

No. 13023

Supreme Court of Illinois

Chanute et al

vs.

Martin

STATE OF ILLINOIS,

SUPREME COURT:

Third Grand Division.

No. 169.

1860

Report
Minute

45

Writing

13922

Charlotte
Mason
Edmonson

STATE OF ILLINOIS, SS.:

IN THE SUPREME COURT,

OTTAWA TERM, 1860.

OCTAVE CHANUTE AND
DAVID T. N. SANDERSON,
Garnishees of CRUGER, SECOR & Co.,

v.

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} *Appeal from Peoria County Court.*

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PEORIA, ILL.:

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I.—OF THE POINTS MADE IN BRIEF FILED BY MR. WILLIAMSON, FOR APPELLANTS.

(A.) The first point is not well taken, for the following reasons:

(1.) The truth of the return of the sheriff to the execution can not be tried in this proceeding.

(2.) Neither can the affidavit on which the garnishee process issued.

(3.) The pretended offer to turn out real estate was not made in apt time, nor by the proper person, nor with the necessary certainty, nor to the extent and in the manner required by law ; and if it were, would not help the case.

(4.) This is not an equitable proceeding, as is alleged.

Drake on Attachments, Sec. 413.
Lawrence v. Lane, 4 Gil. R. 361.
May v. Baker, 15 Ill. R. 90.

(B.) The second point is ill, for the following reasons :

(1.) The answer of the garnishees shows that they were acting as the mere agents of the judgment debtors, and were accountable to them.

(2.) The answers show no contract which can bind the garnishees for the property of the judgment debtors held by them, against this proceeding.

(3.) A debtor has not the right to prefer one creditor over another, contrary to the law of garnishment.

(4.) Courts of law do not take notice of pretended equities, alleged for the purpose of evading the plain provisions of a statute.

(C.) The third point can not be maintained, for the following reasons:

(1.) It is a complete answer to a demand made by a principal upon an agent, for the agent to say that instead of doing what his principal wished, he did what the law required. An execution debtor may have expressed an intention to sell particular property to pay a particular debt ; but this does not prevent the sheriff from seizing and selling the property, notwithstanding the alleged right to prefer creditors.

(2.) It is an old rule that the law is a part of every contract. So in this case, the very contract set up between the garinshees and Cruger, Secor & Co. was necessarily made subject to the provisions of the very statute under which this proceeding is had.

(3.) If the garnishees, after they received the railroad and its earnings, which was after the service of the garnishee process, made no provision for their liability thereon, they have no one to blame but themselves, and ought to suffer for their folly. The maxim that ignorance of the law excuseth no one applies in the present case.

(D.) The fourth point is insufficient, for the following reasons:

(1.) The question whether property necessary for running a railroad can be taken in execution, does not arise in the case.

(2.) The question now is, not how the property held by the garnishees shall be applied, but whether, in default of surrendering it to the custody of the law for such disposition as should be adjudged expedient, the garnishees authorized a judgment against them.

(3.) The appellants have probably mistaken the law in supposing that the sort of imaginary interest of the public in railroads amounts to a discharge of their owners and operators from the common obligation of men in civilized countries to pay their just debts.

(4.) The rule, if any exist, applies to the grantees in the railroad charter only, and not to third parties.

Ohio & Miss. R.R. Co. v. Dunbar et al., 20 Ill. R. 627.

(E.) The fifth point is of no consequence—at best a mere matter of form, as sufficiently appears by the very cases to which the appellants refer.

II.—OF THE MATERIAL POINTS IN THE CASE.

(1.) The garnishee process was served April 2, 1859.

(2.) The garnishees were defaulted and a conditional judgment rendered at the June Term, 1859,—the sixth day of the month.

(3.) At the July Term following, the conditional judgment was set aside, and leave to answer given.

(4.) On the 27th day of June, 1859, the garnishees filed their answers to the interrogatories of the plaintiff below.

(5.) At the July Term the plaintiff moved for judgment upon the answers filed, and the appellants, on their cross motion therefor, had leave to file amended answers.

(6.) On the 8th day of July the amended answers were filed, whereupon the appellee renewed his motion for judgment, notwithstanding the answers and amended answers filed, which motion was allowed.

(7.) Among other things, the answers set out the following contract, to wit:

PEORIA & OQUAWKA (EAST. EX.) RAIL ROAD,
SUPERINTENDENT'S OFFICE, PEORIA, APRIL 5, 1859. }

CRUGER, SECOR & Co.—Gentlemen: We propose to advance all the money requisite, and to pay up in full between the 15th and 25th of each month, all pay-rolls for the previous months, beginning with those for March, 1859, and to pay all ticket-drafts, expenses, supplies, and materials requisite for operating your road, for the sum of one hundred and twenty-five dollars per month in addition to our salaries; *We to have and receive all the gross earnings of the road as fast as they accrue, and to distribute the surplus, if any, as you may direct. All the earnings to be given to us in money,* and no vouchers or orders to be given or received from any of the stations, except where provided by previous contracts which can not be cancelled. Provided that we shall not be required to pay more in any one month, than the gross earnings of the road for that month. *WE TO HAVE THE FULL AND ABSOLUTE CONTROL OF THE FINANCES, but to consult you upon all points not provided for by this proposition.* This arrangement to go into effect immediately, and to continue in force for three months from date. (Signed)

O. CHANUTE,
DAVID T. N. SANDERSON.

We accept the above proposal.

(Signed)

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(8.) A long contract between the Peoria & Oquawka Railroad Co. and Cruger, Secor & Co. is set out, but it is hardly necessary to say that it has literally no business in the case. *It can not change or destroy* the contract between the garnishees and the judgment debtors, and neither of those parties can deny that there was a proper subject-matter for the contract which they made.

(9.) Judgment was rendered against the garnishees, and they appealed to this court.

III.—OF THE POINTS ON WHICH THE JUDGMENT BELOW WAS
RENDERED AND IS SOUGHT TO BE SUSTAINED.

(1.) The question is, have the garnishees *any effects or estate* of the defendants in execution in their possession or control, &c.

Statute of Judgments and Executions, S. 35.

(2.) If the garnishee have *any property, effects, or choses in action*, of the judgment debtors, the same must be applied in satisfaction of the debt.

Statute of Attachments, Sec. 12.

(3.) *All goods and effects whatsoever*, in the hands of any garnishee, belonging to the defendants, &c., shall be liable to satisfy the judgment, &c.

Attachments, Sec. 15.

(4.) Having answered, *admitting possession and control of the Railroad and its receipts*, the garnishees can avoid judgment only by *delivering to the sheriff all the goods, chattels, and effects whatsoever*, confessed to be in their possession.

Attachments, Sec. 16.

(5.) *All the proceeds of the Railroad* which were in the hands of the garnishees on the 3d day of April, 1859, *or which thereafter were received by them*, and all lands, tenements, goods, chattels, rights, credits, moneys, and effects of the defendants, AND THE VALUE THEREOF, in the *possession, custody, or charge*, of the garnishees at the time of the service of the writ, or at any time thereafter, are liable to satisfy the original judgment.

Attachments, Sec. 18.

Stahl et al. v. Webster et al., 11 Ill. R. 516.

(6.) The alleged arrangement between the garnishees and Cruger, Secor & Co. is fraudulent and void, as calculated to hinder and delay creditors in the collection of their debts.

Cleveland v. LaCrosse & Milwaukee Railroad Co.; American Law Register, July, 1859, p. 550, and cases cited.

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(7.) The statute does not make a mere contract of bailment a defense to garnishee process.

(8.) As to the matter of carrying the mail, it is suggested that the fact that a man holds office under or does service for the General Government has not yet been judicially recognized as a sufficient reason why he should not be compelled to pay his debts.

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(10.) The Exhibit A. shows that the garnishees were the *bailees for hire* of the judgment debtors, and were receiving for their services an increase of wages. They are not the Trustees of Cruger, Secor & Co. for the P. & O.R.R.Co.

(11.) The answers themselves manifestly show a disposition to evade the statute. (Answers to 4th and 6th interrogatories.)

(12.) As to the public interests involved, it is modestly remarked that the like interest of the public in steamboats would hardly prevent an attachment of the boat under the statute.

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169. & 170

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Brif of Appellee

Filed Apr. 27, 1840

L. Leland
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169. 170.

In the Supreme Court

Chanute et al vs.

Martin

Chanute et al vs.

Rohmann

Brief of Appellee

Filed Apr 27, 1860

Leland
Clerk

In the Chamite and Sanderason
Case I fear the last point raised
in the argument is not sufficiently
pressed as it is not directly raised
in the brief - It is this - There was a
Contract between the Florin & Ogden
Rail R Co, ^{& Cruger Sec Co} which contract is made
part of the Answer in under which Contract
the net proceeds of the earnings of the road
was to go 1st to pay interest on bonds &c
Now I contend that this contract
means that the gross earnings were
to be applied first to payment of the costs
& expenses of operating the road &c and
hence that the P & O R R had a direct
interest under this Contract made in 1852
to have the earnings of the road so ap-
plied - plaintiff were not only bound
by the contract of theirs with Cruger Sec Co
to apply the earnings but also by the
Contract of Cruger Sec Co - They never
had money enough to keep the road in
operation &c as shown by answers

169-182
Chanute & Sanson
Jas. S. Martin

Additional Brief for
Plffs in Error.

Filed April 25, 1860
L. Leland
Clerk

M. Williamson
for Plffs. in Error

Octave Chanute & }
David & A Sanderson } On the Supreme Court
Garnishes & }
vs }
James A Martin }

This suit was commenced in the County Court of Peoria County by suing out garnish process after execution against Cruger & Co was returned no property found

The first question raised is that the garnishers should have been discharged and that they were not liable in their answer for the reason that they state in their answers that the defendants in execution offered to turn out real estate to be sold under the execution and had always been willing & ready to turn out real estate ~~but~~ liable to execution but defendants attorney and the sheriff refused to take the same and determined to have the same made out of personal property. The title of the real estate was perfect and and unencumbered and of the value of three or four times the amount of judgment.

I regard the law as well settled that the garnishers may set up any equities in their discharge or to show they should not be held in that proceeding - They are not liable to be sued and prosecuted if the defendant ~~has property~~ in execution had property liable to execution within the knowledge of the plaintiff in execution or sheriff - The return of the officer "No property found" and also the affidavit of the plaintiff in execution are to

inform the court that the contingency has happened upon which they would be entitled to use the process of the court for the purpose of garnishment

The fact that the return of the officer is false and that the plaintiff in execution has sworn to a wilful and corrupt falsehood and which were admitted to be false by their motion for judgment on the answer should not make other parties liable to the plaintiff in execution. Whatever the effect might be as to the defendants in execution. It was only an imposition on the court for which the plaintiff in execution should not be allowed to derive advantage and whenever brought to the knowledge of the court by the answer of the garnisher admitted to be true or otherwise should be severely ~~reprimanded~~ ^{rebuked} - To allow this proceeding to be sustained under such circumstances is offering a bribe or inducement to commit perjury - And the man who will ~~swear to~~ commit wilful and corrupt perjury has an advantage over the honest man

The first opportunity of taking advantage of such a state of facts is by the answer of the garnisher - If advantage can not be taken in that way then there is no remedy

The statute provides that real estate shall be first taken in execution - Treat Scates & Black^c Statutes page

The intention of the legislature was that personal property should not be reached by process of law until all real estate at least known to the plaintiff & officer should be exhausted - The Sheriff was bound

in the first instance to sell the real estate offered to be turned out under the execution before garnisher process could legally issue

It was an abuse of the process of the Court to refuse to levy on property that the Statute expressly provides shall be first levied on and sold and if personal property had under such circumstances been levied on the Court for such abuse of its process would have set aside the levy on motion - Shall now the ~~def~~ plaintiff in execution be allowed to effect the same purpose in another way but in as express and positive violation of law by suing out garnisher process? Should not the Court still exercise a salutary influence over its process whether means a final and prevent oppression of the parties and a violation of law in its use? - When parties so abuse the process of the courts and act in direct violation of law and then solemnly admit in a court of justice they have so acted shall they still be allowed all the advantage they could have had, if they had acted honestly & in good faith?

Unless advantage can be taken on the answer there is no way to bring it to the notice of the Court and any one who is corrupt enough to impose on a court by a false affidavit and abuse its process will have the advantage of honest men

The Defendants in execution had the right to say their personal effects should not be taken ~~seized~~ or appropriated to the payment of the judgment against them until their real estate

was exhausted and the garnishees were liable only in the event that defendants in execution had no property within the knowledge of the Sheriff or execution plaintiff liable to execution - The affidavit and return are to inform the Court of that fact and that this contingency has happened before they can legally use the process of the Court to even bring other parties before the Court - Then when the answer admitted to be true informs the Court that there was property known both to the plaintiff in execution and the Sheriff liable to execution and which the Statute says shall be first taken and this was offered to be turned out the Court should have discharged the defendants.

That contingency had not happened on which the garnishee was liable.

Had this been a bill of discovery which bears a strong analogy to it and the facts were revealed in the answer as are set up in this answer I apprehend the Court would not have subjected the personal property discovered to the payment of the judgment until the real estate was sold.

2

But if the Court should hold that they were amenable to the process of the Court under the circumstances still I hold that their answer does not make them liable in the Capacity from which they received the money

They were trustees or assignees of the money they received - If a garnishee ~~after~~ has money in his hands at the time he is served and afterwards makes a contract to pay it to a third person he is still liable

But there is no case going any further - Notwithstanding he may have been served with garnishee process he may still be allowed to receive money under express contract and stipulation to pay it out to other persons than the plaintiff in execution - The law does not from the mere fact that he has been served with garnishee process require that he shall violate his position ^{made in good faith} contract under which he received the money and hold it for the benefit of another party. If the contract under which the money was received & paid out was not made in good faith or was made to evade the liability of the garnishee & favor the defendant in execution then an issue should have been taken on the answer and it would have been for a jury to determine

The Supreme Court of Iowa 3rd Greene Rep decide that if goods of the debtor came into the hands of the garnishee as agent of a third person to whom he accounted for the goods the garnishee is not liable

A debtor has a right to prefer one creditor over another if done in good faith.

16 Ill 443

In the case of Cooper et al vs McClellan et al 16 Ill 443 the court say that courts of law will take cognizance of the equitable interests of Choses in action so as to protect them & that a court of equity will compel its performance - In that case notes had been received for collection with directions to pay the money to other persons - The court held that to be an equitable assignment and that it could not be taken for the assignors debts

By this equitable assignment the money became the property of the persons to whom it was received to be paid under the agreement and - No court even with the assent of the debtor has the right ~~even with the assent of the debtor~~ has a right to appropriate the ~~money~~ private property of one to the payment of another's debt 4 Gillman Rep 360

Money in the hands of an assignee can not be reached by garnisher process 15 Ill 208 and it can make no difference whether it came into his hands before or after service - The rule must be the same if he is agent or trustee only for a particular purpose

If ~~money~~ A delivers goods to be to be delivered to B then B has the property and may demand the goods
Jones on Bailments 52 note

3

It is further shown by the answer of the garnishees how the money came into their hands. They say Cruger Secor & Co were lessees of the Peoria & Equawka Rail Road Co and had bound themselves to keep it running so that the Co was incorporated ^{in operation} & were common carriers of passengers & of the U S Mail &c. Their duty was to the public and the public had an interest in the running of the road ~~while in this~~ under these circumstances they became hard pressed for funds and a contract was entered into between Cruger Secor & Co and the garnishees that the garnishees should advance money to keep the road running and that whilst said contract was continuing the garnishees advanced of their own funds about five thousand dollars more than they ever received from the proceeds of the road and therefore it can not clearly appear from the answers of the garnishees that they were ever liable to be sued by Cruger Secor & Co but on the contrary it does appear that Cruger Secor & Co were at all times indebted to them - They never paid any money to Cruger Secor & Co nor to any one for them nor had they ever any money in their hands that Cruger Secor & Co could legally demand and the fact of their being garnishees could not create a liability to the execution plaintiff if they were not liable to the Cruger Secor & Co. The true test ~~as to the liability~~ of the garnishee is to ascertain whether he would be liable to the ~~plaintiff~~ ^{creditor} in execution - If not then the garnishees should be discharged.

Drake Sec 452 following

There must be a privity of contract between the defendant and the garnishee so as to give the defendant a right to ~~the~~ goods or proceeds to his own use
Drake on attachment 439 & f

There was in this case no right of action in favor of Cuyler Secor & co against the garnishees only for any surplus ^{which might be} in their hands which never was

There must be a right of action against the garnishee or garnishees should be discharged
Drake 452 & fol

If there are liens on the property so that the defendant could not take it without discharging the liens the garnishee must be discharged
Drake 515-

If there are equities existing between the garnishee and other parties in relation to money in his hands it can not be adjusted in this proceeding and the garnishee should be discharged
4 Gill Rep 361

If at the time of receiving the money or goods the garnishees in good faith contract to pay it over to a third party he should be discharged. "for it is well settled that garnishment can not have the effect of changing the nature of a contract between the garnishee and defendant or of preventing the garnishee from performing a contract with a third person. Any other doctrine would lead to mischievous results."
Drake on attach Section 498

In some states the garnishee is only held liable for the effects in his hands at the time of the garnishee service of garnishee

Where property is placed in the hands of one to be sold and the proceeds applied to a particular purpose and upon the sale there appears a surplus of money over what is necessary for the given purpose he will be held as garnisher of the person to whom the property ^{as to the surplus} belonged because priority of contract combines with priority of interest to give the defendant a right to recover the surplus Drake Sec 453

3 Mass R 564 16 Mass 275 - 7 Pick 247

8 Pick 405 - 16 Ill 444 4 Ill R 454

It can not possibly make any difference whether the property was placed in the hands of the garnisher before or after service for it was charged with the trust when he received it and he is bound to carry it out - A court of equity would compel him to do so

16 Ill 435

- 4 The garnishees positively deny that they had any effects of any kind in their hands at the time of service - That after the service they contracted for a certain consideration to advance money to pay off the indebtedness themselves of Cruger Sec & Co That they in pursuance of such contract advanced about \$5000 out of their own funds - The answer does not anywhere state that they ever received enough of money to pay themselves what they had advanced out of their own funds to pay indebtedness of Cruger Sec & Co the execution defendants - The Court could not possibly see that they had money in their hands belonging to Cruger Sec & Co

and unless it clearly appears from the answer that they were liable from the answer the Court erred in sustaining the motion for judgment on the answer

- 5- Property which is necessary for the successful running and operation of the road would not be liable to execution - Only the excess over what is necessary can be taken on execution -

It would therefore be competent for the garnishees to set up & show that the income is necessary to pay the interest on the mortgage debts - that its use is necessary to run the road & to earn revenue to pay interest for by law such use is ~~necessary~~ authorized and can not be defeated - The road or lessees may set this up in equity also might the mortgagees set it up for it is the lawful right of the Company & its lessees to prevent an illegal interference with its duties

1 Law Monthly page 148

5 John Rep 343 Drake Sec 505

The ~~gross~~ net earnings of the road under the contract of Cruger Secor & Co ~~were first to go to the date~~ I think in 1852 which is referred to & made part of the answer of the garnishees also provides that the gross earnings of the road should first go to pay interest and provide a sinking fund for the first mortgage bonds

Here it is contemplated by this contract that the costs and expenses of operating the road shall be first paid out of the gross earnings of the road for it provides the net earnings after the payment

of the costs & expenses of operating the road shall go to pay interest &c - The garnishees had not only bound themselves to carry out this contract of Cruger Secor & Co but ~~not having received~~ but the gross earnings of the road not being sufficient for the purpose they actually advanced \$5000- of their own money for that purpose and which was not received back - Now under the contract of Cruger Secor & Co with the Peoria and Aquawakee Rail Road Company it can not be said but that the Peoria and Aquawakee Rail Road Company had an equity at least in having the contract carried out. They were interested in having it done. Their equities were set up in the answer sufficiently and by all of the authorities above quoted their equities in the matter should have discharged the garnishees.

The earnings of the road was as necessary to carry on the road as cars - wood or any thing else - Judge McLean in the case of Coe vs Hart et al 6 Law American Law Register, ^{page 41} says "The rail Road like a Complicated Machine Consists of a great number of parts a combined action of which is essential to produce revenue And as well might a creditor claim the right to levy on and abstract some essential part from Woodward's planing Machine or any other Combination of Machinery as to take from a rail road its locomotives or passenger cars - Such an abstraction would cause its operations to cease" To take the earnings of the road under garnishee process would have the like effects and if the one could not be tolerated neither should the other

In such case equity has jurisdiction which is

The only proper way of reaching the effects
Judge Storer in *Ludlow vs Heard et al* 6 C & L Reg
page 504 says "There must be a reference to a master
to examine the property levied on and report im-
mediately whether the same on the principles indi-
cated by the Court is necessary to the operation
of the road and if any part thereof can be dis-
posed of without injury to the Company to describe it."

In the case of *Cary vs The Pittsburgh & Wayne & Chi-
cago RR Co* 1 Law Monthly 339 the Court say ^{on execution} a sale of
cord wood purchased for the actual use of the Company
is void. "If a rail road company should procure
more wood than is reasonably necessary Creditors may
subject the surplus to the satisfaction of judgments by
petition in Equity - The Chancellor may determine
if such surplus exists - but this proceeding can not
be determined by the sheriff on execution nor by the
Court in any proceeding as at law - In the same
case the Court further decide that the indispensable
means of operating the rail road should not be
taken away for any class of Creditors - They say it
is a Statutory duty to and no growing out of the
Common law responsibilities of carriers that every
rail road company having the means should operate
its road - The Statute contemplates this The object of
creating rail road Corporations is defeated without
it - This duty of operating the rail road carries
with it the necessary means 1 Kent 464

In the same case also the Court decides p. 442 that
independent of the doctrine of fixtures cord wood
must be held not liable to execution upon the ground
of public policy - If it were so they say trains
may be stopped passengers, mails and freight de-
tained and the most serious consequences result
The law and the public interest would not toler-
ate this

From the Current of modern decisions I think
there can be no doubt but that any property which
is necessary for the operating of the road would not
be liable to execution and as a consequence the
earnings of the road necessary for operating the
road would not be held by garnisher process on
the same principle

W. Williamson
att'y for plffs

162-101
Chaute Sanderson

my
James A. Martin

Appellants Argument

Filed April 12, 1860
L. Leland
Clerk

2

=nal proceeding - The affidavit
for garnishee process, is required
not to give the court jurisdic-
=tion, but as in other cases
to afford a reasonable presump-
=tion that the process of the
court is required. And
if the garnishee can at all
question the truth of the
sheriff's return, and the plain-
=tiff's affidavit, it can only
be by some objection made
at the earliest possible mo-
=ment, and in manner
of a plea in abatement, ten-
=dering a distinct issue and
resting the case upon it.

In the present case, this
objection was not made
until after judgment by
default had been rendered
against the garnishees.

The idea that the motion
for judgment admitted the
falsity of the return and
affidavit, is ——— funny!
a little more learning on the
subject of admission by demon

=ver, would have saved the
 counsels' waste of of eloquence
 over the melancholy wicked=
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 confederate the plaintiff below.
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from the course marked out by the statute, to a lengthier course of proceedings to show by the formation and trial of an indefinite number of issues, that the return of the sheriff and his own affidavit are true -

- 2 The maxim is, that the law is a part of every contract. In this case, the garnishes, three days after service of the garnisher process, made the contract printed in full, on p 4 of appellee's brief, and received the property and money specified therein. The law of garnishment was a part of that contract, and the language of the statute quoted in the brief is unmistakable and prescriptive. The Iowa case cited for the appellant, cannot change the words of the law. It is also a maxim of the

law that it is not allowable to interpret what has no need of interpretation — here the meaning of the language used by the legislature is plain. The only duty of the court is to enforce it.

In the case at bar, the garnishees answered twice, they asked no leave to answer further. The maxim that the pleading of the party is to be taken most strongly against him = self, requires the court to hold that they have knowingly violated the law, and must satisfy the demand of the plaintiff below, not only because they have received money and property therefor, but also as the proper penalty of their disobedience and contempt.

3. The ridiculous absurdity of the attempt to defeat the

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3. The ridiculous absurdity of the attempt to defeat the

garimshu procep by the allegation that Cruger, Secor & Co. are the lessees of the Peoria & Oyanawka Railroad Company, and that the public have an interest in railroads generally, is perhaps, sufficiently noticed on page 3 of the printed brief -

4. The appellants counsel cites Drake on Attachments and cases referred to at considerable length - Suffice it to say that where Mr. Drake's citations and comments differ from the terms of our statute the court will follow the latter - and that all the fine talk about exigentia must fall to the ground, because the service of the garimshu procep was first in point of time - The design of the law was, as it were, to enjoin every conceivable kind of transfer, use, and disposal,

law for the protection and enforcement of their rights.

6. It is believed that the other points in the case are sufficiently stated and supported in the printed brief, pp. 5-6, and the appellee submits his rights and interests to the judgment of the court, confident that the course he has pursued will be sustained.
-

169. - 10!

Chambers vs.

v
Martin -

Reply of Appellee
to written argt
for appellants

Filed May 8, 1860
L. Leland
Clerk

STATE OF ILLINOIS, SS.

IN THE SUPREME COURT AT OTTAWA,

Or the

Term, A. D. 1860

Octave Chanutte
David J. N. Sanderson
garnishees of
Eruger, Secor & Co.
v.
Philip Rohmann

APPEAL FROM PEORIA.

Judgment below for Appellee for \$*261*^{*70*}/_{*100*} and costs.

Certificate of Judgment and Appeal.

STATE OF ILLINOIS, } SS.
PEORIA COUNTY,

Charles Kettelle

I, ~~ENOCH P. SLOAN~~, Clerk of the *Circuit* *County*

Court within and for said county, do hereby certify that at the *August* Term,
A. D. 18*59* of the said ~~Circuit Court~~, *County Court*

Philip Rohmann

recovered by the consideration thereof, a judgment against *Octave Chanutte and*
David J. N. Sanderson garnishees of *William H. Eruger,*
Charles A. Secor, James H. Secor, Samuel
Gilman and Thomas C. Field,
for the sum of *Two Hundred and Sixty One*
Dollars and *Seventy* cents, and costs of suit taxed at the fur-
ther sum of _____ Dollars and _____

cents; and that thereupon, to wit, on the *Twentythird* day of *August*
A. D. 18*59* the said
Octave Chanutte and David
J. N. Sanderson

prayed an appeal from said judgment to the Supreme Court of said State, which was allowed
by said Court on filing bond, pursuant to the statute in such case made and provided, in the
penal sum of *Five Hundred* Dollars, with

to be approved by the clerk of said court, by agreement
within *twenty* days next after the date last aforesaid. And I do hereby further certify
that within the time so limited, to wit, on the *twentythird* day of *August*
A. D. 18*59* the said appellant *I* filed in my office an appeal bond, in all things according to
the order of said court and the statute aforesaid therefor, thereby perfecting said appeal.

Witness my hand and the seal of said Court, at Peoria,
this *Ninth* day of *April* A. D. 18 *60*

Charles Kettelle

Circuit Clerk, Peoria County Court



170-102

Octave Charute & al

v.

Philip Rohmann

Certificate of
Judgment &
Agreement for
Hearing &c.

Filed April 12 1880
L. Leland
Clerk

Williamson for Appts
Bourney " H. W.

B R I E F

OF POINTS AND AUTHORITIES.

CHANUTE & SANDERSON, }
vs. } Appeal.
JAMES A. MARTIN.

1 The Court erred in sustaining the motion for judgment on the answer of the garnishees, because the defendants in execution offered to turn out real estate on execution. That the real estate offered to be turned out, must be sold before garnishee process can issue. It is an abuse of the powers of the Court if plaintiff in execution, and Sheriff refused to have real estate levied on and sold, and then issued garnishee process. This is an equitable proceeding, and if the same facts had been revealed in answer to bill of discovery, bill would be dismissed.

2 The garnishees show they received the money under contract, in good faith, to pay to other creditors. They were trustees or assignees for a specific trust.

If the money came to their hands as agent of another than execution defendant the garnishees are not liable.—3 Greene Rep. 73.

A debtor has the right to prefer one creditor over another.—16 Ills. 443.

Courts of law will take cognizance of equitable assignment of closes in action, so as to protect the assignees. If notes have been received for collection with direction to pay other persons the garnishee will be discharged.—16 Ills. 443.

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Cruger, Secor & Co. were lessees of the Peoria & Oquawka 3 Rail Road, which which was common carriers, &c., and which road was incorporated and in operation. Cruger, Secor and Co., became hard pressed for money and contracted with garnishees to keep the road running and pay off the indebtedness of certain classes. The true test of the liability of the garnishees was, whether they were liable to Cruger, Secor & Co.—Drake 432 and fol.

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Their duty as common carriers compels them to run the road. No class of creditors should be allowed to take away the necessary means of operating the road until sale of the entire road becomes necessary.—6 Law Mo. 341.

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 518-18 Ill. 288.

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M. WILLIAMSON, for Plaintiffs.

169
Chauncey et al
vs
James A Martin
Brief

Filed Apr 17, 1860

L. Leland
Clerk

B R I E F

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Brief ¹⁶⁹
Charlotte & Sanders vs
James A. Martin

Filed Apr. 17, 1860
L. Leland
Clerk

B R I E F

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CHANUTE & SANDERSON, }
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119
Charlotte Sanderson
by
James A. Martin
Brief

Filed Apr. 17, 1861

A. L. Schmitt
Clerk

B R I E F

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vs. } Appeal.
JAMES A. MARTIN.

1 The Court erred in sustaining the motion for judgment on the answer of the garnishees, because the defendants in execution offered to turn out real estate on execution. That the real estate offered to be turned out, must be sold before garnishee process can issue. It is an abuse of the powers of the Court if plaintiff in execution, and Sheriff refused to have real estate levied on and sold, and then issued garnishee process. This is an equitable proceeding, and if the same facts had been revealed in answer to bill of discovery, bill would be dismissed.

2 The garnishees show they received the money under contract, in good faith, to pay to other creditors. They were trustees or assignees for a specific trust.

If the money came to their hands as agent of another than execution defendant the garnishees are not liable.—3 Greene Rep. 73.

A debtor has the right to prefer one creditor over another.—16 Ills. 443.

Courts of law will take cognizance of equitable assignment of choses in action, so as to protect the assignees. If notes have been received for collection with direction to pay other persons the garnishee will be discharged.—16 Ills. 443.

the time of answer. That they had not received money enough to indemnify themselves under their contract from liability.

Property and money, &c., which are necessary for the running
 4 of the road, cannot be taken in execution.—6 A. L. Reg. 41. 1
 Law Monthly Mag. 343, and authorities cited.

Then if the property of a personal nature which is necessary to run the road, cannot be taken in execution, neither can funds which is necessary to be used for the same purpose be garnisheed.

It is competent for the garnishee to set up that the income is necessary to pay interest on mortgage debts. That it is necessary to run the road to raise revenue to pay interest for such use is authorized and cannot be defeated. Rail Road Company Lessees or Mortgagees may set this up.—1 Law Monthly 343. 5 John 343. Drake 505 Gwynne on Sheriff's 255-389.

Their duty as common carriers compels them to run the road. No class of creditors should be allowed to take away the necessary means of operating the road until sale of the entire road becomes necessary.—6 Law Mo. 341.

The judgment should have been entered against the garnishees
 5 in favor of Cruger, Secor & Co. for use of defendants.—11 Ill.
 518-18 Ill. 288.

Other parties were, also, prosecuting garnishees, as such, at the same time.

M^r WILLIAMSON, for Plaintiffs.

Brief 119
Charlotte Sanderson

my
James A. Martin

Filed Apr 17/1860.

W. Leland
Clerk

page 1

Be it remembered, that on this 2^d Day of April
AD 1859, There issued from the Clerks Office of
said county of Peoria ^{a Writ of Process}, which in words
and figures is as follows. To wit,

State of Illinois, Peoria County.

Clerk County Court office,

Peoria 2^d April 1859

State of Illinois,

Peoria County,

} ss. To the Sheriff of Peoria County, Greeting

Whereas James A Martin

obtained a judgment for the sum of Two Hundred ^{and}
Seven dollars ^{and} Thirty cents, (\$ 207.30) and the further sum
of Ten dollars ^{and} Eighty cents Costs against W^m H. Cruger
Charles A Secor, Thos. C Fields ^{and} Samuel Gilman on the 3^d
day of August 1858, before the County Court of Peoria County
Illinois, and whereas Execution issued against the said W^m H.
Cruger, Ch^s A Secor, Thos. C Fields ^{and} Samuel Gilman on the
12 day of November 1858, and returned no property found, &c
and whereas James A Martin has this day made affidavit

page 2

that said defendant has no property within the knowledge of him the said Jas A Martin in his possession liable to execution and that the said Jas A Martin has just reason to believe that Octave Chanute, David T. N. Sanderson and Charles E. Tolleth are severally indebted to the said Wm H. Cruger, Charles A. Sicor, Thomas C. Fields and Samuel Gilman and have estate and effects of said Wm H. Cruger Et Al. in their hands. You are therefore commanded as heretofore commanded to summon the said Octave Chanute, David T. N. Sanderson and Charles E. Tolleth to appear before the County Court of said Peoria County at a Term thereof to be held at the Court House in the City of Peoria, in said County on the first Monday of April 1859 to answer unto James A. Martin as garnishees in said cause, and hereof make due service and return. Witness, Charles Kettelle, Clerk of the said County Court, and the Seal thereof at Peoria, this 9 day of April A.D. 1859



Chas Kettelle Clerk.
per Geo W. Kettelle Dpty

No.
Garnished Process.

Peoria County Court.

Term, 185

In the Matter of.

Jas A Martin

vs.

Wm H Cruger Et al

State of Illinois } ss
Peoria County.

I have duly examined this writ by reading the same to the within named Octave Chanute David T. N. Sanderson and Charles E. Tolleth, this 2 day of April A.D. 1859,

John Bryner Sheriff
By J. M. Easley Dpty.

Filed in County Court this 2d day of
Apr 1859

Ch Kettelle Clerk,

Jonny Attorney.

And, whereas, on the 14th day of January A.D. 1859,
there was filed in the said Clerk's office of said County
of Teoria the following, *Affidavit for Garnishee Process*,
which is, as follows. To wit.

"State of Illinois } ss.

"County of Teoria } James A Martin

vs.

William H. Burger
Charles A. Secor.

Thomas C. Field

Samuel Gilman

In the County Court, judgment for plaintiff
August Term A.D. 1858 for \$507 ³⁰/₁₀₀. Execution
November 12th 1858, to Sheriff Teoria County re-
turned No property found.

"State of Illinois } ss.

"County of Teoria } affidavit for Garnishee process.

"James A Martin plaintiff in the above entitled Cause
makes oath and says, that the above named defen-
dants have not, nor has any or either of them any prop-
erty within the knowledge of this affiant liable to
Execution, and that said affiant has just reason to
believe and doth believe that Octave Chanute, David
J. N. Sanderson, Charles E. Follett, is or are in some
manner indebted to the said defendants or one or
more of them, and have effects and estate of said
defendants, or one or more of them in their hands
and further this affiant saith not.

page 44

Subscribed and sworn to
before me this 14th day
of January A.D. 1859
C. Kettelle Clerk

James A. Martin

James A. Martin
vs

Williams H. Cruger & al.

Affidavit for
Garnishees pro.

Filed January 14 1859
Charles Kettelle Clerk
per C. W. H.

And afterwards, To Wit: on the 18th day of April A.D.
1859, there was in the said office of the Clerk of the County
Court, the following *Interrogatories, to said Garnishees:*
To Wit:

State of Illinois } ss.
County of Peoria } In the County Court
May Term A.D. 1859.

James A. Martin
vs.

Octave Chanute,
David J. N. Sanderson
& Charles E. Follett.
Garnishees of.

William H. Cruger
Charles A. Secor.
Thomas C. Field &
Samuel Gilman

Interrogatories to said Garnishees
respectively.

1st

State whether you or any or either of you have been, or are now in the employment, service or business of said William H. Cruger, Charles A. Secor, Thomas C. Field & Samuel Gilman &c of Cruger Secor & Co or any or either of them, if so, how long, what was the business, service or employment, what wages were you to receive, how and at what time and in what manner were you to receive it. Answer fully and respectively in every particular.

2^d Have you or any or either of you at any time or times previous, or subsequent to the service of Garnished process on you in this cause, bargained for, bought or agreed to buy, agreed, stipulated or contracted for any lands, tenements, or hereditaments, either as the agents, servants or trustees of or for said William H. Cruger, Charles A. Secor, Thomas C. Field & Samuel Gilman or of Cruger Secor & Co, or any two of them, or any or either of them, if so, how, when, and where, in what manner and for what consideration answer fully and respectively in every particular.

3^d Were you or any or either of you at the time of the service of Garnished process in this cause or at any time since said service indebted in any way, shape, manner, form, or ^{consideration} consideration to said William H. Cruger, Charles A. Secor, Thomas C. Field & Samuel Gilman or of Cruger Secor & Co. or any or either of them answer fully.

4th Were you or any or either of you at the time of the service of Garnished process in this cause or at any time since said service, in the possession, power or control, either in trust or otherwise howsoever of any lands tenements, goods, chattels, rights, credits, moneys, or effects, of any kind, quality, nature or descriptions whatsoever of, or for said William H. Cruger, Charles A. Secor, Thomas C. Field, and Samuel Gilman or of Cruger Secor & Co. or any or either of them, jointly, severally or otherwise. Answer respectively and fully.

5th Are you, or any or either of you now, or were you or any or either of you at the time of the service of Garnished Process in this cause in any way, shape manner or form indebted to said William H. Cruger, Charles A. Secor, Thomas C. Field and Samuel Gilman or of Cruger Secor & Co. or any or either of them Answer fully.

6 Have you or any or either of you now or had you or any or either of you at any time since the service of Garnished Process in this cause, any moneys, rights, credits, of any kind, quality, or description whatsoever, either as ticket-agents, Salesman, trustees, confidence-men, agents or any other way whatsoever of said William H. Cruger, Charles A. Secor, Thomas C. Field & Samuel Gilman or of Cruger Secor & Co. or any or either of them Answer fully.

Whereas, at the August term of the County Court of the County of Peoria in the Year one thousand eight hundred and fifty Eight a Judgment was rendered in and by said Court against William H. Bruger, Charles A. Secor Thomas C. Field, and Samuel Gilman defendant, in favor of,

James A. Martin for the sum of Five Hundred and seven and $\frac{30}{100}$ Dollars, damages (\$507.30) and Ten Dollars, and Eighty Cents Costs; And Octavo Chanute, David J. N. Sanderson and Charles E. Follett, having been duly summoned as garnished of the said defendants and they having failed to appear and discover on oath or affirmation what lands tenements, goods, chattels, moneys, credits and effects of the said defendants were in their custody, charge or possession, or under their control, or what moneys or property were by them owing to said defendants as is required by law, a conditional judgment for the above named amount was by said Court, rendered against said Garnished and this writ ordered to be issued,

Now Therefore, we Command that you summon the said Octavo Chanute David J. N. Sanderson and Charles E. Follett, garnished as aforesaid, personally to be, and appear before the said County Court, on the first day of the next term thereof to be holden at Peoria in said County, on the First Monday of July next, thio and there to show cause, if any they have, or can show, why final judgment should not be entered against them upon the due execution and return of this writ and have you then and there this writ with an endorsement

Page 9

G.D. No.

Sciro Pacias vs. Garrisoned

County Court

July Term, 1859

In the Hall of

James A. Martin

vs.

Octavo Chanute
Etal

State of Illinois }
Peoria County, } ss.

Served by reading to the within
named Octavo Chanute &

Charles E. Follett this 26 day
of June A.D. 1859

J. N. Sanderson Not found
in my County

John W. Bryner 185

Sherriff
Or. J. M. Casley Sept

Recs - Served. &c.

Filed in the County Court
this 4 day of July 1859

Charles Clerk

Charles M. Bonney attorney

hereon in what manner you shall have executed the same.
Witness, Charles Kittelle Clerk of said County Court, and the
Seal thereof, at Peoria this 10th day of June A.D. 1859
Charles Kittelle Clerk per Geo. S. Kittelle City Clerk.

And afterwards, To Wit. on the 27th day of June, 1859,
there was filed in the office of said Clerk of County Court.
the Answer to aforesaid Interrogatories, by, Octavo Chanute
Etal: which, in Words &c. &c. is as follows.

To Wit.

In the County Court
of Peoria County May.
Term A.D. 1859.

James A. Martin

vs.

Octavo Chanute

David T. N. Sanderson

Charles E. Follett - Garnished &c.

Answer of Garnishees.

To 1st Interrogatory.

These defendants, answering State That Octavo Chanute ent-
ered the Service of said Cruger Secor Co. in

July 1854 as "Engineer" at a Salary of \$1000. Sanderson also entered their service as "book keeper" in Sept. 1855 at a Salary of \$800. per year, And the said Follett entered their service in August 1858. as general freight agent at a Salary of \$1500. And each of them have continued in said Employment ever since. Said Garnishee have received a part of their several Salaries except the following sums, which are still due & unpaid upon said salaries and upon certain monies advanced by them there is due to said O Chanute. \$2457.76.

D. F. Sanderson \$2435.55

C. E. Follett. 621.71.

To the 2^d Interrogatory they say
That in March A.D. 1856 Chanute as agent of Cruger Secor & Co purchased 150 acres of land in Woodford County being the land on which the town of Secor now stands. He also as such agent purchased 100 acres of land in Tazewell County, the description of which these Respondents do not know - but the title to the same as they believe stands in the name of William H. Cruger with the exceptions above named these Respondents, nor either of them have ever bargained for, bought or agreed to buy, stipulated, agreed or contracted for any lands, tenements or hereditaments, either as the agents, servants, servants or trustees of or for said Cruger, Secor & Co or for any member of said firm.

To the 3^d Interrogatory they say.

That neither of them were at the time of the service of the Garnishee Process in this cause, nor have they

or Either of them at any time since then been in any manner indebted to said Cruger Secor & Co or any member of said firm in any Sum whatever.

To the 4th Interrogatory they say.

That neither of these defendants at the time of the service of the Garnished Process in this cause, nor since that time, have had in their possession or power or control either in trust or otherwise any Lands tenements goods, Chattels, Rights Credits moneys or Effects of any kind quantity, nature or description, whatsoever of or for said Cruger Secor & Co or any member of said firm either jointly severally or otherwise

To the 5th Interrogatory, they say.

That neither of the said defendants were at the time of the service of the said Garnished Process in any manner indebted, nor have they since that time or Either of them been in any manner indebted to the said Cruger Secor & Co or to any member of said firm in any manner whatever

To the 6th Interrogatory they say

That they nor Either of them have since the service of the Garnished process in this cause had in their possession any moneys, rights credits of any kind quality or description whatever, in any capacity whatever, belonging to said Cruger Secor & Co or any member of said firm. Except under and in pursuance of the Terms of certain written contracts or agreements now to the Court

here shown Dated the 5th & 16th days of April A.D. 1859
under and in pursuance of which they did both receive
and pay out money for the purposes of keeping said
Road running and in order and defraying the expenses
of the same both before & since the service of said Grand
Jury Process but only in such manner and for the purposes
in said Contracts mentioned

To the 7th Interrogatory they say
that they believe the Peoria & Quakana Rail Road Company
is indebted to the said Cuyler Secor & Co in a very large
Sum of Money amounting to at least the sum of \$500,000
They presumed that others are indebted to them but they
have not particularly inquired into these matters and can
not state that either of them know any such other persons
or persons who are indebted to the said Cuyler Secor & Co
or to any member of said firm, or to any person or persons
who have in their possession power or control any lands ten-
ements, goods, chattels, rights, credits, Monies or effects of
or for or belonging to said Cuyler Secor & Co or any mem-
ber of said firm in any manner whatever

This sum 274869 Dollars

State of Illinois }
Peoria County } ss. O. Chanute, D. T. N. Sanderson & Charles
E. Follett, being sworn say the foregoing answers by
them subscribed is true to the best of their knowledge
information and belief
Sworn to before me this 27th
day of May A.D. 1859
Henry M. Beck Notary Public.

O. Chanute
David T. N. Sanderson
Chas. E. Follett

And afterwards. To Wit. on the 8th day of July A.D. 1859.
 Then was filed in the office of Said Clerk of County Court of
 Peoria County, *the Amended Answer of said Garnishes = Octave*
Chanute Et. Al. which, in words & is as follows. To Wit;
 "The amended answers of Octave Chanute and David
 T. N. Sanderson filed by leave of court first had and
 obtained in case of James A. Martine

The said Garnishes for further Answer say that on the
 day of. A.D. 185. the said defendants, in
 execution in this cause, made their certain contract, with
 the Peoria and Ogawka rail road company whereby and
 in which the said defendants Cruger Secor & Co bound
 themselves to operate that part of the Peoria & Ogawka rail
 road lying east of the Illinois river so far east as.

And to build construct and keep the same in repair
 as by the terms of the Contract will fully appear a copy
 of which said Contract is hereto attached, marked "A"
 And made a part of this answer said Sanderson and Chanute
 further Answering say that by the terms of said contract
 the said Cruger Secor & Co bound themselves to furnish
 Locomotive Cars engines and all proper and necessary ma-
 chinery and equipments necessary to the successful and proper
 operating of said rail road and they further say said rail
 road Company is incorporated and are in operation on
 the part of said rail road lying east of the Illinois
 River and as far East as the Illinois Central road
 And for a long time have on said part of said road
 been common carriers of passengers and freight thereon
 And also said road is used for the purpose of transporting

the United States Mail thereon

Page 14

The said Garnishees further ^{Answering} say that they did not nor did either of them have any goods chattels lands tenements or effects of any kind in their or either of their possession at the time of the service of process on them in this case And that they have not now nor has either of them any goods chattels lands tenements or effects of any kind in their or either of their hands at this time They further say that after the service of Garnishee Process on them in this cause to wit on the 5th day of April 1859, the said Kruger Secor & Co being duly pressed for funds proposed to these Garnishees the said Sanderson and the said Chanute that they the said Sanderson and Chanute should make certain advances out of their own funds to enable them to pay off certain of their Indebtedness And to continue the operation of said road and the running of the cars thereon for the conveyance of passengers freight and for the transportation of the United States Mail as aforesaid. That said proposition of the said Kruger Secor & Co was agreed to by these garnishees and these said defendants then submitted a proposition in writing to said Kruger Secor & Co And which was also accepted by said Kruger Secor & Co. And which said Contract is filed with the original Answers in this case marked "A" and made part hereof.

That in addition to monies received under said proposition said Sanderson & Chanute did to wit on the 20 day

of April 1859 in order to aid the said Cruger Secor & Co in prosecuting the running and operation of the said road aforesaid procure his said notes to be discounted and thereby raised on said notes the sum of \$1200. And on the 20th of May 1859 for the purposes aforesaid they did by discounting their notes again raise the further sum of \$1500. That said Chanute borrowed the further sum of \$1000. of Wm F Bryan for the purposes aforesaid and secured the same by trust deed on real estate. That there are other notes of these garnishees to the amount of six hundred and fifty eight dollars on which they raised further funds to pay the expenses of running & operating said road of said defendants in execution aforesaid That at another time to wit in May 1859 said Sanderson paid for the purposes as aforesaid the sum of \$200 in cash and the said Chanute the further sum at the same time of \$200. That said monies in addition to what was received under and by virtue of said propositions were required to pay the expenses mentioned in said proposition and acceptance dated April 5th 1859 and that all of the above mentioned sums of money were advanced by these garnishees to pay off the indebtedness of Cruger Secor & Co and to pay the Costs and expenses of operating and running said road and were not paid to Cruger Secor & Co or either of them. That these Garnishees nor either of them have not paid Cruger Secor & Co any moneys whatever since the service of Garnishee Process on them in this cause.

Page 76 That all of the monies received by said garnishees were applied to the payment of the indebtedness of said railroad in keeping the same in repair paying ticket drafts expenses Supplies and materials necessary for operating said road. That there never was at any time any surplus in their hands over and above what they had obligated themselves to pay according to the stipulations of said proposition or contract Dated April 5th 1859 That they received the said monies under the contract with the express understanding that the same should be paid out by these garnishees for the purposes stipulated in said contract and upon no other terms or conditions and that the same was so applied by these garnishees That these garnishees claim they were bound to pay the said moneys for the purposes specified in said contract not having received the same nor any part thereof of Cuger Secor & Co they claim they are not liable as Garnishees but that they were bound by law to pay the same to other parties than Cuger Secor & Co for the purposes in said contract specified - and that the moneys received under and by virtue of said contract came into the hands of the said garnishees in fact as their own money they having bound themselves to pay said claims

That the indebtedness of Cuger Secor & Co. to these garnishees is stated in their prior answer in this cause.

That there has been paid on the judgment against Cuger Secor & Co. in favor of said Martin the sum of \$25,00 since the rendition of said judgment. That said William H. Cuger proposed and offered

Page 17

to turn out to the Sheriff under execution in this case real estate to satisfy the same And that the Sheriff refused to receive it and levy thereon saying that he was ordered by the plaintiffs attorney to levy on nothing but personal property - That said real estate is unencumbered and of the value of about \$1500 & title perfect. That the said Chamute also was directed by said Cruz & Secor Co to see plaintiffs attorney and request that he have the execution levied upon said real estate, that in pursuance of such request he offered to said plaintiffs attorney to turn out said real estate to be levied on and sold under execution in said case - but that plaintiffs attorney refused to have the same levied upon real estate and declared his intention to make the money out of personal property - That said defendants have always been ready & willing to turn out said real estate and yet are - to be sold on Execution in satisfaction of said judgment and now having fully answered they pray to be discharged

O. Chamute
David J N Sanderson

Octavo Chamute and David J N Sanderson being duly sworn depose & say that the Matters and things set forth in the foregoing Answer. is true as they verily believe.

Sworn to & subscribed
before me this 7th day

of July 1859. Cha Kettells (Clerk)
per Geo H Kettells Sply.

Proceedings of the County Court of Peoria County,
Page 18 State of Illinois, began and held at the Court House at
Peoria in said County, under its extended jurisdiction
for judicial and other business, on Monday.

February 7th A.D. 1859.

Present Hon^{ble} Wellington Loucks, Judge.

Charles Kettelle ^{Clerk} and John Bryner ^{Sheriff}

Monday February 14th 1859.

James A. Martin

vs:

Garnshees to Octave Chamute
D. T. N. Sanderson & Co.

William H. Bruger

Thomas C. Fields

Charles A. Secor

Samuel Gilman

On Motion, this cause is
Ordered to be continued to the
next Term A.D. 1859.

Proceedings of the County Court of Peoria County began
and held at the Court House at Peoria, under its exten-
ded jurisdiction for judicial and other purposes.

Present Hon^{ble} Wellington Loucks, Judge.

Charles Kettelle ^{Clerk} and John Bryner ^{Sheriff}

Monday March 7th 1859.

James A. Martin

vs:

Garnshees Octave Chamute D. T. N. Sanderson
and Charles E. Follet

William H. Bruger

Thomas C. Fields & Co.
Cruger, Scott & Co

On Motion, this cause is
Continued, until the next
or April Term. A.D. 1859.

Page 19

Proceedings of the County Court of Peoria County
State of Illinois began and held at the Court House
in the city of Peoria in said county, on Monday April 4th
1859, for judicial and other business, as authorized by
Law under an Act of the General Assembly of the
State of Illinois to "Extend the jurisdiction of the
County Court Peoria County" Passed 1855.
Present Hon Wellington Loucks, Judge, Charles Kettelle ^{clerk}
and John Bryner Sheriff.

Saturday April 9th 1859.

James A. Martin &
vs: ^{Octavo Chanute} Garnishes D. J. Sanderson
Jm H. Cruger. Etal
Thomas C. Fields Etal

On Motion of Plaintiffs Atty. Sher Cause
is ordered to be continued, to May Term. A.D. 1859

Proceedings of the County Court of Peoria County, and State
of Illinois, began and held at the Court House in Peoria
under its extended jurisdiction for judicial and other pur-
poses & presiding The Honorable Wellington Loucks, Judge
and Charles Kettelle ^{clerk} and John Bryner Sheriff. on

Monday June 6th 1859.

James A. Martin vs: ^{Octavo Chanute} Garnishes D. J. Sanderson
Jm H. Cruger Etal. ^{Chas. D. Trollett}
Thos C Fields Etal. ^{Process}

This day came the said Plaintiff by Charles C. Borney
his attorney and the said Garnishes being three times sole-
mnly called ^{and} ~~and~~ not but made default. Therefore it is
considered by the Court that the said James A. Martin
do have ^{and} recover of ^{and} from the said Octave Chanute
David T. N. Sanderson ^{and} Charles E. Follett the sum
of \$ 518.10 Two Hundred ^{and} Eighteen ^{and} 10/100 Dollars.
to apply on the Judgement rendered in this Court
heretofore to Writ August 3^d 1859, in favor of said
Plaintiff ^{against} W^m S. Gruger, Charles A. Secor, Thomas
C. Fields ^{and} Samuel Gilman ^{and} also his Costs ^{and} Charges
by him ^{about} this Suit in his behalf expended ^{and} that he
have Execution therefor, ^{conditional} however that the said
Octave Chanute, D. T. Sanderson ^{and} Charles E. Follett do
not show cause why this judgment should not be
made final on the return of a Writ of Scire Facias.

Proceedings of the County Court of Peoria County
began ^{and} held at the Court House in the city of Peoria
in said County on.

Monday July 4th 1859.

for judicial ^{and} other business ^{under} the act ^{extending} the jurisdiction
of the said Court. Present. Hon Wellington Loucks Judge
Charles Kettelle ^{Esq} ^{and} John W. Bryner Sheriff.

Tuesday July 5, 1859.

James A. Martin
vs.

Garnishes of W^m S. Gruger
Octave Chanute ^{and} Charles A. Secor
David T. N. Sanderson ^{and} Charles E. Follett Et al

Page 21 This day came the said Plaintiff by Charles C Bonney
his attorney and the said Defendants Garnishers by Mr
Williamson their attorney and on motion of said def
endants it is ordered by the Court that the Conditional
Judgment rendered in this cause To wit: June 8th 1859
see page 261. be set aside and rendered of no effect at their
costs. Whereupon the said defendants filed their answer
to the interrogatories filed herein. Thereupon the said Plff
entered his Motion for judgment on the aforesaid answers
of the said Garnishers filed herein, Whereupon the said
defendants entered their Cross Motion for leave to amend
said Answer. The Court being fully advised in the
Premises doth sustain the said Cross Motion and
Leave is given them to amend said Answer by 3
o'clock. July 8th 1859.

Proceedings of the County Court of Peoria County
State of Illinois held at the Court House, at Peoria
in said county for judicial and other business, under
the extended Jurisdiction of said Court, and Presiding
The Hon^{ble} Wellington Loucks. Judge
Charles Keltette Clerk and John Bryner Sheriff
on Monday August 22^d 1859.

James A. Martin

vs.

Octave Chanute

David T. Sanders and

Garnishers of Wm H. Cragg
Charles A. Secor
et al.

Page 21 This day came the said Plaintiff by Charles C Bonney
his attorney and the said Defendants Garnishers by Mr
Williamson their attorney and on motion of said def
endants it is ordered by the Court that the Conditional
Judgment rendered in this cause To wit: June 8th 1859
see page 261. be set aside and rendered of no effect at their
costs. Whereupon the said defendants filed their answer
to the interrogatories filed herein. Thereupon the said Plff
entered his Motion for judgment on the aforesaid answers
of the said Garnishers filed herein, Whereupon the said
defendants entered their Cross Motion for leave to amend
said Answer. The Court being fully advised in the
Premises doth sustain the said Cross Motion and
Leave is given them to amend said Answer by 3
o'clock. July 8th 1859.

Proceedings of the County Court of Peoria County
State of Illinois held at the Court House, at Peoria
in said county for judicial and other business, under
the extended Jurisdiction of said Court, and Presiding
The Hon^{ble} Wellington Loucks. Judge
Charles Keltette Clerk and John Bryner Sheriff
on Monday August 22^d 1859.

James A Martin

vs.

Octave Chanute

David N Sanders and

Garnishers of Wm H Cruger
Charles A Secor
et al

This day came the said James A Martin by Charles C Bonney, his Attorney and the said Garnishees by Marion Williams on their Ally: And thereupon this cause came on to be heard on the motion of said Plff for judgment against the said Garnishees, upon, and notwithstanding the Matters and things alleged in their Answers and amended Answers filed herein; And now all and singular the Premises being seen and fully understood by the Court here, the Court is of opinion that Octave Chamute and David T N Sanderson have not shown sufficient cause why final judgment should not be rendered herein against them: & but that it sufficiently appears from the Answers aforesaid of the said Octave Chamute and David T N Sanderson that since the service of the Garnished Process issued herein against them by the said Octave Chamute, David T N Sanderson have had in their possession and control, certain property, goods, chattels, moneys, credits, and effects, of the said William H. Craggs, Charles A. Secor, Samuel Gilman and Thomas C Fields, out of which the said judgment against them ought to be satisfied & and that judgment ought to be rendered against the said Octave Chamute and David T N Sanderson for the amount of the judgment aforesaid specified in the affidavit for Garnished process, filed herein, less the sum of ~~one hundred~~ ^{seventy five} and ~~thirteen~~ Dollars mentioned in said Amended Answer.

Therefore it is considered by the Court, that the said James A Martin do have and recover of and from the said Octave Chamute and David T N Sanderson the Sum of Five hundred and forty three Dollars and Eighty five cents being the

This day came the said James A Martin by Charles C Bonney, his Attorney and the said Garnishees by Marion Williams on their Ally: And thereupon this cause came on to be heard on the motion of said Plff for judgment against the said Garnishees, upon, and notwithstanding the Matters and things alleged in their Answers and amended Answers filed herein; And now all and singular the Premises being seen and fully understood by the Court here, the Court is of opinion that Octave Chamute and David T N Sanderson have not shown sufficient cause why final judgment should not be rendered herein against them: & but that it sufficiently appears from the Answers aforesaid of the said Octave Chamute and David T N Sanderson that since the service of the Garnished Process issued herein against them by the said Octave Chamute, David T N Sanderson have had in their possession and control, certain property, goods, chattels, moneys, credits, and effects, of the said William H. Craggs, Charles A. Secor, Samuel Gilman and Thomas C Fields, out of which the said judgment against them ought to be satisfied & and that judgment ought to be rendered against the said Octave Chamute and David T N Sanderson for the amount of the judgment aforesaid specified in the affidavit for Garnished process, filed herein, less the sum of ~~one hundred~~ ^{seventy five} and ~~thirteen~~ Dollars mentioned in said Amended Answer.

Therefore it is considered by the Court, that the said James A Martin do have and recover of and from the said Octave Chamute and David T N Sanderson the Sum of Five hundred and forty three Dollars and Eighty five cents being the

amount of the judgment aforesaid and the Costs therein
 an appeal of Record to the Court, less the Credit aforesaid,
 together with the Costs by him about his suit in their behalf
 expended to be taxed hereafter by the Clerk and that he
 have execution and such other Orders and process as the Law
 allow therefor. But because the Court here is of opinion that
 the said Charles E. Follett hath shown sufficient cause why
 final judgment should not be rendered herein against him, and
 the said plaintiff hath not any wise denied or impeached
 his Answer to the Interrogatories filed herein, & therefore it is
 considered by the Court that the said Charles E. Follett be disch-
 arged and go hence without day and that he do have and
 recover of and from the said James A. Martin his costs
 by him about his suit in this behalf expended after the
 filing of his Answer aforesaid and that he have Execution therefor

Tuesday August 23^d 1859

James A. Martin

vs.

assumpsit.

Octavo Chanute

Garnishes of Wm H. Cruver Esq.

David T. N. Sanderson

This day came the said defendants
 by Wm Williamson their Attorney and prays an appeal of
 this cause to the Supreme Court of this State. Which is
 ordered to be allowed on their entering into bonds in the
 Penat sum of One Thousand Dollars, within twenty
 days. Security to be approved by the Clerk.

Page 24 And afterwards, To Wit. on the 23^d of August A.D. 1859
there was Filed in the said Clerk's office of the County Court
of Peoria County, a Bill of Exceptions, which in Words, is as
follows. To Wit;

James A Martin

vs.

Chanute & Sanderson

County Court. Aug term 1859.

Be it remembered that on this
day Came on this cause for hearing upon the filing
of the Answers of the said defendants as Garnishees
And the said plaintiff having entered his Motion
in this cause for judgment on the Answer of said Gar-
nishees which said answers are in the words & fig-
ures following to wit:

In the County Court
of Peoria County
May Term A.D. 1859.

James A. Martin

vs.

Octave Chanute
David T. N. Sanderson
Charles E. Folliott

Garnishees

To --- Answer of Garnishees ---

1st Interrogatory. These defendants answering State, That O Chanute
entered the Service of said Granger Secor & Co in July
1854, as "Engineer," at a Salary of \$1000.- Sanderson
also Entered their Service as "book keeper," in Sept 1855
at a Salary of \$800 per year And the said Folliott

Page 25 entered their service in August 1858. as general freight Agent & at a Salary of \$1500. And each of them have continued in said Employment ever since Said Garnishes have received a part of their several Salaries except the following sums which are still due & unpaid upon said Salaries And upon certain money advanced by them There is due to said O. Chanute \$2457.76
" " D. F. Sanderson 2435.55
" " C. E. Follett 621.71

To the 2nd Interrogatory they say. That in March A.D. 1856 Chanute as agent of Cruger Secor & Co purchased 150 acres of land in Woodford County, being the land on which the town of Secor now stands He also as such agent purchased 160^{acres} of land in Tazewell County the description of which these Respondents do not know, but the title to the same as they believe stands in the name of William H. Cruger with the exceptions above named these Respondents nor either of them have ever bargained for, bought or agreed to buy, stipulated, agreed as contracted for any lands, tenements or hereditaments either as the agents, servants, servants or trustees of or for said Cruger Secor & Co or for any member of said firm

To the 3rd Interrogatory they say. That neither of them were at the time of the service of the Garnishes process in this cause, nor have they or either of them at any time since then been in any manner indebted to said Cruger Secor & Co or any member of said firm in any sum whatever.

^{To the}
4th Interrogatory they say

Page 26 That neither of these defendants at the time of the service of the Garnished Process in this cause, nor since that time, have had in their possession or power or control either in trust or otherwise any lands tenements, goods, chattels, Rights, Credits, Money or Effects of any kind quantity, nature or description whatsoever, of or for said Cruger Secor & Co or any member of said firm either jointly severally or otherwise

^{To the}
5th Interrogatory, they say

That neither of the said defendants were at the time of the service of the said Garnished Process, in any manner indebted, nor have they since that time or either of them been in any manner indebted to the said Cruger Secor & Co or to any member of said firm in any manner whatever.

^{To the}
6th Interrogatory they say.

That they nor either of them have since the service of the Garnished process in this cause had in their possession ^{any} moneys, rights, credits of any kind quality or description whatever, in any capacity whatever; belonging to said Cruger Secor & Co or any member of said firm. Except, under and in pursuance of the terms of certain written contracts or agreements now to the Court, here shown Dated the 5th & 16th days of April A.D. 1859, under and in pursuance of which they did both receive and pay out money for purposes of keeping said Road running, and in order to defraying the expenses of the same. Both before & since the service of said Garnished process but only in such manner and for the purposes in said Contracts mentioned

To the
7th Interrogatory they say,

Page 27 That they believe the Peoria & Ogawa Rail Road comp
any is indebted to the said Cruger Secor & Co in a ver
large sum of money amounting to at least the sum of
\$500,000. They presume that others are indebted to
them but they have not particularly inquired into these
matters and cannot state that either of them know
any such other persons or persons who are indebted
to the said Cruger Secor & Co or to any member
of said firm or any person or persons who have in their
possession power or control any Lands Tenements
goods, chattels, rights Credits, Moneys or Effects of, or
for, or belonging to said Cruger Secor & Co or any mem
ber of said firm in any manner whatever
State of Illinois

Peoria County J^o Chanute, D. T. N. Sanderson & Charles
E. Follett, being sworn, say the foregoing answers by them
subscribed, is true to the best of their knowledge infor
mation and belief
Sworn to before me
this 27th day of May
A.D. 1859. Henry M. Peck
Notary Public

O Chanute
David T. N. Sanderson
Char E. Follett.

"The aforesaid answers of Octave Chanute and David T. N.
Sanderson filed by leave of Court first had and obtained
in case of James A. Martin The said Garnishees for
further answer say that on the day of
A.D. 185 the said defendants in execution in this

Page 28 cause made their certain contract with the Peoria and
Oquawka railroad company whereby and in which the
said defendants Cruger Secor & Co bound themselves to
operate that part of the Peoria & Oquawka railroad lying
east of the Illinois River so far east as
and to build construct and keep the same in repair as
by the terms of the contract will fully appear a copy
of which said contract is hereto attached marked
"A" and made part of this answer. Said Sanderson and
Chanute further answering say that by the terms of said
contract the said Cruger Secor & Co bound themselves
to furnish Locomotives Cars engines and all proper and
necessary Machinery and equipments necessary for the
successful and proper operating of said railroad and
they further say said railroad company is incorporated
and are in operation on the part of said railroad lying
east of the Illinois River and as far East as the Illinois
Central road and for a long time have on said part
of said road been common carriers of passengers and
freight thereon and also said road is used for the purpose
of transporting the United States Mail thereon
The said Gamishev further answering say that they did not
nor did either of them have any goods Chattels lands
tenements or effects of any kind in their or either of their
possession at the time of the service of process on them
in this case and ^{that} they have not now nor has either of
them any goods Chattels lands tenements or effects of
any kind in their or either of their hands at this time

Page 28 cause made their certain contract with the Peoria and
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east of the Illinois River and as far East as the Illinois
Central road and for a long time have on said part
of said road been common carriers of passengers and
freight thereon and also said road is used for the purpose
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The said Gamishev further answering say that they did not
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tenements or effects of any kind in their or either of their
possession at the time of the service of process on them
in this case and ^{that} they have not now nor has either of
them any goods Chattels lands tenements or effects of
any kind in their or either of their hands at this time

They further say that after the service of Garnishes process on them in this cause to wit on the 5th day of April 1859 the said Cruger Secor & Co. being hard pressed for funds proposed to these garnishes the said Sanderson and the said Chanute that they the said Sanderson and Chanute should make certain advances out of their own funds to enable them to pay off certain of their indebtedness and to continue the operation of said road and the running of the Cars thereon for the conveyance of passengers freight and for the transportation of the United States mail as aforesaid. That said proposition of the said Cruger Secor & Co was agreed to by these garnishes and these said defendants then submitted a proposition in writing to said Cruger Secor & Co and which was also accepted by said Cruger Secor & Co. and which said contract is filed with the original answers in this case marked "A" and made part hereof.

That in addition to monies received under said propositions said Sanderson & Chanute did to wit on the 20 day of April 1859. in in order to aid the said Cruger Secor & Co in prosecuting the running and operation of the said road aforesaid procure this said notes to be discounted and thereby raised on said notes the sum of \$1200. And on the 20th of May 1859 for the purpose aforesaid they did by discounting their notes again raise the further sum of \$1500. That said Chanute borrowed the further sum of \$1000. of Wm F Bryan for the purposes aforesaid and secured the same by trust deed on real estate. That these other notes of these garnishes

to the amount of six hundred and fifty eight dollars on which they raised further funds to pay the expenses of running & operating said road of said defendants in execution of aforesaid That at another time to wit in May 1859 said Sanderson paid for the purposes as aforesaid the sum of \$ 200 in cash and the said Chanute the further sum at the same time of \$ 200. That said monies in addition to what was received under and by virtue of said propositions were required to pay the expenses mentioned in said proposition and acceptance dated April 5th 1859. And that all of the above mentioned sums of money were advanced by these garnishees to pay off the indebtedness of Cruger Secor & Co and to pay the costs and expenses of operating and running said road and were not paid to Cruger Secor & Co. or either of them That these garnishees nor either of them have not paid Cruger Secor & Co in way moneys whatever since the service of garnished process on them in this cause. That all of the monies received by said garnishees were applied to the payment of the indebtedness of said rail road in keeping the same in repair paying ticket drafts expenses supplies and materials necessary for operating said road. That there never was at any time any surplus in their hands over and above what they had obligated themselves to pay according to the stipulations of said proposition or contract Dated April 5th 1859. That they received the said monies under the contract with the express understanding that the same should be paid out by these garnishees for the purposes stipulated

Page 31

in said contract And upon no other terms or conditions And that the same was so applied by these garnishees That these garnishees claim they were bound to pay the said moneys for the purposes specified in said contract not having received the same nor any part thereof of Cruger Secor & Co they claim they are not liable as Garnishees but that they were bound by law to pay the same to other parties than Cruger Secor & Co. for the purposes in said contract specified - And that the moneys received under and by virtue of said contract came into the hands of the said garnishees in fact as their own money they having bound themselves to pay said claims

That the indebtedness of Cruger Secor & Co to these garnishees is stated in their prior answer in this case

That there has been paid on the judgment against Cruger Secor & Co in favor of said Martin the sum of \$ 2500 since the rendition of said judgment.

That said William H. Cruger proposed and offered to turn out to the Sheriff under Execution in this case real estate to satisfy the same And that the Sheriff refused to receive it And says thereon saying that he was ordered by the plaintiffs attorney to levy on nothing but personal property - That said real estate is unencumbered and of the value of about \$ 1500 & title perfect. That the said Chanute also was directed by said Cruger Secor to see plaintiffs attorney and request that he have the execution levied upon said real estate, that in pursuance of such request he offered to said plaintiffs attorney to turn

Page 32

out said real estate to be levied on and sold under execution in said case. but that plaintiffs attorney refused to have the same levied upon real estate and declared his intention to make the money out of personal property that said defendants have always been ready & willing to turn out said real estate and yet aw to be sold on execution in satisfaction of said judgment and now having fully answered they pray to be discharged.

O. Chamute

David J. N. Sanderson

Octavo Chamute and David J. N. Sanderson being duly sworn depose & say that the matters and things set forth in the foregoing answer is true as they verily believe
Sworn to & subscribed

Before me this 7th day
of July 1859

Chas Kellitt Clerk per Geo W Kellitt dpy

"A"

Peoria & Ogawka (East. Ill) Rail Road
Superintendents office

Peoria, April 5th 1859

Cruger Secor & Co
Gentlemen

We propose to advance all the money requisite, and to pay up in full between the 15th & 25th of each month all Pay Rolls for the previous months beginning with those for March 1859 and also to pay all Ticket Drafts, expenses, supplies, and materials requisite for operating your road, for the sum of one Hundred Twenty

Five Dollars per month in addition to our Salaries

Page 33

We to have and receive all the Gross Earnings of the Road as fast as they accrue and to distribute the surplus if any as you may direct. All the Earnings to be given to us in money, and no vouchers or orders to be given or received from any of the Stations, except when provided by previous contracts which cannot be cancelled.

Provided that we shall not be required to pay more in any one month than the Gross Earnings of the Road for that month. We to have the full and absolute control of the finances, but to consult you upon all points not provided for by this proposition. This arrangement to go into effect immediately and to continue in force for three months from date

O Chanute

David T. N. Sanderson

We accept the above proposal

Cruzer, Secor & Co.

Georgia & Oquawka (East. Ex.) Rail Road
Gen. Freight Department,
Peoria, April 16 1859.

Whereas we are indebted to Octavo Chanute & D. T. N. Sanderson in the sum of five thousand dollars we hereby authorize them to collect all moneys that may be in the hands of any of our Station agents & Conductors until the same is paid

Cruzer Secor & Co.

Witness

D. W. C. Follett

This. Secum made by Clerk - G. Karale
att for Geo. H. Karale

Page 34

And which said motion was sustained by the Court.
And judgment rendered against the defendants Charles
Sanborn in said answers which was all the
evidence in the case for the sum of
dollars and to the rendition of which
said judgment the defendant then & there excepted and
objected and prayed an appeal to the Supreme Court and
prayed the Court to sign & seal this bill of exceptions
Wellington Loucks 
County Judge.

Exhibit "A"

Articles of agreement made and concluded this Twenty third day of December in the year of our Lord one thousand Eight hundred and fifty six between the Peoria and Oquawka Rail Road Company, ^{Charles A. Syron, James F. Lusk, Samuel Gilman, William H. Cruger} party of the first part, and Thomas O. Field parties of the second part whereby it is covenanted and agreed as follows. The parties of the second part covenant and agree that they will build construct and finish in every respect in the most substantial and workmanlike manner, all that portion of the Eastern Extension of the Peoria & Oquawka Rail Road which lies between the junction of said Rail road with the Chicago Alton & St. Louis Rail Road and the Indiana State Line, and furnish all materials for the construction of said portion of said Eastern Extension of good quality. The rail furnished for the track of said portion of said Eastern Extension shall be of the Erie pattern and of the average weight of at least fifty six pounds per yard, and shall be laid on wrought iron chairs, and of ties of Twenty three hundred to the mile. The road bed of said road shall be graded for a single track, the ~~cost~~ not to be over twenty feet at the grade and the embankment to be fourteen feet at the grade.

Page 35 The said parties of the second part, shall furnish the following equipment for said portion of said Eastern Extension two twenty two, ton Locomotives, three first class Passenger Cars, sixteen Freight Cars, ten Flat Cars, six hand cars, They shall also furnish houses for said Locomotives at each end of said portion of said Eastern Extension of the Peoria & Oquawka Rail Road, they shall also furnish at such points proper accommodation for Passengers. Such Passenger houses shall be at least of the dimensions of 16 x 32 feet and of equal style and finish of Passenger. Houses on the Chicago Alton & St. Louis Rail Road also a turn table, two water tanks and also necessary sign boards at crossings. And the said parties of the second part covenant and agree to build construct and finish, said portion of said road in manner aforesaid and to do perform and furnish all and singular the things and matters aforesaid for the sum of and compensation of Thirty thousand dollars for each and every lineal mile of said portion of said road, to be constructed by the said parties of the second part as aforesaid to be payable only in the funds and securities and in the manner herein after, specified and to build complete and finish said portion of said road within two years from the date that this contract shall become ^{binding} ~~binding~~ upon the parties of the second part the said parties of the second part having the right to use all and any portion of said road until the same shall be finished and completed.

And the said party of the first part hereby, covenants and agrees to pay to the said parties of the second part in full compensation for the building, constructing and finishing said

portion of said road at the sum per mile above mentioned in the manner following. First. The parties of the second part are authorized to use the corporate name of the Peoria & Ogawka Railroad Company to collect the stock subscriptions, already made along the line of said portion of said road, the sum so collected to be credited to the Peoria & Ogawka Railroad and deducted from the Thirty thousand dollars per mile.

Second By an issue of \$750,000. in convertible Coupon Bonds of the party of the first part drawing interest at the rate of eight per cent. per annum payable semi annually said bonds to be payable twenty five years after date in the City of New York and to be convertible into stock after 1865 at the option of the holder thereof. Said Bonds shall be secured by a Deed of Trust or Mortgage executed by the party of the first part to such person or persons as Trustee or Trustees as the parties of the second part may direct by and with the approval of the President of the Peoria & Ogawka Railroad Company and the said Mortgage or deed of Trust shall create and be a first lien upon the property of said Company belonging to said portion of said Eastern Extensions only, the Coupons attached to said Bonds shall be payable at such place in the City of New York as shall be appointed by the Trustee or Trustees mentioned in said Deed of Trust or Mortgage. Said Bonds and said Deed of Trust or Mortgage shall contain a sinking fund clause of two per centum per annum to accumulate out of the Earnings of said portion of said road, such accumulation

Page 37

or funding of the Earnings shall commence within two years after said portion of said road is in running order, one half of said Bonds to be taken by the parties of the second part and credited on their contract at par the other half of said Bonds to be received by said parties of the second part and credited on their contract at seventy five per centum of their par value, the balance of the thirty thousand Dollars per Mile shall be paid by the party of the first part in income bonds to be secured by a specific lien on that portion of said Eastern Extension with eight percent Interest Coupons. payable semi annually in the City of New York said income bonds to have fifteen years to run and to be payable in the City of New York said income bonds to contain a clause making them convertible into Stock after the road shall have run three years, at the option of the holders. Said Mortgage Bonds above mentioned shall be executed by the party of the first part and deposited with the Trustee or Trustees therein named, with instructions to deliver the same to the parties of the second part only on the order of the President of the Peoria & Oquawka Rail Road Company when the road shall be graded from the Chicago Alton & St Louis Rail road to the Chicago branch of the Illinois Central Rail road.

Five Hundred thousand of said first Mortgage Bonds shall be delivered to the parties of the second part for the purpose of Hypothecation or negotiation to enable them to procure Iron, said Iron shall be held or controlled by the Trustee or Trustees mentioned in said Deed of Trust or Mortgage or the President of the Company until the same shall be laid

Page 38

down upon said portions of said road. When Income Bonds sufficient to make up the sum of Thirty Thousand Dollars per mile for the portion of road to that point shall be issued and delivered to the parties of the second part reserving ten per cent of said Income Bonds till the balance of said Road is completed and when the balance of said Road shall be graded and ready for the Iron the balance of said first Mortgage bonds shall be delivered to the parties in the same manner as provided for the delivery of the Five hundred thousand dollars of Bonds above mentioned and the balance of the Income Bonds to make up the sum of thirty thousand dollars per mile shall also be delivered to the said parties of the second part when said road is completed to the Indiana State line. It is hereby understood and agreed that the thirty thousand dollars a mile shall include the Engineering.

The parties of the second part also covenant and agree to settle and adjust the claims or claims which Richard P. Morgan may have under or by reason of his contract with the Peoria & Ogawatha Railroad company dated fourteenth day of December 1854, and for the settlement of which he now has a suit pending against said company in the circuit court of the United States for the Northern District of Illinois and to pay and discharge such sum or sums as may be found due and owing to him the said Morgan upon such settlement under said contract and keep said company harmless from all claims of said Morgan for Damages &c in said contract. It is hereby mutually covenanted and agreed that this contract and the covenants and agreements herein shall not be binding upon

either of the parties hereto, untill such settlement shall be made by the parties of the second part with said Richard P. Morgan but in case said Morgan shall refuse to settle as above mentioned then the parties of the second part shall have the privilege to consider this contract binding they saving and protecting the party of the first part from all liability under or by virtue of said Morgan Contract or of any judgment he may obtain. It is also mutually covenanted and agreed that this contract shall not be binding upon the parties of the second part unless the parties of the second part shall within Ninety days from the date hereof notify the Peoria & Oquawka Railroad Company in writing that they will be bound by this contract upon the settlement with Richard P. Morgan above mentioned.

The parties of the second part further contract and agree to advance and pay for the party of the first part the interest on the Bonds mentioned in this contract untill said portions of said road shall be completed and delivered to the Peoria & Oquawka Rail Road Company at which time of such delivery of said portions of said road the party of the first part hereby agree to refund and repay to the party of the second part the sum or sums so advanced to pay interest together with ten per cent interest on the same from the date of the payment thereof by the party of the second part.

And the parties of the second part further contract and agree to furnish all the additional necessary Rolling Stock and Equipment which may be required for the operation and running of said portion of said Eastern Extension for which the said party of the first part hereby covenants and agrees to pay them

the said parties of the second part upon the delivery of said portion of said road by the parties of the second part to the parties of the first part the original cost of the same with ten percent interest thereon from the date of the purchase of the same by the said parties of the second part. And it is further covenanted and agreed between the parties of these presents that the parties of the second part shall retain the possession control use occupation and enjoyment of the said portion of the Eastern Extension of the Peoria and Oquawka Rail Road from the junction of said road with the Chicago Alton & St. Louis Rail Road to the Indiana State Line and shall and may apply the net earnings of the same as follows.

First. To pay the interest and provide the sinking fund of the first mortgage Bonds.

Second. To pay the interest on the Income Bonds and then to pay and discharge any and all manner of indebtedness due the parties of the second part from the party of the first part for interest additional Rolling Stock &c but in case the Income Bonds above mentioned or any portion of them shall have been converted into stock then after paying the interest on the balance outstanding and the payment of all indebtedness to the party of the second part above mentioned and for station and depot houses Right of way or other proper and necessary outlay of the party of the second part with ten percent interest then the balance or residuum of said Earnings shall be paid to the stockholders of the stock belonging to that portion of said Road. It is hereby agreed that the parties of the second part will not be required to deliver the possession control and man-

agement of the said portion of said road, untill that portion of the Peoria & Oquawka Rail Road from the East bank of the Illinois River to its junction with the Chicago Alton & St Louis Rail Road, now controlled and managed by Cuyler Seior & Co under a contract dated June 17 1855, shall be surrendered and delivered to the Peoria & Oquawka Rail Road Company and then not untill any and all indebtedness under this contract at that time due and owing the parties of the second part, shall be paid or satisfactorily secured to them, and the party of the first part hereby agrees not to issue any other securities or create any other liens upon the portion of the Eastern Extension of the Peoria & Oquawka Rail Road, between the Chicago Alton & St Louis Rail Road & the Indiana State Line than is mentioned and provided for in this Contract and it is hereby agreed that the bonds issued and the indebtedness arising or accruing under this contract shall only be a lien upon and effect the portion of road hereby contracted to be built to wit from the Chicago Alton & St Louis Rail Road to the Indiana State Line. The parties of the second part hereby agree to accept and pay the draft of the Peoria & Oquawka Rail Road Company on them at twelve months from the perfecting of this contract for the same or amount due to Dennison for Engineering on said portion of said road. It is hereby understood and agreed that the parties of the second part, shall be and they are hereby empowered to use the Corporate name of the Peoria and Oquawka Rail Road Company to procure and take possession of the land necessary for the building and ^{constructing} of said road hereby contracted to be built.

The said parties of the second part, further covenant and agree that after the portion of the said Eastern Extension of the Peoria & Oquawka Rail Road from the Chicago Alton & St Louis Rail Road to the Indiana State Line shall have been built and finished they will make monthly reports to the Peoria and Oquawka Rail Road Company of the amount of Earnings of said portion of said Eastern Extension of said Peoria & Oquawka Rail Road. It is further understood and agreed between the parties of this agreement that in case the settlement with Richard P. Morgan above mentioned, is consummated the orders or drafts drawn by said Morgan or accepted by the Peoria & Oquawka Railroad Company on account of said contract shall be taken into consideration and arranged and provided for so as to save and protect the said Peoria & Oquawka Rail Road Company from any liability for or on account of the same. The parties of the second part are to deduct from the thirty thousand Dollars per mile the sum of Fifty two thousand six hundred & sixteen dollars & sixty two cents already advanced by said Company to R. P. Morgan. The parties of the second part hereby agree to settle and adjust any claims which Weld and Clarke may have against the Peoria & Oquawka Rail Road Company under the contract between Weld & Clarke and the Peoria & Oquawka Rail Road Company dated June 17th 1853. and pay and discharge any and all claims which may be due Weld & Clarke under said contract if any there should be due but in case the said Weld & Clarke refuse to settle such claims with the parties of the second part shall have the right to proceed under the contract saving and protecting the said Peoria & Oquawka Rail Road Company from all liability under or by virtue of said Weld & Clarke

Page 43

contract or any judgment which they the said Weld & blacks may obtain against the Peoria & Oquawka Railroad Company

In witness whereof the said parties of the second part have hereunto subscribed their names and the President and Secretary of said Company have subscribed their respective names hereto and affixed the seal of said Company the day and year first above written

Sig^d Peoria & Oquawka RR Co.

By N B Curtis Pres

Sig^d Henry Nolte

Sec Peoria RR Co.

Sig^d Chas A. Leor ☪

Sig^d James F. Leor. ☪

Sig^d Saml Gilman ☪

Sig^d W H Cruger. ☪

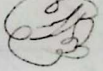
Sig^d Tho C. Fields. ☪

And which said motion was sustained by the court and judgment rendered against the defendants Chamute & Sanderson on said answers which was all the evidenced in the case for the sum of dollars and to the rendition of which said judgment the defendants then & there excepted and objected and prayed an appeal to the Supreme Court and prayed the court to sign & seal their bill of exceptions

Wellington Loucks County Judge ☪

And afterwards To Wit on the 23^d of August 1859. there was filed in the Clerks office aforesaid, ~~an appeal~~ ^{an appeal} ~~Bona~~ which, in words and figures is as follows. To wit,

Know all men by these presents that we David Sanderson Octave Chanute and George C Bestor are held and firmly bound unto James E Martin in the penal sum of one thousand dollars for the payment of which well and truly to be made we bind ourselves our heirs executors jointly and severally by these presents. Witness our hands & seals this 23rd day of August A.D. 1859. The condition of the above obligation is such that whereas the said James E Martin did on the 23rd day of August 1859. before the County Court of Peoria County Illinois recover a certain judgment against the above bounden David J N Sanderson, and Olive Chanute for the sum of five hundred & forty three + 85/100. dollars & costs from which said judgment the said Sanderson & Chanute prayed an appeal to the Supreme Court. Now if the said Sanderson & Chanute shall prosecute their said appeal without delay and with effect. and shall pay all judgments costs and damages and interest in case the said judgment shall be affirmed then the above obligation to be void otherwise to remain in full force & virtue

David J N Sanderson 
 Octave Chanute 
 Geo C. Bestor 

State of Illinois
County of Teona

Clerks office

I Charles Kettelle, Clerk of the

Page 45 County Court of said County. Do hereby certify
that the foregoing is a full, true and perfect trans-
cript from the Files and Records of my office
in a certain Cause in said Court wherein.

James A Martin is Plff and O Chamute & Erv
Garnishes of Cruger & Co are defendants.

Witness my Hand and Seal of said Court
this 3d of March 1860.

Charles Kettelle ^{Clk}
per Geo. H. Kettelle spty

Assignment of Error

Octave Chamute & David J N Sanderson By James A Martin	}	Supreme Court April Term 1860
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And now comes the said Octave Chamute and
David J N Sanderson by M Williamson
their Attorney And says that in the record
Judgment And proceedings aforesaid there is
Manifest error in this to wit

The Court erred in Sustaining the motion
of James A Martin plaintiff below for judgment
over

on the Answer and Amended Answers of the
of plaintiffs as garnishees

2

The Court erred in finding from
the Answer and Amended Answers of the
garnishees (now plaintiffs) that any money
property goods Chattels or effects had come
into the hands of the plaintiffs after the
service of garnishee process ^{in this case} out of which
the said judgment ought to be satisfied

3

The Court erred in finding that suffi-
cient goods Chattels money property and effects
to pay the said judgment of said James A Martin
had come into the hands of the plaintiffs at
any time whatever

4

^{the Court erred in rendering}
The said judgment ~~was rendered~~ in
favor of James A Martin against the plaintiffs
Chamute & Sanderson whereas if any judgment should
have been rendered against the plaintiffs the
same should have been rendered in favor of
Cruyer Leor & Co the defendants in execution

5

That said judgment was rendered in favor of
James A Martin whereas by the laws of the land
it ought to have been rendered in favor of said Octave
Chamute and David J & Sanderson. Wherefore the said
plaintiffs pray that the said judgment may be reversed
Annulled and for nought held and that the plaintiffs
be restored to all they have lost by reason thereof

by M Williamson
their Attorney

Whereupon comes the said
James O. Martin by Charles C. Bonney
his attorney, and says that there is
no error, either in the record and
proceedings aforesaid, or in the rendition
of the judgment aforesaid, and prays
that the Justices of the said Supreme
Court, now here, may proceed to
examine as well the Record and pro-
ceedings aforesaid, as the matters
aforesaid above assigned for error.
And that the judgment aforesaid, in
form aforesaid given, may be in all
things affirmed &c.

Charles C. Bonney
attorney for
appellant -

"

169

Octave Chaumet
Bal. 27

James A. Martin

Transcript
Ems

Filed April 12, 1960
L. Leland
Clerk

W. W. Leland

5/13/60
5/13/60