

No. 13450

Supreme Court of Illinois

Reese.

vs.

Booth et al.

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 137.

Rees
vs

Kenyon, Knicker

1361

13450

STATE OF ILLINOIS.

IN SUPREME COURT, APRIL TERM, A. D. 1861.

POINTS & BRIEF.

ALONZO KINYON & KIRTLAND F. BOOTH, APPELLANTS,

vs.

JEREMIAH J. REES, APPELLEE.

KINYON & STEVENS, ATT'Y FOR APPELLANTS,

B. H. TRUSDELL, ATT'Y FOR APPELLEE.

PRATT, SHAW & CO., PRINTERS, AMBOY, ILLS.

STATE OF ILLINOIS, } ss.
County of Lee,

Supreme Court in and for the Third
Grand Division of the State of
Illinois, April Term, A. D. 1861.

Jeremiah J. Rees, Appellee,
vs.
Alonzo Kinyon and Kirtland
F. Booth, Appellants. } Brief of the Points
and authorities of
the Appellants

First Point.

The only question presented for the consideration of this Court is, whether the Circuit Court erred in holding that the attachment proceedings, described in the Pleas demurred to, were *void*, in consequence of the defective affidavit in those proceedings. If the judgment obtained under those proceedings was *absolutely void*, then trespass would lie for enforcing the same. It only *voidable*, then trespass would not lie, and the Court erred in sustaining the demurrer.— This proposition need not be supported by a citation of the authorities.

Second Point.

The Court below erred in sustaining the demurrers of the plaintiff below to the second Plea of the said Booth, and to the second Plea of the said Kinyon, and in holding that the attachment proceedings, described in said Pleas, were *absolutely void*, in consequence of affidavit (in said Pleas set forth,) stating the nonresidence of the defendant in said attachment proceeding—the plaintiff below—*upon information and belief*. See *Illinois Statutes*, by Purple, Chapter 8, section 6. *Miere vs. Brush* 3d vol. of *Scammon's R.* 21. *Same vol.* P. 144, *Frink et al vs. King*. 21st vol. of *Illinois R.* 80, *Dyer vs. Flint*. Also the case of *Voorhees et al vs. the Bank of the United States*, 10th vol. of *Peters R.* 449. 3d vol. of *Chitty's Practice*, P. 523 and authorities there cited. *Graham's Practice*, P. 121, and authorities there cited. 3d vol. of *East's R.* 135, *Taylor vs. Phillips*.

Third Point.

The Circuit Court erred in sustaining said demurrers to said Pleas, because it was an unauthorized usurpation of Judicial power in the Circuit Court to declare that the attachment proceedings, or judgment under the same, was *absolutely void*, thus setting the said judgment aside, and declaring the same *void* in a *collateral* proceeding, after the defendant in the attach-

ment had waived all insufficiencies in the affidavit for the attachment, by his omission to appear and object to the affidavit upon the grounds of its insufficiency, and failure, afterwards, to appeal, which "objection," if made at any time in the progress of the cause, either in the Justice's court, or Circuit Court, or even in this Court, could have been "obviated" by an amendment of the affidavit under the *sixth section of the eighth chapter of the Statutes of Illinois*, as compiled by Purple. See also cases of *Miere vs. Brush*, 3d vol. of *Scammon's Reports*, P. 21. *Frink et al vs. Charles P. King*, Administrator of George Almarode, deceased, 3d vol. of *Scammon's R.* 144. The cases of *Clark vs. Roberts*, Breese R. P. 222 and *Phelps vs. Young Breese*, R. P. 255, were expressly overruled in the cases cited in 3d *Scammon* as above. See, also, the case of *Dyer vs. Flint* 21st vol. of *Illinois R.*, P. 80. In which last case an affidavit, objectionable for *precisely similar grounds* to those raised to the affidavit set forth in the Pleas in the case at bar, was declared by this Court to be erroneous *only*. And for such error was remanded with leave to amend. Whereas, in the case of *Clark vs. Roberts*, Breese R. 222, this Court declared the proceedings, under an insufficient affidavit, to be *absolutely void*, and refused to remand the case. This decision was made before the Statutes now in force, allowing an amendment of the affidavit. This Court in that case says "the amendment of the affidavit will not help the previous illegal proceedings." (The Justice in that case having allowed an amendment of the affidavit.) Thus intimating that could an amendment have been made, the proceedings could have been helped.

Fourth Point.

The legal insufficiency of the affidavit set forth in said Pleas, was waived by the plaintiff below by his neglect to appear in the attachment proceeding and object to the affidavit for that reason, and his subsequent neglect to appeal. He having been constructively in the Justice's Court, and hence bound by all the proceedings against him, unless he took exception to any proceeding, or appealed. See cases in 3d vol. of *Scammon R.*, and 21st vol. of *Illinois R.*, cited under the "Third Point."

Fifth Point.

A *void* proceeding can not be waived. See 3d vol. of *East's R.*, P. 155, *Taylor vs. Phillips*. 3d vol. *Chitty's Practice* P. 523. But the objection to the affidavit, set forth in the Pleas demurred to, in the case at bar, was waived by the defendant in the at-

2^d John R
190
4th John R
X 309

achment proceeding—(the plaintiff below) in not appearing and objecting to the affidavit for the reason assigned. *Statutes of Illinois, by Purple, chapter 8, section 6. Miere vs. Brush, 3d vol. of Scammon R., P. 21.* Therefore the affidavit for the writ of attachment was not void, and hence the Pleas demurred to should have been held good, and the demurrers overruled. Again a void proceeding can not be amended. *Graham's Practice, P. 121, and authorities there cited.* But the affidavit for the attachment—set forth in the Pleas demurred to—can be amended. *Illinois Statutes, by Purple, chapter 8, section 6. Miere vs. Brush, 3d vol. Scammon R., 21. Same vol., P. 144, Frink et al vs. King. Also 21st vol. of Illinois R. 80, Dyer vs. Flint.* Therefore the affidavit, for the attachment, was not void.

Sixth Point.

The cases cited in 3d Scammon and 21st Illinois, were all commenced by attachment in the *Circuit Court*. But the attachment described in the Pleas demurred to, was commenced in a *Justice's Court*, under a Statute in some respects different from the Statute in relation to attachments in the Circuit court. That difference is this: That in the attachment law for the Circuit court, it is provided, in the eighth section thereof, that no writ of attachment shall be quashed on account of any insufficiency of the original affidavit, &c., if the plaintiff shall cause a legal and sufficient affidavit, &c., to be filed, or the writ amended in such time and manner as the Court shall direct. But in the attachment law regulating practice in a *Justice's Court*, it is provided, by the sixth section thereof, that no attachment shall be abated or dismissed for want of form, &c., but that amendments may be made, or new affidavits, &c., be filed, so as to "obviate objections" to the same. Thus showing that in proceedings in the Justice's court, that it is necessary to raise "objections" for any defect in the affidavit, &c., that the party objecting may take advantage of any insufficiency. Whereas, these terms do not appear in the law regulating practice of the kind in the Circuit court. So that if this Court held, as it has at least three times, that the proceedings in the Circuit court in attachment were not void for insufficiency in an affidavit for the writ, certainly it will hold, that proceedings of this kind in *Justices Court* with this difference in the provisions of the two Statutes, are not void, but at least are only voidable.

KINYON & STEVENS,

Att'ys for Appellants.

193 & 137

STATE OF ILLINOIS.

IN SUPREME COURT, APRIL TERM, A. D. 1861.

POINTS & BRIEF.

ALONZO KINYON & KIRTLAND F. BOOTH, APPELLANTS,

vs.

JEREMIAH J. REES, APPELLEE.

KINYON & STEVENS, ATT'Y FOR APPELLANTS,

B. H. TRUSDELL, ATT'Y FOR APPELLEE.

PRATT, SHAW & CO., PRINTERS, AMBOY, ILLS.

Filed Apr. 16th 1861
L. Ireland
Clerk

STATE OF ILLINOIS, }
County of Lee, } ss.

Supreme Court in and for the Third
Grand Division of the State of
Illinois, April Term, A. D. 1861.

Jeremiah J. Rees, Appellee, vs. Alonzo Kinyon and Kirtland F. Booth, Appellants.	}	Brief of the Points and authorities of the Appellants
---	---	---

First Point.

The only question presented for the consideration of this Court is, whether the Circuit Court erred in holding that the attachment proceedings, described in the Pleas demurred to, were *void*, in consequence of the defective affidavit in those proceedings. If the judgment obtained under those proceedings was *absolutely void*, then trespass would lie for enforcing the same. If only *voidable*, then trespass would not lie, and the Court erred in sustaining the demurrer.— This proposition need not be supported by a citation of the authorities.

Second Point.

The Court below erred in sustaining the demurrers of the plaintiff below to the second Plea of the said Booth, and to the second Plea of the said Kinyon, and in holding that the attachment proceedings, described in said Pleas, were *absolutely void*, in consequence of affidavit (in said Pleas set forth,) stating the nonresidence of the defendant in said attachment proceeding—the plaintiff below—upon information and belief. See *Illinois Statutes*, by Purple, Chapter 8, section 6. *Miere vs. Brush* 3d vol. of *Scammon's R.* 21. *Same vol.* P. 144, *Frink et al vs. King.* 21st vol. of *Illinois R.* 80, *Dyer vs. Flint.* Also the case of *Voorhees et al vs. the Bank of the United States*, 10th vol. of *Peters R.* 449. 3d vol. of *Chitty's Practice*, P. 523 and authorities there cited. *Graham's Practice*, P. 121, and authorities there cited. 3d vol. of *East's R.* 155, *Taylor vs. Phillips.*

Third Point.

The Circuit Court erred in sustaining said demurrers to said Pleas, because it was an unauthorized usurpation of Judicial power in the Circuit Court to declare that the attachment proceedings, or judgment under the same, was *absolutely void*, thus setting the said judgment aside, and declaring the same *void* in a *collateral* proceeding, after the defendant in the attach-

ment had waived all insufficiencies in the affidavit for the attachment, by his omission to appear and object to the affidavit upon the grounds of its insufficiency, and failure, afterwards, to appeal, which objection, if made at any time in the progress of the cause, either in the Justice's court, or Circuit Court, or even in this Court, could have been "obviated" by an amendment of the affidavit under the sixth section of the eighth chapter of the *Statutes of Illinois*, as compiled by Purple. See also cases of *Miere vs. Brush*, 3d vol. of *Scammon's Reports*, P. 21. *Frink et al vs. Charles P. King*, Administrator of George Almarode, deceased, 3d vol. of *Scammon's R.* 144. The cases of *Clark vs. Roberts*, Breese R., P. 222 and *Phelps vs. Young Breese*, R., P. 255, were expressly overruled in the cases cited in 3d *Scammon* as above. See, also, the case of *Dyer vs. Flint* 21st vol. of *Illinois R.* P. 80. In which last case an affidavit, objectionable for *precisely similar grounds* to those raised to the affidavit set forth in the Pleas in the case at bar, was declared by this Court to be erroneous *only*. And for such error was remanded with leave to amend. Whereas, in the case of *Clark vs. Roberts*, Breese R. 222, this Court declared the proceedings, under an insufficient affidavit, to be *absolutely void*, and refused to remand the case. This decision was made before the Statutes now in force, allowing an amendment of the affidavit. This Court in that case says "the amendment of the affidavit will not help the previous illegal proceedings." (The Justice in that case having allowed an amendment of the affidavit.) Thus intimating that could an amendment have been made, the proceedings could have been helped.

Fourth Point.

The legal insufficiency of the affidavit set forth in said Pleas, was waived by the plaintiff below by his neglect to appear in the attachment proceeding and object to the affidavit for that reason, and his subsequent neglect to appeal. He having been constructively in the Justice's Court, and hence bound by all the proceedings against him, unless he took exception to any proceeding, or appealed. See cases in 3d vol. of *Scammon R.*, and 21st vol. of *Illinois R.*, cited under the "Third Point."

Fifth Point.

A void proceeding can not be waived. See 3d vol. of *East's R.*, P. 155, *Taylor vs. Phillips.* 3d vol. *Chitty's Practice* P. 523. But the objection to the affidavit, set forth in the Pleas demurred to, in the case at bar, was waived by the defendant in the at-

tachment proceeding—(the plaintiff below) in not appearing and objecting to the affidavit for the reason assigned. *Statutes of Illinois, by Purple, chapter 8, section 6. Miere vs. Brush, 3d vol. of Scammon R., P. 21.* Therefore the affidavit for the writ of attachment was not void, and hence the Pleas demurred to should have been held good, and the demurrers overruled. Again a void proceeding can not be amended. *Graham's Practice, P. 121, and authorities there cited.* But the affidavit for the attachment—set forth in the Pleas demurred to—can be amended. *Illinois Statutes, by Purple, chapter 8, section 6. Miere vs. Brush, 3d vol. Scammon R., 21. Same vol., P. 144, Frink et al vs. King. Also 21st vol. of Illinois R. 80, Dyer vs. Flint.* Therefore the affidavit, for the attachment, was not void.

Sixth Point.

The cases cited in 3d Scammon and 21st Illinois, were all commenced by attachment in the *Circuit Court*. But the attachment described in the Pleas demurred to, was commenced in a *Justice's Court*, under a Statute in some respects different from the Statute in relation to attachments in the Circuit court. That difference is this: That in the attachment law for the Circuit court, it is provided, in the eighth section thereof, that no writ of attachment shall be quashed on account of any insufficiency of the original affidavit, &c., if the plaintiff shall cause a legal and sufficient affidavit, &c., to be filed, or the writ amended in such time and manner as the Court shall direct. But in the attachment law regulating practice in a *Justice's Court*, it is provided, by the sixth section thereof, that no attachment shall be abated or dismissed for want of form, &c., but that amendments may be made, or new affidavits, &c., be filed, so as to "obviate objections" to the same. Thus showing that in proceedings in the Justice's court, that it is necessary to raise "objections" for any defect in the affidavit, &c., that the party objecting may take advantage of any insufficiency. Whereas, these terms do not appear in the law regulating practice of the kind in the Circuit court. So that if this Court held, as it has at least three times, that the proceedings in the Circuit court in attachment were not void for insufficiency in an affidavit for the writ, certainly it will hold, that proceedings of this kind in *Justices Court* with this difference in the provisions of the two Statutes, are not void, but at least are only voidable.

KINYON & STEVENS,

Att'ys for Appellants.

1930137

STATE OF ILLINOIS.

IN SUPREME COURT, APRIL TERM, A. D. 1861.

POINTS & BRIEF.

ALONZO KINYON & KIRTLAND F. BOOTH, APPELLANTS,

vs.

JEREMIAH J. REES, APPELLEE,

KINYON & STEVENS, ATT'Y FOR APPELLANTS,

B. H. TRUSDELL, ATT'Y FOR APPELLEE.

PRATT, SHAW & CO., PRINTERS, AMBOY, ILLS.

Filed Apr. 16th 1861

L. Leland

Clark

STATE OF ILLINOIS, }
County of Lee, } ss.

*Supreme Court in and for the Third
Grand Division of the State of
Illinois, April Term, A. D. 1861.*

Jeremiah J. Rees, Appellee, vs. Alonzo Kinyon and Kirtland F. Booth, Appellants.	} Brief of the Points and authorities of the Appellants
---	---

First Point.

The only question presented for the consideration of this Court is, whether the Circuit Court erred in holding that the attachment proceedings, described in the Pleas demurred to, were *void*, in consequence of the defective affidavit in those proceedings. If the judgment obtained under those proceedings was *absolutely void*, then trespass would lie for enforcing the same. If only *voidable*, then trespass would not lie, and the Court erred in sustaining the demurrer.—This proposition need not be supported by a citation of the authorities.

Second Point.

The Court below erred in sustaining the demurrers of the plaintiff below to the second Plea of the said Booth, and to the second Plea of the said Kinyon, and in holding that the attachment proceedings, described in said Pleas, were *absolutely void*, in consequence of affidavit (in said Pleas set forth,) stating the nonresidence of the defendant in said attachment proceeding—the plaintiff below—*upon information and belief*. See *Illinois Statutes, by Purple, Chapter 8, section 6. Miere vs. Brush 3d vol. of Scammon's R. 21. Same vol. P. 144, Frink et al vs. King. 21st vol. of Illinois R. 80, Dyer vs. Flint. Also the case of Voorhees et al vs. the Bank of the United States, 10th vol. of Peters R. 449. 3d vol. of Chitty's Practice, P. 523 and authorities there cited. Graham's Practice, P. 121, and authorities there cited. 3d vol. of East's R. 155, Taylor vs. Phillips.*

Third Point.

The Circuit Court erred in sustaining said demurrers to said Pleas, because it was an unauthorized usurpation of Judicial power in the Circuit Court to declare that the attachment proceedings, or judgment under the same, was *absolutely void*, thus setting the said judgment aside, and declaring the same *void* in a *collateral* proceeding, after the defendant in the attach-

ment had waived all insufficiencies in the affidavit for the attachment, by his omission to appear and object to the affidavit upon the grounds of its insufficiency, and failure, afterwards, to appeal, which "objection," if made at any time in the progress of the cause, either in the Justice's court, or Circuit Court, or even in this Court, could have been "obviated" by an amendment of the affidavit under the sixth section of the eighth chapter of the Statutes of Illinois, as compiled by Purple. See also cases of *Miere vs. Brush, 3d vol. of Scammon's Reports, P. 21. Frink et al vs. Charles P. King, Administrator of George Almarode, deceased, 3d vol. of Scammon's R. 144. The cases of Clark vs. Roberts, Breese R., P. 222 and Phelps vs. Young Breese, R., P. 255, were expressly overruled in the cases cited in 3d Scammon as above. See, also, the case of Dyer vs. Flint 21st vol. of Illinois R., P. 80. In which last case an affidavit, objectionable for precisely similar grounds to those raised to the affidavit set forth in the Pleas in the case at bar, was declared by this Court to be erroneous only. And for such error was remanded with leave to amend. Whereas, in the case of Clark vs. Roberts, Breese R. 222, this Court declared the proceedings, under an insufficient affidavit, to be *absolutely void*, and refused to remand the case. This decision was made before the Statutes now in force, allowing an amendment of the affidavit. This Court in that case says "the amendment of the affidavit will not help the previous illegal proceedings." (The Justice in that case having allowed an amendment of the affidavit.) Thus intimating that could an amendment have been made, the proceedings could have been helped.*

Fourth Point.

The legal insufficiency of the affidavit set forth in said Pleas, was waived by the plaintiff below by his neglect to appear in the attachment proceeding and object to the affidavit for that reason, and his subsequent neglect to appeal. He having been constructively in the Justice's Court, and hence bound by all the proceedings against him, unless he took exception to any proceeding, or appealed. See cases in 3d vol. of Scammon R., and 21st vol. of Illinois R., cited under the "Third Point."

Fifth Point.

A *void* proceeding can not be waived. See 3d vol. of East's R., P. 155, Taylor vs. Phillips. 3d vol. Chitty's Practice P. 523. But the objection to the affidavit, set forth in the Pleas demurred to, in the case at bar, was waived by the defendant in the at-

attachment proceeding—(the plaintiff below) in not appearing and objecting to the affidavit for the reason assigned. *Statutes of Illinois, by Purple, chapter 8, section 6. Miere vs. Brush, 3d vol. of Scammon R., P. 21.* Therefore the affidavit for the writ of attachment was not *void*, and hence the Pleas demurred to should have been held good, and the demurrers overruled. Again a *void* proceeding can not be amended. *Graham's Practice, P. 121, and authorities there cited.* But the affidavit for the attachment—set forth in the Pleas demurred to—*can be amended. Illinois Statutes, by Purple, chapter 8, section 6. Miere vs. Brush, 3d vol. Scammon R., 21. Same vol., P. 144, Frink et al vs. King. Also 21st vol. of Illinois R. 80, Dyer vs. Flint.* Therefore the affidavit, for the attachment, was not *void*.

Sixth Point.

The cases cited in 3d Scammon and 21st Illinois, were all commenced by attachment in the *Circuit Court*. But the attachment described in the Pleas demurred to, was commenced in a *Justice's Court*, under a Statute in some respects different from the Statute in relation to attachments in the Circuit court. That difference is this: That in the attachment law for the Circuit court, it is provided, in the eighth section thereof, that no writ of attachment shall be quashed on account of any insufficiency of the original affidavit, &c., if the plaintiff shall cause a legal and sufficient affidavit, &c., to be filed, or the writ amended in such time and manner as the Court shall direct. But in the attachment law regulating practice in a *Justice's Court*, it is provided, by the sixth section thereof, that no attachment shall be abated or dismissed for want of form, &c., but that amendments may be made, or new affidavits, &c., be filed, so as to "obviate objections" to the same. Thus showing that in proceedings in the Justice's court, that it is necessary to raise "objections" for any defect in the affidavit, &c., that the party objecting may take advantage of any insufficiency. Whereas, these terms do not appear in the law regulating practice of the kind in the Circuit court. So that if this Court held, as it has at least three times, that the proceedings in the Circuit court in attachment were not *void* for insufficiency in an affidavit for the writ, certainly it will hold, that proceedings of this kind in *Justices Court* with this difference in the provisions of the two Statutes, are not void, but at least are only voidable.

KINYON & STEVENS,

Att'ys for Appellants.

183 & 187

STATE OF ILLINOIS.

IN SUPREME COURT, APRIL TERM, A. D. 1861.

POINTS & BRIEF.

ALONZO KINYON & KIRTLAND F. BOOTH APPELLANTS,

vs.

JEREMIAH J. REES, APPELLEE.

KINYON & STEVENS, ATT'Y FOR APPELLANTS,

B. H. TRUSDELL, ATT'Y FOR APPELLEE.

PRATT, SHAW & CO., PRINTERS, AMBOY, ILLS.

Filed Apr. 16th 1861
L. Leland
Clerk

STATE OF ILLINOIS, } ss.
County of Lee, }

Supreme Court in and for the Third
Grand Division of the State of
Illinois, April Term, A. D. 1861.

Jeremiah J. Rees, Appellee,
vs. }
Alonzo Kinyon and Kirtland } Brief of the Points
F. Booth, Appellants. } and authorities of
the Appellants

First Point.

The only question presented for the consideration of this Court is, whether the Circuit Court erred in holding that the attachment proceedings, described in the Pleas demurred to, were *void*, in consequence of the defective affidavit in those proceedings. If the judgment obtained under those proceedings was *absolutely void*, then trespass would lie for enforcing the same. If only *voidable*, then trespass would not lie, and the Court erred in sustaining the demurrer.— This proposition need not be supported by a citation of the authorities.

Second Point.

The Court below erred in sustaining the demurrers of the plaintiff below to the second Plea of the said Booth, and to the second Plea of the said Kinyon, and in holding that the attachment proceedings, described in said Pleas, were *absolutely void*, in consequence of affidavit (in said Pleas set forth,) stating the nonresidence of the defendant in said attachment proceeding—the plaintiff below—*upon information and belief*. See *Illinois Statutes, by Purple, Chapter 8, section 6. Miere vs. Brush 3d vol. of Scammon's R. 21. Same vol. P. 144, Frink et al vs. King. 21st vol. of Illinois R. 80, Dyer vs. Flint. Also the case of Voorhees et al vs. the Bank of the United States, 10th vol. of Peters R. 449. 3d vol. of Chitty's Practice, P. 523 and authorities there cited. Graham's Practice, P. 121, and authorities there cited. 3d vol. of East's R. 155, Taylor vs. Philips.*

Third Point.

The Circuit Court erred in sustaining said demurrers to said Pleas, because it was an unauthorized usurpation of Judicial power in the Circuit Court to declare that the attachment proceedings, or judgment under the same, was *absolutely void*, thus setting the said judgment aside, and declaring the same *void* in a *collateral* proceeding, after the defendant in the attach-

ment, had waived all insufficiencies in the affidavit for the attachment, by his omission to appear and object to the affidavit upon the grounds of its insufficiency, and failure, afterwards, to appeal, which "objection," if made at any time in the progress of the cause, either in the Justice's court, or Circuit Court, or even in this Court, could have been "obviated" by an amendment of the affidavit under the *sixth section of the eighth chapter of the Statutes of Illinois, as compiled by Purple. See also cases of Miere vs. Brush, 3d vol. of Scammon's Reports, P. 21. Frink et al vs. Charles P. King, Administrator of George Almarode, deceased, 3d vol. of Scammon's R. 144. The cases of Clark vs. Roberts, Breese R., P. 222 and Phelps vs. Young Breese, R., P. 255, were expressly overruled in the cases cited in 3d Scammon as above. See, also, the case of Dyer vs. Flint 21st vol. of Illinois R., P. 80. In which last case an affidavit, objectionable for *precisely similar grounds* to those raised to the affidavit set forth in the Pleas in the case at bar, was declared by this Court to be erroneous *only*. And for such error was remanded with leave to amend. Whereas, in the case of Clark vs. Roberts, Breese R. 222, this Court declared the proceedings, under an insufficient affidavit, to be *absolutely void*, and refused to remand the case. This decision was made before the Statutes now in force, allowing an amendment of the affidavit. This Court in that case says "the amendment of the affidavit will not help the previous illegal proceedings." (The Justice in that case having allowed an amendment of the affidavit.) Thus intimating that could an amendment have been made, the proceedings could have been helped.*

Fourth Point.

The legal insufficiency of the affidavit set forth in said Pleas, was waived by the plaintiff below by his neglect to appear in the attachment proceeding and object to the affidavit for that reason, and his subsequent neglect to appeal. He having been constructively in the Justice's Court, and hence bound by all the proceedings against him, unless he took exception to any proceeding, or appealed. See cases in 3d vol. of Scammon R., and 21st vol. of Illinois R., cited under the "Third Point."

Fifth Point.

A *void* proceeding can not be *waived*. See 3d vol. of East's R., P. 155, Taylor vs. Phillips. 3d vol. Chitty's Practice P. 523. But the objection to the affidavit, set forth in the Pleas demurred to, in the case at bar, was *waived* by the defendant in the at-

attachment proceeding—the plaintiff below) in not appearing and objecting to the affidavit for the reason assigned. *Statutes of Illinois, by Purple, chapter 8, section 6. Miere vs. Brush, 3d vol. of Scammon R., P. 21.* Therefore the affidavit for the writ of attachment was not *void*, and hence the Pleas demurred to should have been held good, and the demurrers overruled. Again a *void* proceeding can not be amended. *Graham's Practice, P. 121, and authorities there cited.* But the affidavit for the attachment—set forth in the Pleas demurred to—can be amended. *Illinois Statutes, by Purple, chapter 8, section 6. Miere vs. Brush, 3d vol. Scammon R., 21. Same vol., P. 144, Frink et al vs. King. Also 21st vol. of Illinois R. 80, Dyer vs. Flint.* Therefore the affidavit, for the attachment, was not *void*.

Sixth Point.

The cases cited in 3d Scammon and 21st Illinois, were all commenced by attachment in the *Circuit Court*. But the attachment described in the Pleas demurred to, was commenced in a *Justice's Court*, under a Statute in some respects different from the Statute in relation to attachments in the Circuit court. That difference is this: That in the attachment law for the Circuit court, it is provided, in the eighth section thereof, that no writ of attachment shall be quashed on account of any insufficiency of the original affidavit, &c., if the plaintiff shall cause a legal and sufficient affidavit, &c., to be filed, or the writ amended in such time and manner as the Court shall direct. But in the attachment law regulating practice in a *Justice's Court*, it is provided, by the sixth section thereof, that no attachment shall be abated or dismissed for want of form, &c., but that amendments may be made, or new affidavits, &c., be filed, so as to "obviate objections" to the same. Thus showing that in proceedings in the Justice's court, that it is necessary to raise "objections" for any defect in the affidavit, &c., that the party objecting may take advantage of any insufficiency. Whereas, these terms do not appear in the law regulating practice of the kind in the Circuit court. So that if this Court held, as it has at least three times, that the proceedings in the Circuit court in attachment were not *void* for insufficiency in an affidavit for the writ, certainly it will hold, that proceedings of this kind in *Justices Court* with this difference in the provisions of the two Statutes, are not void, but at least are only voidable.

KINYON & STEVENS,

Att'ys for Appellants.

STATE OF ILLINOIS.

IN SUPREME COURT, APRIL TERM, A. D. 1861.

POINTS & BRIEF.

ALONZO KINYON & KIRTLAND F. BOOTH, APPELLANTS,

vs.

JEREMIAH J. REES, APPELLEE.

KINYON & STEVENS, ATT'Y FOR APPELLANTS.

B. H. TRUSDELL, ATT'Y FOR APPELLEE.

PRATT, SHAW & CO., PRINTERS, AMBOY, ILLS.

STATE OF ILLINOIS, }
County of Lee, } ss.

*Supreme Court in and for the Third
Grand Division of the State of
Illinois, April Term, A. D. 1861.*

Jeremiah J. Rees, Appellee, }
vs. } Brief of the Points
Alonzo Kinyon and Kirtland } and authorities of
F. Booth, Appellants. } the Appellants

First Point.

The only question presented for the consideration of this Court is, whether the Circuit Court erred in holding that the attachment proceedings, described in the Pleas demurred to, were *void*, in consequence of the defective affidavit in those proceedings. If the judgment obtained under those proceedings was *absolutely void*, then trespass would lie for enforcing the same. If only *voidable*, then trespass would not lie, and the Court erred in sustaining the demurrer.—This proposition need not be supported by a citation of the authorities.

Second Point.

The Court below erred in sustaining the demurrers of the plaintiff below to the second Plea of the said Booth, and to the second Plea of the said Kinyon, and in holding that the attachment proceedings, described in said Pleas, were absolutely *void*, in consequence of affidavit (in said Pleas set forth,) stating the nonresidence of the defendant in said attachment proceeding—the plaintiff below—upon information and belief. See *Illinois Statutes, by Purple, Chapter 8, section 6. Miere vs. Brush 3d vol. of Scammon's R. 21. Same vol. P. 144, Frink et al vs. King. 21st vol. of Illinois R. 80, Dyer vs. Flint. Also the case of Voorhees et al vs. the Bank of the United States, 10th vol. of Peters R. 449. 3d vol. of Chitty's Practice, P. 523 and authorities there cited. Graham's Practice, P. 121, and authorities there cited. 3d vol. of East's R. 155, Taylor vs. Phillips.*

Third Point.

The Circuit Court erred in sustaining said demurrers to said Pleas, because it was an unauthorized usurpation of Judicial power in the Circuit Court to declare that the attachment proceedings, or judgment under the same, was absolutely void, thus setting the said judgment aside, and declaring the same *void*, in a collateral proceeding, after the defendant in the attach-

ment had waived all insufficiencies in the affidavit for the attachment, by his omission to appear and object to the affidavit upon the grounds of its insufficiency, and failure, afterwards, to appeal, which "objection," if made at any time in the progress of the cause, either in the Justice's court, or Circuit Court, or even in this Court, could have been "obviated" by an amendment of the affidavit under the *sixth section of the eighth chapter of the Statutes of Illinois, as compiled by Purple. See also cases of Miere vs. Brush, 3d vol. of Scammon's Reports, P. 21. Frink et al vs. Charles P. King, Administrator of George Almarode, deceased, 3d vol. of Scammon's R. 144. The cases of Clark vs. Roberts, Breese R., P. 222 and Phelps vs. Young Breese, R., P. 255, were expressly overruled in the cases cited in 3d Scammon as above. See, also, the case of Dyer vs. Flint 21st vol. of Illinois R., P. 80. In which last case an affidavit, objectionable for precisely similar grounds to those raised to the affidavit set forth in the Pleas in the case at bar, was declared by this Court to be erroneous only. And for such error was remanded with leave to amend. Whereas, in the case of Clark vs. Roberts, Breese R. 222, this Court declared the proceedings, under an insufficient affidavit, to be absolutely void, and refused to remand the case. This decision was made before the Statutes now in force, allowing an amendment of the affidavit. This Court in that case says "the amendment of the affidavit will not help the previous illegal proceedings." (The Justice in that case having allowed an amendment of the affidavit.) Thus intimating that could an amendment have been made, the proceedings could have been helped.*

Fourth Point.

The legal insufficiency of the affidavit set forth in said Pleas, was waived by the plaintiff below by his neglect to appear in the attachment proceeding and object to the affidavit for that reason, and his subsequent neglect to appeal. He having been constructively in the Justice's Court, and hence bound by all the proceedings against him, unless he took exception to any proceeding, or appealed. See cases in 3d vol. of Scammon R., and 21st vol. of Illinois R., cited under the "Third Point."

Fifth Point.

A void proceeding can not be waived. See 3d vol. of East's R., P. 155, Taylor vs. Phillips. 3d vol. Chitty's Practice P. 523. But the objection to the affidavit, set forth in the Pleas demurred to, in the case at bar, was waived by the defendant in the at-

2d John R
1904 4th
John R
309

attachment proceeding—(the plaintiff below) is not appearing and objecting to the affidavit for the reason assigned. *Statutes of Illinois, by Purple, chapter 8, section 6. Miere vs. Brush, 3d vol. of Scammon R., P. 21.* Therefore the affidavit for the writ of attachment was not void, and hence the Pleas demurred to should have been held good, and the demurrers overruled. Again a void proceeding can not be amended. *Graham's Practice, P. 121, and authorities there cited.* But the affidavit for the attachment—set forth in the Pleas demurred to—can be amended. *Illinois Statutes, by Purple, chapter 8, section 6. Miere vs. Brush, 3d vol. Scammon R., 21. Same vol., P. 144, Frink et al vs. King. Also 21st vol. of Illinois R. 80, Dyer vs. Flint.* Therefore the affidavit, for the attachment, was not void.

Sixth Point.

The cases cited in 3d Scammon and 21st Illinois, were all commenced by attachment in the *Circuit Court*. But the attachment described in the Pleas demurred to, was commenced in a *Justice's Court*, under a Statute in some respects different from the Statute in relation to attachments in the Circuit court. That difference is this: That in the attachment law for the Circuit court, it is provided, in the eighth section thereof, that no writ of attachment shall be quashed on account of any insufficiency of the original affidavit, &c., if the plaintiff shall cause a legal and sufficient affidavit, &c., to be filed, or the writ amended in such time and manner as the Court shall direct. But in the attachment law regulating practice in a *Justice's Court*, it is provided, by the sixth section thereof, that no attachment shall be abated or dismissed for want of form, &c., but that amendments may be made, or new affidavits, &c., be filed, so as to "obviate objections" to the same. Thus showing that in proceedings in the Justice's court, that it is necessary to raise "objections" for any defect in the affidavit, &c., that the party objecting may take advantage of any insufficiency. Whereas, these terms do not appear in the law regulating practice of the kind in the Circuit court. So that if this Court hold, as it has at least three times, that the proceedings in the Circuit court in attachment were not void for insufficiency in an affidavit for the writ, certainly it will hold, that proceedings of this kind in *Justices Court* with this difference in the provisions of the two Statutes, are not void, but at least are only voidable.

KINYON & STEVENS,

Att'ys for Appellants.

137

STATE OF ILLINOIS.

IN SUPREME COURT, APRIL TERM, A. D. 1861.

POINTS & BRIEF.

ALONZO KINYON & KIRTLAND F. BOOTH, APPELLANTS,

VS.

JEREMIAH J. REES, APPELLEE.

Tru. Shal Co. 1861
Ex. Shal
cert

KINYON & STEVENS, ATT'Y FOR APPELLANTS.

B. H. TRUSDELL, ATT'Y FOR APPELLEE.

PRATT, SHAW & CO., PRINTERS, AMBOY, ILLS.

STATE OF ILLINOIS, } ss.
County of Lee, }

Supreme Court in and for the Third
Grand Division of the State of
Illinois, April Term, A. D. 1861.

Jeremiah J. Rees, Appellee, }
vs. } Brief of the Points
Alonzo Kinyon and Kirtland } and authorities of
F. Booth, Appellants. } the Appellants

First Point.

The only question presented for the consideration of this Court is, whether the Circuit Court erred in holding that the attachment proceedings, described in the Pleas demurred to, were *void*, in consequence of the defective affidavit in those proceedings. If the judgment obtained under those proceedings was *absolutely void*, then trespass would lie for enforcing the same. If only *voidable*, then trespass would not lie, and the Court erred in sustaining the demurrer.— This proposition need not be supported by a citation of the authorities.

Second Point.

The Court below erred in sustaining the demurrers of the plaintiff below to the second Plea of the said Booth, and to the second Plea of the said Kinyon, and in holding that the attachment proceedings, described in said Pleas, were absolutely *void*, in consequence of affidavit (in said Pleas set forth,) stating the nonresidence of the defendant in said attachment proceeding—the plaintiff below—upon information and belief. See *Illinois Statutes, by Purple, Chapter 8, section 6. Miere vs. Brush 3d vol. of Scammon's R. 21. Same vol. P. 144, Frink et al vs. King. 21st vol. of Illinois R. 80, Dyer vs. Flint. Also the case of Voorhees et al vs. the Bank of the United States, 10th vol. of Peters R. 449. 3d vol. of Chitty's Practice, P. 523 and authorities there cited. Graham's Practice, P. 121, and authorities there cited. 3d vol. of East's R. 155, Taylor vs. Phillips.*

Third Point.

The Circuit Court erred in sustaining said demurrers to said Pleas, because it was an unauthorized usurpation of Judicial power in the Circuit Court to declare that the attachment proceedings, or judgment under the same, was absolutely void, thus setting the said judgment aside, and declaring the same *void* in a collateral proceeding, after the defendant in the attach-

ment had waived all insufficiencies in the affidavit for the attachment, by his omission to appear and object to the affidavit upon the grounds of its insufficiency, and failure, afterwards, to appeal, which "objection," if made at any time in the progress of the cause, either in the Justice's court, or Circuit Court, or even in this Court, could have been "obviated" by an amendment of the affidavit under the sixth section of the eighth chapter of the Statutes of Illinois, as compiled by Purple. See also cases of *Miere vs. Brush, 3d vol. of Scammon's Reports, P. 21. Frink et al vs. Charles P. King, Administrator of George Almarode, deceased, 3d vol. of Scammon's R. 144. The cases of Clark vs. Roberts, Breese R., P. 222 and Phelps vs. Young Breese, R., P. 255, were expressly overruled in the cases cited in 3d Scammon as above. See, also, the case of Dyer vs. Flint 21st vol. of Illinois R., P. 80. In which last case an affidavit, objectionable for precisely similar grounds to those raised to the affidavit set forth in the Pleas in the case at bar, was declared by this Court to be erroneous only. And for such error was remanded with leave to amend. Whereas, in the case of Clark vs. Roberts, Breese R. 222, this Court declared the proceedings, under an insufficient affidavit, to be absolutely void, and refused to remand the case. This decision was made before the Statutes now in force, allowing an amendment of the affidavit. This Court in that case says "the amendment of the affidavit will not help the previous illegal proceedings." (The Justice in that case having allowed an amendment of the affidavit.) Thus intimating that could an amendment have been made, the proceedings could have been helped.*

Fourth Point.

The legal insufficiency of the affidavit set forth in said Pleas, was waived by the plaintiff below by his neglect to appear in the attachment proceeding and object to the affidavit for that reason, and his subsequent neglect to appeal. He having been constructively in the Justice's Court, and hence bound by all the proceedings against him, unless he took exception to any proceedings, or appealed. See cases in 3d vol. of Scammon R., and 21st vol. of Illinois R., cited under the "Third Point."

Fifth Point.

A void proceeding can not be waived. See 3d vol. of East's R., P. 155, Taylor vs. Phillips. 3d vol. Chitty's Practice P. 523. But the objection to the affidavit, set forth in the Pleas demurred to, in the case at bar, was waived by the defendant in the at-

See 2d vol
John R 190
11th vol John R
309

attachment proceeding—(the plaintiff below) in not appearing and objecting to the affidavit for the reason assigned. *Statutes of Illinois, by Purple, chapter 8, section 6. Miere vs. Brush, 3d vol. of Scammon R., P. 21.* Therefore the affidavit for the writ of attachment was not *void*, and hence the Pleas demurred to should have been held good, and the demurrers overruled. Again a *void* proceeding can not be amended. *Graham's Practice, P. 121, and authorities there cited.* But the affidavit for the attachment—set forth in the Pleas demurred to—can be amended. *Illinois Statutes, by Purple, chapter 8, section 6. Miere vs. Brush, 3d vol. Scammon R., 21. Same vol., P. 144, Frink et al vs. King. Also 21st vol. of Illinois R. 80, Dyer vs. Flint.* Therefore the affidavit, for the attachment, was not *void*.

Sixth Point.

The cases cited in 3d Scammon and 21st Illinois, were all commenced by attachment in the *Circuit Court*. But the attachment described in the Pleas demurred to, was commenced in a *Justice's Court*, under a Statute in some respects, different from the Statute in relation to attachments in the Circuit court. That difference is this: That in the attachment law for the Circuit court, it is provided, in the eighth section thereof, that no writ of attachment shall be quashed on account of any insufficiency of the original affidavit, &c., if the plaintiff shall cause a legal and sufficient affidavit, &c., to be filed, or the writ amended in such time and manner as the Court shall direct. But in the attachment law regulating practice in a *Justice's Court*, it is provided, by the sixth section thereof, that no attachment shall be abated or dismissed for want of form, &c., but that amendments may be made, or new affidavits, &c., be filed, so as to "obviate objections" to the same. Thus showing that in proceedings in the Justice's court, that it is necessary to raise "objections" for any defect in the affidavit, &c., that the party objecting may take advantage of any insufficiency. Whereas, these terms do not appear in the law regulating practice of the kind in the Circuit court. So that if this Court held, as it has at least three times, that the proceedings in the Circuit court in attachment were not *void* for insufficiency in an affidavit for the writ, certainly it will hold, that proceedings of this kind in *Justice's Court* with this difference in the provisions of the two Statutes, are not void, but at least are only voidable.

KINYON & STEVENS,

Att'ys for Appellants.

STATE OF ILLINOIS, SUPREME COURT.

THIRD GRAND DIVISION.

APRIL TERM, 1861.

JEREMIAH J. REES.

vs.

KIRTLAND F. BOOTH, ALONZO KINYON,
AND ORANGE D. REED,

ABSTRACT OF THE RECORD.

This was an action of Trespass commenced against the defendants below, by summons returnable at the November Term, A. D. 1859, of the Lee County Circuit Court.

1 The summons was issued in due form of law October 29th
2 1859, and filed December 12th 1860, having been duly served
on all of the defendants below.

3 The Declaration in Trespass to personal property in the
usual form was filed November 15th A. D. 1859.

4 To the said Declaration the said Booth one of the defend-
ants below filed two pleas on the 17th day of February, A. D.
1860.

5 First, Not Guilty. Second, a special plea of justification
as to part of the articles in the said Declaration mentioned,
in as much, as on the 8th day of March A. D. 1859, before
the commission of the supposed trespasses he was a justice of
the Peace duly elected and qualified in and for the County of
6 Lee and State of Illinois, that on the said 8th day of March
A. D. 1859, one Alonzo Kinyon applied to him as such Jus-
tice of the Peace for a writ of attachment against the personal
effects of the Plaintiff below, under the name and style of J.
G. Rees, and on such his application made and filed with him,
said Booth as such Justice of the Peace, his affidavit in
words and figures following to-wit;

STATE OF ILLINOIS, }
COUNTY OF LEE, } ss.

Affidavit

6 The oath and complaint of Alonzo Kinyon taken before K.
F. Booth a Justice of the Peace of said County doth depose
7 and say that J. G. Rees is justly indebted to Alonzo Kinyon
in the sum of \$45,25-100 dollars and that the said J. G.
Rees is not a resident of this State as this affiant has been in-
formed and believes, and ask that an attachment may issue
against the personal effects of said J. G. Rees.

Subscribed and sworn to before me this 8th day of March
1859.

A. KINYON, [Seal].

K. F. BOOTH, [Seal].

7 That the said Alonzo Kinyon then and there gave a good
and sufficient attachment bond as is by law required and that
the said defendant Booth then and there having jurisdiction
issued as he was by law required a writ of attachment against
the said Rees, which said writ was delivered to one Orange
D. Reed a constable in and for said County of Lee and the

8 same was afterwards to-wit; on the 9th day of March A. D. 1859, returned by said constable with the following endorsements thereon to to-wit: March 9th 1859, By virtue of the within, I have this day levied on the following property: 6 chairs, one barrel and contents, one bedstead, one bag of bags, one lounge, one stand, two baskets of dishes, four comforts, one straw Mattrass, one cotton Mattrass, onedozen pillows, more or less, one clock, one trunk and contents, one looking glass.

O. D. REED, Constable.

8 That said goods and chattels levied upon were the same therein before described as part and parcel of the goods and chattels described in said declaration that afterwards to-wit: on the 22d day of March A. D. 1859, such proceedings were had before the said defendant Booth, as Justice of the Peace aforesaid, as that a judgment was rendered in favor of said Alonzo Kinyon, and against said plaintiff below for the sum of \$45, 25-100 and costs of suit, that thereupon in conformity with the statute in such case made and provided, said Booth as Justice aforesaid issued an order of sale of said goods and chattels so attached as aforesaid, to satisfy said judgment. That said order of sale was delivered to said constable and was duly returned executed, that all of which proceeding were the same trespass complained of by the plaintiff below against said Booth, concluding with a verification.

11 Pleas of Alonzo Kinyon one of the defendants below to said declaration.

11 First—Plea of Not Guilty.

11 Second—Plea of justification, that on the 8th day of March
12 A. D. 1859, the plaintiff below was owing and indebted to him the sum of \$45,25-100 on a promissory note; that on the
13 8th day of March A. D. 1859, he filed his affidavit with one Kirtland F. Booth a Justice of the Peace in and for the County of Lee and State of Illinois, setting forth the same *haec verba* and the same as in said Booth's second plea that on said eighth day of March A. D. 1859, on the issuing of the writ, he filed his bond as required by law.

14 That on the said eighth day of March A. D. 1859, the said Justice of the Peace issued a writ of attachment in words and figures following to-wit:

ATTACHMENT WRIT.

14 STATE OF ILLINOIS, } ss.
LEE COUNTY, }

The people of the State of Illinois to any constable of said County greeting: Whereas, Alonzo Kinyon has on this day filed an affidavit before K. F. Booth, a Justice of the Peace of the said county, that J. G. Rees is justly indebted to Alonzo Kinyon in the sum of \$45,25-100 dollars and that said J. G. Rees is not a resident of this State as this affiant is informed and believes, and the said Alonzo Kinyon having given bond and security according to law, we therefore command you, that you attach so much of the personal effects of the said J. G. Rees to be found in your county, of value sufficient to satisfy the said debt and costs, and such property by you attached.

15 you are to secure or so to provide that the same may be liable to further action therein before the undersigned Justice of the Peace, and in case that personal property of value sufficient cannot be found you will summon all persons that the plaintiff or his agent may direct to appear before me at my office in Amboy, on the 12th day of March 1859, at 1 o'clock P. M. to answer what may be objected against him or them as garnishees and then have you this writ with what you have done thereon.

Given under my hand and seal this 8th day of March 1859.

K. F. BOOTH, J. P. [Seal].

15 And delivered said writ on said 8th day of March to one Orange D. Reed, an acting constable in and for the County of Lee and State of Illinois; that on the 9th day of March A. D. 1859, said constable by virtue of said writ of attachment seized and took possession of the said goods and chattels belonging to the plaintiff below, and described in the introductory part of said plea, and made due return of said writ on the 9th day of March A. D. 1859, with an endorsement thereon of his doings thereon to said Justice of the Peace. That
16 afterwards having advertised as required by law for service on the 22d day of March A. D. 1859, such further proceedings were had before the said justice as that a judgment was rendered in favor of the said Alonzo Kinyon and against the plaintiff below for the sum of \$45,25-100 and three dollars and fifty cents costs. That on the 23d day of March A. D. 1859, the said Justice of the Peace issued a special execution or order of sale in words and figures to-wit:

16 STATE OF ILLINOIS, }
LEE COUNTY, } ss.

The people of the State of Illinois to any constable of said county greeting: Whereas heretofore to-wit: on the 8th day of March A. D. 1859, Alonzo Kinyon sued out before the undersigned a Justice of the Peace, in and for said county, an attachment against J. G. Rees and caused said attachment
17 to be levied on Six chairs, one barrel and contents, one bedstead, one bag of bags, one lounge, one stand, two baskets of dishes, four comforts, one straw mattress, one cotton mattress, one dozen pillows more or less, one clock, one trunk and contents, one looking-glass, as the property of said J. G. Rees, and whereas afterwards to wit: on the 22d day of
17 March 1859, such further proceedings were had before said Justice as that a judgment was rendered in favor of said Alonzo Kinyon and against J. G. Rees, for the sum of \$45,25-100 dollars in a plea of assumpsit, besides costs of suit, which are endorsed thereon and taxed at three dollars and fifty cents and the property attached ordered to be sold for the satisfaction of said judgment and costs. You are hereby commanded that pursuant to said judgment and in conformity with the statute in such case made and provided you proceed without

delay to make sale of said property attached and make said debt and costs and make due returns of your doings hereon.

Given under my hand and seal this 23d day of March 1859.

K. F. BOOTH, [Seal].

Justice of the Peace.

18 And delivered said execution to said constable Reed, by
virtue of which said execution said constable Reed after hav-
ing advertised said goods and chattels as by law required pro-
ceeded to sell the same at public vendue for the purpose of
satisfying said execution &c., concluding with a verification.
19 The defendant below, Orange D. Reed, filed his pleas to said
declaration but as plaintiff below entered a *nolle prosequi* as
to him no abstract of the same is here presented.

26 To the said second plea of the said defendant below, Alonzo
26 Kinyon, the said plaintiff below filed a general demurrer on
the 8th day of May A. D. 1860.

27 To the said second plea of the said defendant below Kirt
land F. Booth the said plaintiff below filed also a general de-
murrer on the 8th day of May A. D. 1860.

32 The said demurrers to said 2d pleas of said Booth and
said Kinyon were by the said court sustained and the said de-
fendants stood by their said pleas.

33 At the November Term A. D. 1860, issue being joined on
said pleas of Not Guilty of said Booth and said Kinyon, said
cause was tried before a jury, who rendered a verdict in favor
34 of said plaintiff below and against the said defendants below,
said Booth and said Kinyon, for the sum of \$200, damages.

34 Said defendants below Booth and Kinyon thereupon upon
the coming in of said verdict, moved the court in arrest of
37 judgment and for a new trial which said motions were by the
said court overruled, to which ruling of the said court the
said defendants below by their counsel objected.

37 The said court thereupon rendered judgment in favor of the
38 plaintiff below and against the said defendants below said
38 Booth and Kinyon for the sum of \$200, and costs. From
which said judgment said defendants below Booth and Kin-
yon pray an appeal, which is allowed.

38 Said defendants perfected their said appeal by filing their
bond within the time, for the amount and with the security re-
quired by the said court.

Afterwards, to wit: on the 1st Tuesday after the third Mon-
day in April in the year of our Lord One Thousand Eight
hundred and Sixty-one, at this same Term before the judges of
the Supreme Court of the State of Illinois come the said Kirt-
land F. Booth and Alonzo Kinyon appellants by Kinyon &
Stevens, their attorneys, and say that in the record and pro-
ceedings aforesaid and also in rendering the judgment afore-
said there is manifest error in this to-wit: that the said court
sustained the said demurrer to the said 2d plea of the said
Booth and the demurrer to the said 2d plea of the said Kin-

yon, Whereas the said demurrers ought to have been over-ruled.

There is also error in this to-wit: that by the record aforesaid it appears that the judgment aforesaid in form aforesaid, was given for the said Jeremiah J. Rees, against the said Kirtland F. Booth and Alonzo Kinyon, whereas by the law of the land the said judgment ought to have been given for the said Kirtland F. Booth and Alonzo Kinyon and against the said Jeremiah J. Rees; and the said Kirtland F. Booth and Alonzo Kinyon pray that the judgment aforesaid for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled and altogether held for nothing, and that they may be restored to all things which they have lost by occasion of such judgment &c.

KINYON & STEVENS,
Attorneys for appellants.

Filed April 16, 1861.
L. Island
Ch.

18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28
 29
 30
 31
 32
 33
 34
 35
 36
 37
 38
 39
 40
 41
 42
 43
 44
 45
 46
 47
 48
 49
 50
 51
 52
 53
 54
 55
 56
 57
 58
 59
 60
 61
 62
 63
 64
 65
 66
 67
 68
 69
 70
 71
 72
 73
 74
 75
 76
 77
 78
 79
 80
 81
 82
 83
 84
 85
 86
 87
 88
 89
 90
 91
 92
 93
 94
 95
 96
 97
 98
 99
 100
 101
 102
 103
 104
 105
 106
 107
 108
 109
 110
 111
 112
 113
 114
 115
 116
 117
 118
 119
 120
 121
 122
 123
 124
 125
 126
 127
 128
 129
 130
 131
 132
 133
 134
 135
 136
 137
 138
 139
 140
 141
 142
 143
 144
 145
 146
 147
 148
 149
 150
 151
 152
 153
 154
 155
 156
 157
 158
 159
 160
 161
 162
 163
 164
 165
 166
 167
 168
 169
 170
 171
 172
 173
 174
 175
 176
 177
 178
 179
 180
 181
 182
 183
 184
 185
 186
 187
 188
 189
 190
 191
 192
 193
 194
 195
 196
 197
 198
 199
 200
 201
 202
 203
 204
 205
 206
 207
 208
 209
 210
 211
 212
 213
 214
 215
 216
 217
 218
 219
 220
 221
 222
 223
 224
 225
 226
 227
 228
 229
 230
 231
 232
 233
 234
 235
 236
 237
 238
 239
 240
 241
 242
 243
 244
 245
 246
 247
 248
 249
 250
 251
 252
 253
 254
 255
 256
 257
 258
 259
 260
 261
 262
 263
 264
 265
 266
 267
 268
 269
 270
 271
 272
 273
 274
 275
 276
 277
 278
 279
 280
 281
 282
 283
 284
 285
 286
 287
 288
 289
 290
 291
 292
 293
 294
 295
 296
 297
 298
 299
 300
 301
 302
 303
 304
 305
 306
 307
 308
 309
 310
 311
 312
 313
 314
 315
 316
 317
 318
 319
 320
 321
 322
 323
 324
 325
 326
 327
 328
 329
 330
 331
 332
 333
 334
 335
 336
 337
 338
 339
 340
 341
 342
 343
 344
 345
 346
 347
 348
 349
 350
 351
 352
 353
 354
 355
 356
 357
 358
 359
 360
 361
 362
 363
 364
 365
 366
 367
 368
 369
 370
 371
 372
 373
 374
 375
 376
 377
 378
 379
 380
 381
 382
 383
 384
 385
 386
 387
 388
 389
 390
 391
 392
 393
 394
 395
 396
 397
 398
 399
 400
 401
 402
 403
 404
 405
 406
 407
 408
 409
 410
 411
 412
 413
 414
 415
 416
 417
 418
 419
 420
 421
 422
 423
 424
 425
 426
 427
 428
 429
 430
 431
 432
 433
 434
 435
 436
 437
 438
 439
 440
 441
 442
 443
 444
 445
 446
 447
 448
 449
 450
 451
 452
 453
 454
 455
 456
 457
 458
 459
 460
 461
 462
 463
 464
 465
 466
 467
 468
 469
 470
 471
 472
 473
 474
 475
 476
 477
 478
 479
 480
 481
 482
 483
 484
 485
 486
 487
 488
 489
 490
 491
 492
 493
 494
 495
 496
 497
 498
 499
 500
 501
 502
 503
 504
 505
 506
 507
 508
 509
 510
 511
 512
 513
 514
 515
 516
 517
 518
 519
 520
 521
 522
 523
 524
 525
 526
 527
 528
 529
 530
 531
 532
 533
 534
 535
 536
 537
 538
 539

United States of America }
Lee County, State of Illinois } ss

Hear in the Lee
County Circuit Court in the 22nd Judicial
Circuit of the State of Illinois, before the
Honorable John O Eustace sole presiding
judge of said 22nd Judicial Circuit of
said State.

Do it remembered that on
the Twenty Ninth day of October AD 1859
a suit was commenced in the Lee County
Circuit Court wherein Jeremiah J. Rees
was Plaintiff and Kirkland F. Boett
Alonzo Kanyon and Orange D Reed were
Defendants in dispute, and thereupon
a summons issued to the said Defendants
in the words & figures following to wit:-

State of Illinois }
Lee County } ss

Summons } This People of the State of Illinois
to the Sheriff of said County - greeting: We
command you that you summon Kirkland
F. Boett, Alonzo Kanyon and Orange D Reed,
if they shall be found in your County
personally to be, and appear before the Circuit
Court of said County on the first day of the

Summons

next Term thereof to be holden at the Court House in Dixon in said County on the 11th Monday of November next to answer unto Jeremiah J. Rees, in a plea of Negligence to the Damage of said Plaintiff as he says in the sum of Three Hundred Dollars, and hence you then and there this writ, with an endorsement thereon in what manner you shall have Executed the same.

Witness Isaac S. Boardman
Clerk of our said Court and the Seal
{ L.S. } thereof at Dixon aforesaid this 29th
day of October A.D. 1859.
Isaac S. Boardman Clerk
per Joseph Ball D. C. "

which said Summons was by the said Sheriff
Sherriff's return) endorsed as follows "Served the within by reading
out Summons) the same to, and in the presence and hearing of the
within named K. L. Booth, always known as Orwig
"I Read this 2^d day of November 1859.
(Prose) Lester Homeling Sheriff
by E. A. Snow Deputy "

And the said Summons being returned served
as aforesaid the said Plaintiff on the
fifteenth day of November aforesaid, filed
his Declaration in said Court in said
County which said Declaration is in the words following:
— To wit: —

Declaration

" Lee County Circuit Court
of the November Term A. D. 1859.

Declaration } State of Illinois } ss.
Lee County }

Jeremiah J. Reese Plaintiff in
this suit, by . . . Bernard H. Truwall his Attorney
complains of Kertland J. Broth, George Kinson and
Orange L. Reed Defendants herein who were
summoned, etc., in a plea of Trespass: For
that whereas the said Defendants heretofore to
wit: on the first day of April in the
year of our Lord one thousand eight hundred
and fifty nine with force and arms to wit,
at Amboy in the County of Lee aforesaid,
seized took and carried away the following
described goods and chattles the property of the
said Plaintiff to wit: One sett of Stone
China ware, One sett of glass ware, One
sett of tin ware, One feather bed, Twelve feather
pillows; Two feather bolsters; One sack of
feathers; four new patched work quilts; eight
woolen blankets; Six comforters; One
mahogany Stand; One Cottage Bed Stead;
One Brass Kettle; One clock; Twelve cane

Declaration } Bedstead chairs; One cotton mattress; One
grape mattress; four wool pillows; Two
clothes Baskets; One lounge; One Trunk;
forty grain bags; One cloth cloak; ten Brooms;
forty books: and Twenty pictures; Three
Mirrors; fourteen wire screens; Six oil cloths
of great value to wit, of the value of three
hundred Dollars in all, then these found
and king, and converted and disposed of
the same to their own use and other
wrongs to the said plaintiff then and there
did to the damage of the said plaintiff
of three hundred Dollars and therefore
he brings suit, etc., etc.

Bernard H. Trusdell,
Atty of Plaintiff. "

Endorsed "Filed Nov 15th 1859
J. I. Boardman Clerk"

And afterwards on the seventeenth day of
February in the year of our Lord, One thousand
Eight hundred and Sixty, the said
Defendant Kirtland H. Doote filed his
separate Pleas in said Cause in said Court
in the words following to wit:—

2
" Lee County Circuit Court
State of Illinois } February Term, A. D. 1860.
Lee County } ss.

Jeremiah J. Rees

vs.

William F. Booth

Orange W. Reed &

Alonzo Kinyon

Trespass.

And the said William F.

Booth one of said defendants by Kinyon & Williams
his Attorneys comes and defends the force and
injury when he and says that he is not
guilty of the said supposed trespass above
said to his charge or any or either of them
or any part thereof in manner and form
as the said plaintiff hath above thereof
complained against him and of this he
puts himself upon the country. "
(And the plaintiff doth the like.)

B. H. Trussell,

Kinyon & Williams

Atty of Plaintiff.

Atty for Deft.

And for a further plea in this behalf said
defendant Booth says as to the supposed
trespass in taking and carrying away the
goods and chattels mentioned in said plaintiffs

Recs of
K. F. Booth

} declaration the said defendant says as to the following articles, to wit: Six chairs, one barrel and contents, one bedstead, one bag of bags, one lounge, one stand, two baskets of dishes, four comforts, one straw Matt-trap, one cotton Matt-trap, one dozen pillows more or less one clock, one trunk and contents and one looking glass, part and parcel of the goods and chattels mentioned in said plaintiffs declaration, Actio non, because he says that on the Eighth day of March A. D. 1859, before the time when the said trespass is supposed to be done, he was and for a long time prior thereto and now is a justice of the Peace, duly elected and qualified in and for the county of Lee and State of Illinois. That on said day one Abner Kingon applied to this defendant in his capacity of justice of the Peace aforesaid for an attachment against the personal effects of said plaintiff, under the name and style of J. B. Rice and made the following oath and complaint, before him, to wit:

State of Illinois }
Lee County, p. } affidavit.

The oath and complaint of Abner Kingon taken before K. F. Booth a justice of the Peace of said

Hears of
K. J. Booth

County doth depose and say that J. G. Rees is justly indebted to Alonzo Kinyon in the sum of 45⁰⁰/₁₀₀ Dollars and that the said J. G. Rees is not a resident of this State as this affiant has been informed and believe and ask that an attachment may issue against the personal effects of said J. G. Rees. Subscribed and sworn to before me this six day of March 1859.

A. Kinyon, seal
K. J. Booth seal

That the said Alonzo Kinyon then and there gave a good and sufficient Attachment Bond as is by law required and the said defendant then and there having jurisdiction issued as he is by law required a writ of Attachment against the said Rees which said writ was delivered to one Orange D. Neal a constable in and for said County of Lee and the same was afterwards to wit, on the 5th day of March, A. D. 1859, returned by said Constable with the following endorsement thereon to wit, March 5th 1859, By virtue of the within I have this day levied on the following property 6 chairs one barrel and contents one bedstead one bag of bags, ^{one lounge} one stand 2 baskets of dishes

Heas of
K. F. Broth

County doth depose and say that J. G. Rees is justly indebted to Alonzo Kinyon in the sum of 45⁷⁵ Dollars and that the said J. G. Rees is not a resident of this State as this affiant has been informed and believe and ask that an attachment may issue against the personal effects of said J. G. Rees. Subscribed and sworn to before me this six day of March 1859.

A. Kinyon, seal
K. F. Broth seal

That the said Alonzo Kinyon then and there gave a good and sufficient Attachment Bond as is by law required and the said defendant then and there having jurisdiction issued as he is by law required a writ of Attachment against the said Rees which said writ was delivered to one Orange S. Real a constable in and for said County of Lee and the same was afterwards to wit, on the 5th day of March, A. D. 1859, returned by said Constable with the following endorsement thereon to wit, March 5th 1859, By virtue of the within I have this day levied on the following property 6 chairs one barrel and contents one bedstead one bag of bags, ^{one lounge} one stand 2 baskets of dishes

Heas of
K. F. Spoth

4 comforts one Straw Matras one cotton Mat
Tras one dozen pillows more or less one clock
one Trunk and contents one looking glass
C. D. Reed, Constable." Said goods and chattles
levied upon being the same herein before
described as part and parcel of the goods and
chattles described in said plaintiffs declaration
that afterwards to wit: On the 22nd day
of March A. D. 1859. such proceedings were
had before this defendant as justice of the
Peace aforesaid as that judgement was rendered
in favor of said George Kinyon and against
said plaintiff for the sum of forty five
8700 Dollars and costs of suit therefore pursuant
to said judgement and in conformity with
the Statute in such case made and provided
this defendant as justice aforesaid issued an
order of sale of said goods and chattles. so at-
tached as aforesaid to satisfy said judgement
which said order of sale was delivered to said con-
stable and was duly returned executed all
which said proceedings were in conformity with
the Statute in such case made and provided.
which are the same trespasses whereof said Plaintiff
hath above complained against the defendant
and all this said defendant is ready to verify
wherefore he prays judgement &c.,

Kinyon & Williams, Atty for deft.

Entered "Filed Feb: 14th 1860. J. S. Doornum Clerk"

And on the said seventeenth day of February
A.D. 1860 the said Defendant Alongz Kinyon filed
his separate plea in said cause in said
Court in the words following to wit:—

Lee County Circuit Court
February Term A.D. 1860.

State of Illinois } ss.
Lee County }

Jeremiah J. Rees

vs:

Orange L. Reed
Kir. H. and J. Booth, &
Alongz Kinyon.

Plea of
Alongz Kinyon

And the said defendant
Alongz Kinyon by his Attorneys Kinyon and
Fuller comes and defends the force and injury
wherein he, and says that he is not guilty of
the said supposed trespass above said to his
charge or any or either of them or any part
thereof in manner and form as the said
plaintiff hath above thereof complained
against him and of this he the said de-
fendant puts himself upon the country
(And the plaintiff doth the like.)

B. H. Trusdell,
Atty of Plaintiff.

Kinyon & Fuller,
Atty for Deft.

And for further plea in this behalf the

Hears of
George Kenyon

said defendant says as to the supposed Trespass
in taking and carrying away the goods and chat-
tels in said plaintiffs declaration mentioned as
to certain part of the same that is to say
the following articles to wit, Six chairs one barrel
and contents one bedstead, one bag of bags one
Lounge one stand Two baskets of dishes, four
comforts, one Straw Mattress, one cotton
mattress one dozen pillows more or less
one clock one Trunk and contents, and
one looking glass, Actio non. because this
defendant says that on the eighth day of
March A. D. 1858, the said plaintiff was
owing to and indebted to this defendant in the
sum of forty five Dollars and twenty
five cents, which said indebtedness was evi-
denced by a certain promisory note made ex-
ecuted and delivered by the said plaintiff
by the name style and description of J. J.
Rees to one J. McEwen and endorsed by
the said McEwen to this defendant which
said promisory note is in words and figures
following, to wit: Due per McEwen
one hundred Dollars in hand, at the
Exchange Hotel, Cambridge, Ill, for value
received, for said McEwen & wife.
Sept. 18th 1858.

(Signed) J. J. Rees.

Head, of
Alonzo Kinyon

On the back of said note is the following endorsement, to wit: December 13th received on the within \$57, also the name of the payee of said note endorsed in blank, to wit (Jeremiah McEwen) That on the said eighth day of March after having filed a bond as required by law this defendant made the following affidavit as he lawfully had a right to do before one Kirtland J. Booth a justice of the Peace in and for the county of Lee and State of Illinois duly elected commissioner and qualified according to law, in words and figures, following, to wit:

Affidavit.

State of Illinois }
Lee County } ss. The oath and complaint
of Alonzo Kinyon taken
before K. J. Booth a justice of the Peace of
said County ~~doth~~ depose and say that
J. G. Rees is justly indebted to Alonzo Kinyon
in the sum of 45⁰⁰ Dollars and that
said J. G. Rees is not a resident of this
State as this affiant has been informed
and believes and asks that an attachment
may issue against the personal effects of
the said J. G. Rees

A. Kinyon, Seal

Reas, of
Alonzo Kingon

Subscribed and sworn to before me this 8th
day of March, 1859.

K. H. Booth, J. T. Seal

In which affidavit the name of the said
plaintiff was by mistake written, J. S. Reas
instead of J. J. Reas. That on the said
eighth day of March the said Booth
justice of the Peace as aforesaid issued the
following writ of Attachment as law-
fully had a right to do, against the goods
and chattles of the said plaintiff by the
same style and description of J. S. Reas in
words and figures following, to wit:

Attachment Writ.

State of Illinois

Lee County } ss. The people of the
State of Illinois, to any constable of
said County, Greeting: Whereas Alonzo
Kingon has on this day filed an affidavit
before K. H. Booth a justice of the Peace
of the said County that J. S. Reas is justly
indebted to Alonzo Kingon in the sum of 45⁰⁰/₁₀₀
Dollars and that said J. S. Reas is not a
resident of this State as this affiant is
informed and believes, and the said Alonzo

Hears of
Mouze Kingen

Kingen having given bond and security according to law, we therefore command you that you attach so much of the personal effects of the said J. B. Rees to be found in your county of value sufficient to satisfy the said debt and costs and such property by you attached you are to secure or so to provide that the same may be liable to further action thereon before the undersigned justice of the Peace, and in case that personal property of value sufficient cannot be found you will summon all persons that the plaintiff or his agent may direct to appear before me at my office in Lombard on the 12th day of March 1859 at 1 o'clock P. M. to answer what may be objection against him or them as garnishee then and there have you this writ with what you have done thereon. Given under my hand and seal this 8th day of March 1859.

K. F. Booth, J. P. {seal}

And delivered the same on the said eighth day of March to one Orange L. Reed an acting constable in and for the county of Lee and State of Illinois, duly elected and qualified according to law. That on the ninth day of March A. D. 1859, said Reed as he lawfully might by virtue of said writ

Heas. of
Along Kinyon

of attachment, seized and took possession of the said goods and chattles, belonging to the said plaintiff ⁱⁿ heretofore described, ^{and} ^{endorsed} his doings thereon upon the back of said writ of attachment and on the said ninth day of March returned the said writ to the said justice of the Peace as by law he was required to do. That afterwards having advertised ten days for service as required by law, to wit: on the twenty second day of March A. D. 1858, said further proceedings were had before the said justice as that a judgement was rendered in favor of the said Along Kinyon and against the said plaintiff by the same style and description of J. B. Heas for the sum of forty five Dollars and twenty five cents and three Dollars and fifty cents costs, and afterwards to wit, on the twenty third day of March A. D. 1858, the said justice of the Peace, as he lawfully might, and by law was required to do, issued a special execution or order of Sale in words and figures following to wit:

State of Illinois

La County } ss. The people of the State of Illinois, to any constable of said County, Greeting: Whereas heretofore, to wit, on the 8th day of March, A. D. 1858, Along Kinyon

Rees vs
Alonzo Kinyon

said out before the undersigned a justice of
the Peace in and for said County, an attach-
ment against J. G. Rees and caused said
attachment to be levied on six chairs, one
barrel and contents, one bedstead, one bag of
bags one lounge one stand two baskets of
dishes four comforts one straw Mattress
one cotton Mattress one dozen pillows more
or less one clock one trunk and contents one
looking glass as ^{the} property of said J. G. Rees, and
whereas afterwards, to wit: on the 22^d day of March
1857, such further proceedings were had before said
justice as that a judgement was rendered in
favor of said Alonzo Kinyon and against J.
G. Rees, for the sum of 45 Dollars and 25 cents
in a plea of assumpsit besides costs of suit
which are endorsed thereon and taxed at 3 dollars
and fifty cents and the property attached
ordered to be sold for the satisfaction of said
judgement and costs you are hereby commanded
that pursuant to said judgement, and in con-
formity with the Statute in such case made
and provided, you proceed without delay
to make sale of said property attached and
make said debt and costs and make due
return of your doings hereon. Given un-
der my hand and seal this 23^d day of
March 1857. (Signed) K. J. Booth {Seal}
Justice of the Peace.

Heas of
George Kingon

And deliver the same to said Reed constable as
aforesaid by virtue of which execution or order
of sale said Reed afterwards, after having adver-
tised said goods and chattles for sale ten days as
required by law to wit: on the eleventh day of
April A.D. 1859, at ten o'clock, A.M. of said
day sold said goods and chattles at public
vendue for the purpose of satisfying said exe-
cution and costs for selling said goods as lawfully
he might and by law was required to do,
and on the said eleventh day of April
returned said execution or order of sale to said
justice of the Peace with his doings thereon
endorsed on the back of the same as required
by law, which is the said supposed trespass
in the introductory part of this plea mentioned
and whereof the said plaintiff hath above
complained against him the said defendant
and thus the said defendant is ready to verify
wherefore he prays judgment if the said plaintiff
ought to have or maintain his aforesaid
action thereof against him.

Kingon D. Fuller,
Atty for Deft.

Emended " Filed Feb. 17th 1860.

J. S. Boardman, Clerk.

And on the said 17th day of February, A.D. 1860 the said
Defendant Orange Reed filed his separate pleas in said
Court in said Cause in the words following to wit: -

"

Lee County Circuit Court.

February Term, A.D. 1860.

State of Illinois }
Lee County } ss.

Pleas of
O. D. Reed }

Jeremiah J. Rees
vs.
Kirtland J. Booth
Orange D. Reed &
Alonzo Kinyon }

Action of Trespass.

And the said defendant
Orange D. Reed by his Attorneys Kinyon &
Fuller comes and defends the force and injury
when &c., and says that he is not guilty
of the said supposed Trespass above laid
to his charge or any or either of them or
any part thereof in manner and form
as the said plaintiff hath above thereof com-
plained against him and of this he the
said defendant puts himself upon the
Country. (And the plaintiff doth the like.)

B. H. Trusdell,
Atty for Pltff.

Kinyon & Fuller,
Atty for Deft.

Hears of
A. D. Reed

And for further plea in this behalf the said defendant says as to the supposed Trespass in taking and carrying ^{away} the goods and chattles in said plaintiffs declaration mentioned or to certain part of the same, that is to say, the following articles, to wit: Six chairs, one barrel and contents one bulstoad one bag of bags, one lounge, one stand, two baskets of dishes four comforts, one straw Mattrap, one cotton Mattrap, one dozen pillows, more or less, one clock, one trunk and contents and one looking glass, Action non. because the said defendant says that on the first day of April, A. D. 1859, and for a long time prior thereto, to wit: for more than one year this defendant was an acting constable within and for the County of Lee and State of Illinois, duly elected and qualified according to law, That on the eighth day of March, A. D. 1859, one Kirkland F. Booth a justice of the Peace in and for the County of Lee and State aforesaid duly elected commissioned and qualified by law issued the following writ of Attachment as he lawfully had a right to do, against the goods and chattles of the said plaintiff by the name style and description of J. G. Rees, in words and figures following, to wit:

Attachment Writ.

Pleas, of
O O Rem

State of Illinois }
Lee County } ss.

The people of the State of Illinois, to any Constable of said County Greeting: Whereas, Alonzo Kinyon has on this day filed an affidavit before K. J. Booth a Justice of the Peace of the said County that J. G. New is justly indebted to Alonzo Kinyon in the sum of 45 ²⁰/₁₀₀ Dollars and that the said J. G. New is not a resident of this State as this affiant is informed and believes and the said Alonzo Kinyon having given bond and security according to the law we therefore command you that you attach so much of the personal effects of the said J. G. New to be found in your County of value sufficient to satisfy the said debt and costs and such property by you attached you are to secure or so to provide that the same may be liable to further action, before the undersigned Justice of the Peace and in case that personal property of value sufficient cannot be found, you will summon all persons that the plaintiff or his agent may direct to appear before me at my office in Lombard on the 12th day of March 1858, at 1 o'clock P. M. to answer what may be objected against him or them as garnishee then

Hear of
O D Reed

and there have you this writ with what you
have done thereon. Given under my hand and
seal this 8th day of March 1859.

K. J. Booth, J. S. Sul

And delivered the same on the said eighth day
of March, to this defendant constable as aforesaid
That on the ninth day of March A.D. 1859
This defendant as he lawfully might, by
virtue of said writ of Attachment, seized and
took possession of the said goods and chattles
belonging to the said plaintiff herein before
described and endorsed his doings thereon, upon
the back of said writ of attachment, and
on the said ninth day of March returned
at said writ to the said justice of the Peace
as by law was required to do. That after-
wards after having advertised ten days for
service as required by law, to wit, on the
twenty second day of March, A.D. 1859,
such further proceedings were had before the
said justice as that a judgement was rendered
in favor of the said George Kinyon and against
the said plaintiff by the same style and
description of J. S. Reed, for the sum of
forty five dollars and twenty five cents
and three dollars and fifty cents costs.

Plens of
O D Reed }

And afterwards to wit: On the ninth day of March A. D. 1859, the said justice of the Peace as he lawfully might and by law was required to do issued a special execution or order of sale in words and figures following, to wit:

State of Illinois } ss.
Lee County }

The people of the State of Illinois, to any Constable of said County, Greeting: Whereas, heretofore, to wit: on the 8th day of March, A. D. 1859, Alonzo Kinyon sued out before the undersigned a justice of the Peace in and for said County, an attachment against J. G. Rees, and has caused said attachment to be levied on, six chairs, one barrel and contents, one bedstead, one bag of bags, one lounge, one stand, two baskets of dishes, four comforts, one straw mattress, one cotton mattress, one dozen pillows more or less, one clock, one trunk and contents, one looking glass, as the property of said J. G. Rees, and whereas afterwards, to wit: on the 22^d day of March, 1859, such further proceedings were had before said justice as that judgement was rendered in favor of

Plena of
O D Rees

And afterwards to wit: On the ninth day of March A. D. 1859, the said Justice of the Peace as he lawfully might and by law was required to do issued a special execution or order of sale in words and figures following, to wit:

State of Illinois } ss.
Lee County }

The people of the State of Illinois, to any Constable of said County, Greeting: Whereas, heretofore to wit: on the 8th day of March, A. D. 1859, Alonzo Fungion sued out before the undersigned a Justice of the Peace in and for said County, an attachment against J. G. Rees, and has caused said attachment to be levied on, six chairs, one barrel and contents, one bedstead, one bag of bags, one lounge, one stand, two baskets of dishes, four comforts, one straw mattress, one cotton mattress, one dozen pillows more or less, one clock, one trunk and contents, one looking glass, as the property of said J. G. Rees, and whereas afterwards, to wit: on the 22^d day of March, 1859, such further proceedings were had before said Justice as that judgement was rendered in favor of

execution and carts for selling said goods, as lawfully he might, and by law was required to do, and on the said eleventh day of April returned said execution or order of sale to said justice of the Peace, with his doings thereon endorsed on the back of the same as required by law, which is the said supposed Trespas in the introductory part of this plea mentioned and whereof the said plaintiff hath above complained against him, and this the said defendant is ready to verify, wherefore he prays judgement if the said plaintiff ought to have or maintain his aforesaid action thereof against him.

Kington & Fuller,
Attys for Deft. "

Endorsed " Filed Feb 17th 1860.

J. S. Boardman, Clerk. "

And afterwards on the eighth day of May A.D. 1860 the said Plaintiff filed his separate Demurrers to the separate pleas of the said Defendants, which said separate Demurrers are in the words following that is to say,

(Demurrer to the plea of said Defendant Kington)

Pleas of
A. D. Reed

said George Kinyon and against J. S. Rice for the sum of 45 dollars and 25 cts., in a plea of assumpsit besides costs of suit which are, endorsed herein and taxed at 3 dollars and 50 cents and the property attached ordered to be sold for the satisfaction of said judgment and costs. you are therefore hereby commanded, that pursuant to said judgment, and in conformity with the Statute, in such case made and provided, you proceed without delay to make sale of said property attached and make said debt and costs, and make due return of your doings herein. Given under my hand and seal this 23^d day of March 1858.

(Signed) K. J. Booth Seal
Justice of the Peace.

And delivered the same to this defendant, constable as aforesaid, by virtue of which execution or order of sale, this defendant, afterwards, after having advertised said goods and chattles for sale ten days as required by law, to wit: on the eleventh day of April A. D. 1858, at ten o'clock A. M. of said day sold said goods and chattles at public venue for the purpose of satisfying said

execution and costs for selling said goods, as lawfully he might, and by law was required to do, and on the said eleventh day of April returned said execution or order of sale to said Justice of the Peace, with his doings thereon endorsed on the back of the same as required by law, which is the said supposed Trespass in the introductory part of this plea mentioned and whereof the said plaintiff hath above complained against him, and this the said defendant is ready to verify, wherefore he prays judgement if the said plaintiff ought to have or maintain his aforesaid action thereof against him.

Kinyon & Fuller,

Attys for Deft. "

Endorsed—Filed Feb 17th 1860,

J. S. Boardman, Clerk. "

And afterwards on the eighth day of May A.D. 1860 the said Plaintiff filed his separate Demurrers to the separate pleas of the said Defendants, which said separate Demurrers are in the words following that is to say—

(Demurrer to the plea of said Defendant Kinyon)

State of Missouri }
Lee County, Mo. }

Lee County Circuit Court
May Term, A. D. 1860.

Demurrer to
the plea of
Alonso Kinyon

Jeremiah J. Kees
vs.
Alonso Kinyon
impleaded with
Orange S. Reed, &
Kittland J. Booth.

Trespass, demurrer to second
plea.

And the said plaintiff
as to the said plea of the said defendant
Kinyon by him secondly above pleaded with
that the same and the matters therein con-
tained, in manner and form as the same
are above pleaded and set forth, are not
sufficient in law to bar or preclude him
the said plaintiff from having or maintain-
ing his aforesaid action thereof against him
the said defendant, Kinyon, and that
he the said plaintiff is not bound by
law to answer the same. And this he
the said plaintiff is ready to verify, where-
fore by reason of the insufficiency of the
said plea in this behalf the said plaintiff
prays judgment and his damages by him
sustained ^{on} occasion of the committing of
the said trespass to be adjudged to him &c.

Bernard H. Swindle, Atty of Plaintiff. "
Entered Filed May, 6 1860, J. S. Boardman, clerk."

(Demurrer to the plea of Defendant Booth)

Lee County Circuit Court,
of the May Term, 1860.

State of Illinois }
Lee County } ss.

Jeremiah J. Rea
vs.

Kirtland J. Booth
impleaded with
Orange L. Reed, &
Alonzo Kinyon

Trespass
Demurrer to second
plea.

Demurrer to
the 2^d plea of
R. J. Booth

And the said plaintiff as
to the said plea of the said defendant Booth
by him secondly above pleaded, saith the
the same, and the matters therein contained
in manner and form as the same are above
pleaded and set forth, are not sufficient
in law to bar or preclude him the said
plaintiff from having or maintaining
his aforesaid action thereof against him
the said defendant Booth, and that he
the said plaintiff is not bound by law
to answer the same. And this the said plain-
tiff is ready to verify, wherefore by reason of
the insufficiency of the said plea in this

behalf the said plaintiff prays judgement and
his damages by him sustained, on occa-
sion of the committing of the said Trespass
to be adjudged to him &c.,

Barnard H. Trusdell,

Att'y of Plaintiff.

Endorsed - "Filed May 8, 1860.

C. S. Boardman, Clerk. "

(Demurrer to the plea of Defendant Reed)

7

"

Lee County Circuit Court,
of the May Term, 1860.

State of Illinois } ss.
Lee County }

Demurrer
to the plea of
O. D. Reed }

Jeremiah J. Rees
vs.

Orange D. Reed, in-
pleaded with Kirtland
J. Booth & George Kinyon

In Trespass
Demurrer in
second plea.

And the said plaintiff as to the said plea
of the said defendant - Reed, by him secondly
above pleaded, saith that the same, and
the matters therein contained in manner
and form as the same are above plea-
ded and set forth are not sufficient in

law to bar^{or} preclude him the said plaintiff
from having or maintaining his aforesaid
action there against him the said defen-
dant, Reel- and that he the said plain-
tiff is not bound by law to answer the
same. And that the said plaintiff is
ready to verify- wherefore by reason of
the insufficiency of the said plea in this
behalf the said plaintiff prays judgement
and his damages by him sustained, ^{on} occasion
by the committing of the said Trespass to
be adjudged to him &c.,

Bernard H. Truwell,

Atty of Plaintiff. "

Endorsed - Filed May 8th, 1860,

J. S. Boardman, Clerk. "

And afterwards to wit: at a regular Term
of the said Lev. County Circuit Court, begun
and holden at the Court House in the City of
Dixon in said Lev County on the first Monday
in May in the year of Our Lord One thousand
Eight Hundred and Sixty.

Present Honorable John V. Eastace Judge

Robert C. Smith State Attorney

James S. Boardman Clerk

Lester Harding Sheriff

And on the sixteenth day of May aforesaid
the same being one of the regular days of the
said May Term the following record entry
appears to us in that behalf: to wit; -

" Jamniah J. Rees,

Reed }
Kirtland J. Booth, Mays Kinyon }
and Orange D Reed }

Indorsed,

On this
day comes the said Plaintiff by Smadell his
Attorney, and the Defendants by Kinyon and
Williams their Attorneys, and the Demurrers to
the Special pleas of each Defendant, coming on to
be heard, one now by the Court sustained,

And afterwards to wit at another regular
term of the said Lee County Circuit Court
begun and holden at Drow aforesaid on
the fourth Monday of November Anno Domini
One Thousand Eight Hundred and Sixty

Present Hon. John V. Custace Judge
David McContry State Attorney
Amos L. Bates Sheriff

Attest

Benjamin F. Shaw Clerk,

And on the
seventh day of December AD 1860 (the same being

one of the regular days of said November Term)
the following Record entry appears to us, in
this behalf that is to say:—
"Jammiah J. Rees,

U. Jeremiah J. Rees

Revised }

19
Karl Louis F. Booth, Menz Embroider
and Orange D Reed

Impress

On this day comes the Plaintiff by Grisdell & Sons & Sons his attorneys; also come the Defendants by Kinyon and Williams their attorneys, and the issues being joined now come a jury of good and lawful men to wit; David C Smith, D P Burr Stephen H Finley, Harvey J Mead, Herman C Abbot Mount A Moore, Milner R Barnes, Harvey C Williams John Comington, John Holman and Herman Zimmerman and the regular panel of jurors being exhausted Renken A Woods was called as a Salesman from the bystanders, and he together with the eleven jurors of the regular panel were duly elected, tried and sworn: and now comes the said Plaintiff and enters a Notice Pleading as to the Defendant Orange D Reed, and so the trial proceeds; and the jury in this case having heard the evidence and the argument of Counsel taken to consider of their verdict; and by agreement of parties the said jury have leave to seal their verdict, and to meet the Court to-morrow morning at Nine O'clock.

And afterwards on the day following the proceedings last herein written to wit on the Eighth Day of December aforesaid, at the hour of Nine O'Clock, the said jury being in Court, the following proceedings were had as appears by of Record in this behalf: that is to say:—

Record }

Kimyon & Booth
vs
Kempson & Booth

Proposed

On this

day again came the said parties by their respective Counsel, also came the jury here before empanelled in this behalf: and the said jury now returned Verdict that they find the Defendants Kempson & Booth Guilty, and that they assess the said Plaintiffs Damages in the sum of Two Hundred Dollars (\$200); and thereupon the said Defendants enter their motions in arrest of judgment and for a New trial in —

And the following is the Verdict of the jury above named in haec Verba: to wit:—

Verdict }

" We the jurors find the Defendants Kempson
" & Booth Guilty, and assess the Plaintiffs
" Damages at two hundred dollars, say no more "

And the Instructions in said cause are in the words following that is to say:—

7 " Jeremiah G. Keel
Instructions } vs.
Kinyon et al. }

Given

The Defendant ask the Court to instruct the jury that unless the plaintiff has proven that he was either in the possession of the property taken at the time of the alleged trespass or that he was at that time the owner of such property and entitled to the immediate possession of the same they must find for the Defendant.

Given

That unless the plaintiff has proven that these Defendants either assisted in taking the property or ordered or directed it to be taken they must find for the Defendant.

Given

That unless the Plaintiff has proven that the goods left in the house or grainery in Dec. 1858, was the same goods taken by witness Keel, in the Spring of A. D. 1859, and by the direction of these Defendants or one of them that he can not recover the value of such property left in the house or grainery and that the plaintiff can only recover the damages for the property belonging to the plaintiff actually

Instructions } Taken by the witness Reed under the direction
of the defendants or either of them.

Given That unless the Plaintiff has proven that
the Defendant Booth either assisted in taking
the property or ordered, or directed it to be taken
they must find the defendant Booth not
guilty.

Given And the same law is applicable to the
Defendant Kingon.

Given If the jury believe from the evidence that
Booth commanded Reed to take this property
and that the same was accordingly taken and
received from said Reed a portion of the
proceeds of the sale of the same those facts
are sufficient to connect Booth with the
Trespass, if the taking of the property was a
Trespass.

Given That the simple fact that Booth received the
proceeds of the sale of the property or any portion
of the same is not sufficient to constitute him

Instructions } a Trespasser unless it is also proven that he
either aided, assisted or directed in the commission
of the Trespass.

Yours The jury are instructed that there is no evidence
before them tending to prove justification. "

Endorsed - Filed Dec. 8th 1860.

B. J. Shaw, Clerk. "

for Joseph Bull D.C. "

And afterwards to wit on the fifteenth day of December
aforesaid (the same being as yet one of the regular
days of said November Term; the following is
the Record entry in this behalf to wit: -

" Jeremiah J. Rees -

"
Kirtland J. Booth and George Kingdon
impleaded with Orange D. Reed

} Trespass

On this

day again came the said parties by their
respective Counsel, and the motions in arrest of
judgment, and for a new trial coming on to be
heard, and by the Court overruled, and to which
ruling of the Court the said Defendants by their
Counsel then and there except.

It is considered and adjudged by the Court

Record }

that the said Plaintiff have and recover of the said Defendants the sum of Two Hundred Dollars his Damages by him in this behalf sustained, together with his costs and charges by him in and about this suit expended and that he have execution therefor.

And now come the Defendants and pray and appeal, which is allowed, on the condition however that the said Defendants do within sixty days from the date hereof file an appeal Bond, in the sum of Five Hundred Dollars with Rufus H. Bellows and Henry C. Judger as securities, properly conditioned and which said bond is to be approved by the Clerk of this Court " "

And afterwards to wit on the eleventh day of February AD 1861, the said time being within sixty days from the date of said judgment, the said Defendants in said suit filed their appeal bond, which was regularly approved: said Bond being set out in the words and figures as follows to wit:—

Appeal }
Bond }

Know all men by these Presents, that we
Kirtland J. Booth and Alonzo Kinyon as principals
and we Rufus H. Mellen and Henry E. Badger
as securities all of Amboy in the County of
Lee and State of Illinois, are held and
firmly bound unto Jeremiah J. Rees in the
sum of Five Hundred Dollars good and law-
ful money for the payment of which well
and truly to be made we and each of us
bind ourselves our heirs executors and adminis-
trators jointly and severally firmly by these
presents Witness our hands and seals
this 11th day of February A.D. 1861.

The condition of the above obligation is
such that whereas judgement was ren-
dered against the above bounden Kirtland
J. Booth and Alonzo Kinyon ^{in favor of the said Jeremiah J. Rees} in the Circuit
Court of said Lee County in the State
of Illinois, at the November Term, thereof
A. D. 1860, for the sum of Two Hundred
Dollars Damages besides costs of suit, to be
taped in which judgement and proceedings the
said Kirtland J. Booth and Alonzo Kinyon
complain and believe that there is error
therein, and thereupon have prayed
an appeal from the decision of said
Court in that behalf, to wit at the
November Term of said Court as

Appeal Bond
Continued

aforesaid. Now therefore if the said Kirtland
J. Booth and Alonzo Kinyon shall prosecute
their appeal to effect and without delay
and shall pay such judgement and costs as
aforesaid in case such judgement shall
be affirmed, as also all such costs as may
accrue upon a trial or dismissal of said
appeal then this obligation to be void
otherwise to remain in full force and effect.

Sealed and delivered in presence of
Everett C. Chase

Kirtland J. Booth	{ Seal }
Alonzo Kinyon	{ Sd }
R. H. Mellen	{ Sd }
H. C. Badger	{ Sd }

Endorsed "Filed and approved Feb. 11th 1861.

B. F. Shaw, Clerk,
per Joseph Ball, D. C.

State of Illinois } ss
 DeWitt County

Certificate } I, Benjamin F. Shaw Clerk
 of the Circuit Court within and for the
 County of DeWitt in the State aforesaid do
 hereby certify that the foregoing is a full
 true and complete exemplification of all the
 proceedings of Record in the cause of
 Jeremiah J. Rees against Kirtland F. Booth
 and Henry Kingdon impleaded with Orange
 D. Reed in an action of Trover, as
 appears from the Books and files of my office
 in testimony whereof I hereunto set my
 hand, and the Seal of said Court at
 Dixon this 12th day of March 1881.
 Benj. F. Shaw Clerk
 per Joseph Bull D.C.

Cost of this Transcript	\$8.50	
Clerk's Fees	10.60	Costs in the Cause
Sheriff's Fees	12.75	
Witness Fees	24.00	
County Fees	4.25	
	<u>\$60.10</u>	

And now comes the said appeal
in the cause aforesaid
1. Henry Kingon, and Portland F.
Booth - by Mess Kingon and
Stevens. their attorneys - and say
that there are manifest errors
in the record & proceedings and
also in reversing the judgment aforesaid
judgment in the aforesaid cause
in this to wit: That the said court sustained
the said demurrer to the ^{said} 2^d plea of
the said Booth and the demurrer to the
said 2^d plea of the said Kingon -
Whereas the said demurrer ought to have
been overruled. There is also error in this
to wit; that by the record aforesaid it appears
that the judgment aforesaid in form aforesaid
was given for the said Jeremiah J. Rees,
against the said Portland F. Booth, and
Alonzo Kingon, whereas by the law of the
land the said judgment ought to have
been given for the said Portland F. Booth
and Alonzo Kingon
and against the said Jeremiah J. Rees,
and the said Portland F. Booth, and Alonzo
Kingon, pray that the judgment aforesaid
for the errors aforesaid and other errors in the
record and proceedings aforesaid may be
reversed and annulled and altogether held
for nothing and that they may be restored
of all things which they have lost by
reason of such judgment &c
Henry Kingon & Stevens
Attys for appellants

And now comes said appellee by
 Wm. G. Gray Bushnell & very his attys and
 says that there is no error nor
 manner of error in said records
 or proceedings, & therefore prays
 that said judgment may be affirmed
 in all things. Wm. G. Gray

Gray Avery & Bushnell
 for appellee

137
 Kirtland & Bowler
 et al. vs 137
 Jeremiah J. Pies
 Transcript of Record

Filed March 9, 1861
 L. Leland
 Clerk

Pages 8, 9 & 10 paid by J. H. Pies

State of Illinois. In Supreme Court in and for the
third Grand division April Term A.D. 1861

Alonzo Ringoat
Ritland H. Booth
Appellants } Argument by H. Stevens
vs.
Serenahel. Rees
Appellee }

May it please the Court: This Cause is an action of trespass. Commenced by the Appellee - Rees - against the Appellants and one Orange D. Reed in the Circuit Court in and for Lee County. The declaration is in trespass to personal property, and in the usual form. Each defendant filed separate Pleas to the declaration. And as a motu proprio was entered as to the defendant, Reed, I shall dismiss all consideration of ^{the} Case so far as it relates to him, and ^{give} my attention exclusively to the Case so far only as it affects the other defendants below - Booth and Ringoat. Booth filed a Plea of the general issue. Also a Special Plea in bar, ^{setting} forth substantially that, on the 8th day of March A.D. 1859 Alonzo Ringoat (the other defendant below) Applied to him as Justice of the Peace in and for Lee County for a writ of attachment against the goods and Chattels of the said Rees. And ^{on} such Application made and filed with said Booth. As such Justice of the Peace his Affidavit in the words and figures following to wit:

" State of Illinois 3

" County of Lee 3 ss Affidavit

" The oath and Complaint of Alongo

" Kingon taken before R. H. Booth a Justice of the Peace
" of said County doth depose and say that J. B. Rees is justly
" indebted to Alongo Kingon in the sum of 45 ²⁵/₁₀₀ dollars
" and that the said J. B. Rees is not a resident of this state,
3 " As this affiant has been informed and believes, and
" asks that an attachment may issue against the personal
" effects of said J. B. Rees.

" Subscribed and Sworn to before me this 8th day of
" March 1859 A. Kingon (Seal)

" R. H. Booth (Seal) "

" That the said Alongo Kingon then and there gave a
good and sufficient Attachment bond as by law required.

" And that the said ^{defendant} Booth then and there having Jurisdiction,
issued, as he was by law required, a writ of Attachment
against the said Rees, which said writ was delivered to

4 " one Orange D Reed, a Constable in and for said County
of Lee, and that the said writ was afterwards, to wit: on
the 9th day of March AD 1859, returned by said Constable with
the following endorsement thereon, to wit: " March 9th 1859

" by virtue of the within, I have this day levied on the following
" property 6 chairs, one bureau and contents, one bedstead, one
" bag of bags, one lounge, one stand, 2 baskets of dishes, 4 Comforts
" one straw mattress, one Cotton mattress, one dozen pillows
" more or less, one clock, one trunk and contents, one looking
5 " Glass A. D. Reed Constable "

That said goods and chattels levied upon were the same therein before described as part and parcel of the goods and chattels, described in the plaintiff's declaration. That afterwards, to wit, on the 22nd day of March AD 1859 ~~xxx~~ such proceedings were had before the said defendant, Booth, as Justice of the Peace aforesaid, as that a Judgment was rendered in favor of said Alonzo Kinyon, and against the said plaintiff below for the sum of \$45²⁵/₁₀₀ and Costs of Suit. That thereupon in conformity with the statute in such case made and provided, said Booth, as Justice aforesaid, issued an Order of ~~said~~ Sale of said goods and chattels, so attached as aforesaid, to satisfy said Judgment. That said Order of sale was delivered to said Constable, and was duly returned executed. That all of which proceedings were the same trespass complained of by the plaintiff below against said Booth. Concluding with a verification.

The other defendant, Kinyon - Also filed two Pleas to said Declaration - 1st Plea of Not guilty. 2nd a Special Plea of Justification, that on the 8th day of March AD 1859 the plaintiff below was owing and indebted to him in the sum of \$46²⁵/₁₀₀ on a promissory note; that on the said 8th day of March AD 1859 he filed his affidavit with one Kirkland H. Booth, a Justice of the Peace in and for the County of Lee and State of Illinois; setting ~~forth~~ ^{forth} the same affidavit as was set forth in the said Second Plea of the other defendant below - Booth. That on the said 8th day of March AD 1859 on the issuing of a writ of Attachment by said Justice he filed his bond as required by law. That on the said 8th day of March AD 1859 the said Justice of the Peace issued

A writ of attachment in words and figures following,
to wit:

" Attachment writ.

" State of Illinois }
" Lee County } ss

" The people of the state of Illinois to my
" constable of said County Greeting: Whereas Alonzo Ringon
" has on this day filed an affidavit before R. H. Booth, a Justice
" of the Peace of the said County that J. G. Rees is justly indebted
" to Alonzo Ringon in the sum of $45\frac{25}{100}$ dollars, and
" that said J. G. Rees is not a resident of this state, as this
" affiant is informed and believes; And the said
" Alonzo Ringon having given bond and security ac-
" cording to law, we therefore Command you, that
" you attach so much of the personal effects of the said
" J. G. Rees, to be found in your County of value suf-
" ficient to satisfy the said debt and costs, and
" such property by you attached you are to secure
" or so to provide that the same may be liable to further action
" therein, before the undersigned Justice of the Peace, and
" in case that ~~seized~~ personal property of value suffi-
" cient can not be found, you will summon all persons
" that the plaintiff or his agent may direct to appear before
" me at my office in Amboy on the 12th day of March A.D.
" 1859 at 1 o'clock P.M. to answer what may be
" objected against him or them as garnishees and
" then have you this writ with what you have done thereon
" Given under my hand and seal this 8th day of March 1859

(Signed) R. H. Booth J. P. C.B.

And delivered said writ on said 8th day of March to one Orange D. Reed, ^{an} ~~and~~ Acting Constable in and for the County of Lee and State of Illinois. That on the 9th day of March A.D. 1859 said Constable, by virtue of said writ of Attachment, seized and took possession of the said goods and chattels belonging to the Plaintiff, and described in the introductory part of said Plea, and made due return of said writ on the 9th day of March A.D. 1859 with an endorsement thereon of his doings thereon to said Justice of the Peace. That afterwards, having advertised as required by law for service, on the 22nd day of March A.D. 1859 such further proceedings were had before the said Justice as that a Judgment was rendered in favor of the said Monzo Rinson and against the Plaintiff below for the sum of \$45 $\frac{25}{100}$ & three dollars and fifty cents costs. That on the 23rd day of March A.D. 1859, the said Justice of the Peace issued a Special execution, or order of sale in words and figures ^{following} to wit:

"State of Illinois
 " Lee County } ss The people of the State of Illinois to
 " any Constable of said County, Greeting: Whereas hereafter
 " to wit: on the 8th day of March A.D. 1859 Monzo ^{Rinson} sued out
 " before the undersigned, a Justice of the Peace in and for
 " said County an attachment against J. B. Rees and
 " caused said Attachment to be levied on 6 chairs, one barrel
 " and contents, one headstead, one bag of bags, one lounge, one
 " stand, two baskets of dishes, four comforts, one ~~stove~~ ^{stair} mattress,
 " one Cotton mattress, one dozen pillows more or less, one clock,
 " one trunk and contents, one looking glass, as the property
 " of said J. B. Rees, And Whereas afterwards to wit: on the 22nd

11 day of March 1859 Such further proceedings were had before
11 said Justice as that a Judgment was rendered in favor of
11 said Alonzo Ringon and against J. G. Reed for the sum
11 of 45 dollars and 25 Cents in a Plea of Assumpsit, besides
11 Cost of Suit, which are endorsed thereon and taxed at 3 dollars
11 and 50 Cents, and the property Attached Ordered to be
11 sold for the Satisfaction of said Judgment and Costs. You
11 are hereby Commanded that pursuant to said Judg-
11 -ment and in conformity with the statute in such
11 Case made and provided. You proceed without delay
11 to make Sale of said property Attached, and make said
11 debt and Costs, and make due return of your doings
11 ~~thereon~~ hereon. Given under my hand and seal this
11 23rd day of March 1859 (Signed) R. H. Booth *Just*
11 Justice of the Peace.

And delivered said execution to said Constable
Reed. By virtue of which said execution, said Constable
Reed after having advertised said goods and chattels
as by law required proceeded to sell the same at public ven-
-due for the purpose of satisfying said execution. which was
the same supposed trespass complained of in the decla-
-ration against him &c. Concluding with a verification
To the said Second Pleas of the said defendants below-
Ringon and Booth. the plaintiff, ^{below} interposed a General
Demurrer, which were sustained by the Circuit Court at
the May Term thereof A.D. 1860. and each of the said
Special Pleas of Justification were by the Circuit Court
held bad, and insufficient in law to bar the plaintiff's
action against the defendants below. Afterwards at

the November Term of said Court A.D. 1860 the said Cause came on to be heard and the issue, presented by the Pleas of not guilty, was tried by Jury in said Court, and a verdict for the plaintiff below was by the said Jury found in the sum of two hundred dollars. And afterwards at the same term, the defendants below - King and Booth - moved the said Circuit Court in arrest of Judgment and for a new trial. Which ^{to which the ruling & decision of the Court the defendants, the excepted} motions were then by the Court overruled, and thereupon Judgment was rendered against the defendants below in favor of the plaintiff below in the sum of two hundred dollars to which Judgment the said defendants did also except. And from the same have appealed to this Court.

The only question presented by the Appellants for the consideration of this Court is, whether the Circuit Court erred in sustaining the demurrers to the special Pleas of Justification. The Appellants claim that upon both principle and authority the Pleas were good in law, and if true would ^{have} been an effectual bar to the action.

The sole question presented in testing the validity of those Pleas is whether the ~~the~~ proceedings in the Attachment Case, described in the Pleas, and the Judgment obtained under those proceedings, ^{were} void or only voidable. The Circuit Court held them absolutely void. And upon that sole proposition sustained the demurrers. On the contrary I claim, and think I shall be able to convince this Court, that those proceedings and Judgment are at least only in

- valid and hence not void. The proceeding which
it is claimed renders the said Judgment void is
the affidavit made by the Appellant Rinyon for
the purpose of procuring the writ of attachment. He states
in his affidavit positively that Rees was indebted to him
in a sum therein named; but as to the cause for the
issuing of the writ - the nonresidence of Rees - he swears
upon information and belief instead of stating the
same positively upon knowledge. Does this objection to
the affidavit make the Judgment void or only void
- able? I readily concede that the affidavit is irregular,
and had the defendant in the attachment proceed-
- ings - Rees - appeared and objected to the same upon
that ground, the Justice should have dismissed the
attachment, unless the plaintiff in those proceedings
had filed an amended or new affidavit. If the Judg-
ment obtained therein ^{is} ~~is~~ a nullity and void then
the enforcement of the same would constitute a trespass.
But on the contrary if it was only voidable then
trespass would not lie. It is perhaps useless to cite
authorities in support of this proposition. Undoubtedly,
in the absence of legislative provision to the contrary,
the affidavit, being the foundation of the action
and which alone gave the Justice Jurisdiction to
issue the writ - would have been absolutely void and
of no effect. But the Sixeth Section of the Eighth Chapter
of the Statutes of this State, by Purple, provides that "no at-
" - tachment shall be abated or dismissed for want of
" form if the essential matters in this Chapter be substantiated
" - by set forth;

" And Justices of the peace shall allow any amend-
 " = ment to be made of any affidavit, writ, return, or bond,
 " or allow a new affidavit or bond to be filed which may
 " be necessary to obviate objections to the same; And in
 " Cases of Appeals to the Circuit Courts, the Courts shall
 " allow amendments as aforesaid." Now clearly
 under the provisions of this statute, had the defend-
 -ant - Res - Appeared and "Objected" to the affidavit
 in question - Ringon could have amended the same,
 or even filed a new one that would have "obviated
 the "objection" The statute cited makes it imperative
 upon the Justice to allow such Amendment if
 asked. The defendant in the Attachment - Res -
 was duly brought into Court - legal service by pub-
 -lication was duly made upon him - and Constructive
 -ly he was, in Contemplation of law, all the time in
 Court and participated in the proceedings, and is ^{bound} ~~bound~~
 by them unless objections were by him made thereto
 either in that Court or on Appeal to a higher
 Court. Unless the Justice had not acquired
Jurisdiction of his person or property. But it is claim-
 ed by Res that the Justice who issued the writ of ~~the~~
 Attachment did not acquire Jurisdiction over him.
 because of the insufficiency of the affidavit. And
 this again brings us back to the consideration of the
 question as before stated, whether the affidavit was
void, or voidable only. We have seen that by
 Statute law, in force when this affidavit was made,
 the same was amendable. Now we affirm,

that upon reason and authority, Any proceeding which may be Amended is not, and Can not be void. First upon reason. A void thing is simply no thing. A Nonexistence. A Nonentity. So, When it is said that a void thing Can be Amended, it is simply affirmed that nothing can be amended. There must be something by which to amend. When legislative or Judicial Authority or power says that a proceeding may be Amended, it ~~is~~ ex vi Termini Says that it is not void. Omnipotent Power alone Can dispose of the Absurdity. For we are informed in Holy Writ - that "in the beginning ~~the earth was without form void~~ Let Omnipotence brought it into being and gave it existence." ~~And the earth was without form void.~~ But it is quite problematical whether any legislative or Judicial power, at least since the Creation, has ever been adequate to the Successful performance of such a mathematical impossibility. The case cited is the only one on Record in which vitality has been ascribed to a void. I could maintain and insist that upon authority that if the Affidavit was amendable then it was not void. First, I cite the Case of Clark vs. Roberts Breese R. P. 222. In that case Roberts, who was the plaintiff below, made an affidavit before a Justice of the Peace, in which he swore that Clark was indebted to him in the sum of one hundred dollars, and as a cause for the issuing of the writ of attachment, deposed that "Clark was privately moving his property out of the County" and then prayed for the attachment. Judgment was rendered in the Justice's Court in favor of Roberts in the sum of one hundred dollars, from which judgment Clark appealed to the Circuit Court

for Madison County. In that Court Clark moved to quash the attachment upon the grounds of the insufficiency of the affidavit. And at the same time Roberts moved to amend the same. Clark's motion accordingly an amended affidavit sufficient in law was filed by Roberts. Was overruled, and that of Roberts sustained. To which ruling Clark excepted. Judgment was again rendered for Roberts against Clark by the Circuit Court for Montgomery County - a change of venue having in the mean time been taken. From which last Judgment Clark appealed to this Court. In the consideration of that case this Court among other things says

" The affidavit was necessary to give Jurisdiction to the
" Justice. It does not comply with the requisition of the
" statute; hence all the subsequent proceedings are void. *Montg.*
" *vs. Handy* 2 Hen. & Montf. 308. The Courts in Kentucky sanction
" the same doctrine. The Amendment of the affidavit
" will not help the previous illegal proceedings. An affida-
" -vit, being the foundation of the proceedings by attachment,
" must be framed agreeable to the provisions of the statute,
" otherwise, the Justice has no Jurisdiction. The Circuit Court
" ought to have quashed the attachment. The Judgment
" below must be reversed with costs." Here this Court ~~has~~
held the affidavit to be absolutely void, notwithstanding
notwithstanding an amended affidavit, good in law, had
been filed. And the Court say that the Amendment of
the affidavit did not help the prior illegal proceedings.
Why did not the amended affidavit help the previous
illegal proceeding? Because the amendment was the
performance of an act that, in law, could not be done.

And it could not be done, because there was nothing to amend. There was nothing to amend because the first affidavit made by Roberts was void. Is not the conclusion irresistible from that decision, that had the affidavit been amendable, then the same would ^{have} not been void. If Roberts' Amended Affidavit, in that case, could have given any vitality to the subsequent legal proceedings, then the first affidavit made by him would not have been void. But this Court say that his amended affidavit did not give or impart vitality. Therefore we come to the same conclusion that this Court did, that the affidavit was void. But the Appellee in the case at bar may say, that this Court, in the case of Clark vs Roberts, held that the amended affidavit filed in that case did not "help" the proceedings ~~at that~~ subsequent to the making of the first affidavit, because the filing of Roberts' amended affidavit was an unauthorized act in law. To which proposition I readily assent. When that decision was made there was no statute whatever in force, as there is now, that amendments may be made to ^{the} affidavits for the purpose of procuring the writ of Attachment. But now by positive statute, authority is conferred upon parties to amend. And if we can amend, then, if there is any force or logic in our previous reasoning, the proceedings amendable were not void. And if not void trespass would not lie, and the Judgment below should be reversed. ~~This may not be sound reasoning. But I frankly say that I have not the ingenuity to detect the fallacy, if there be any.~~

I Conclude therefore that when the legislature provided that proceedings of the kind ⁱⁿ question could be amended that it in effect provided that defective proceedings, within the purview of its ^{remedial} ~~remedial~~ provisions, were not void; unless, indeed, the objecting party, who seeks to take advantage of any omission or defect, appears in Court and presents his objections so that the party may amend, and upon his ~~failure~~ ^{neglect} to amend the Court dismisses his proceedings because of ^{his} neglect or refusal to "obviate the objections." And even in that event I do not think the proceedings objected to would be void, but only erroneous, and subject to be taken advantage of unless cured by amendment.

The next authority I cite in support of the proposition that any amendable proceeding is not void, is the Case of Meire vs. Bush 3d Vol. of Scammon R. P. 21. That Case was commenced in the Circuit Court for So Doris County, but after the statute, allowing amendments in attachments, proceedings, was enacted. So that in this decision we have the first authoritative Construction of the statute in question, if it indeed needed one. The objection to the proceedings in that Case was, that the Condition of the Attachment bond was not as required by law. The defendant did not appear in the Circuit Court, but Judgment was taken against him by default. But he afterwards brought the Cause to this Court on error. The first Assignment of Error is as follows: "The Attachment bond executed by Bush contains no Condition to pay costs

" to the defendant, in case the plaintiff should be
" cast in the suit." Upon this Assignment of
error this Court says: "In support of the first error
" assigned, reference is made to the Case of Jonathan Clark
" v. Levi Roberts in which it is decided that the want of a
" legal affidavit, it being the foundation of the action, is
" fatal. When that decision was made in 1828 we had
" no statute such as the present authorizing Amendments.
" The statute of 1833 under which this suit was instituted
" was enacted to prevent the loss and inconvenience
" to which parties suing by attachment were exposed
" by the carelessness, ignorance, or unskillfulness of those who
" might prepare the paper; and hence the provisions
" of the twenty eighth section. The bond in this case is not
" in exact conformity with the sixth section and the form
" given in the seventh, ~~one~~ of the Conditions, namely,
" to pay the costs to the defendant in the attachment, if the
" plaintiff should be cast in the suit, being omitted.
" This defect can not now be assigned as error; the par-
" ty should have taken the objection in the Court below
" where the plaintiff in the attachment, could have av-
" ailed himself of the provisions of the twenty eighth
" section, by filing a new bond. His not having done
" so should be considered as a waiver of the objection. His
" not appearing, and suffering judgment to pass, by default
" can make no difference in the construction which should
" be given to the several provisions of the Act. It is manifest
" by the object and intention of the twenty eighth section
" to save a plaintiff in an attachment, from any injury

" resulting from mere formal defects in papers
" which are prepared by others. It would then be again
" - not its spirit to reverse a Judgment which he has obtained
" for an informality which does not affect in any manner
" the merits of the Cause, or prejudice, in any way, the rights or inter-
" - est of the defendant; the affidavit being regular, and the Court
" having Jurisdiction of the Cause."

Now, in this decision it is expressly stated by the Court that the omission by the plaintiff in the attachment to file such ^a bond as required by law, could not be assigned as error in this Court; that ~~his~~ ^{of the defendant} failure to take advantage of the defective bond in the Circuit Court, where the action was commenced, was a "waiver" of the objection that might have been raised in the Court below. And the very best of reasons is assigned in support of this decision - that had the objections been made in the Court below, the plaintiff in attachment could have "availed" himself of the statute allowing amendments, and thus have obviated the objections. So we say in the case at bar, that had Rees appeared in the Justice Court and made his objection to the affidavit, and the objection was not obviated by amendment, then clearly the Justice should have dismissed the attachment. But Rees did not see proper to appear - although legally summoned, but stood back and let the plaintiff in attachment take Judgment against him - and also neglected to appeal ^{from} the Judgment rendered by the Justice, thereby depriving the plaintiff in attachment

from "waiving" himself of the statute allowing amendments. For clearly it would have been sufficient for Ringon to have amended his affidavit after "objections" thereto had been made. It would be a high handed outrage upon Justice to allow the defendant in attachment to thus accomplish indirectly what he could not do directly - deprive the plaintiff - Ringon - of Amendment - when the law provides that he may. But Rees ^{says} may in reply to this, that it was the duty of Ringon to have made a good affidavit in law. And he not having done so he omitted such duty at his peril. But this Court says in the Cause last cited that the failure of the defendant in attachment to "object" to a defective proceeding in the Court where the party could obviate the objection by Amendment was a "Waiver" of the defect complained of. Now, in the Case last cited, had the proceedings in the Circuit Court been void in consequence of the failure of the plaintiff in attachment to file a legal bond, then the objection could not have been waived. For, before I conclude, I shall perform what this Court may consider ~~an~~ useless task; of establishing the proposition - that a void proceeding can not be waived. That it never is too late to take advantage of a void proceeding. And here I may be allowed to digress from the main line of argument, and direct attention to the fact that in the Case of Miere vs. Bush, last cited, this Court did not

remand the Cause for the purpose of allowing the Plain-
 tiff below, to amend the bond, nor did this Court order
 the same amended. But to this day the bond remains
 as first made. The Court holding that the defect was
 cured by the omission of ~~Bittel~~ defendant in attach-
 -ment to object. ~~What~~ plainer case could be given
 in support of the position of the Appellants, in the
 case at ~~bar~~, that the omission of Rees to appear
 and object to the Affidavit in question, is in law,
 a waiver of the objections? And if waived then (if
 the other proposition that void proceeding can not be revived,
 be true) it follows incontrovertibly that the Judgment
 against Rees in the Justice's Court was not void.
 But it may be said that the case of Miere vs. Bush
 is not analogous ^{to the case at bar} and therefore not in point, and hence
 not authoritative upon this case. Why not anal-
 -ogous? Because, it is said, the defect in that case was
 in the bond. That in this case the objection is to the affida-
 -vit. That the Affidavit, being the first step
 taken in the Cause and being the foundation of the
 action, and upon which the Jurisdiction of the Court
 rests, must be sufficient or the Court could not acquire
 Jurisdiction of the defendant. To this Argument I have
 two replies to make. First: The statute allowing the
 party to amend in attachment proceedings extends to
 the affidavit with the same force as to any other
 step taken in the progress of the Cause. And the
 Court says in the case of Miere vs. Bush, in response
 to the reference to the case of Clark vs. Roberts (where

the question was upon the Sufficiency of the
Affidavit that "when that decision was made in
1828 we had no statute such as the present, Authorizing
Amendments. The Statute of 1833 under which this Stat
was instituted, was enacted to prevent the loss and
inconvenience to which parties suing by Attachment
were exposed by the Carelessness, ignorance or unskillful-
ness of those who might prepare the paper; and hence
the provision of the twenty-eighth Section." Now is
it not clear that the Court here more than intim-
ates that had the Statute allowing Amendments been
in force when the decision ^{in the Case} of Clark vs. Roberts, was made
that the doctrine of that decision would not have
been law? In Short is it not a reversal of the decis-
ion in the Case of Clark vs. Roberts? That rever-
sal being based upon the Statute allowing Amend-
ments. Secondly: But to remove all doubt ^{from} upon
the question, whether the Case of Moore vs Bush is in
point in the Case at bar I Cite the Case of Frank Et al
vs. Charles P. King Administrator of George Almarode
3rd Vol. Scammon R. P. 144. In this Case the question
arose distinctly upon the Affidavit. And hence
if ~~there was~~ any Jurisdictional question ~~that~~ could
be raised in any Case upon the Sufficiency of the affide-
-vit, it would be in this Cause last cited. And if
any Case can be Authority in an other, this last Cause
referred to must be in point and Conclusive of
the Case now before the Court. But to the Case.
The Cause arose out of the Statute giving persons

in ~~the~~ employment on Steamboats ^{running on} ~~any~~ navigable waters of this state, the right to proceed against the boat by Attachment. The law requires an affidavit of the necessary facts to be made before Attachment issues. One of the facts, required to be shown to before the writ issues, is that the boat is traversing some navigable water of the state. This fact was not stated in the affidavit of Almarode. For this omission it ^{was} ~~was~~ moved in the Circuit Court for Peoria County (the action having been commenced in that Court) that the suit against the boat be dismissed for the want of a sufficient affidavit. At the same time Almarode entered a motion to amend the affidavit, which last motion the Court overruled, but allowed the motion to dismiss the suit. On the next day Almarode's Attorney entered a motion to set aside the Judgment of dismissal and to reinstate the Cause on the docket, which was Allowed by the Court to which I think the owner of the boat ~~excepted~~. On the same day upon Motion of Almarode leave was given him to amend the affidavit which was likewise excepted to. The affidavit was accordingly amended so as to obviate the objection raised. Several other steps were taken, but none material to ^{be} noticed here. The Cause was appealed to this Court. The second Error Assigned was: "In granting Almarode leave to amend his affidavit." Upon this Assignment, this Court says

" The second Assignment of Error involves the Construction
" of the 'Act authorizing the seizure of boats and other
" vessels by Attachment, in Certain Cases.' This Act entitles
" certain persons, among them engineers, to the remedy by Attach-
" -ment against any boat or vessel built, repaired, or equip-
" -ped, or running upon any of the navigable Waters ~~of~~
" ~~State~~ within the Jurisdiction of this State. The Affidavit
" of Almarade, as first made, did not state that the
" Services for which the Claim was made by him, were
" rendered on the boat while she was running on the nav-
" -igable waters of this state, or that the boat was thus running,
" and for want thereof, it was clearly defective, and all
" proceedings under it would have been void and of no
" effect, were it not that the same act directs, in the third
" section, that 'the like proceedings shall be had as in other
" Cases of Attachment.' This has reference to the general attach-
" -ment law, passed on the preceding day, by the twenty-eighth
" section of which, it is declared that no writ of Attachment
" shall be quashed, &c., on account of any insufficiency of the
" Original Affidavit, if the plaintiff, or some credible person for
" him, shall cause a legal and sufficient Affidavit to be fil-
" -ed, and in that event, the Cause shall proceed as if such
" proceedings had been originally sufficient. This law was pass-
" -ed, doubtless, to remedy the evils arising out of the
" law as it existed at the time the decisions in the
" Cases of Clark vs. Roberts and Phelps vs. Young
" were made. We think under the section of this act
" just quoted, the amendment was allowable, the
" statutes being in pari Materia. Must be construed
" together, so as to effect their several objects."

(6)

Here the Court says that the proceeding, would have been void were it not for the statute allowing ~~altering~~ amendment. In other words the affidavit, being amendable, is not void. And this notwithstanding the affidavit in that case was necessary to confer Jurisdiction. But it may be said that in this ^{case} the defendant in attachment appeared and objected to the affidavit upon the grounds of its insufficiency, and that the plaintiff upon such objection being made, moved to amend, which motion was finally allowed, and that for this reason the case is not analogous. I can not see how the defendant's appearance in that case would make any difference, if it was necessary that a sufficient ^{affidavit} should have been made in the first instance, that Jurisdiction might be acquired. But I think that the decision establishes this proposition:—that an affidavit although not complying with the requirements of the law in attachment proceedings, may be good and sufficient to confer Jurisdiction, if no objection be made to the same; or if objected to, the same be amended so as to obviate the objection. If amended, or the objection ^{by the defendant's neglect to object,} waived, in either case the affidavit will be considered sufficient in law. But ^{if} ~~any~~ ^{be for a moment supposed} ~~should~~ ^{on this point,} that ~~the~~ defendant's appearance in that case was the reason why this Court held the amendment allowable, that ^{supposition} ~~is~~ ^{is} entirely ~~disproved~~ ^{disproved} by the decision of the

Court in the Case of Inger vs. Hunt 21st vol. Illinois
R. P. 80. In that case the affidavit for attachment
was objectionable for precisely the same objections that
are raised to the affidavit now under consideration
with this difference; that in that case the indebted-
-ness, as well as the defendant's residence was sworn to
upon information and belief. Whereas ⁱⁿ the case now
under consideration, the indebtedness is sworn to positively.
But perhaps this difference is nothing in our favor. Cer-
-tainly nothing against us. The defendant in that case
did not appear or raise any objections to the affidavit.
But made default. Stood back and let judgment
pass against him in the Circuit Court, the suit
having been commenced there. One or two years
after judgment against him in the Circuit Court,
the cause was brought ^{to} this Court on error. And
this was the first appearance of the defendant in the
cause. One of the errors assigned was upon the
sufficiency of the affidavit, upon the point mentioned.
This Court very distinctly says that the affidavit was
irregular; and after briefly discussing the same, the
Court says: "For this error the judgment of the Court below
" is reversed, and the cause remanded, with leave to ~~amend~~
" amend." Here the Court speaks of the objection to the
affidavit only as "error." It is not deemed by this Court
void; for it orders the cause remanded with leave
to amend the affidavit. What nonsense it would
be to say that the judgment in that case was absolutely

But still one more authority more ~~quoting~~ upon this point.

Mr. Groves in his excellent book on Practice on Page 121 Says
"It has been laid down in the books of practice that in the several cases
"above enumerated, where the process is not merely voidable, but void, it will
"be set aside on application, and can not be amended."

See also Johnson R. 1904 41 K Johnson R. 309

void. when the Cause went from the Circuit Court
where Judgment was rendered to this Court, and back
again to the Court below with leave to Amend. There
must have been some life left in the Judgment, or
this Court would have simply reversed the Judgment,
without making any further Order in the Cause. And
all this was done notwithstanding the objection to the
Judgment went to the Affidavit - the foundation of the
action, and notwithstanding the defendant in the
Attachment proceedings did not appear in any Court
where amendment could be made, and object to
the affidavit. This decision establishes two points in
the Cause now under Consideration. First: That ~~that~~ the
affidavit - although it is the foundation of the action and
gives the Court Jurisdiction - yet may be amended
even after Judgment taken by default. Second: That
that defendant, ^{failure to} appear and make his objection to the
affidavit, and the taking of Judgment against the default
- and upon such insufficient affidavit will not render
the Judgment void. Is not this a fair deduction from
the decision last cited? And if so, how can the
Appellee, Recs, expect that the Judgment below,
in this Cause, will be Affirmed. The Circuit Court
held the Judgment, under which the Appellants suc-
tified, Absolutely void. But this Court plainly says in
effect, (from the Case last cited,) that the Judgment was
not void. It was not void because amendable.
Have I not then fairly established the proposition first
proposed? That a void proceeding can not be amended?

Or in other words that an Amenable proceeding can
not be void. But the affidavit in this Cause is amena-
-dable. Therefore the affidavit is not void. And if not
void then trespass would not lie against the Appel-
-lants for any step they took in enforcing the judg-
-ment, under which they Sustained in their Special
Pleas. But Counsel for the Appellee, may say, in a
spirit of despair, that not any of the Cases cited
are in point. Why not? Perhaps it may be said
that in ^{all} ~~some~~ of them, the defendant in attachment
appeared in some Court, and raised his objections
to the illegal proceedings. Of Course he did, or the
questions never would have been adjudicated. But
perhaps it will be said that ^{he} the defendant-Rees, appear-
ed in the Justice Court and made his objections, or
had he failed in that, but subsequently appealed to the
Circuit Court, ^{and} made his objections there, which could
have ^{been} done, the plaintiff's ⁱⁿ attachment, could by law
have obviated the difficulty by amendment. But in-
-asmuch as the defendant-Rees did not so appear
and object, and did not subsequently appeal to the
Circuit Court, but stood by with arms folded
and permitted the plaintiff in attachment to take
Judgment against him by default; and also ~~but~~
remained quiet in ambush until it was too late
to appeal to the Circuit Court, where if the question
upon the sufficiency of the affidavit had been raised,
the same could have been "obviated" by amendment;
that because of all this neglect and omission of Rees,
that therefore the judgment is void.

Upon principles of Justice I can not see how the defendants neglect, ^{and} laches could destroy a single right of the plaintiff. To me it looks absurd to say that the plaintiffs proceedings would have been good if the defendant -ant had appeared in the Cause for the first time in the ~~Supreme~~ Supreme Court after Judgment had been taken against ^{him} in the Court below; but that had he failed ~~altogether~~ to appear in the Cause, let Judgment be taken against him, failed to appeal, within the time allowed by law, permit the plaintiff to proceed and enforce the Judgment - then turn around and claim that the proceedings are all void. When had he appeared and made his objections to the Court, an amendment would have been allowed. The plaintiffs rights, in that event, would be measured by the defendants neglect. Surely the defendants neglect should not make the plaintiffs acts void. Should Courts thus hold out bait to dilatory debtors thus to remain silent; permit themselves to be sued; stand with folded arms, and let Judgment pass against them by default; fail to appeal until too late; wait until the statute of limitations bars the plaintiffs claim, and then when the Judgment is sought to ^{be} enforced against them, to permit them to sue the plaintiff and the officers of the law in trespass for enforcing a Judgment by them claimed to be void, when, if void, is the direct result of their own fault and omission? And yet this is the theory of the Appellee. The establishment of this rule is his only and last hope of success.

This would be a very convenient mode of paying debts
For their liquidation would be successful, just in propor-
-tion to their ^{of the debtor} neglect and ~~Chicanery~~ Chicanery. And unsuccess-
-ful in proportion to the amount of honesty with which the
debtor may ^{be} affected. This Court will readily see that
a debtor might easily pay off his debts with his surplus
negligence and dishonesty. Legal proceedings would be a
game, at which the most adroit & cunning would be most
successful. If this Court should hold the Judgment ob-
-tained by Ringon against Rees void and thereby hold the
Appellants liable in trespass for ^{the} collection of that Judg-
-ment - the result ^{would} be, that the claim against Rees would
be barred by the statute of Limitations, and therefore disbar-
-red in law, and he would at the same time obtain
the full cash value of the property taken on execution
to satisfy the Judgment against him. But, ^{again} Suppose
that the claim that Ringon held against Rees was
not barred by the statute of Limitations. And that,
(upon the supposition that the Judgment obtained
against Rees was void,) Ringon should commence
another suit upon the claim, and Rees ^{should} plead a
former recovery; would it be competent for Ringon
to reply or prove that the ^{former} Judgment was void?
But again suppose this Court should hold the said
Judgment void, and that thereupon the ~~Appellants~~ Appellants
are liable for the Judgment obtained against them in
the Circuit Court, would there be any mode given
~~at all~~ ~~with the money~~ ~~xxx~~ whereby they could collect
the claim ~~of~~ against Rees? Surely not if Ringon could

not reply to the plea of former recovery that the same was void. But I fail to see why a Judgment should be held ^{not} void ^{when the person against whom the same was rendered appears in that cause} in the Court of last resort and raises that question directly. And yet if the defendant does not appear in that cause, but commences another proceeding, distinct from the first, that the Court will hold in the second cause what it did not in the first - that ~~the~~ the first is void. Now this Court has held ^{in effect} that if the defendant - Res. - had appeared in the attachment proceeding then the same would not have been void; for if he had not raised the question upon the sufficiency of the affidavit, it would have been a waiver; and had he raised the question then Kingon could have amended. In either case the Judgment would not have been void. But because the defendant in attachment did not appear, therefore the plaintiffs proceedings are void. Or, to state the legal proposition in other words - it lies within a defendant's power to render the plaintiffs proceedings a nullity by his omission to appear in that cause. That the plaintiffs proceedings do not so much depend upon their own vitality, as upon the defendants negligence. This enormity carries with it its own antidote. Is this Court prepared to sanction such a doctrine? It is a Maxim in law, that a person can not do indirectly, what he can not do directly. The Appellee in this cause requires

Could have obtained a decision from this Court, had he appealed from the Judgment in the ~~attachment~~ Cause, that the same was void. This Court, as has been shown, has more than once decided that point. Now will he be allowed to do indirectly the same that he could not do directly? But such would be the result if this Court declares in this Collateral proceeding what it would not in the other case - that the Judgment therein is void. Will the Court thus impeach that Judgment Collaterally? Is this Court prepared to lend its sanction to this ^{savage} ~~Indian~~ mode of warfare? To permit a defendant to lie in ambush and decoy the plaintiff in his legal trap, and then pounce upon his victim, when he is unarmed with his legal weapon - the right to amend. Suppose Kingon had commenced his action ^{by} of attachment in the Circuit Court, and that the affidavit had been objectionable for the same reason that Complaint is made against ^{one} ~~the~~ under discussion; and the defendant having failed to appear and make objection, the plaintiff took Judgment against him; execution issued to satisfy the Judgment and real estate sold on ^{the} execution; a deed made to an innocent purchaser of the land. Would Ejectment lie against such purchaser? Certainly it would if the Judgment obtained was absolutely void. For no person can obtain any rights under a void Judgment. If a promissory note is declared void by statute, because tainted with usury, it is not valid, even in the hands of an innocent purchaser before due. Why? Because it is void; and rights can not grow out of nothing.

The reasoning in the Case of ~~at~~ ~~the~~ Doorhees et al
 vs. The Bank of the United States 10th vol. of Peters's S. Court
 Reports, is so exactly in point in this Case that I can not refrain
 from quoting the same. That suit was an action of Eject-
 -ment. The suit was defended upon the ground that the
 plaintiffs title was based upon a Judgment in attach-
 -ment proceedings not regular. The irregularity complained
 of was that the record in the attachment proceedings did
 not ^{show} affirmatively that any affidavit was made by the
 attaching Creditor. The Court in that Case after assum-
 -ing that the affidavit was not made, argued from thence
 that the omission could not affect the validity of the
 Judgment attacked thus collaterally. And in speak-
 -ing of the Judgment in ^{the} attachment proceedings, which
 was so attacked, the Court says: "So long as this Judg-
 -ment remains in force, it is in itself evidence of the right
 of the plaintiff to the thing adjudged, and gives him a
 right to process to execute the Judgment; the errors of the
 Court, however apparent can be examined only by an appel-
 -late power; And by the laws of every Country a time is fixed
 for such examination, whether in reversing Judgment, issu-
 -ing execution, or enforcing it by process of sale or imprison-
 -ment. No rule can be more reasonable, than that the per-
 -son who complains of an injury done him, should
 avail himself of his legal rights in a reasonable time, or that that
 time should be limited by law. This has wisely been done by
 acts of limitation on writs of error and appeal, if that time elap-
 -ses, Common Justice requires, that what a defaulter can not
 do directly in the mode pointed out by law, he shall not be

permitted to do collaterally by evasion. A Judgment or
execution irreversible by a Superior Court, Can not be de-
clared a nullity by any Authority of law, if it has been ~~re-~~
^{rendered}
~~by~~ by a Court of Competent Jurisdiction of the parties, the
Subject-matter, with authority to use the process it has issu-
ed; it must remain the only test of the respective rights
of the parties to it. If the validity of a sale under its process
can be questioned for any irregularity preceding the Judgment,
the Court which Assumes such power places itself in the
position of that which undoes it, and deprives it of all
power of regulating its own practice or modes of proceeding
in the progress of a Cause to Judgment. If after its rendi-
tion it ~~is~~ is declared void for any matter which can be
Assigned for error only on writ of error or appeal, then
Such Court not only usurps the Jurisdiction of an appel-
late Court, but collaterally nullifies what such Court
is prohibited by express Statute-law from even reversing.
If the principle once prevail, that any proceeding of a
Court of Competent Jurisdiction can be declared to be a
nullity by any Court, after a writ of error or appeal is barred
by limitation, every County Court, or Justice of the peace in
the Union, may exercise the same right, from which
our own Judgments or process would not be exempted.
The only difference in this respect between this and any
other Court is, that no Court can revise our proceeding;
but that difference disappears, after the time prescribed
for a writ of error or appeal to revise those of an inferior
Court of the United States or of any State; they stand on
the same footing in law. The errors of the Court do not

impaired their validity; binding, till reversed, any objection
to their full effect must go to the authority under which
they have been conducted. If not warranted by the Con-
stitution or law of the land, our most solemn proceed-
ings can confer no right which is denied to any Judicial
act under color of law, which can properly be deemed
to have been done Coram non Iudice; that is by
persons assuming the Judicial function in the given
case without lawful authority. The line which sep-
arates error in judgment from the usurpation
of power is very definite; and is precisely that which
denotes the cases where a judgment or decree is rever-
sible only by an appellate court, or maybe declared
a nullity collaterally, when it is offered in evidence in an
action concerning the matter adjudicated, or purporting
to have been so. In the one case, it is a record importing
absolute verity; in the other, mere waste paper; there can
be no middle character assigned to Judicial proceedings
which are irreversible for error. Such is their effect between
the parties to the suit; And such are the immunities
which the law affords to a plaintiff who has obtained an
erroneous judgment or execution. It would be a well-
merited reproach to our jurisprudence, if an innocent purchaser,
no party to the suit, who had paid his money on the faith of an order
of a court, should not have the same protection under an erro-
neous proceeding, as the party who derived the benefit accruing
from it. A purchaser under Judicial process, pays the plain-
tiff his demand on the property sold; to the extent of the purchase
money, he discharges the defendant from his adjudged obligation.

" Time has given an inviolable sanctity to every act of the
" Court preceding the sale, which precludes the defendant from
" controverting the absolute right of the plaintiff to the full benefit
" of his Judgment; And it shall not be permitted that the
" purchaser shall be answerable for defects in the record, from
" the consequence of which the plaintiff is absolved. Such
" flagrant injustice is imputable neither to the common
" or statute law of ^{the} land. If a judgment is reversed for
" error, it is a settled principle of the common law, ~~and~~
" coeval with its existence, that the defendant shall
" have restitution only of the money; the purchaser shall
" hold the property sold. And there are few, if any states
" in the Union who have not consecrated this principle
" by statute. This great rule, established for the protection
" of purchasers on the faith of Judicial process, will be
" utterly prostrated; encouragement will be given to de-
" fendants in judgments, their heirs and privies, to take
" advantage of the security into which honest purchasers
" have been lulled; if any Judicial proceeding which
" could stand the test of ^{a writ of} error, or appeal, if taken in time,
" or had become irreversible directly, could be avoided
" collaterally. Acts of limitation become useless if a defend-
" ant is allowed to evade them by awaiting judgments or
" executions, on the suggestion of defects or omissions in
" the record, which can be reviewed only by an appellate
" Court; a direct premium is held out for delaying
" the resort to the mode pointed out by law for correcting the
" errors of Judicial proceedings. His debt is paid by
" the purchaser; the property purchased is restored to the de-
" fendant without any obligation to refund."

What ^{language} mounts the point in the case now under con-
 sideration could be used? So long as the Judgment in
 the Attachment Cause remains in force just so long
 (says the Court) the Plaintiff in that Judgment has a right to process to
 execute the same. "The errors of the Court, however appa-
 rent, can be examined only by an appellate power." Now
 take this last sentence, and let us see what it estab-
 lishes in the case at bar. This Court has said in
 the case of Dyer vs Hunt 21st Illinois R. that a Judg-
 ment, obtained in a proceeding in which an affidavit
 objectionable for the same cause that lies against Ringon's
 affidavit, was only "erroneous." That for that "error" the
 cause was remanded with leave to amend. Now the
 Supreme Court of the United States, in the foregoing opin-
 ion, says that, that "error" however Apparent, can
 be examined only by an "appellate power." Was the "error"
 in the case of Ringon vs. Rees, sought to be examined in
 an "Appellate Court" on Appeal? No. But such "exami-
 nation" was attempted in a "Collateral" proceeding. And,
 we not only deny the law as declared by the Circuit Court,
 but protest against the mode of its procedure. But
 says the Supreme Court, in the opinion quoted: A "time" is
 fixed for such "examination." What examination? The
 examination of the errors by an "appellate power." And
 that if that time elapses "Common Justice Justice requires
 that what a defendant can not do directly in the mode pre-
 scribed out by law (that is by appeal) he should not be permitted
 to do collaterally, by evasion." How Collaterally? Just what
 Rees has sought to do, by waiting until too late to appeal, and

have the examination by an "Appellate power." But proceeding "collaterally by evasion." Thereby depriving the plaintiff in that cause of his undoubted right to amend. Instead of appealing directly from the Judgment he complains of, Rees seeks to accomplish the same end indirectly by evasion. Thus deriving the same benefit for him; but denying to us indirectly, ^{to} what we would be entitled directly - the right to obviate the objection of which he complains. And again, says the Supreme Court: if after the rendition of the Judgment complained of, it is "declared void" for any matter which can be assigned for error, then such Court not only "usurps" Jurisdiction of an Appellate Court, but collaterally nullifies what such Court is prohibited from reversing. And the same Court well says that if the principle be once established, that a proceeding can be ~~declared~~ declared a nullity by any Court, after a writ of error or appeal is barred by limitation, (as in the case of Reynolds v. Rees) every County or Justices Court can exercise the same right. And that Court truly says that it would be "usurpation" for a Court to declare that a Nullity collaterally, which is reversible only by an "Appellate Court." It would not be difficult to convict the Circuit Court of usurpation under this rule. And the consequences flowing from such a mode of reversing erroneous or void Judgments are very correctly stated in the foregoing extract from the opinion of the Supreme Court of the United States. It would not be difficult to see the confusion that results from a toleration of such a practice. Under it, a Justice of the Peace might declare the Judgment

of the Circuit Court void and of no effect. Suppose
Rincon had commenced ~~his~~ ~~case~~ his attachment
suit in the Circuit Court instead of in a Justice's
Court; and that the affidavit was ^{as} objectionable as
the one under consideration; and that he had taken
Judgment in the Circuit Court on such defective
affidavit. Now suppose that execution had issued
out of the Circuit Court under the Judgment thus
obtained, and levied upon ^{the} personal property of the
Judgment debtor. Would it not be competent
for such execution debtor ^{to} bring trespass against the
Judgment Creditor and the officers, in a Justice's
Court, for such levy? And would ^{it} not also be
competent for the Justice of the Peace in the trespass
suit, to declare the Judgment rendered by the Circuit
Court void? Certainly all this would be competent,
if this mode of reversing Judgments Collaterally be
established as proper and legitimate. It may be said
that such a ^{proceeding} ~~case~~ as the one supposed would not be com-
petent because a Justice of the Peace out of deference
to the decisions of the Circuit Court would not thus
reverse the Judgments of the latter Court. Suppose there
had been no deference to the Cause in the Circuit Court.
Then this deference would cease to exist, because it
would be said, the Judge of the Circuit Court did not have
his attention directed to the legal question. It is true an
appeal, in the case supposed, would lie to the Circuit
Court. But this right does not obviate the objection to
this Collateral mode of reversing Judgments.

The statutes limiting the time for writs of error, and
appeals would, as has been said, be useless. A party
against whom a void Judgment is rendered, instead
of appealing to a higher Court to reverse the same, can,
if this practice is tolerated, wait for years, perhaps, and
whenever the Judgment is sought to be enforced, sue the
Judgment Creditor and officers for enforcing the same.
But one more proposition and I shall conclude. I
maintain that a void proceeding ^{can not be} waived. In support of
this position I first cite the Case of Taylor vs Phillips 3rd
vol of East R. P. 155. In that Cause the process issued
on Sunday. The question arose in the progress of the Cause
whether the defendant had not waived the objection.
Upon this point Lord Ellenborough, Chief Justice,
said: "That it was a matter of public policy that no
" proceedings of the nature described in the statute, should
" be had on Sunday; and therefore the regularity or irreg-
" - ularity of them could not depend on the assent of the
" party, afterwards to waive an objection to such proceedings,
" which were in themselves absolutely avoided by the statute.
And again, Mr Chitty in his 3rd volume on Practice
on page 523 says: "The distinction between and irregularity
" and a nullity is thus far material, that an irregularity must
" be objected to promptly, or within a reasonable time, and
" before any step adopting it has been taken, or it will be
" considered waived, and too late to be objected to. But
" it has been considered that a proceeding that is a mere
" nullity can not be waived, and may be taken advantage
" - of notwithstanding an inconsistent step by the party.

" Objecting, and neither delay nor the taking such step will
 " prevent the party from applying to the Court." And so
 I might cite a whole library of authorities in support
 the proposition. But it would be a useless waste
 of the time of this Court. Now this ^{Court} ~~Court~~ has held in
 the Case of Micare vs. Bush that the failure of
 the defendant to object to the omission or error com-
 -plained, was a "waiver" of the objection. And that
 the defendant's non-appearance in the Case could
 make no difference. They go on to say that the omission
 of Rees to appear and object to the ^{fore} Affidavit in this
 Cause was a waiver of the objections to the same.
 And if waived, then, by the authorities cited, the
 Judgment obtained by Kingon against Rees in the
 Justice's Court was not void. And if the same
 was not void, then trespass would not lie against
 the appellants, and their Pleas of Justification sho-
 -uld have been held sufficient. But there is still
 one more view of this Cause which I wish to pre-
 -sent to this Court. It is this. That in all the decis-
 -ion ^{upon the subject} of this Court made since the enactment of the statute
 allowing amendments in Attachment proceedings, the
 Causes were commenced in the Circuit Courts, and
 hence the Judicial Construction given in those Causes
 to that statute, relates and has reference to the Attachment
 law for proceedings in that Court, and not in Justice's
 Courts. I maintain that there is an essential difference
 between the two statutes so far as they relate to the
 question now under discussion. What is that difference?

The Eighth section of the Attachment Law in Circuit
Courts reads as follows: "No writ of attachment hereafter
to be issued shall be quashed, nor the property taken thereon
restored, nor any garnishee discharged, nor any bond by him
given canceled, nor any rule entered against the sheriff dis-
charged, on account of any insufficiency of the Original
Affidavit, writ of attachment or attachment bond, if
the plaintiff, ~~if the Plaintiff~~, or some credible person
for him, shall cause a legal and sufficient affidavit
or attachment bond to be filed, or the writ to be amended
in such time and manner as the Court shall
in their discretion direct; And in that event the Cause
shall proceed as if such proceedings had originally been
sufficient." The Sixth section of the Attachment Law in
Justice's Courts is as follows: "No Attachment shall be ob-
tained or dismissed for want of form, if the essential matters
^{required} in this Chapter be substantially set forth; And Justices of
the Peace shall allow any amendment to be made, of any
affidavit, writ, return or bond, or allow a new affida-
vit or bond to be filed, which may be necessary to ob-
viate objections to the same; And in cases of Appeals to the
Circuit Courts, the Courts shall allow amendments as
aforesaid." Here it is provided in the last section quoted,
and which relates to Attachments in Courts of Justices
of the Peace, that the Justices shall allow such amend-
ments to the Affidavit &c., as may be necessary to
"obviate objections" to the same. Thus showing clearly
and beyond all doubt, that it was contemplated that
any defect or insufficiency in the Affidavit or other

paper in the attachment proceeding should be objected
to, or that it would ^{be} deemed sufficient. For if otherwise
how could it be said, that an Amendment could be
made so as to "Obviate" the Objection. But this Court
in all the Causes decided upon this subject, ^{has held} that the
affidavit is not only amendable, but that the same
is not void because of any insufficiency thereof, and
that too, where ~~that~~ there had been no appearance by
the defendant. And all of these decisions were
made upon a statute which leaves the question,
under discussion, more doubtful than does the
statute allowing Amendments in Justices Courts.
So that, if this Court still adheres to its former
decisions upon the statute first quoted, much more
should it hold that the affidavit in this Cause is
not void. But whether there is an essential difference
or not, still I think it has been conclusively established
both upon principle, and Authority, not only of this
Court, but other Courts of very high respectability, that
the affidavit of Ringon before the Justice of the Peace,
who issued the attachment, was not void; but that
objection ^{to the same}, that could have been obviated by Amendment,
was waived by the omission of Rees to appear in
the Cause ^{and} present his objections thereto. And
not only this, but I think it has been equally well
established, that the Circuit Court could not thus
collaterally declare ^{that} the Judgment in the Attach-
-ment proceeding was utterly and absolutely void and
of no binding force or effect whatever. That such

Mode of procedure in effect nullifies and renders
useless statutes limiting the time during which ap-
-peals and writs of error may ^{be} brought to this
Court to ~~reverse~~ reverse erroneous or void Judgments.
That it leads to confusion between the Jurisdiction of differ-
ent Courts. That it gives countenance to dilatory and
dishonest debtors to stand by and let Judgment be taken
against them by default, wait until the claimaga-
-inst them is barred by the statute of limitation, then
when it is too late for the Judgment Creditor to
amend his defective proceeding, or for the defendant
to appeal to a Court where amendment would be
allowed, to permit the debtor to defeat the plain-
-tiffs collection of the claims indirectly and evasively,
when he could not do so directly and in the mode
pointed out by law. If such is to be the rule of law
established by the Court of last resort for the State,
then it behooves every Creditor in the State, to take
extra precaution to guard against every mistake
that would render his Judgment void, and thus en-
-able the debtor to pay off his debts by vindictive suits
against his confiding Creditor, and the faithful and
obedient officers of the law. Under such a rule it
becomes the ^{only} safety of Creditors to employ skillful
lawyers to transact all their business in Justice Courts in
such proceedings; of which the profession could not
complain, but which would be none the less a
great source of grievance to victimized Creditors.
But I rest in confidence that such a rule will not be established.

137-48

Booth & Ring on
Appellants

vs.

J. J. Rees
Appellee

Argument

Filed Apr. 20. 1861.
L. Iceland
Clerk.