

No. 11895

Supreme Court of Illinois

Risley.

vs.

Fellows.

71641  7

<sup>37</sup>  
Hamilton J. Risley  
vs  
Elisha C. Fellows

1849

11895

Hamilton D. Risley

4

Appeal from Will.

Elisha C. Follows

At the May term, 1843, of the Will  
Circuit Court, Patrick Doyle recovered a  
judgment against Steele & Ames for \$113.96. E. C.  
Follows, Esq. was the plaintiff's attorney. An execu-  
-tion was issued on the judgment on the 16<sup>th</sup> of May  
1843, and placed in the hands of H. D. Risley, then  
sheriff, who returned it in August 1846, satisfied  
in full. He settled the costs of the suit, and paid  
to Follows \$26 on account of the judgment. At the  
May term 1848, Follows as the attorney of the  
plaintiff moved the circuit court for a judg-  
-ment against Risley for the amount collected  
on the execution and not paid over. Risley  
filed an answer to the application, in which  
he admitted the balance to be in his hands,  
expressed his readiness to pay it to any person  
authorized to receive it, but alleged as a  
reason why he had not paid it to Follows,  
and why he could not safely pay it, that  
Doyle departed this life in the year 1844, and  
that no person had administered on his estate.  
At the same term, the Court made an order that  
Risley forthwith pay to the plaintiff, or to Follows,  
the sum of \$109.64, and interest at the rate of  
twenty per centum per annum from the

return of the certificate. Nisley then filed a bill in chancery against Fellows, and the well known legal representative of Doyle, setting forth the foregoing state of facts, and reiterating the allegations in his answer, and praying that the judgment against him might not be enforced. On this bill, he obtained an injunction. At the succeeding term, the court, on the appearance of Fellows, sustained a motion to dissolve the injunction and dismiss the bill. From that decision, Nisley prosecuted an appeal to this court.

As the case is here presented, the allegations of the bill must be considered as true. Do they show sufficient cause for the interference of a court of equity to prevent the enforcement of the judgment against the sheriff? The answer must be in the affirmative. The proceeding against the sheriff was carried on, and the judgment obtained, in the name of a dead man. There was, in fact, no plaintiff. The proper parties were not before the court so as to vest it with jurisdiction. The proceeding being without vitality, the judgment was a nullity. It would constitute no bar to another proceeding in the name of the personal representative of Doyle. The authority of Fellows, to receive payment

was revoked by the death of his client; and from that time, the legal right to the money was vested in the personal representative, in whose name alone it could be demanded, and proceedings instituted for its recovery. The Sheriff could not lawfully do otherwise than retain the funds until demanded by the personal representative. He is not in any default till such demand is made. The demand by Fallowell established no official delinquency, for his authority to receive the money being at an end, the demand was negatory. He had no personal interest in the collection of the money, for all claims on the plaintiff for professional services in the case was fully discharged by the payment made him by the Sheriff.

The cases cited by the counsel for the Appellee to show, that this decision was available in the proceeding at law, and therefore cannot be made the basis of a suit in Equity, have no application. There was no vitality in that proceeding; the decision of it could neither conclude the Sheriff, nor the representatives of Doyle.

The decree of the Circuit Court will be reversed with costs, and the bank demanded

for further proceeding, with leave to the  
dependants to answer.

H. H. Pireley

4

E. C. Fellows

Opinion of the Court,

A. H. Treat,

copied & compared

Supreme Court, 3<sup>rd</sup> Grand Division - June Term 1849.

Hamilton D. Nicely?

vs

Appeal from Will.

Elisha C. Fellows -

Decree reversed & Cause remanded.

Appellants costs - Fil. transcript 20, fil. encls 6 $\frac{1}{4}$ , apper. 25, Dh. Cause 10 $\frac{1}{2}$ ,	63 $\frac{3}{4}$
Ord. setting cause for hearing 25, Ent. jinder in encls 25,	50
Fil. abstracts 25, Ent. argument 25, Ent. submission 25,	75
Ord. taking time 25, fil. opinion 6 $\frac{1}{4}$ , Ord. reversing 25, Ord. remanding 25,	81 $\frac{1}{4}$
Ent. Decree & opinion 15 fol. 2, 70, Copy of Decree & opinion 2.40,	5.60
Costs of cal 50, Ent. jinder in parts 25, Ord. for extra. 25, postage 20,	1.20
Execution 50, fil. & Dh: 18 $\frac{1}{4}$ , Supps. enter. 12 $\frac{1}{2}$ , bill of costs 37 $\frac{1}{2}$ ,	1.18 $\frac{1}{4}$
Copy 25, Satisfactum 25, Clk's fee for transcript. &c. 8.54	9.04
	<hr/>
	Am't. of 19.23 $\frac{3}{4}$

A true copy from my fee book as taxed & recorded therein.

Shelton Clk. Sup. Court.

Supreme Court  
Hamilton D. Kisley  
vs  
Elisha C. Fellows

Bill of Costs \$19.22<sup>3</sup>/<sub>4</sub>

H. D. Kelsey } Sent back to A. Leach a \$10.00  
                  } bill on Bank of Massillon Ohio, which  
E. C. Fellows } he sent to me in this case - G. H. Starn's  
                  } put letter in Post Office Feb. 7. 1850.



Supreme Court, 3<sup>d</sup> Grand Division - June Term 1849.

Hamilton D. Kislay

Appeal from Will.

Elisha C. Fellows

Diene reversed & cause remanded.

Appellus costs = Apper. 25,	fil. joined in 6 <sup>th</sup> ,	bill of costs 37 <sup>1</sup> / <sub>2</sub> ,	Copy 25,	93 <sup>3</sup> / <sub>4</sub>
Cut. H. seal 50,	fil. & Ch. 18 <sup>th</sup> ,	Supp. retu. 10 <sup>th</sup> ,	Sate pr. 25,	Dr. fee 1.25,
				2.31 <sup>1</sup> / <sub>4</sub>
				<u>Amk. \$3.25</u>

State of Illinois, ss.

Supreme Court—Third Grand Division, at Ottawa:

The People of the state of Illinois to the sheriff of Will county---Greeting:

WE COMMAND YOU, that of the goods and chattels, lands and tenements of \_\_\_\_\_

Elisha C. Fellows you cause to be made the

sum of Three dollars and twenty five

cents, the amount of the foregoing bill, which is due and unpaid, and is a true copy from the Fee Book in my office; and hereof make due return in ninety days.

WITNESS, the Hon. SAMUEL H. TREAT, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this

28<sup>th</sup> day of July

A. D. 1849.

S. Heland Clerk of the Supreme Court.

Supreme Court

Hamilton D. Ridley

Elisha C. Fellows

For Bill in \$3.25

J. R. v. Ohio Gubell

July 29<sup>th</sup> 1850 at 12-

O. Clock M.

Admstr

Filed Oct. 7. 1850.

v. W. Leland Clk.

J. Return this Salary in full & Money sent  
to Clk. Mch 3 1850

Admstr  
Shpp

Mr. Seland Mr.

herewith Enclose I send your  
fourteen Dollars. To be in full for  
your fees in suit Hal Kiley vs E. C.  
Hillong. Mr. McEney has taken his  
fees upon Back of Ex.  
Schack

John at Nash 3<sup>th</sup> 1850

State of Illinois, ss.

Supreme Court, Third Grand Division, at Ottawa:

The People of the State of Illinois, to the Sheriff of *Will* County---Greeting:  
WE COMMAND YOU, That of the goods and chattels, lands and tenements, and real estate of

*Elisha C. Fellows* \_\_\_\_\_

you cause to be made the sum of *nineteen* \_\_\_\_\_ dollars and  
*twenty two & three fourths* <sup>cents</sup> in the said Supreme Court, which \_\_\_\_\_

*Hamilton D. Risley* \_\_\_\_\_

lately recovered against *him* before the Justices of our said Supreme Court, as appears to  
us of record, and make return hereof in ninety days.

WITNESS, the Hon. SAMUEL H. TREAT, Chief Justice  
of our said Court, and the Seal thereof, at Ottawa,  
this *28<sup>th</sup>* \_\_\_\_\_ day of *July* \_\_\_\_\_  
in the year of our Lord one thousand eight hundred  
and *forty nine*.

*S. Ireland* Clerk of the Supreme Court.

Supreme<sup>37</sup> Court.  
Hamilton D. Kelsey  
Elisha C. Fellows

Execution

Bill of costs \$19.00<sup>2</sup>/<sub>4</sub>  
Fee Bill under 3.25  
Amt. of \$22.47<sup>2</sup>/<sub>4</sub>

I Received Execution  
July 29<sup>th</sup> 49 at  
12 O'Clock M.  
Adesach  
Shpp

Filed Clerk. J. 1850.  
J. Leland Clerk.

Received my fees in  
full Eight dollars & fifty four  
cents M. M. Enay & K

J. Returns by Public Salary in full  
Feb. 20th 1850  
Adesach Shpp

\$ 22.47  
8.54 M. Enay  
\$ 13.93 Leland

The People of the State of Illinois. To all to Whom these presents Shall Come  
Greeting - Know Ye that we having caused to be inspected the files and Records now  
Remaining in the office of the Clerk of the Circuit Court of our County of Will. do  
find in these certain Files and Records proceedings in the words and figures  
following (to wit)

(State's File April 22. 1848.)

"Will County Circuit Court"

"Patrick Doyle" }  
"do" } "Appelal"  
"George Steel & Philip Shaver" }

"Judgment rendered in this Court for the  
"plaintiff Doyle May Term of the Will County Circuit Court 1843, Debt \$113.96,  
"To Hamilton A. Riley late Sheriff in and for the County of  
"Will. and State of Illinois,

"You will take notice that I shall by my Counsel at  
"the May Term 1848 of the Will County Circuit Court. On the first day of the said Term  
"or as soon thereafter as Counsel shall be heard, and move the Honourable Court for  
"a Judgment against You for the Amount of Money You collected as the Sheriff of  
"Will County aforesaid by virtue of an execution issued on the Judgment rendered  
"in the above entitled Cause, in my favor at the May Term of said Court 1843 for  
"the Sum of \$113.96, and Costs which execution bears date the 16th of May 1844,  
"Commanding You as then Sheriff of Will County aforesaid to collect the said \$113.96  
"Debt, and Costs which Debt You have collected, and although I have frequently  
"demanded the Same You have neglected and refused to pay over the Same to me  
"or my authorized Attorney, hence I am compelled to make Application to the said  
"Court for a Judgment against You for whatever Amount it shall be made to  
"appear to said Court you have collected and refused to pay over on said Execution,

"Dated this 17th day of April 1848.

"Patrick Doyle"

"Per E. C. Sellars his atty"

"State of Illinois" } "Linton Farley of said County personally appeared before me,  
"County of Will" } "William Smith Clerk of the Circuit Court in and for said  
"County who being duly sworn Deposeth & Says that on the 21st day of April 1848 he  
"saw Hamilton A. Riley late Sheriff of said County a notice of which the  
"within is a copy and further this Dependent Saith not  
"Subscribed and Sworn to  
"this 22d day of April 1848. W. Smith clk,  
"Linton Farley"

(Affidavit of E. C. Sellars Filed May 10th 1848)

"In the Will County Circuit Court"

"Patrick Doyle" } Cause disposed of May Term 1843  
"do" } Appels.  
"George Steel & Philip Shaver" }

"State of Illinois"  
"Will County" } "Elisha C. Sellars being duly sworn and oath Says that some time  
"in October or November 1841 Patrick Doyle the plaintiff in this Suit left with this  
"deponent for Collection a note of some hundred Dollars in said Doyle's favor against

(over)

George Steel and Philip Amer the Defendants in this Suit for which said note this  
Deponent gave said Doyle a receipt as this Deponent verily believes, and this Deponent  
further says that he was retained and employed by said Doyle as his attorney to prosecute  
and collect said note, that this Deponent as said attorney in November 1840, prosecuted  
said note before Mr. J. North Esq. then a Justice of the peace in and for said Will  
County and obtained a Judgment against George Steel and Philip Amer. and  
in favor of said Doyle for \$98. 71, and costs, that at short time previous to obtaining  
said Judgment aforesaid, said Doyle left this State for the State of Ohio, and has  
not since returned to this State as this Deponent verily believes, and this Deponent  
further says that the said Defendants George Steel, and Philip Amer, within  
twenty days after the rendition of said Judgment took an appeal of said Cause  
to the Will County Circuit Court, and this Deponent further says that he this Deponent  
appeared by virtue of his authority and employment aforesaid, as the attorney of the said  
Doyle, in said Suit in the Will County Circuit Court, that said Suit was  
continued along from Term to Term in said Will Cir. Court until the May Term  
1843, of said Court at which Term this Deponent as the attorney of said Doyle  
obtained a Judgment in favor of the said Doyle, and against George Steel  
and Philip Amer, on said note above mentioned, and interest, for one hundred &  
thirteen Dollars, and twenty six Cents, and costs of Suit, this Deponent further says  
that this Deponent as the attorney of said Doyle, on the 16th day of May  
1844 caused an execution in said Cause for the collection of said Judgment to be  
issued to the Sheriff of Will County aforesaid, against the said George Steel, and  
Philip Amer, that Hamilton A. Risley was then Sheriff of said Will County, and  
said execution came into his hands as such Sheriff on the 11th June 1844, as  
appears by reference to the Memorandum of said Hamilton A. Risley then Sheriff  
made on said execution, and this Deponent further says that afterwards on the 21st  
day of August 1846 the said Hamilton A. Risley as the late Sheriff of said Will  
County returned the aforesaid execution with the following return and Certificate endorsed  
thereon, "State of Illinois"  
"Will County," "I Hamilton A. Risley late Sheriff of said County do Certify

and return this execution and accompanying fee Bills satisfied in full August 20th 1846  
"H. A. Risley late Sheriff of Will Co. Ill  
"late Deputy Shff  
By which return it appears that said Hamilton A. Risley late Sheriff of said Will  
County, had at that time collected the aforesaid Judgment, and costs in full  
and this Deponent further says, that on the 21st day of August 1845 this Deponent  
as the attorney of said Doyle the Plaintiff in said execution, received on  
said execution twenty six Dollars, this Deponent further says that from what  
he understood from George Squibb the Deputy of the said Hamilton A. Risley, and  
the Defendants in the execution, and this Deponent has no doubt but that the  
Amount of the execution aforesaid was collected by said Sheriff, through Squibb,  
his Deputy some six or 8 Months before the date of the return of said execution  
aforesaid, and this Deponent further says, that both before and since said  
Hamilton A. Risley made the return on said execution as satisfied in full  
and since he as the late Sheriff of Will County aforesaid collected the money  
on said Execution this Deponent has in a private manner twice or three times

demanded in the name of an in behalf of the said Defendant Plaintiff in the  
 execution of the said Hamilton D. Risley the amount of the moneys so collected  
 by him on the said execution in favor of the said Patrick Doyle, but that  
 the said Hamilton D. Risley has neglected and refused to pay over to this  
 deponent as the attorney of the said Plaintiff in the execution, the amount  
 of money so collected by him as aforesaid on said execution, this deponent  
 further says that as near as this deponent can recollect he this deponent  
 as the attorney of the said Patrick Doyle, in the name, and in behalf  
 of said Doyle, demanded of said Hamilton D. Risley the amount of money  
 by him collected on said execution in the fall of 1835, & also demanded it  
 two or three in 1846 and also in 1847 and further this deponent's Oath not  
 sworn to and Subscribed "E. C. Fellows"  
 May 10<sup>th</sup> 1848 before me, Wm Smith CLK.

(Reply and Petition of H. D. Risley late Sheriff & Filed May 13, 1848)

"Patrick Doyle" }  
 vs } "Will County, Court May Term 1848,"  
 "George Steele & Philip Storer" }

"That the said Hamilton D. Risley late Sheriff aforesaid  
 comes and shows to this Court that it is true that as such Sheriff an execution came into his hands  
 in favor of said Doyle, and against said Steele and Storer, as stated in the affidavit of E. C. Fellows  
 herein that he collected to his best recollection about one hundred and twenty five Dollars &  
 eighty five Cents on said execution, and also Costs of said, and returned the same satisfied  
 and full that he has heretofore paid to said Fellows as atty of said Doyle Twenty Six  
 Dollars and eighty five Cents on said execution, or of money collected thereon, and that the  
 Balance of money so collected, except the parts which have been paid over is now in his  
 hands, your petitioner also shows that the reason he has not paid over the balance of said money  
 is because he knew of no person to whom he could lawfully and in safety pay the same,  
 because he says <sup>that</sup> he has been informed, and verily believes, and is prepared to prove to the  
 satisfaction of this Court that sometime in the year 1844 said Patrick Doyle departed  
 this life, and that since his death no one has appeared as the representative of said Doyle  
 decessed lawfully authorized to demand or receive said money, and that he has been unable  
 though he has made inquiry with that view, to find out any person to whom he could safely  
 pay the same, your petitioner also shows and charges that he has reason to & does believe, that  
 said E. C. Fellows has no authority, and has not at any time when he demanded  
 said money as mentioned in his said affidavit to demand or receive the same, &  
 that he has instituted this proceeding & demanded said money as aforesaid for  
 his own sole use and benefit, without any authority so to do from any person whatever  
 notwithstanding he has received the full <sup>amount</sup> of his fees for his services as atty, in the above  
 cause, your petitioner also states that he is desirous of paying the Balance of said  
 money in hands to such person as is lawfully authorized to receive it, and to  
 give your petitioner a proper & legal acquittance therefor, your petitioner therefore  
 prays that this Court will direct him if he shall pay the same to the public Auditor  
 or to any other person in the State of Illinois, or to what person or officer  
 he shall pay the same that it may be safe for the benefit of the lawful



Representatives of Saint Doyle. And also safe for your petitioner in paying the same  
 And that this Court will make such other and further order in the premises as shall  
 seem lawful and just. in view of the fact of the (death) decease of Saint Doyle. And that  
 Saint Fellows is seeking without any authority or right to obtain Saint money. Your  
 petitioner also shows that he was informed of the decease of Saint Doyle according  
 to his best recollection & belief before Saint Fellows ever demanded Saint money. as  
 aforesaid. that he your petitioner was advised by a friend of Saint Doyle that Saint Doyle  
 was dead and not to pay Saint money to Saint Saint Fellows. And that he would endeavor  
 to ascertain the representatives of Saint Doyle. that the money might be paid to  
 them. And that he your petitioner has made diligent inquiry to ascertain the persons  
 or persons to whom he could safely pay Saint money but as yet to no purpose. Your  
 petitioner also shows that at one time when Saint Fellows demanded Saint money. he  
 informed your petitioner that he desired to send it to the family of Saint Doyle.  
 While in truth & in fact Saint Doyle as your petitioner is informed & believes.  
 never had any family. for which reason your petitioner believes it would not be  
 proper to pay Saint money to Saint Fellows. And that he could not safely do so.  
 hence he prays the direction of the Court as above mentioned  
 Subscribed and sworn to before me  
 this 12<sup>th</sup> day of May 1848. W. Smith Clerk,  
 H. A. Shiley late  
 Sheriff of Will Co.

(Monday May 1. 1848)

State of Illinois }  
 Will County }  
 I was before the Honorable J. B. Thomas one of the Justices of  
 the Supreme Court of the State of Illinois. and presiding Judge of the Seventh Judicial  
 of Saint State at the May Term of the Will County Circuit Court began and held at the  
 Court house in Saint County. on the first day of May (the same being the  
 first Monday of said month) in the year of our Lord one thousand eight hundred  
 and forty eight - and of the year of the Independence of the United States the  
 Seventy Second.

Present The Hon. J. B. Thomas Justice & Judge as aforesaid  
 James Brodie Sheriff of Will County  
 William W. Boardman State atty. for said Court  
 William Smith Clerk of Will Co. Court Clerk

And afterwards (to wit) on Friday the 12<sup>th</sup> day of May A. D. 1848 being one of the  
 days of the aforesaid Term of said Court the following proceedings were had (to wit)

"Patrick Doyle"

"vs"

Hamilton A. Shiley late Sheriff of Will County

} "Notice of Motion for Judgment"

"This day the said plaintiff came by  
 E. C. Fellows his attorney. and the said Hamilton A. Shiley late Sheriff of the  
 County of Will by his attorney also came. and satisfactory proof having been made  
 to the Court of the Service of the notice according to law. and it appearing to the  
 Court that the said Hamilton A. Shiley received the sum of one hundred thirty five  
 dollars. and sixty four cents. it being the debt specified in said execution and  
 that he has paid to E. C. Fellows the attorney for said plaintiff the sum of

Twenty Six Dollars. And that the Sum of One hundred and Nine Dollars and Sixty  
four Cents still remains in the hands of the said Hamilton A. Shibley. And that the said  
Hamilton A. Shibley has been requested to pay over the same to the plaintiff and hath  
failed to do so, and the said Hamilton A. Shibley having failed to make sufficient defense  
It is therefore ordered and adjudged by the said Court that the said Hamilton A. Shibley  
immediately, and <sup>without</sup> further delay to pay over to the said plaintiff, or to E. C. Fellows his said  
attorney the said Sum of One hundred and Nine Dollars and Sixty four Cents. Together with  
Twenty per Centum per Annum from the Twenty fourth day of August A. D. 1846, till  
the time the same shall be paid. When the said Plaintiff or E. C. Fellows his attorney  
shall serve him the said Hamilton A. Shibley with a Copy of this Order. According to  
the Statute in such Cases made and provided.

(Petition Filed May 19<sup>th</sup> A. D. 1848)

To The Honorable Jesse B. Thomas one of the Justices of the Supreme Court of the State of Illinois, & Judge  
of the Will County Circuit Court in Chancery sitting,

Humbly complaining Shews unto your honor your  
orator Hamilton A. Shibley late Sheriff of said Will County, that herebefore to wit on or about the 11<sup>th</sup>  
day of June A. D. 1844. an Execution issued out of the Clerk's office of the said Will County Circuit Court  
came to his hands for Collection as such Sheriff for the Collection of a Judgment recovered in said  
Court in favor of said Patrick Doyle, and against George Steele, and Philip Shaw amounting to  
\$115<sup>96</sup> or thereabouts besides Costs of Suit, that afterwards by virtue of said Execution your orator pro-  
ceeded to & did collect and make the amount of said Execution, and on the 21<sup>th</sup> day of August  
A. D. 1846 he returned the same to the Clerk's office aforesaid according to Law your orator  
further Shews that before the return of said Execution he paid to E. C. Fellows as attorney for  
said Doyle Twenty Six Dollars or over of the Money so collected, and that he paid all the  
Costs of said Suit to the proper officers who were entitled to Costs, and your orator also Shews that  
previous to the May Term 1848 of the said Will County Circuit Court said Fellows as attorney aforesaid  
gave your orator notice that he should move for a Judgment against your orator for the  
Amount of Money collected by him on said Execution, and not paid over, which notice was given in  
the name of said Patrick Doyle as will more fully appear by reference to said notice the affidavit  
of said Fellows, and the Reply or Answer thereto of your orator now on file in the Clerk's office  
aforesaid to which reference is hereby made as part of this petition, and your orator further  
Shews that in pursuance of said notice application was made to the said Will County Circuit Court at its  
May Term aforesaid for Judgment as aforesaid against your orator, and on which said application  
Judgment was at said Term rendered against him in favor of said Doyle for the Sum of  
One hundred and Nine Dollars and Sixty four Cents, with interest at the rate of twenty per  
Centum per Annum, from the 21<sup>th</sup> day of August A. D. 1846 until the same should be paid  
as will more fully appear by reference to the records of said Court, and your orator also Shews  
that no notice was given him of a claim of twenty per Centum, per Annum, per Annum interest  
or damages for the detention of said Money nor was it claimed to your orator's knowledge & as  
he is informed and believes, at the time of hearing of said application for said Judgment, and  
your orator also Shews that some time in the year eighteen hundred and forty three (4) said  
Patrick Doyle departed this life as he is informed and believes, that said Doyle was deceased  
when said Fellows claimed said Money of him in said Doyle's name, and that he  
is now able to show to this Court by a person who assisted in entering the body of said

(over)

"Says shortly after his decease aforesaid that he did die at the time aforesaid. And was  
 "dead long before the application of said Doyle for said Judgment, and that said Judgment  
 "was rendered in a proceeding where a dead man was sole plaintiff, and that said Fellows is  
 "getting said money, his fee being paid, for his own use without authority, and your Orator  
 "further shews, that he did not pay over said money to said Fellows after he learned of  
 "said Doyle's decease, because he thought it was not his duty, and that he would not be  
 "safe in so doing, and that he has diligently sought for some legal representative of said Doyle  
 "necessary to whom he would pay said money but to no purpose, and also that he your  
 "Orator has acted in good faith in all this matter, and with a sole purpose of doing  
 "his duty in the premises, and that he has been ever ready to pay the balance of said money in  
 "his hands when he could ascertain to whom he should of right pay it but that he has been  
 "informed and believes that the authority of said Fellows to receive the same ceased long  
 "before the notice of application for Judgment aforesaid, and your Orator prays that  
 "Elisha C. Fellows, and the representatives of said Doyle deceased when discovered may be  
 "made parties defendants hereto and that process issue against them agreeably to the practice  
 "of this Court that they make full and perfect answers hereto in every particular, and  
 "each of them for himself, and your Orator prays that the said Judgment and proceedings,  
 "may be set aside, and all things therein and done made null, and that your Orator  
 "may have such further and other relief as the case may require, and as shall seem meet  
 "and just, and your Orator prays that writ of Injunction may issue agreeably to the prac-  
 "tice of this Court, directed to said Defendants and each of them, commanding, Enjoining  
 "and restraining them, and each of them, and all others acting for them, or either of them  
 "or for said Doyle deceased, from attaining for, demanding, or receiving from said Orator, or  
 "taking any steps whatever by serving copy of said Record on said Orator, or otherwise  
 "to collect said Judgment or any money thereon, until the further order of this Court,  
 "and that said Fellows pay the costs of this proceeding and of said application, and  
 "that your Orator will ever pray &c.

"H. D. Risley"

"Asgood & Little, Sol. & of Court for Comptant."

(Order of Master in Chancery)

"State of Illinois } The Clerk of said Court, Court will please issue a writ of Injunction  
 "Will County } in the within case agreeably to the prayer of the petition upon his  
 "entering into the usual Bond to restore all damages done &c. in the sum of three hundred  
 "Dollars with Alonzo Leach as Security, and oblige  
 "Subst May 19, 1848 G. W. Bowen Master in Chancery

(The affidavit of H. D. Risley to the above petition & injunction issued May 19, 1848)

Will County Circuit Court October Term A. D. 1848.

"State of Illinois }  
 "Will County } Now before the Honorable J. B. Thomas One of the Justices of the Supreme  
 "Court of the State of Illinois, and presiding Judge of the Seventh Judicial Circuit  
 "of said State at the October Term of the Circuit Court in and for the said  
 "County of Will, began, and held at the Court in said County on the  
 "fourth day of October (the same being the second Monday of the said  
 "Month) in the year of our Lord One thousand Eight hundred, and

a forty Eight. And of the Court of the Independence of the United States the Seventy third  
"Present The Honourable Judge B. Thomas Justice and Judge as aforesaid  
Almiza Leach Sheriff of Mill County  
William A. Awardman States atty. 7th Dist. Cir.  
William Smith Clerk of said Mill Co. Cir. Ct.  
And afterwards (to wit) on Tuesday October the 10th A. D. 1848. being one of the days  
of the aforesaid Term of said Court. The following proceedings were had (to wit)

"Hamilton A. Piskey late Sheriff of Mill County"  
"vs"  
"Elisha C. Fellows"  
} "Bill and Injunction"

"That comes the defendant in his own  
proper person. And enters his Motion to dismiss the Bill and dissolve the Injunction herein

And afterwards (to wit) on Tuesday October the 17th A. D. 1848 being one of the days of the  
aforesaid Term of said Court the following proceedings were had (to wit)

"Hamilton A. Piskey late Sheriff of the County of Mill"  
"vs"  
"Elisha C. Fellows"  
} "Bill and Injunction"

"That this day comes on to be heard  
the Motion of defendant heretofore set forth made in this Cause to dissolve the Injunction  
in said Cause. And to dismiss the Compliments Bill of Complaint herein. And after hearing  
the Arguments of Counsel. having fully understood. It is Ordered by the Court  
that the said Motion be sustained. the Injunction dissolved. and the Bill dismissed.  
And thereupon the said Compliments <sup>supp. Appoind & Little</sup> Bill is filed in the  
Court, in this behalf. and prays an Appeal to the Supreme Court. Which said appeal  
is allowed by the Court. Upon the Condition that the said Compliments file with  
the Clerk of this Court within thirty days his Bond with Almiza Leach as Security  
in the several Sums of three hundred Dollars. as determined according to the form  
of the Statute in such Case made and provided

State of Illinois }  
Mill County } "I, Michael McEury Clerk of the Circuit Court in and  
for said County do hereby Certify. that the preceding is  
a true and correct transcript from the files and Records now remaining in  
my office. and I further Certify that the Appeal Bond has been executed. by  
Hamilton A. Piskey with Almiza Leach as Security according to the order of the  
Court. and that said Bond was filed in my office on the 1st day of  
November A. D. 1848.

In Testimony Whereof I have hereunto Subscribed my Name  
and affixed the Seal of said Court at Solist in said  
County this 7th day of June A. D. 1849.

Michael McEury Clerk.  
By Edwards Ingoldsbay Dep. CLK.

In the Supreme Court of the State of Illinois

Hamilton D. Kisly (as Sheriff of Will County)

vs.  
Appeals from Will

Elisha C. Fellows

And now comes the said Hamilton D. Kisly Plaintiff in error & says there is manifest error in the record & proceedings of the Court below, in the decision & judgment recorded therein, in this, to wit:—

- 1st. The said Court erred in sustaining the motion of the Defendant below to dismiss said Bill & dissolve the injunction
  - 2d. The said Court erred in dismissing said Bill & dissolving said injunction & rendering judgment against the Plaintiff below
- And also that there are other errors manifest in the record & proceedings of the Court below, and the said Plaintiff in error comes & asks this Court to reverse the decision & judgment of the Court below, & that the injunction therein be perpetuated.

Argued & Held Atty  
& Counsel for Plf. in error

And now comes Elisha C. Fellows appellee by Glover & Cook says that in the record & proceedings aforesaid and in the Judgment aforesaid there is no such error as is above assigned & he prays that said Judgment be affirmed &

Glover & Cook  
attys for appellee

of the 103<sup>rd</sup> do. # 7. 544  
and paid 50  
\$ 8. 544

Filed June 13. 1849  
W. L. D. Clerk

Elisha C. Fellows

Plaintiff in error

Will Co. Sheriff

of the 103<sup>rd</sup> do. # 7. 544