No. 8688

Supreme Court of Illinois

Wm. Ferguson

vs.

M. M. Rawlings

71641 7

Page 1

State of Illinois
Pulaski County

Pleas at the April term A.D. 1858 of the Circuit Court of Pulaski County Illinois

Isaac M. Rawlings
vs
William Ferguson
Attachment

Be it remembered that on the 21st day of May A.D. 1858, the plaintiff in the above styled cause filed in the Circuit Clerks office of said Pulaski County, a precipe, affidavit and bond, in the words and figures following

(Precipe)

Isaac M. Rawlings
vs
William Ferguson
Attachment

Issue in the above case as per papers sent & you will observe the consideration of the note and account.

Yours Respectfully &c
(signed) I M Rawlings, atty
To James M. Danley, Clerk of the Circuit Court Pulaski Co. Ills.

On the back of which Precipe was the following endorsement -

"Rawlings vs Ferguson ——— Precipe, filed May 21. 1858.

J.M. Danley - Clerk

page 2.

(Affidavit)

State of Illinois }
Pulaski County }

Before me C. M. Jewell, one of the justices of the peace within and for said county, personally comes M. M. Rawlings, who being first duly sworn according and says on oath, and says. That That William Ferguson is indebted to the said M. M. Rawlings, in the sum of one hundred and fifteen dollars, and eighteen cents, by note and book account, and that the said William Ferguson has departed this State or conceals himself so civil process cannot be served on him, according to the best information, So he the said M. M. Rawlings prays that a attachment may issue against the real and personal estate of the said William Ferguson.

M. M. Rawlings

Subscribed and Sworn to before me this the 20th day of May A. D. 1858.

C. M. Jewell, J. P.

On the back of which affidavit was the following indorsement—

Affidavit
M. M. Rawlings
vs
W. Ferguson

Filed May 21. 1858.
Jeff. Davis
Clk

(Bond)

page 3

Know all men by these presents that we M. M. Rawlings and John Wilson, are held and firmly bound unto William Ferguson, in the sum of Two hundred and Thirty two dollars and fifty six cents for the payment of which we are jointly and severally bind ourselves our heirs and executors. The condition of the above obligation is that whereas the above bounden M. M. Rawlings, hath on the day of the date hereof, sued an attachment out of the Circuit Court of said County, as the suit of William Ferguson against the estate of the above named William Ferguson, for the sum of One hundred and Seven dollars and eighteen cents, and the same being about to be sued out of said Court, attachable on the first day of the next term of the Court thereof to be holden in Smith County.

Now if the said M. M. Rawlings shall personally appear with effects, or in case of failure therein, shall well and truly pay and satisfy the said William Ferguson all such costs in said suit and such damages as shall be awarded against the said William Ferguson, his heirs, executors or administrators in any suit or suits which may hereafter be brought for wrongfully suing out the said attachment, then the above obligation to be void, otherwise to remain in full force and effect. This 10th day of May

[8688-2]

page 4. A.D. 1858.

M. M. Rawlings Seal
John Wilkinson Seal

On the back of which Bond was the following indorsement-

Attachment Bond	
M. M. Rawlings vs William Bergan	
Filed May 2nd 1858	
J. A. Lawrence Clerk	

Whereupon, after the filing of the said precipe, affidavit, and bond as aforesaid, the following writ, issued out of the Circuit Clerk's office of said Pulaski County - in words and figures following -

State of Illinois }
Pulaski County } ss.

The People of the State of Illinois to the Sheriff of said County Greeting: Whereas, Moses M. Rawlings has filed in the Circuit Clerk's office of our Pulaski County Circuit Court, an affidavit, stating claim, that William O'Bryan is indebted to said Moses M. Rawlings in the sum of One hundred and Sixteen dollars and eighteen cents, by note and that affiant, continues the

said William Duquesne has departed this State or conceals himself so that process cannot be served on him, according to the best information. And the said Moses M. Rawlings having given bond and security according to the directions of the act in such case made and provided, We therefore command you that you attach so much of the estate, real or personal of the said William Duquesne, to be found in your county, as shall be of value sufficient to satisfy the said debt and costs, according to the complaint, and to detain, or so to proceed, that the same may be liable to further proceedings thereon according to law, at a Circuit Court to be holden at Bath Caledonia in and for said County, on the first Monday in the month of September next, so as to compel the said William Duquesne to appear and answer at such court, what may be objected against him - When and where you shall make Return to said Court how you have executed this Writ.

Witness Jas. M. Davidge, Clerk of said Circuit Court & seal thereof hereto affixed, at N. Caledonia, on this 21st day, A.D. 1858.

James M. Davidge - Clerk.

On the back of which writ of attachment was the following endorsement,

page 6

Pulaski Cir Court
September Term 1858

Attachment

Mary M. Rawlings
vs
William Ferguson

and also on the back of which writ was a return in the words and figures following—

"Served this attachment on the South half of lot No. Twelve of Block No Twelve, upon which is situated a small frame tenement, in old part Mound City, May 27. 1858.

Thomas Smith, Sheriff
per A. C. Brotherton Dep.

Whereupon a notice, containing the words and figures following, issued from the Circuit Clerk's office of said Pulaski County, and sent to the Publisher of the Mound City Compositor for publication, a copy of which publication is filed with the papers of the above styled cause,

Attachment

State of Illinois, Pulaski County, } S.S.
Pulaski Circuit Court, Sept. term 1858

Mary M. Rawlings
vs
William Ferguson

Notice is hereby given

page 7

to you the said William Ferguson
that a suit of attachment has been sued
out of the office of the Clerk of the Circuit
Court of Ricaudi County, entitled May 21,
1858, at the suit of Alexander M. Rawlings
against you the said William Ferguson,
for the sum of $116.18, directed to the Sheriff
of said County to execute — in which said
suit of attachment has been returned
into the said Clerk's office, levied upon
South half of Lot 17, of Block 12, Old plat
of Mound City. Now unless you, the said
defendant, shall be and appear before
the Circuit Court of said County on
the 1st day of the next term thereof, to
be held on the first Monday in September next,
give special bail and plead thereto,
judgment will be rendered against
you by default, and be rendered liable
to satisfy said judgment, with cost,
attest — Jas. M. Davidge, Clerk.
May 27, A.D. 1858."

And to which is attached the following affidavit.

State of Illinois }
Ricaudi County } ss. J. John A. Waugh, publisher of the Mound City Emporium, a weekly paper published in said County, do hereby certify that the subjoined advertisement was published in said paper four weeks consecutively — the first publication being made on the 8th day of June 1858.

Mound City Sept 8. 1858 } John A. Waugh
Pub. Emporium

[5428-4]

page 8

And thereafterwards, on the 7th day of September, A.D. 1858, Isaac M. Rawlings by H. M. Rawlings his attorney, filed in the Circuit Clerk's office of said Pulaski County, the following declaration.

State of Illinois }
Pulaski County } ss.

Apr Term A.D. 1858

Circuit Court of Pulaski Co. Illinois,

Isaac M. Rawlings, an plaintiff in this suit, by H. M. Rawlings his attorney complains of William Hagans the defendant in this suit, summoned &c., in a plea of trespass on the case on promises. For that the said defendant at Mound City, to wit, at the County of Pulaski and State of Illinois on the 24th day of April 1858, by his promissory note of that date by him executed for value received promised the plaintiff to pay him or his order, the sum of one hundred, twenty eight dollars and thirty cents. Yet though requested the said defendant hath never paid the said sum, but refuses so to do.

And for this the said defendant afterwards on the 20th day of May 1858, at the County and State aforesaid, being indebted to the plaintiff in the further sum of Twenty dollars and eighty eight cents, according to the answer assumed, in consideration thereof then and there promised the plaintiff to pay him thereof

page 9

on demand. but though often requested, the said defendant hath never paid the said sum in this Count mentioned, but refuses so to do. By reason of which said Counts promises and refusal by defendant to pay any part of the money in this Count. or any part or sum of the money in this Count mentioned, or any or either of any part thereof (at the often requested so to do) the said plaintiff saith that he is injured, and hath sustained damage to the amount of One hundred and fifty dollars and therefore he brings this suit.

A. M. Rawlings
H. W. Rawlings
his atts.

To which declaration was attached ~~the following~~ a note, promissory and account, in the words and figures following

"The defendant will take notice that the annexed promissory note & account constitute the plaintiffs cause of action in this case, and none other

"Mount City Ills April 24, 1858.

Yours &c. John T. Williams

[8648-5]

page
10. Ferguson, promise to pay M. M. Rawlings or order Twenty eight dollars and thirty cents for value received,

William his + mark Ferguson

attest - H. F. Delany
L. M. Hughes

An action of which note was the following indorsement

William Ferguson
Note for $28, 30

Petition May 2nd 1858
Wm Lawson
Clerk

(account)

Mount Circ. May 20th 1858,

William Ferguson

To M. M. Rawlings Dr

To One note of hand executed April 24. 1858, at two days after date, for twenty eight dollars and thirty cents ~~$28, 30~~

Dr. Sum cash 93 lbs Bacon hams at 12½ cents 11, 63

do - Cash to pay Jurors 9 00

May 6. Cash paid for swearing and cost paid Dr Lee ,90

2, 85 -

$17, 88

Settled

page 11.

And thereafterwards, at a special term of the Circuit Court, begun and held at the Court House in North Calaveras, commencing on the 30th day of August A.D. 1858, and on the fourth day of the said term - being Thursday the 2d day of September, 1858, the following Order was made, and entered of record in said Court, viz

"M. M. Rawlings
vs
William Ferguson } Assumpsit.
Continued."

And thereafterwards, to wit, at a Circuit Court begun and held in the Court House at North Calaveras, commencing on the 1st Monday in September, 1858, and on Friday the 5th day of the said term, the following order of this Circuit Court was made and entered of Record, viz

Mary M. Rawlings
vs
William Ferguson } Assumpsit

On this day came the plaintiff, and the defendant being duly notified of the pendency of this Suit by publication, and affidavit by his Counsel

page 12. and summons, and then times voluntarily called, come not, but make default — On motion of plaintiff — Ordered, that a jury be summoned to assess damages in vacation, and same continued."

Whereupon, on the 28th day of March A.D. 1889, the following Writ of Inquiry issued from the Office of the Circuit Court of said Peoria County.

State of Illinois } Sct.
Peoria County }

The People of the State of Illinois to the Sheriff of said County Greeting — Whereas, at a Circuit Court begun and held in the Court House at North Pekin on the first Monday in the month of September A.D. 1888, in a certain cause pending in said Court wherein Jesse M. Rowley is plaintiff & William Ferguson defendant entitled "Assumpsit", on Friday of said term the defendant was called, came not but made default — Whereupon it was ordered, that the plaintiff dam-"ages be ascertained by a jury in vacation.

page 13.

We therefore command you that at the Court house in North Calaveras at such day and hours as you may assign this cause to come before you, twelve good and lawful men of your bailiwick, who are not akin to the parties herein, and by their oaths & affirmations, inquire what damages the plaintiff hath sustained by occasion of the said assaults and trespasses and a judgment in plaintiff's accustomed, to plaintiff's damages as is alleged One hundred and fifty dollars,

And the inquisition which you shall take herein, you shall lay upon our Premises Circuit Court on the Second Monday in the month of April next at the Court house in North Calaveras, and have you then and there this writ,

Witness, Jas. M. Dowling Clerk of said Circuit Court, and the seal thereof hereto affixed at office in North Calaveras this 23 day of March A.D. 1859.

Jas. M. Dowling
Clerk.

page "14" On the back of which Writ of Inquiry is the following endorsement, viz,—

Received this Ex.
April Term A.D. 1859
Writ of Inquiry
Mons M. Rawlings
vs
William Ferguson

Whereupon the said Sheriff on the 9th day of April A.D. 1859 summoned the following jury, and the following proceedings were had.

(oath of jurors)

You and each of you do solemnly swear you shall diligently enquire of damages in the suit between Mons M. Rawlings, plaintiff, and William Ferguson defendant, and a true verdict give according to evidence, So help you God.

(verdict of jury)

Mons M. Rawlings
vs
William Ferguson
} Assumpsit.

C. Mangold, John B. Walker, David Walker, R. A. Russell, John Owens, Thomas Roland, A. Barkley, J. C. Rood, T. J. McClelland, R. W. Stoppler, C. M. Collins, Jackson Bartwood.

12

Aug 0 being sworn alleging to require
15 of Defendants in this suit upon an
oath or affirmation. That the plaintiff
has sustained damages by reason
" of the defendants non-performance
of the promises and assumptions in
the declaration mentioned. to the
damage of Twenty Dollars & fifty
eight cents, besides his costs. "

To which was the following certificate –

State of Illinois } SCT.
Pulaski County }

I, the undersigned, sheriff
of the said County, do certify the
above to be the return of the same
in the above entitled Cause, as
indorsed on the 9th day of
April inst., in pursuance with the
annexed writ of Capias – Laid fees
being first duly secured according to
Law. Given under my hand and seal
this 9th April A.D. 1889.

A. C. Pattison,
Sheriff

And thereafter now, on the 17th day
of April A.D. 1889, a summons, in the
words and figures following issued from
the Clerks Office of said Pulaski County.

State of Illinois, Pulaski County, ss.
The People of the State of Illinois, to the

page Sheriff of Pulaski County - Greeting.
16 We command you to Dr. H. H. Delany, Chas. M. Frost & Jas. M. Daniel to be and appear before the Circuit Court of Pulaski County in Lincoln, one of the next term thereof, to be holden at the Court House in N. Caledonia, to testify and the truth to speak, in a certain matter of controversy pending in said Court, wherein Mrs M. Rawlings is plaintiff and Wm. Hopson is defendant, and have written and then this writ.

Witness J. M. Daniel, Clerk of said Court, and the judicial seal thereof at N. Caledonia this 14 day of April A.D. 1889.

O. M. Daniel Clerk.

On the back of which Summons was the following endorsement and return,

Rawlings
vs
Hopson
Witness
Dr. H. H. Delany
Chas. M. Frost
Jas. M. Daniel

Served the within by serving to the within named Dr. H. H. Delany

Charles M. Hunt & Jas. M. Daniels

page 17 April 14th 1859.

A. C. Buchanan Shff

17. Shff fees

Sum & Ret 85 Mil. 20 Miles $1.20 $2.05

A summons was issued out of the Office of the Clerk of the Circuit Court of said Pulaski County on the 28th day of March A.D. 1859, in the words and figures following viz –

State of Illinois }
Pulaski County } sct

The people of the State of Illinois to the Sheriff of said County, Greeting. We command you that you summon Henry H. Dunning, Thomas Smith, if in your County, to be and appear before A. C. Buchanan, Sheriff of Pulaski County, in the Court house at Mound City in and for said County, on the 9th day of April – inst. to testify and the truth to speak in behalf of Mary M. Rawlings in a certain action of assumpsit pending on writ of Exposas before said Sheriff wherein Mary M. Rawlings is plaintiff & Wm Ferguson is defendant, and this they are not to fail under penalty of the law – and have you then and there this writ. Witness the Clerk aforesaid of said Circuit Court at Office in Mound City, this 28 day of March A.D. 1859

Jas. M. Daniels – Clerk

page On the back of which Summons was an end
18 "orsement, in the words and figures following,

Pulaski Cir Court
April Term 1859

Ind

M. M. Remington
vs
H. H. Deming
Ban. Sanction

And thereafterwards on the 18th day of April
A.D. 1859. ~~an~~ attachment issued out of the
Office of the Circuit Clerk of said Pulaski
County, in the words and figures follo
"wing, against the goods of the said H. H. Deming,
viz —

State of Illinois } ss
Pulaski County }

The People of the State
of Illinois, to the Sheriff of said County,
Greeting — We command you that
you attach and take H. H.
Deming if he is found in your county
so that you have his body in your custody
to keep the Circuit court
of Pulaski County, in session
at the Court house in Mound City
to be held on the 18th day of April
A.D. 1859 to answer

page 19

as Witness appears in obedience with the Commandment of a Subpoena in this behalf issued, was sworn and testified into the Federal Circuit Court at its present Term, Augustus Dow & others. and now further saith that this suit,

Silas J. McDowell
Clerk Supreme Circuit Court
& Court of Private Land Claims
at office in North Carolina
on this 18th day April A.D. 1859

J. W. McDowell, Clerk

On the back of which said writ was the following memorandum & return viz—

Recorded on the
Minute Book
Certificate
W. W. Parsons
Wm. Hopkins
Witness
Orton H. Delany

(Return)

Executed the within by taking A. F. Delany on the 19 day of April 1859

A. Buckner
"

[2498-8A]

page
20 On the 17th day of April A.D. 1859 the defendant appeared and filed a plea in abatement in the words and figures following — viz.

William Ferguson
ads
Moses M. Rawlings

Circuit Court Pulaski County Illinois.
April Term 1859.

And the said William Ferguson comes and defends the said wrong and injury in the said plaintiffs declaration mentioned, and says that before and at the time of the commencement of the suit, to wit — on the 21st twenty first day of May A.D. 1858. the said defendant, has been, was, and is still a resident of the said State of Illinois.

That he, the said defendant has not absented and has been about to depart from this State, at any time before or since the said suit was commenced with the intention of having his effects removed from this State nor has he been about to remove his property from this State to the injury of the said plaintiff or any other person whatever. That he has not concealed himself or stood in defiance of an officer so that process could not be served

page 21.

upon him. but that on the contrary the said defendant was before at and has been ever since the commencement of the said action, a resident of the counties Franklin and State of Illinois. and of this he puts himself upon the country.

Wm. Hunter
his atty.

Endorsement on the file.

William Hunter, attorney for the said William Ferguson, being duly sworn, declares on oath that the facts set forth in the affidavit are true as he verily believes. This 12 day of April 1859.

J. W. Dwyer Clk.

Endorsed on the back of which there is in the affidavit was an instrument in the words and figures following, viz:

Thos. H. Rawlings
vs
William Ferguson

Plea in abatement

Filed April 17th AD 1859

J. M. Dwyer
Cl.

page
22 And on the 12th day of April the defendant filed in this cause a Demurrer, in the words and figures following, viz:

William Ferguson
vs
Mary M. Rawlings

Circuit Court
Pulaski Co. Ill.

Demurrer to Declaration.

And the said William Ferguson by Wm. Hunter his attorney, comes and appears the wrongful injury in said plaintiff's accusation mentioned, and says that the said plaintiff ought not have and maintain his said action against him, because he says that the said plaintiff's declaration is not sufficient in law to have and maintain his said action against him, and this he is ready to verify. by

Wm. Hunter, atty for
Defendant

And the said defendant assigns the following causes of demurrer—

1st. The said declaration does not aver said alleged injurious words or contain the words on which suit is brought.

2d. It is not averred that defendant ever became liable to pay, or that there was any consideration — or that the deft. thereafter promised. (2 Chitty pl. 340)

3d. There is no breach assigned (" " 337.)

4 No averment of time to any material fact except the time deft. subscribed or due to promise — no time as to date. (1s. Chitty pl. 309 — note 3)

5th. No averment that the note was ever delivered to the plaintiff or any other person by defendant."

On the back of which said demurrer was an endorsement in the words and figures following viz.

Filed April 12 1859.

Dan'l Sheridan
Clk

Demurrer

Wm. M. Gunning
Attorney for plaintiff

Wm. M. Gunning
Counsel

page 24

And afterwards to wit at a circuit court began and held in the court house at North Carolina in and for said county on the second Monday in the month of April A.D. 1859 and on Friday the second day of the term the following proceedings were had in said cause and duly made a matter of record of

Alex M Rawlings A pumpt

v

William Sergeant } On this day came the defendant by Hunter, his attorney, and moved to dismiss suit, thereupon came the plaintiff by his attorney and resisted said motion and after consideration thereof, motion was overruled, the defendant then moved to set aside default, which said motion was sustained and default set aside

And afterwards on Thursday of the term last aforesaid the following other proceedings were had in the cause viz

Alex M Rawlings A pumpt

v

William Sergeant } And now at this day came the plaintiff, and the defendant having plead in abatement and filed his demurrer to

page 25

plaintiffs declaration, the plaintiff by Patrick his attorney moved to strike plea from the files, which said motion was sustained and plea stricken from the files, thereupon the defendant by his said attorney withdrew his demurrer whereupon the defendant being three times solemnly called came not but made default

And afterwards, at another day, to wit, on the second Thursday of the said term and session, the said second Thursday being the 21st day of the said month the following proceedings and judgment were had, pronounced, and made a matter of record in said court viz

Mrs M Rawlings } Assumpsit
William Ferguson }

And again at this day, came the plaintiff by his attorney and moved the court to remit to assess the damages which was awarded him, thereupon came a jury Chas M Gerell, Jas Wrights, Gilbert Sleers, David Ford, Daniel Lipes, A. L. Taylor, John Stevenson, A. C. Howard, Wm Holzer, P. P. Richardson Joseph Gaines and James Martin

page 26. who being elected, tried and sworn well, and truly, to assess the damages &c. Having heard the evidence upon their oaths do say "we the jury find for the Plaintiff, and do assess his damages at one hundred and sixteen dollars and eighteen cents — judgment is therefore hereby rendered in favor of the Plaintiff against the said defendant for the sum of one hundred and sixteen dollars and eighteen cents damages, and costs of suit — and it appearing to the court, that writ issued on the 29th day 1838 — the attachment in this cause was levied on the southwest of lot no twelve, of Block No twelve in which is situated a small frame tenement, in old Port Mandeley — Therefore, ordered, that the same levied on and attached premises or interest, be sold, to satisfy the said damages and costs. And that a special execution issue to sell the same, directed to the Sheriff of Pulaski County. Commonwealth vs Isaac Williams &c

State of Illinois } Cot
Pulaski County }

I Gaston Blackiage
Clerk circuit court, in and for said county aforesaid, do hereby certify, that

page 27

The foregoing pages contain a true and complete transcript of the record with the endorsements and returns thereon, the pleadings with the endorsements on the same, together with all the proceedings, orders and judgments of the court in the foregoing entitled cause Moses M Rawlings vs William Ferguson

In testimony whereof I hereunto subscribe my name and affix the seal of the Circuit Court at office at Paducah this 10th day of May A.D. 1859

Jas. M. Davidge Clerk

William M Rawlings — Appeal

vs

William Ferguson — Judgment Bill.

Docket & terms 50c Sp ad 50c	80
Ent appr & atty 15c Mark & Cen 40c	55
Tot Bond 50c Filg 11 Papers 55c	1,05
Notice for Pet 50c Ent and ing 20c	.70
Sp ent ing 40c Mo Entries 20c	.60
Call & Sever jury 15c Ent verdict 10c	25
Jud 25c Tot Jud 15c Sever ent 5c	45
Bill 30c Ins Execution 75c Tot & ent at 25	1.30
Sp writ & Subpoenas 1,60 Att for trial 40	2,00
	$7.70
Russell Fees	50
Shutt bes. Leg att 50c Mileage 40	90
Rec 10c Mark Ad Fees 25	35
	$9.45

[21-8-12]

page 28

Plaintiff Judgment Bill continued

Amount not over	$9.45
Ret sur 10 h Sem sub Mileage 0 ret 2.05	2 15
Sem att. an col 50 h Mileage 0 ret 50	1.00
Jurors fees 50 Sweat fees 15 Sub Mileage 75	1 40
Sweat & witnesses 10 h Sem sub 1 Mileage 100	1.00
fees bill before Sheriff	$.00
fees bill in our court	$.00
Docket bill	1,25
Printers bill	7.50
Att'y M. Alexander dues	$29.80

Defts Bill

Ent appr & atty 15 h	15
Atty filing, & attachment 15	15
Atty answer 5 h, bra 20	25
No res and appearance 20 f Bill 30	50
Copying 30 h Man out send 60 folios 10	6.30
Certificate an a seal 35 h	35
Att'y J. M. Handy dues	$7.70

Sevier County, Circuit
April Term A.D. 1839

Transcript of Plaintiff

Moses M. Rawlings

v

William Ferguson

See 1st rule
of Court — There
is no specimen
of errors as there
required —

5

William Ferguson.
Plaintiff in Error
vs
Moses M. Rawlings. } From Pulaski Circuit
Defendant in Error

To the Honorable Judges of the Supreme Court of the State of Illinois

William Ferguson of Franklin County Illinois complains that at the April Term AD 1859 of the Circuit Court within and for the County of Pulaski. Moses M. Rawlings recovered a judgment against this Appellant for the sum of one hundred and sixteen dollars and Eighteen cents ($116 18) - That said judgment is unjust and erroneous as will appear by the transcript of the Record of the said cause hereto attached. The said William Ferguson therefore prays that a writ of Error may issue in said cause. ~~and to operate as a supersedeas~~ - and assigns the following causes of Error

That the Court erred in overruling the motion of the Defendant to dismiss suit
1st Because the return of the Sheriff to the writ shows no levy. and does not show whether defendant Ferguson was found or not.
1 st Freemans Digest P 136 Note 2. Sec 9

2d Because the Affidavit sets forth no cause of action.

3d Because the certificate of attachment was not filed or recorded. 1st Scammon 193. 458. 473. 1st Freeman Digest Repts 714-10th por. 256-12 por. 2d Freeman Digest 217. 574. 16th Ill. R. 64

4th Because the Plaintiffs declaration was not filed within the time required by Law. The writ in Attachment was issued May 21st. and served and returned May 27th. 1858. Proclamation for special term to be held 30th August was made on the 22d June 1858. Special Term commenced August 30th. on Thursday the 4th day of which the said cause was continued. That on Tuesday the 2d day of the September Term. Plaintiff filed his declaration on finding the fifth day of the term a default was taken against Ferguson

5th Because the said Default against Ferguson was void.

The Court erred in sustaining Plaintiffs motion to strike Plea in abatement from the files

1st Because the Record shows that there was no plea in abatement on file until three days after the motion

was made and sustained. The motion was made on the 14th and the Record shows that the plea in abatement was filed on the 17th.
* See Bottom of page.

2d Because as the defendant was by law allowed to file his plea in abatement traversing the facts in the plaintiffs affidavit and at the same time to have his demurrer to the plaintiffs declaration.

The Court erred in rendering judgment for the Plaintiff when it should have been for the defendant who therefore prays the said judgment may be reversed.

* 3d Because in fact the plea in abatement was filed on the ~~twelfth~~ 25 day of April the same being the second day of the term. That the date of the filing as appears upon the record is erroneous as will appear from the said record. the said seventeenth day of April being on Sunday and the said record further showing that the plea in abatement was stricken from the files. three days before it shows it was on file.

William Hunter
Atty for Plaintiff in Error.

Joman in Error
T. F. Bigger
~~S. A. Ward~~ ~~Atty~~ and James T. Casey
Attys for Deft in error

[9688-15]

33

Supreme Court Ills

William Ferguson
Plff in Error
vs
Morrell Rawlings
Deft in Error

Transcript of Record

Petition and
Errors assigned

Filed 28. October 1859 –
N. Johnston Clk

Paid by Hunter – $5.00

State of Illinois,
SUPREME COURT,
First Grand Division. } ss

The People of the State of Illinois,

To the Sheriff of Pulaski County.

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Pulaski county, before the Judge thereof between

Moses M Rawlings plaintiff and

William Ferguson defendant it is said that manifest error hath intervened to the injury of said William Ferguson as we are informed by his complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Mount Vernon, before the justices thereof; to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said Moses M Rawlings

that he be and appear before the justices of our said Supreme Court; at the next term of said Court, to be holden at **Mount Vernon**, in said State, on the first Tuesday after the second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if he shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Moses M Rawlings notice together with this writ.

WITNESS, the Hon. John D Caton Chief Justice of the Supreme Court and the seal thereof, at MOUNT VERNON, this twenty-eighth day of October in the year of our Lord one thousand eight hundred and fifty nine

Noah Johnston
Clerk of the Supreme Court.

[8668-167]

33

SUPREME COURT.

First Grand Division.

William Ferguson

Plaintiff in Error,

VS.

Moses M Rawlings

Defendant in Error.

SCIRE FACIAS.

FILED -

Received the within scire facias by reading and delivering a true copy thereof to the within named defendant in error Moses M Rawlings this first day of November A.D. 1859.

Thos. H. Bartleson Sheriff of Pulaski County Illinois

Defendant's Costs
Mileage
Serving
Copy
Fees
$4.10

Mound City Oct 27 1859

Noah Johnson Esq

Dear Sir Enclosed I send $14 dollars, to be applied in the payment of fees in the cases of Stein & Gay vs Wm A Hughes & Wm Ferguson vs Moses M Rawlings the letter which is enclosed, I believe this includes all the cases that I expect to try this Term

In the case of Morgan vs Moses Morgan is gone away without making arrangement about fees So that I presume we cannot get the case ready

Please send the writs of Scire Facias to me as soon as possible in the two first cases, as there is no time to spare in getting service

Yours Truly
Wm Hewitt

[3488-17]

State of Illinois,
SUPREME COURT,
First Grand Division. } ss

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Pulaski Greeting:

Because, *In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of* Pulaski *county, before the Judge thereof between*

Moses M Rawlings *plaintiff and*

William Ferguson *defendant it is said manifest error hath intervened to the injury of the aforesaid* William Ferguson *as we are informed by* his *complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given; you distinctly and openly without delay send to our Justices of our Supreme Court the record and proceedings of the plaint aforesaid; with all things touching the same; under your seal, so that we may have the same before our Justices aforesaid at* **Mount Vernon,** *in the County of Jefferson, on the* 1st Tuesday after the 2nd Monday of November *next, that the record and proceedings, being inspected, we may cause to be done therein; to correct the error, what of right ought to be done according to law.*

WITNESS, *the Hon:* John D Caton *Chief Justice of the Supreme Court and the seal thereof, at* MOUNT VERNON, *this* twenty eighth *day of* October *in the year of our Lord one thousand eight hundred and* fifty nine

Noah Johnston
Clerk of the Supreme Court.

[8689-18]

33

SUPREME COURT.

First Grand Division.

William Ferguson

Plaintiff in Error,

VS.

Moses M Rawlings

Defendant in Error.

WRIT OF ERROR.

Issued & FILED October 28th 1859 —

N. Johnston Cl

State of Illinois — In the Supreme Court
First Grand division — November Term 1859

William Ferguson
Plaintiff in Error
vs
Moses M Rawlings
defendant in Error

Error to Pulaski

Transcript of
Plaintiff in Error

The Clerk of the Supreme Court of Illinois for the first Grand Division will please issue a writ of Error in favor of William Ferguson the Plaintiff in Error and against ~~Moses M~~ Rawlings defendant in Error in this cause to reverse a judgment rendered at the April term AD 1859 of the Pulaski County Circuit Court in favor of the said Moses M. Rawlings and against the said William Ferguson for the sum One hundred and sixteen dollars and eighteen cents ($116 18/100)

William Hunter
Atty for Plff in Error

[BB-197]

33

Supreme Court

State of Illinois

Mount Vernon

William Ferguson

Plaintiff in Error

vs

Moses McRavings

Defendant in Error

Transcript of Plaintiff in Error

Filed 28th October 1859.

N. Johnston Clk

Ingram vs Rawlings —

Counsel for Defdt in error, refer the Court to —

Vance et al vs Funk et al 263

Randolph vs Emmett 13" 346

18" Ills. 262 - & 150

Drake on attachment 111 - 112

3rd Alabama 347

13" Mo 347

1 Plea in abatement

2 Pending, demurr

3 Mo. to dismiss sustained then

4 Mo. to set aside default

Plea in abatement stricken from files - then

Defdt. withdrawes demurr

STATE OF ILLINOIS—IN THE SUPREME COURT—FIRST GRAND DIVISION—OF NOVEMBER TERM, 1859.

WILLIAM FERGUSON, Plaintiff in Error, vs. MOSES M. RAWLINGS, Defendant in Error. Plaintiff assigns for Error.	Error to Pulaski.

PLAINTIFF'S BRIEF OF POINTS AND AUTHORITIES.

1st. That the Court erred in overruling the motion to dismiss the suit.

2nd. Because the return of the Sheriff to the writ of attachment, does not show whether defendant (Ferguson) was or was not found.

I Freeman 136, Note 2, XV Ills. 266.

3d. Because the affidavit shows no cause of attachment.

Breeze 222.

4th. Because the certificate of attachment was not filed or recorded.

XI Ills. 21, I Freeman 714, 10th par. 256 12th par.

5th. Because the declaration was not filed within the time required by law.

Statute 253.

The writ in attachment was issued May 21st and returned served May 22d, 1858. Proclamation for special term of Court to be held 30th of August, was made on the 22d of June 1858. Special term commenced August 30th; on Thursday the 4th day of said term said cause was continued.

That on Tuesday the 2d day of the September term, Plaintiff filed his declaration, and on Friday the 5th day of the term a default was entered against Ferguson, which default was void.

Scates Statute 253.

6th. That the Court erred in sustaining the motion to strike the plea in abatement from the files.

Because the plea was not filed until three days after it was stricken from the files (as per Record) stricken from the files on the 14th and filed on the 17th.—Because in fact the plea in abatement was filed on the 12th day of April, being the 2nd day of the term, that the date of filing as appears by the Record is erroneous, filed on the 17th April, *which was Sunday*.

Because the defendant (below) was by law allowed to file his plea in abatement traversing the facts in Plaintiffs affidavit, and at the same time to have his demurrer to the Plaintiffs declaration.

I Chitty's Plead. 458, 455, XVIII Ills. 263, III Scam. 201

XI Ills. 574.

WM. HUNTER, *Attorney for Plaintiff in Error.*

7th The Court erred in rendering Judgment on damages assessed by the Jury without proof of the truth of defendants affadavit or other evidence

Wm Hunter
for Plaintiff

[3658-2]

33-15 33

State of Illinois
Supreme Court
1st Grand Division
November Term 1859

William Ferguson
Plaintiff in Error
vs
Moses McRawlings
Defendant in Error

Plaintiff Brief

Filed Nov. 16. 1859
N. Johnston Clk

Brief 111 - The opinion and the
Alternative is well
13 Ills 544

STATE OF ILLINOIS — IN THE SUPREME COURT — FIRST GRAND DIVISION — NOVEMBER TERM, 1859.

Error to Pulaski.—Abstract of Plaintiff in Error.

WILLIAM FERGUSON, Plaintiff in Error.

vs.

Page of Record.

MOSES M. RAWLINGS, Defendant in Error.

1. This was an attachment commenced in the Circuit Court of Pulaski county on the 21st day of May, 1858, by filing Precipe, Affidavit and Bond.

The affidavit of Rawlings charges that Ferguson is indebted to Rawlings in the sum

2. of $116 18 by note and book account, and "that Ferguson has departed this State, or "conceals himself so that process cannot be served upon him according to the best infor- "formation," and prays an attachment.

On the same day a writ of attachment was issued against the estate of Ferguson, re-

4—5. turnable on the 1st Monday of September, at the next term of said Court, and which writ was returned endorsed—

6. "Served this attachment on the south half of lot No. 12, of block No. 12, upon which "is situated a small frame tenement, in old plat Mound City, May 27, 1858.

"THOMAS SMITH, Sh'ff, per A. C. BARTLESON, Dpt'y."

11. At a special term of said Court begun 30th day of August, 1858.

On the 4th day of said term, Thursday, 2d day of September, the case was continued.

At the regular term begun on the 1st Monday of September, 1858, on Tuesday, the 2d

8. day of said term and 7th day of Sept., plaintiff filed his declaration.

On Friday the 5th day of the term, a default was taken against Ferguson, and ordered

12. that a jury be summoned to assess damages in vacation, and cause continued.

March 23d, a writ of inquiry was issued to assess damages in vacation.

The said Jury, on the 9th day of April, assessed Rawlings' damages at $120 58.

14.—15. Tuesday the 2d day of April term, 1859, Ferguson, by Att'y, moved to dismiss suit,

24. which was overruled.

Then entered motion to set aside default, which was sustained; Ferguson filed plea in abatement to affidavit, and demurrer to declaration.

20. Plea in abatement denies that Ferguson had departed that State or concealed himself so that process could not be served upon him, and states that he has been before, at the time, and ever since the commencement of this suit, continually a resident of Franklin county, Illinois.

The endorsement on said plea that it was filed April 17th is a clerical error, as shown

22 in the following, because the 17th was Sunday, &c.

On Thursday, the 14th day of April, and 4th day of the term, Rawlings, by Attorney,

25 moved to strike plea in abatement from the files, which motion was sustained by the Court, whereupon defendant withdrew his demurrer.

Afterwards, on the second Thursday of said term, being the 21st day of April, Raw-

lings moved for a venire to assess damages which was awarded, and which jury assessed at $116 18 ; judgment rendered thereon for $116 18 damages and costs of suit, and it appearing to the Court that on the 27th of May, 1858 an attachment was levied on the south half of lot No. 12, in block No. 12, old plat Mound City, it is ordered that the same be sold, and that a special execution issue.

WM. HUNTER, Attorney
for plaintiff in error.

33

William Ferguson

vs

Moses M. Rawlings

Abstract

Filed Nov. 11- 1859-

A. Johnston Clk

STATE OF ILLINOIS—IN THE SUPREME COURT—FIRST GRAND DIVISION—OF NOVEMBER TERM, 1859.

WILLIAM FERGUSON, Plaintiff in Error, vs. MOSES M. RAWLINGS, Defendant in Error. Plaintiff assigns for Error.	Error to Pulaski.

PLAINTIFF'S BRIEF OF POINTS AND AUTHORITIES.

1st. That the Court erred in overruling the motion to dismiss the suit.

2nd. Because the return of the Sheriff to the writ of attachment, does not show whether defendant (Ferguson) was or was not found.

I Freeman 136, Note 2, XV Ills. 266.

3d. Because the affidavit shows no cause of attachment.

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4th. Because the certificate of attachment was not filed or recorded.

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5th. Because the declaration was not filed within the time required by law.

Statute 253.

The writ in attachment was issued May 21st and returned served May 22d, 1858. Proclamation for special term of Court to be held 30th of August, was made on the 22d of June 1858. Special term commenced August 30th; on Thursday the 4th day of said term said cause was continued.

That on Tuesday the 2d day of the September term, Plaintiff filed his declaration, and on Friday the 5th day of the term a default was entered against Ferguson, which default was void.

Scates Statute 253.

6th. That the Court erred in sustaining the motion to strike the plea in abatement from the files.

Because the plea was not filed until three days after it was stricken from the files (as per Record) stricken from the files on the 14th and filed on the 17th.—Because in fact the plea in abatement was filed on the 12th day of April, being the 2nd day of the term, that the date of filing as appears by the Record is erroneous, filed on the 17th April, *which was Sunday.*

Because the defendant (below) was by law allowed to file his plea in abatement traversing the facts in Plaintiffs affidavit, and at the same time to have his demurer to the Plaintiffs declaration.

I Chitty's Plead. 458, 455. XVIII Ills. 263, III Scam. 201

XI Ills. 574.

WM. HUNTER, *Attorney for Plaintiff in Error.*

That the Court erred in rendering judgment on assessment of damages by the Jury without testimony of other facts Wm Hunter for Plaintiff

[8478-94]

State of Illinois 33
Supreme Court
1st Grand Division
November Term 1859

William Ferguson
Plaintiff in Error
vs
Moses McRamey
Defendant in Error

Plaintiffs Brief

8688

Filed Nov. 16. 1859 –
A. Johnston Clk

STATE OF ILLINOIS — IN THE SUPREME COURT — FIRST GRAND DIVISION — NOVEMBER TERM, 1859.

Error to Pulaski.—Abstract of Plaintiff in Error.

WILLIAM FERGUSON, Plaintiff in Error.

vs.

Page of Record.

MOSES M. RAWLINGS, Defendant in Error.

1. This was an attachment commenced in the Circuit Court of Pulaski county on the 21st day of May, 1858, by filing Precipe, Affidavit and Bond.

The affidavit of Rawlings charges that Ferguson is indebted to Rawlings in the sum

2. of $116 18 by note and book account, and "that Ferguson has departed this State, or "conceals himself so that process cannot be served upon him according to the best infor- "formation," and prays an attachment.

On the same day a writ of attachment was issued against the estate of Ferguson, re-

4—5. turnable on the 1st Monday of September, at the next term of said Court, and which writ was returned endorsed—

6. "Served this attachment on the south half of lot No. 12, of block No. 12, upon which "is situated a small frame tenement, in old plat Mound City, May 27, 1858.

"THOMAS SMITH, Sh'ff, per A. C. BARTLESON, Dpt'y."

11. At a special term of said Court begun 30th day of August, 1858.

On the 4th day of said term, Thursday, 2d day of September, the case was continued.

At the regular term begun on the 1st Monday of September, 1858, on Tuesday, the 2d

8. day of said term and 7th day of Sept., plaintiff filed his declaration.

On Friday the 5th day of the term, a default was taken against Ferguson, and ordered

12. that a jury be summoned to assess damages in vacation, and cause continued.

March 23d, a writ of inquiry was issued to assess damages in vacation.

The said Jury. on the 9th day of April, assessed Rawlings' damages at $120 58.

14.—15.

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Then entered motion to set aside default, which was sustained; Ferguson filed plea in abatement to affidavit, and demurrer to declaration.

20. Plea in abatement denies that Ferguson had departed that State or concealed himself so that process could not be served upon him, and states that he has been before, at the time, and ever since the commencement of this suit, continually a resident of Franklin county, Illinois.

The endorsement on said plea that it was filed April 17th is a clerical error, as shown

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On Thursday, the 14th day of April, and 4th day of the term, Rawlings, by Attorney,

25 moved to strike plea in abatement from the files, which motion was sustained by the Court, whereupon defendant withdrew his demurrer.

Afterwards, on the second Thursday of said term, being the 21st day of April, Raw-

[8688-25]

lings moved for a venire to assess damages which was awarded, and which jury assessed at $116 18 ; judgment rendered thereon for $116 18 damages and costs of suit, and it appearing to the Court that on the 27th of May, 1858 an attachment was levied on the south half of lot No. 12, in block No. 12, old plat Mound City, it is ordered that the same be sold, and that a special execution issue.

WM. HUNTER, Attorney
for plaintiff in error.

[Page 26]

33

William Ferguson

vs

Moses M Rawlings

Abstract

Filed Nov. 11 - 1859 -

A. Johnston Clk

No 33 - 15

Nov. Term 1859

Wm. Ferguson

vs

M. M. Rawlings

Error to Pulaski

Affirmed

8688