakley vs Aspinwall, 4 Comstock, 520.

The statute (vide Scales, et al, Comp'l, page 549) provides no mode to make a pretended or actual assignee of a debt garnisheed, a party to the garnishee suit, either by actual or constructive service, so that as a *quasi in rem* proceeding, it is not decisive of or binding upon the rights of the assignee, Lupsch.

The Superior Court of Chicago discharged the garnishee, as otherwise the garnishee would be exposed to a second judgment for the same debt in the suit already pending against him, at the instance of the assignee, Lupsch, since under the constitution, judgment in the present suit can be no bar to said suit in favor of Lupsch.

IV. It is a sufficient defence to the garnishee, if he, any time before judgment, brings an assignment of the debt garnisheed to the attention of the Court.

Smith vs Wright, 6 Blackford, 550.
Wakefield vs Martin, 3 Mass. 558.
Dix et al vs Cobb et al, 4 Ib., 509.
Stevens vs Stevens, 1 Ashmead 190.
Waters vs Washington Insurance Co., 1 Clark, (Iowa) 412.

V. The answer not being disproved, the garnishee, as to the building contract should be discharged, for it not only does not appear that he is indebted to Hambrecht, but the answer shows the indebtedness to the assignee Lupsch.

VI. With regard to the English authorities cited by plaintiff, Royal vs Rowles, and Jones vs Gibbons, are cases of bankruptcy, turning upon the peculiar wording of an act of Parliament, viz: 21 James 1, Dearl vs Hall, and Loveridge vs Cooper are not cases invol-

ving the respective rights of an assignee of a chose in action, and a garnishing creditor, where notice of the assignment, although prior to, is given after garnishment, but between different assignees of the same fund, by contract with the same assignor, where the assignee, second in point of assignment, was first in point of notice thereof, to the debtor, and the assignee first in point of time, was guilty of gross laches, resulting in injury to the second assignee. They decided that the second assignee held on the principle that as between two innocent persons, he should suffer who has enabled a third party to perpetrate a fraud upon the other. The question was treated as *res nova*, although in Cooper vs Fenimore, 3 Russell 60, it had been decided that notice was not necessary to complete an assignment of a chose in action, and recognized between two assignees of the same fund, from the same assignor, that the equities being equal, and neither assignee having the legal title, even when the second assignee had first given notice of the assignment to the debtor, the first assignee held as against the second on the familiar principle, *prior in tempore, potior in jure.* The earlier decision of Cooper vs Fenimore, (although reported in the same volume of Russell,) has been more generally followed in the United States, vide Muir vs Schenck, 3 Hill, 228, and the other list of cases, first cited in this argument, under head—notice not necessary to complete assignment. The dictum of Dearle vs Hall, that notice to the debtor of an assignment of the debt, is as essential as delivery to the sale of chattels was carried into a direct adjudication in Woodbridge vs Perkins, 3 Day, 364, and then followed by the other American decisions, cited in plaintiff's argument. Where the equities are equal, in the absence of legal title, *prior in tempore potior in jure*, is the general rule in equity; and there is nothing in the English cases, cited by plaintiff, to constitute them exceptions to the general rule, unless it be that the laches of the 1st assignee was so great as to amount to a constructive fraud on the second assignee.—The American cases, cited by plaintiff, seem to have adopted the rule of the necessity of notice of assignment to the debtor to complete the

same, as an easy and practical one to avoid litigation, upon conflicting equities, rather than as an old rule of law, sanctioned by authority.

VII. Notice to the debtor is only necessary to charge him with the duty of paying to the assignee without which a payment to the assignor by virtue of process against him, would be good.

Story on Conflict of Laws, § 396.

VIII. A garnishing creditor after judgment is not a bona fide purchaser for value, and is not, like a garnishing creditor before judgment, entitled to be so considered by virtue of the statute. The assignee for value certainly has a superior equity to a garnishing creditor;—but a garnishee has a still greater equity, in requiring that the assignee and the garnishing creditors should fight out their own law-battles at their own expense, without exposing him to the risk of being compelled to pay the same debt twice.

MONROE & SPENCER,

Counsel for Garnishee.

103-75

Bonn

vs

Staaden

Desp-Bond

Filed May 1. 1876

L. Adams

Clerk

103

Printed by Jameson & Morse, 14 La Salle Street, Chicago.

IN THE SUPREME COURT

OF THE STATE OF ILLINOIS.

APRIL TERM, A. D. 1860.

BALTHASER BORN,

vs.

NICHOLAS STAADEN,
GARNISHEE OF
MICHAEL HAMBRECHT.

ABSTRACT OF THE RECORD.

2 Affidavit of plaintiff for garnishee, sworn to and filed in the superior court of Chicago, on the 1st day of July, A. D. 1859.

Affidavit sets forth, that plaintiff lately recovered a judgment in the Cook county court of common pleas, against Michael Hambrecht, for the sum of $558.82, and $17.32 costs of suit.

That an execution had been issued on said judgment, and returned by the sheriff of Cook county, "no property found."

That said Michael Hambrecht has no property within deponent's knowledge, in his posession, liable to execution—that the deponent hath just reason to believe, and does believe, that one Nicholas Staaden is indebted to said Hambrecht, and hath effects in his hands belonging to said Hambrecht, and praying writ of garnishment against said Staaden.

3 That in pursuance of said affidavit, a garnishee summons was issued, dated July 1st, 1859, returnable on the first Monday of July, 1859.

4 That said garnishee summons was duly served on said Staaden, on the said 1st day of July, 1859, by the sheriff of Cook county, Ill.

5 + 6 -

That at the September term, A. D. 1859, of said superior court of Chicago, and on the 5th day of September, 1859, plaintiff caused interrogatories to be filed in said court for said Staaden to answer as garnishee aforesaid.

That by said interrogatories, plaintiff asked and required the answer of Staaden in substance, to the following:—

1. Whether he had entered into a contract with said Hambrecht, to build and erect for him a house or building, or to do any portion of the work thereof, in the city of Chicago or anywhere else, before service of writ of garnishment. If so, to state terms and conditions of contract.

2. That if he answered that he did enter into such contract, then to state at date of service of garnishee summons what part of the contract was performed—and how much he had paid Hambrecht on contract (if any,) and has said Hambrecht, since said service, continued to work under said contract—if so, has he in part, or wholly performed said contract—if in part, what part, and what sum was due when he was served, and what sum or sums have became due, and how, and when, and what is the balance now (then) due from him to said Hambrecht.

3. If he had, at time of service of process herein, upon him, or has he since, had in his possession, custody, charge or control, any lands, tenements, goods, chattels, moneys, credits or effects, or any of them belonging to said Hambrecht, or in which he was any way interested—if so, to state the same fully.

4. If he was, at the time of the service of process herein, or has he since become indebted to Michael Hambrecht in any way—if so, how, and in what amount or amounts.

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That to said interrogatories the said Nicholas Staaden filed his answer in said superior court, on the 16th day of September, 1859.

That said answer substantially sets forth the following, as the facts:

1. That garnishee did, on the 11th day of April, 1859, enter into a contract with said Hambrecht, to build him a house or store in the city of Chicago, whereby garnishee was to pay him $400 when roof on house, $345 when work entirely completed and accepted by architect, $300 three months after work accepted, and $300 six months after completion and acceptance of work—that Hambrecht was to do all the carpenter work of house, roofing and painting, and was to furnish lumber, glass, locks, etc. —that in fact, he was to do all the work on house, except mason work, plastering, and furnishing gas and water pipes, and iron posts for front of

house—that building was to be completed by the 15th day of July—that for every day after that period that building remained uncompleted, Hambrecht was to forfeit two dollars.

2. That at time of service, said building partially completed, the roof was on, some painting done, some, but not all, the windows were in —that he had then paid Hambrecht at least $600—that after service of process, Hambrecht continued to work with frequent intermissions, till date of answer—that house was not then completed, nor was it accepted by architect—that it was impossible to state amount due on contract at time of service or then, by reason of unfinished state of building, but garnishee was of opinion that the amount would be between $400 and $500.

3. Said garnishee also says, in answer to 3d interrogatory, that he cannot state whether at the time of the service of garnishee process, he had any moneys, credits, lands, tenements, goods, chattels, or effects, or property in his hands, or whether he was in any wise indebted to said Hambrecht or not—but refers to answer to 2d Int. as a full and complete answer to 3d Int.

He also says in connection with his answer to 3d Int., that on the 13th day of September, 1859, he was served with notice of what purported to be an assignment of said contract by Hambrecht, to one August Lupsch—that said assignment purported to be acknowledged May 25th, 1859, before justice Robinson of Cook county.

In answer to 4th Int. he refers to answer to 3d Int. as his answer thereto.

11812

To this answer said plaintiff filed his exceptions, in said superior court, on the 5th day of October, 1859, which are in substance, as follows:

1. That Staaden does not fully and fairly answer 1st Int., but evades same—that he does not fully set out terms and conditions of contract—that if in writing, he should set out a copy thereof in his answer, or excuse himself for not so doing.

2. That in answer to 2d Int., he does not fully and fairly state what work had been done at time of service of garnishment, and the exact amount paid—that he does not state amount due Hambrecht at time of service of process—that he does not state specifically what part of the work Hambrecht done after service, and what sum or sums since have become due—what part of the work was to be done when he answered, and the exact balance then due.

3. That his answer to 3d Int. is evasive and incomplete.

4. That his answer to 4th Int. is equally evasive and incomplete.

5. That said answer is in other respects, patent on the face of it, insufficient and incomplete.

That said garnishee, without any order of court disposing of said exceptions, consented to, and did further answer make, which was filed in said superior court on the 18th day of October, A. D. 1859, and which is in substance as follows:

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1. That garnishee and said Hambrecht did enter into a contract in writing for building house mentioned in first answer herein—that it is dated April 11th, 1859, and that exclusive of specifications and plans, it is in following words, (setting it out) which is substantially as stated in 1st answer, except that the contract does not in fact, provide that Hambrecht shall forfeit $2 for every day house remains unfinished after July 15.

2. That at time of service of garnishee process, he had paid Hambrecht $450 for lumber to put in building, and $126 in liquor, making in the aggregate $576, that at said time roof was on house and most of the joists were up—but that he cannot state with certainty, or approximate to what was then done or the relative portion done.

That since filing of first answer, he has with architect, made calculation of amount due on the 27th day of September, 1859—that at that time building was unfinished as to the roof, sky-lights and other parts.

That amount then found to be due, by garnishee and architect, to Hambrecht on contract, and which is still due, is $613, from which he claims a deduction for delay in house not being completed by time agreed on in contract.

That after deducting amount of damage which he claims, there is still a balance due on contract of $467, payable as by terms of contract.

Garnishee further states that he owes Hambrecht in addition, and on a separate trade, $8 to be paid in liquor on demand, and $11 for extra work.

Also, that on the 4th day of October, 1859, suit was commenced in superior court of Chicago, in the name of said Hambrecht, for use of August Lupsch against said garnishee, for the recovery of money due on said contract.

That it was decided by architect that there was only $13.66 due Oct. 14th, 1859, on contract, to Hambrecht—that another payment would become due, December 23d, 1859, and the last payment, March 23d, 1860.

That afterwards, to wit: on the 22d day of February, 1860, the said cause was submitted to the said court on answers, without intervention of jury, by agreement of parties—and the said court, upon consideration thereof discharged garnishee, and judgment was rendered against plaintiff for costs.

Then follows assignment of errors.

S. A. Irvin
atty for Plff

Assignment of Errors—

1— The Court erred in discharging the Garnishee in above cause and rendering judgment against plaintiff for costs—

2 Because he does not claim to be discharged from the payment of $ 8-00 and the $11 to the plaintiff in this proceeding—

3 Because the only reason he makes to be discharged from the amount of $ 613 due on the Building in the first answer is that on the 13th day of September 1859 over two months after service of Garnishee process he was served with some kind of a notice (without stating what it was) that Hambrecht had assigned said Building Contract to one Lapsley and

that a Judgment purported to be
a Recorded before a Justice
Robinson of Cook County
on May 25- 1859

4— Because the Judgment of
discharge of said Garnishee
is contrary to law under the
facts set forth in his answer-
that the Judgment should have
been rendered for Pltf. & Error
in fact.

J. H. Sumner

103

Filed May 1st 1860
T. Lehmann
Clerk

N. Bachelder
for Pltf

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