

13687

No. _____

Supreme Court of Illinois

Gardner

vs.

Hall

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 116

Gardner

vs
Call

1862

Supreme

13687

State of Illinois }
Supreme Court } 50 Third Grand Division
April Term Third 1862

Samuel S. Gardner }
vs: } error to Cabell Co.
Lyman Hall et al }

E. F. Bull one of said plaintiffs attorneys being first duly sworn according to law on oath says that said defendant Hall told this affiant that he intended to harass said plaintiff and to keep him from having ~~a hearing of said case~~ said cause disposed of as long as possible.

Affiant further states that he made enquiries of several of said Halls friends, that up to the time of his departure had been intimately connected with him and that he could not ascertain his whereabouts.

Affiant further states that he is informed by Eric L. Waterman the Sheriff of Cabell Co. Ills. that he went with the Sci. fa. or writ of error issued in this cause, to the house occupied by the family of said Hall for the purpose of ~~and~~ obtaining service thereon and that he the said Sheriff, says that the persons ~~at~~ at the house, whom he supposed to be said Halls wife and who answered his enquiries, either told him the said Sheriff that she did not know when said Hall was or else told him that he was near Sandoval when said Halls affidavit shows

that he said Hall, is not dead has
not been at Sandoral at all unless it
has been to pass through there on his
way to said Union Co. Affiant further
states that he resides at said city of Ledge
and is intimately acquainted there and
that he could not find out from
enquiries made among said Hall's friends
whereabouts said Hall could be found -
That he did not go to said Hall's family
for the reason that he believed ~~say~~ from
what he heard, from enquiries that had
been made &c that enquiries at the house
would be useless and result in naught.

Affiant submits that if two copies
of the paper containing said notice
duy marked were mailed as set forth
in affidavits of Gardner & Osman that
in all probability said Hall did know of
the pendency of this writ of error or that
his not knowing was to his own fault
or the fault of his family - Affiant
further states that said enquiries
were made more than ten days prior
to the first ~~day~~ day of this term
of court

Subscribed & sworn to before } E. F. Bull
me this 23rd Apr. 1862 }

L. Leland Clerk
J. D. Rice Deputy

S. S. Gardner

vs:

Lyman Hall et al

vs-

App't. of E. F. Bull

Samuel S. Gardner
vs
James Hale,
Louis Chie
Jeremiah Chie
& Henry King

State of Illinois
Supreme Court
Third Grand Division
April Term A.D. 1862

State of Illinois }
Sabato County } vs

David G. Searles
Being first duly sworn, doth depose
and say that Henry King, one of
the defendants in the above entitled
suit, is dead, and died before the
commencement of this term of this
Court

Subscribed and sworn to
before me, this 20th
day of April A.D. 1862
L. Leland Clerk
by J. B. Rice Secy

David G. Searles

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Filed April 25th 1862
L. Leland
Clerk

State of Illinois vs Third Grand Division
Supreme Court } April Term A.D. 1862

Samuel S. Gardner,
Plaintiff in error
vs

Symon Hall, Henry King
Louis Ethel and Jeremiah
Ethel, Defendants in error

} Error to Adelle
County Circuit
Court

Samuel S.

Gardner the above named plaintiff
being first duly sworn according to
law on oath deposes and says that
he has made due and diligent inquiry
~~of various persons that ought to~~

for said defendant Symon Hall
and that he ^{said Hall} cannot be found, ~~so~~
and that process cannot be served on
said ~~person~~ ^{Hall}, but affiant has been informed
and believes that said Hall is
out of the State of Illinois.

Affiant further states that said
defendant Henry King is a non-
resident of the State of Illinois.

Subscribed & sworn to before me
this 5th day of February 1862 } Samuel S. Gardner

L. Leland Clerk of the Supreme Court
by J. D. Rice Deputy

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Samuel S. Gardner
"

Sydney Hall Esq.

aff. of Non-Residence

Filed Feb. 5th 1862
L. Leland
Clerk

Samuel D. Gardner } State of Illinois - Supreme Court
vs } King's Grand Division - Appeal
Lyman Hall } Term AD 1862

State of Illinois }
Monroe County } SS

Lyman Hall, being
first duly sworn, on oath deposed & says
that he is the defendant in the above
entitled suit. - That on this ²¹ twenty first day
of April AD 1862, and not before,
he received information of the pendency
of said suit, & that before said ²¹ twenty first day
of April AD 1862, he had no knowledge
of the pendency of the same. -

And affiant further says that for
years, he has been a resident of
the city of Cadotte, in the county of Ca-
dotte & State of Illinois, and now is a
resident of said city, and the family
of affiant is now residing there. -

And affiant further says
that since the fourteenth day of January AD
1862 he has been temporarily absent
from said county of Cadotte, as a surgeon
in the service of the Medical Government,
during all which time he has been located
in the said county of Monroe & State of
Illinois, but at no time, since the com-
mencement of this suit, has either affiant,
or any member of his family, been outside
the limits of the State of Illinois. -

And affiant further says that at

no time had he made any concealment
of his location, & at any time, any person
by enquiries of the wife of affiant at
said city of Ladalle, could have received
information as to where affiant was
located. — And affiant further says
that he is desirous of conducting counsel
& giving his personal attention to the
defense of said suit, but cannot do so
at this time of this court, by reason
of his duties as surgeon as aforesaid
Subscribed & sworn to
before me this ^{twenty first} day
of April A.D. 1862. — } Lyman Hall

Subscribed and sworn to before me
this 21st day of April A.D. 1862

Cyrus Wick
Notary Public

order of subscription
established —

Filed April 23. 1862.
at. Volcano
C.H.

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116
Gardner vs Hall
April 21. 1862.

Page 1

State of Illinois }
 La Salle County }^{vs} Pleas before the Honorable Mad-
 -ison E. Hollister the Judge of
 the Ninth Judicial district of the State of Illinois
 and the Presiding Judge of the La Salle County
 Circuit Court at a term of said Court commenced
 and held at the Court House in Ottawa in said
 County and State on the first Monday in the month
 of February the same being the fourth day of
 February in the year of Our Lord One thousand
 Eight hundred and sixty one, and of the Inde-
 pendence of the United States of America the
 Eighty fourth

Present.

The Honorable Madison E. Hollister Presiding Judge
 Abraham D. Moore Clerk
 David P. Jones States Attorney
 Eric S. Waterman Sheriff

Be it remembered that on the 25th day of January
 AD 1861 a precept was filed with the Clerk of said
 Court in the words and figures following, to wit;

State of Illinois } Circuit Court for said County
 La Salle County }
 February Term 1861
 Samuel S. Gardner }
 vs } Petition for Mechanics Lien
 Lyman Hall Lewis }
 Eliel & Jeremiah Eliel }
 Henry King }
 A. B. Moore Esq
 vs Sir, Please issue terms
 as above to Shff LaSalle Co & obge
 E. F. Bull

On the said 25th day of January 1861 there was also filed with the Clerk of said Court a petition in the words and figures following to wit;

" State of Illinois } Circuit Court February Term
 LaSalle County } thereof A.D. 1861.

To the Honorable M E Hollister Judge of the Circuit Court within and for the County of LaSalle in the Ninth Judicial Circuit of the State of Illinois.
 In Chancery Sitting

Respectfully represents unto your Honor, your Petitioner Samuel Sgard now of the County of LaSalle in the State of Illinois, that on the ninth day of April A.D. 1860, one Loggman Hall, whom your Petitioner prays may be made party defendant to this your Petitioner's Petition, also of said County of LaSalle was the owner of the following described tracts of land or Town Lots situated in the Town City of LaSalle in said County and State viz: — The East twenty feet of Lot No. Eleven and the West twenty feet of Lot No. Twelve, all in Block No one hundred and twenty (120) as known and designated on the recorded plat of said City of LaSalle.

Your orator would further represent unto your

Remor, that on said ninth day of April A.D. 1860
 said defendant being desirous of erecting buildings
 upon said premises and of improving the same
 requested your orator to furnish some of the ma-
 terials and to do some of the work necessary to
 erect and complete the same. That in compliance
 with such request your orator did on said ninth
 day of April A.D. 1860 enter into a contract with
 said defendant to do certain work and furnish
 certain materials for said buildings which con-
 tract was in writing and specified what work
 was to be done by your Petitioner, what materials
 were to be furnished, and the compensation to be
 received by your Petitioner for the same a copy of
 which contract is herewith annexed marked ex-
 hibit "A" which contract also shows at what
 time said work was to be completed, the materials
 furnished and the time of payment for the same.

Your orator would further represent that by said
 contract he agreed to furnish materials of a good
 quality and to do the work in a substantial
 and workmanlike manner necessary for the erec-
 tion of the walls of certain buildings then about
 being erected by said Hall upon said premises, that
 there were to be three long or side walls in said buildings
 each one hundred feet in length, three stories in height
 for the first or front sixty feet and two stories in

height for the last or back forty feet with corresponding front and rear walls - the walls to be three brick in thickness and that the said ^{walls} above described were the walls which your orator agreed by said contract to erect on said premises for the said buildings, but the side walls to said buildings were not according to said contract to be struck joint.

Your orator would further represent that by said contract he agreed to plaster with three coat work the two stone rooms in said buildings and one of the long rooms of the second story of said buildings to both the same where lathing should be necessary - to furnish the necessary materials for said plastering. The materials to be of a good quality and the work done in a skilfull manner, but the brick walls were not by said contract to be lathed by your orator.

Your orator would further represent that he agreed to furnish said materials and to do the said work and to have the same completed by the twentieth (20) day of July A.D. 1860

Your orator would further represent unto your Honor that he did build said walls for said buildings in a substantial and workmanlike manner, that he furnished materials for the same that he did plaster said stone rooms and said long room with three coat work in a skilfull manner

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5 and furnished materials of a good quality for the same
That said walls were built, and the materials for the
same provided. - that said plastering was done and
materials for the same furnished in manner pre-
sented and according to the terms of said contract
That the whole of said work was done, and all of
said materials were furnished by your orator, for
said buildings by or before the twentieth day of
July AD 1860 as by the terms of said contract
were provided.

Your orator would further represent that
said defendant by said contract agreed to pay your
orator for doing said work and furnishing said
materials the sum of ten dollars for each one thousand
and brick contained in the walls of said buildings
measured by wall measure, and the sum of twenty
five cents per yard for said plastering for each
and every yard thereof. - and the amount due your
orator upon the completion of said contract at
the prices above specified, said defendant agreed
and contracted to pay your orator as follows, the
sum of twenty five (\$25) dollars on the twentieth
day of September AD 1860 and the sum of twenty
five dollars for each and every month thereafter
until the first day of January AD 1861, at which
time - he will - the first day of January AD 1861,
the whole amount coming to your orator upon
said contract should become due and payable with

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ten percent interest thereon from the twentieth day of July ad 1860.

Your orator would further represent that said Defendant agreed to have the foundation walls for said buildings ready for your orator by the first day of May ad 1860. that your orator should not be delayed by the carpenter work to be done on said buildings, and that he the defendant would furnish all the caps and sills to be used in said walls at the times required. but your orator avers that said foundation walls were not ready for your orator on the first day of May ad 1860 and that he was delayed by the carpenter work on said buildings— and that said caps and sills were not furnished by said Defendants as required by your orator and that your orator was consequently delayed in his said work, but that notwithstanding such delay your orator performed his part of said contract according to the terms thereof.

Your orator would further represent that the said work done by your orator and the said materials for the same provided by your orator according to the terms of and the price fixed as aforesaid by said contract amounted to a large sum of money and that on the eighteenth day of August ad 1860 after the completion of said contract on the part of your orator there was due your orator according to the terms of said contract the sum of three thousand

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and four hundred eighteen ³⁰/₁₀₀ dollars (\$3418 ³⁰/₁₀₀)
and that on the day and year last mentioned
your orator and the said defendant measured
the said work accounted together and agreed
upon the amount of money then coming to
your orator under said contract, for the said
work done and materials for the same provided
by your orator, and that said defendant at
that time signed a writing upon the back of
said contract by which writing he acknowledged
that your orator had performed the said contract
on his your orators part, and that the said sum
of Three Thousand four hundred eighteen ³⁰/₁₀₀
dollars was then due your orator upon said
contract, a copy of which said writing is given
with exhibit "A" filed herewith, which exhibit
your orator prays may be taken and deemed
a part of this your orators Petition.

Your orator would further represent unto
your Honor that Louis Elie and Jeremiah Elie
of said LaSalle County and Henry King
of Allentown in the State of Pennsylvania hold
or claim to hold some title to said West twenty
feet of said lot to Chucene (12) in said Block No
one hundred and twenty (120) by way of mortgage
or otherwise, but your orator avers that said
Louis Elie and Jeremiah Elie and said Henry

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Having (whom your orator also prays may be made
party defendants to this Petition) well knew of the
existence of said contract between your orator,
and said Hoall, well knew that your orator
did said work and furnished said material
for said buildings or the portion thereof situated
on said West twenty feet of said Lot twelve.

Your orator would further represent unto
your Honor that he has frequently and in a
friendly manner applied to said Hoall for the
payment the amount of money due your orator
under said contract but that said Hoall has
neglected and refused to pay the same, and
that there is now due your orator under said
contract, for which your orator is entitled to
a lien upon said premises the sum of Three
thousand four hundred eighteen ^{and} ³⁰/₁₀₀ dollars
(\$3418³⁰/₁₀₀) together with a considerable ^{amount}
of interest accrued thereon since the said ^{twentieth}
~~twentieth~~ day of July and 1860.

Your orator would further represent unto
your Honor that by a condition in said contract
it was provided that if the said Logman
Hoall should on the first day of January and
1861 give to your orator a mortgage upon said
premises for the full amount then due your ora-
tor under said contract which mortgage was to

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be a first lien upon said premises conditioned to pay your orator the sum due him under said contract in monthly installments of Fifty dollars each with notes to correspond therewith & with writent from the first day of January aD 1861 and should pay your orator the sum of Fifty dollars upon said amount due your orator said first day of January aD 1861. Then in that case your orator agreed to receive said notes and mortgage and said sum of Fifty dollars and to extend the time for the payment of the balance due him under the contract so as to correspond with the times in said notes and mortgage mentioned.

But your orator avers that said Hall did not on said first day of January aD 1861 pay said sum of Fifty Dollars, or offer so to do, nor did said Hall give your orator a mortgage upon said premises on said first day of January aD 1861, nor did he offer so to do, and your orator avers that one half, to wit, the west twenty feet of said lot twelve of said premises are ^{heavily} ~~very~~ encumbered and that said Hall cannot give your orator a mortgage upon said premises that will be a first lien thereon and the said Hall although often requested in a friendly manner so to do has utterly neglected and refused to give such mortgage to your orator.

Your orator therefore pray that the peoples writ

of subpoena may issue to said defendants Loggman
 Hall Louis Eliel and Jeremiah Eliel and Henry
 König commanding them to appear on a certain
 day therein to be named to appear and answer
 this your orators Petition, that an account may
 be taken of the amount due your orator on said
 contract by and under the order and direction
 of this Court. That your Honor will order a sale
 of said premises to pay the amt thus found to
 be due your orator, if the same shall not be paid
 your orator at a time to be fixed by this Court that
 such order of this Court shall be entered against
 said defendants and each of them, that such disposition
 of the proceeds of such sale shall be made as and
 in such other and further order be entered herein as
 equity and good conscience shall require and your
 orator will ever pray &c.

Pull on Evans

Plff Atty.

Articles of Agreement made and concluded this
 ninth day of April A.D. 1860 by and between S.
 S. Gardner of the first part and Loggman Hall
 of the second part both of the City of La Salle
 County of La Salle in State of Illinois Witnesses.

That the said S. S. Gardner agrees with the said
 Loggman Hall to put up the brick walls of two
 stories, which the said Hall is now building on

the East twenty feet of Lot Eleven and west
 twenty feet of Lot Twelve in Block No 120 in
 the said city of LaSalle. There are to be three
 brick walls laid in said structure, each wall
 to be one hundred feet long and to be three
 stories high for sixty feet from the front and
 two stories balance of the wall. The walls are to be
 three bricks thick. Also front and rear walls for
 said structure. The said gardner is to furnish
 all the materials of the said walls, and to lay
 the brick for the sum of Ten dollars for each one
 thousand bricks wall measure. The brick and all
 the other necessary materials for said walls are
 to be of a good quality. The ~~side~~^{side} walls of said
 building not to be struck joint and the work
 is to be done in a substantial and workmanlike
 manner. The said Gardner agrees also to plaster
 the two ~~stories~~^{stories} and one of the long rooms of second
 story in both where needed of the said buildings,
 and furnish all the materials for the same. The
 brick walls not to be lathed. Three plaster to be
 three coat work and the materials to be of
 good quality and the work to be done in a skill-
 full manner at the rate of twenty five cents per
 yard. Said walls are to be finished and the
 plastering all done by the twentieth day of june
 next (1856.) The said Hall agrees to have the

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foundation walls for said brick work ready by the first of May next and further covenants that said Gardner shall not be delayed by the Carpenter work to be done on said buildings. Said Hall is to furnish all the caps and piles to be used in said walls at the times required.

It is further stipulated by and between the parties that after the expiration of two months from the completion of said work, to wit on the 20th day of July next. Said Hall is to pay the said Gardner twenty five dollars for each and every month first payment to be on the 20th of September until the first day of January A.D. 1861 when the whole sum shall be due and payable to the said Gardner for the labor done and the materials furnished at the rates above specified with ten per cent interest from the twentieth day of July A.D. 1860. And it is further ^{expressly} stipulated that if the said Hall shall give a mortgage which shall be a first lien upon the said premises on the first day of January next A.D. 1861. to the said Gardner conditioned to pay him the said Gardner at the rate of fifty dollars a month with ten per cent interest from the first day of January A.D. 1861. The first payment to be at the said time of giving the said mortgage, until the whole remaining sum due the said Gardner on the first day of January next under this

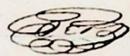
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contract be paid then and in that case said Gardner agrees to take said mortgage conditioned as above with notes for the sums and due at the times respectively above stated, and extend the times of payment according thereto.

In Witness Whereof we have hereunto set our hands & seals this ninth day of April A.D. 1860.

Signatures

J. S. Gardner



Logyman Keall



On this 18th day of August 1860 the said Gardner and Keall the parties to the above contract agree that the said contract has been fulfilled on the part of said Gardner and after admasurement of the work the said Keall agrees that there is due the said Gardner for the work done by him according to said contract the sum of Three Thousand four hundred and eighteen dollars and thirty cents.

D. Evans, Witness

Signature of Logyman Keall

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Be it further remembered that on the said 25th day of January A.D. 1861, there issued out of and under the seal of said Court a summons, in the words and figures following to wit;

"State of Illinois }
Said County } pct. The People of the State of Illinois, To the Sheriff of Said County Greeting;

We command you to Summon Symon Hall, Louis Eliel, Jeremiah Eliel & Henry King, if to be found in your County, personally to be and appear before the Circuit Court of Said County, on the first day of the next term thereof, to be holden at the Court House in Ottawa, on the first Monday in the month of February next, to answer ^{to} a certain bill of Complaint filed in our said ^{Circuit} Court on the Law side thereof, against them by Samuel S. Gardner.

And have you there and there this writ, and make return thereon in what manner you execute the same

Witness Abraham B. Moore, clerk of Said Court, and the Seal ~~thereof~~ of said Court at Ottawa, this 25th day of January A.D. 1861,
A. B. Moore Clerk,

Which summons was returned by the Sheriff of said County, with the following endorsement thereon, to wit;

"Served the within by reading to the within named Louis Eliel & delivering a copy Jan 25 1861,
E. S. Waterman Shff.

Served the within by reading & leaving a copy to the within named Jeremiah Eliel Jan 25, 1861
E. S. Waterman Shff
By Jas C Bartlett dpt

Served the within by reading to the within named Symon Hall and delivering a copy
Jan 28, 1861

Print	1.60
45 miles	2.25
3 Copies	1.50
	<u>5.35</u>

E. S. Waterman Shff.

On the 4th day of February 1861, an order was entered of record in said cause in the words following to wit;

"Samuel S. Gardner
vs }
Lyman Hall, Louis } Petition for mechanics
Eliel, Jeremiah Eliel } liev
& Henry King }
By agreement of parties
this cause, by order of the

Court continued "

On the 23^d day of February the same being one of the days of the February term of said court for the year 1861 an order was entered of record in said cause as follows, to wit;

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believes a resident of the state of Pennsylvania
Subscribed & sworn to before S. S. Gardner
me this 22nd day of February
AD 1861. E. Fallett Bull

(Seal)

Notary Public "

On Monday June 10th the same being one of
the days of the June Term of said Court for
the year 1861 ~~the same being one of the days~~
~~of the June term of said Court for the year 1861~~
an order was entered of record in said Cause
in the words and figures following to wit;

"
Samuel S. Gardner }
115 " } Petition for Mechanics Lien
Symon Hall, }
Louis Eliel, Jeremiah }
Eliel & Henry King... }

On motion of the Petition-
er by his attorney, the defendants are ruled to
file answers to the petition herein on or before
Wednesday Morning next."

On Tuesday the 11th day of June the same being
one of the days of the June Term 1861

an order was entered of record in said Cause in the words and figures following to wit;

Samuel S. Gardner }
vs } Petition for Mechanics
 } "

Here follows a correct copy of the demurrer filed in said Cause October the fifteenth 1861.

Samuel S. ~~Hall~~ ^{Gardner} } LaSalle County Circuit Court
" } November Term AD 1861
Symon Hall et al } Petition for Mechanics Lien

And now comes Symon Hall one of the defendants in the above entitled Cause, by D. L. Hough his attorney, & by proclatation etc, demurs to the petition in said Cause & for cause shows that from the said petition itself it appears that from the terms of said contract provision was made for extending the time for the payment for the work under said contract beyond the period of one year from the time stipulated for the completion thereof; - and also that the said Complainant hath not made or stated such a case as doth or ought to entitle him to any such discovery or relief, as it thereby sought and prayed for from or against said defendant.

Wherefore he prays judgment &c
D. L. Hough
for defendant Hall,

an order was entered of record in said Cause in the words and figures following to wit;

"Samuel S. Gardner }
 vs } Petition for Mechanics
 Lyman Hall et al } Lien

By agreement of parties it is ordered by the Court that the rule to plead heretofore entered in this cause, be extended until the fifteenth day of October next. "

On the 13th day of October 1861. a demurrer was filed in said cause, which is in the words and figures following to wit;

"Samuel S. Gardner }
 vs } Petition for Mechanics
 Lyman Hall, Louis } Lien
 Eliel, Jeremiah Eliel } The defendants
 & Henry King } this day come by D. L.
 Hough & J. O. Glover their
 attorneys and demur to the petition in this
 Cause. "

(See paper attached for copy of demurrer)

Samuel S. Gardner

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On Monday the 11th day of November the same being one of the days of the November Term of said Court for the year 1861, an order was entered of record in said cause, in the words and figures following, to wit;

107	vs	}	Petition for Mechanics
Samuel S. Gardner	vs	}	Lien.
Seymour Hall, Lewis	vs	}	This day came the
Eliel, Jeremiah Eliel	vs	}	parties hereto by their
& Henry King	vs	}	attorneys, and after argument of counsel the

Court sustain the defendants demurrer to the petition herein. //

On Wednesday the ~~11~~⁴ day of ~~November~~^{December} the same being one of the days of the ~~November~~^{November} Term of said Court for the year 1861 an order was entered of record in said cause in the words and figures following to wit

107	vs	}	Petition for Mechanics
Samuel S. Gardner	vs	}	Lien.
Seymour Hall, Lewis Eliel	vs	}	
Jeremiah Eliel & Henry King	vs	}	

This day again comes the Petitioner by Bull, Gray, Avery & Bushnell his attorneys, and the Defendants by D. L. Kough and J. O. Glover their attorneys. Whereupon the Court order that judgement be entered herein against the Plaintiff on the Defendants demand to the Petition herein.

It is therefore considered by the Court that the Defendants have and recover of the Plaintiff their costs and charges by them herein expended and that they have execution therefor."

State of Illinois }
 La Salle County }
 I Abalam B. Moore
 Clerk of the Circuit Court
 in and for said County do hereby certify that
 the above and foregoing is true full and
 complete record of the proceedings had in
 the above entitled cause together with complete
 copies of the files thereof.

Witness my hand and the seal
 of said Court at Ottawa this
 4th day of February AD 1862

A. B. Moore Clerk
 C. H. Hook Deputy

Supreme Court of the State of Illinois - Third Grand Session -
April Term 1862

And now comes the said Samuel S. Lyman plaintiff in error by O. C. May & Co. Esqs. his attys. says that in the making the return & giving judgment aforesaid there is manifest error and a plea is the following grounds of error viz: The Court erred in sustaining the return of the said Lyman & in the Complaints Petition in the Court below

2. The Court erred in making judgment there in favor of the Defendants below, whereas said judgment should have been in favor of the p[er]son or petitioner in the Court below, and said return should have been overruled and for the error aforesaid & other errors in the record & proceedings aforesaid the said Plaintiff in Error says that the said judgment or decree should be reversed &

O. C. May
 & Co. Esqs. } p[er]s attys
 & C. H. Bull

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 Samuel S. Lyman
 is
 Lyman Hall
 Et al
 ~~~~~  
 Certified Copy  
 of record etc.

Filed February 5th 1862  
 L. Deland  
 Clerk

\$500 paid

And now comes the said Samuel S. Lyman plaintiff in error by O. C. May & Co. Esqs. his attys. says that in the making the return & giving judgment aforesaid there is manifest error and a plea is the following grounds of error viz: The Court erred in sustaining the return of the said Lyman & in the Complaints Petition in the Court below

Gardner  
Had et al } Suggesting in regard  
to <sup>the effect of</sup> dismissing the will  
as to King one of the Defts.

The Record in this case shows that King one of the Defts in the Circuit below was never served with the process & no one ever appeared for him - and his interest in the case was not such as to render it indispensable that he should be made a party. He is charged in the Petition as having some interest as mortgagee only - Yet the judge was general on the Decree in favor of all the Defts, but in regard to ~~King~~ King who was not served, the judge is not good pro forma - it is a nullity & no proceedings are necessary to revoke it as to him, and we were certainly entitled to bring a writ of Error as to the other Defts, to revoke a judgment manifestly erroneous, but ~~the King~~ <sup>is</sup> no fault in law as to King & the writ of Error was properly dismissed, <sup>as to him</sup> he ought not to have been made a party to it in the first instance - and if we cannot revoke this judgment if erroneous

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Supm. Court

Law. S. Gardner

4

Sydney Hall

suggestion as to  
the effect of diminishing  
the trial of error as  
to being one of the  
best not shown  
in the Court below

Yale May 12, 1842

J. S. Edwards  
MR

as to the other parties there are all  
without remedy - entirely - such  
I apprehend cannot be the case  
J. S. Edwards  
for pff

Samuel B. Gardner

10

Sydney Keell  
Henry King et al

On the motion for continuance I suggest that Henry King was by the showing of the petition a necessary party in the case

The record shows that King did appear in the cause. It is true that the proof of publication does not appear in the record but the affidavit of non residence and the order for publication do appear. p 16.

Then a rule was taken on all the depts to please pay 17

Pay 18 an agreement of the parties extending time for ~~sub~~ pleading was made.

On pays 19 & 20 the appearance of defendants is expressly stated

The Judgment was in favor of all the <sup>record page 20</sup> defendants and this court are now asked to reverse a judgment entered in favor of King in a proceeding where he was

a necessary party, and when his interests  
were manifestly largely involved without  
making his his or representative parties

B. C. Cook

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Suggestions in support  
Mr. for Conference

STATE OF ILLINOIS, ss. 511

Supreme Court within and for the Third Grand Division of said State. Samuel S. Gardner, Plaintiff in Error, vs. Lyman Hall, Louis Phil, Jeremiah Eli, and Henry King, Defendants in Error. Error to La Salle County Circuit Court.

Whereas, the above named plaintiff in error, has sued out a Writ of Error to reverse a Decree which the said defendants in error obtained against him in the Circuit Court of La Salle County, which said writ of error is now pending in said Supreme Court; and whereas, a writ of *scire facias*, returnable on the first day of the next term of said Supreme Court, to be holden at Ottawa, in said State of Illinois, on the first Tuesday after the third Monday in April next, has been duly issued herein according to law; and whereas, also, it appears, by and laid on file in the office of the Clerk of said Supreme Court, that the said Lyman Hall and Henry King, two of said defendants in error, are non residents of the State of Illinois, and without the reach of the process of said Supreme Court;

Now, therefore, you the said Lyman Hall and Henry King, the said defendants in error, whose non-residence appears as aforesaid, are hereby notified to be and appear before the Justices of said Supreme Court, at the next term thereof, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, A. D. 1862 to hear the record and proceedings of said decree of said Circuit Court brought into said Supreme Court on return of said writ of error and the errors assigned, if you see fit; and further, to do and receive what said Supreme Court shall order in this behalf.

Dated this fifth day of February, A. D. 1862.

Attest: L. LELAND, CLERK.  
O. C. Gray and P. T. Att'ys.  
G. S. Eldridge, [Feb. 5, 1862.]

State of Illinois }  
LaSalle County } I William Osman  
Publisher of the Ottawa  
Free Trader a truly newspaper  
Printed and published at the City  
of Ottawa in the County of  
LaSalle in the State of Illinois do  
hereby certify that a notice of  
which the annexed & foregoing  
printed notice is a true copy  
was published for four weeks  
consecutively in the said newspaper  
the first publication whereof was  
on the Eighth day of February  
A. D. 1862.

Dated April 22<sup>d</sup> 1862

Wm Osman  
Publisher

State of Illinois }  
LaSalle County } Wm Osman whose name  
is subscribed to the foregoing certificate  
of publication being duly sworn  
says that the facts stated in said  
certificate are true, that on or about  
the 10<sup>th</sup> day of February 1862, he mailed

Copy of the Ottawa Free Press the  
 newspaper mentioned in said  
 certificate containing the said notice  
 in said certificate mentioned  
 conspicuously marked, <sup>advised</sup> to Lyman  
 Hall at Sabae, Illinois and in  
 the like manner mailed another  
 copy of said <sup>new</sup> paper containing said  
 notice <sup>advised</sup> to Henry King at Alhutown  
 Puseyland - conspicuously marked  
 as aforesaid - that said newspapers  
 containing said notices were  
 respectively deposited by Depourel  
 in the Post Office at Ottawa Illinois  
 on or prior to said 10<sup>th</sup> day of February  
 AD 1862 -

Wm. C. Man

Subscribed & sworn to  
 before me this 22<sup>d</sup>  
 day of April AD 1862  
 Arthur Lockwood  
 Justice of the Peace

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 Gaudin  
 Hall

Proof of Publication  
 or

Filed April 23<sup>d</sup> 1862.  
 L. Deland  
 Clerk

Supreme Court of the State of Illinois

Samuel S. Gardner

Plf in error

error to habeas

Lynnan Hall

Henry King & others

Def in error Samuel S. Gardner

being duly sworn says that on the eighth day of February AD 1862, the above named Henry King as affiant is informed & believes, lived at Allentown in the State of Pennsylvania & which place was as affiant is informed & believes at the time of the first publication of the notice in this cause & the mailing thereof as set forth in the affidavits of Mr Osman he has carried the <sup>usual</sup> Post Office address of the said Henry King - that said Defendant Hall at that time was absent from this State & could not be found therein & has ever since continued absent from this State as Dependant is informed & believes - that at the time after first publication of said notice & of the mailing thereof as set forth in said Osman's affidavit the family of said Defendant Hall reside at the City of LaSalle in the

County of LaSalle and the State of  
Illinois - that said City of LaSalle  
was the usual place Post Office  
address of the said Hall while he  
was within this State & since his  
departure <sup>(prior to the publication of said note)</sup> from this State, Depo-  
nent after diligent enquiry  
has been unable to ascertain  
that what the work office address  
of said Hall is.

Subscribed & sworn to } Samuel S. Gardner  
before me this 22<sup>d</sup> day }  
of April A.D. 1862 }  
L. Soland Clerk }

STATE OF ILLINOIS, }  
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Sheriff of the County of

~~Cook~~ La Salle

Greeting:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit ~~Court~~ Courts of La Salle County, before the Judge thereof, between Samuel S. Gardner

plaintiff; and Lyman Hall, Louis Eliel, Jeremiah Eliel & ~~Henry Hall~~ Henry King

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

as we are informed by complaints the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said Lyman Hall, Louis Eliel, Jeremiah Eliel & ~~Henry Hall~~ Henry King

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

notice, together with this writ.

Witness, The Hon. John D. Eaton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 5<sup>th</sup> day of February in the Year of Our Lord One Thousand Eight Hundred and Sixty two.

L. Leland

Clerk of the Supreme Court.  
J. B. Rice

Samuel S Gardner

No. 116

vs.

Lynnen Hall Estate

SCIRE FACIAS.

FILED April 22.

A. D. 1862

L. Leland

Plack.

O. C. Gray &

G. S. Eldridge

Attys for plack in error

Received by reading this writ D Louis Blich  
and Jeremiah Blich this 29<sup>th</sup> day of Mar 1862  
Lynnen Hall one Henry Derry per farmer  
in this county

|          |             |
|----------|-------------|
| per writ | 1.10        |
| 30 miles | 1.50        |
|          | <u>2.60</u> |

J. S. Keston an S. J. P.  
per G. W. Dyer