No. 8453

Supreme Court of Illinois

W. R. Wilkinson

vs.

Quincy A. Ballard

Pleas begun and held in the Circuit
Court in and for the County of Wabash
and State of Illinois in the Cause wherein
William D Wilkinson is Plaintiff and
Lucinda A Ballard is Defendant as
follows to Wit

Petition

State of Illinois }
Wabash County } Wabash Circuit Court
September Term 1858.

To the Honorable Edwin Beecher Judge of the Twelfth Judicial Circuit in the State of Illinois.

The Petition of Lucy A. Ballard of said County humbly complaining, would respectfully represent unto your Honor that heretofore to-wit on or about the 6th day of May 1858 your Petitioner left his home in Wabash County Illinois on a short business trip down to the County of Wayne in the State aforesaid that soon thereafter to-wit on the 8th day of May 1858 one William R Wilkinson of said County of Wabash by John C. Youngkin his clerk commenced an action against your Petitioner by attachment before Joseph Wood a Justice of the Peace in and for said County of Wabash for the sum of ninety five dollars and ten cents, that the affidavit upon which said writ of attachment was based was made by the said John C Youngkin clerk as aforesaid, that said affidavit alledges and charges among other things that your Petitioner had absconded and that he concealed himself so that the ordinary process could not be served upon him that said said writ of attachment was placed in the hands of Levi Couch a constable of said Wabash County who levied the same upon the goods

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chattles, notes and accounts of your Petitioner and so returned the same on the said 8th day of May 1858 - The same day upon which said attachment was issued, that said writ of attachment was not personally served upon your petitioner he at the time being in Wayne county and knowing nothing of said proceedings, That afterwards to wit on the 18th day of May 1858 Judgment was ren and against your petitioner by said Justice in favor of the said Wm A Wilkinson for the said sum of ninety five dollars and ten cents.

That afterwards to wit, on or about the day of 1858 all of the goods, chattles, notes and accounts so attached as aforesaid were by the said Constables sold at and for the sum of one hundred and fifty eight dollars and twenty eight cents which goods &c were purchased by

That the said goods, chattles, notes and accounts so attached, and sold as aforesaid were well worth the sum of five hundred dollars.

Your Petitioner would further represent unto your Honor That at the time of the making of said affidavit and the issuance of said attachment your petitioner was neither absconding nor concealing himself. But on the contrary was attending to his legitimate and lawful business in the said County of Wayne and State afore-

said. That the said Judgment rendered against your Petitioner by the said Joseph Woods Justice of the Peace as aforesaid is grossly wrong and erroneous your petitioner at the time having a good legal and substantial defence to the said action instituted against him by the said William R Wilkinson as aforesaid

Your petitioner would further represent unto your Honor That he not knowing anything about the proceedings being instituted and prosecuted against him by the said William R Wilkinson as aforesaid in Wabash County, did not return home until the expiration of twenty-one days after the rendition of the Judgment aforesaid thereby thus lost to take an appeal in the ordinary way from said Judgment to the Circuit Court of said County. That the rendition of said Judgment against your Petitioner in favor of the said William R Wilkinson was not the result of negligence or inattention on the part of your Petitioner, nor is your petitioner chargeable with any negligence or laches in not taking an appeal from said Judgment for the reason aforesaid

That at the time of the rendition of said Judgment your petitioner was note indebted to the said Wm R Wilkinson in the said sum of ninety five dollars and ten cents. But is indebted at only in was a much smaller sum. which he is ready

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said he will be able to show upon a full and fair trial of said cause.

Therefore in consideration of the premises your petitioner would humbly pray your Honor to grant and award to your petitioner a writ of Certiorari to remove the above entitled cause from before the said Joseph Wood Justice of the peace as aforesaid into the Circuit court of said Wabash county, so that the decision of the said Justice may be reviewed and corrected and that your petitioner may have Justice in the premises. That your Honor may grant such other and further relief in the premises as may be just and right &c &c and your petitioner as in duty bound will ever pray &c &c

D A Ballard

Harmon & Watson attys
for Petitioner

Sworn to and subscribed
before me this 4th day of
September A D 1858

Miriam Daly Clerk

Circuit Court Wabash County

Order

The Clerk of the Circuit Court of Wabash County will issue a writ of Certiorari as prayed for by the within petition upon the Petitioners giving bond and security according to Law.
This 6th Sept 1858

Edwin Bucher
Judge 1st Court
12th Judicial Circuit.

Writ

State of Illinois }
Wabash County } ss. The People of the State of Illinois to Joseph Wood Esq a Justice of the Peace of said County Greeting. Whereas in a suit before you wherein William A Wilkinson was plaintiff and Lunsey D. Ballard Defendant, the said defendant having obtained an order from the Judge of our Circuit Court for a writ of Certiorari to remove said cause into the Circuit Court of said County — Now we therefore hereby command you to certify, and return to our said Court a full and complete Transcript of the proceedings had before you in said cause, and suspend all further proceedings in relation thereto

Witness Hiram Bilz Clerk of the Wabash Circuit Court & the seal thereof at Mt Carmel this 7th day of September AD 1858

Hiram Bilz Clerk

Endorsement of Return.

Executed the within by reading the same to the within named Joseph Wood this 9th day of September A.D. 1858. Chas. Cayou Sheriff W. Co. Ills.
C. C. Cayou Deputy

State of Illinois Wabash County ss
Circuit Court June A.D. 1859

William R. Wilkinson
vs
Murray & Ballard

Be it remembered that on this day the Plaintiff Wilkinson moved the court to dismiss the Petition for Certiorari filed by the Defts Ballard herein which said motion being by the Court overruled. to the opinion of the Court so overruling said motion the Pltff Wilkinson by his counsel then & there excepted and tenders this his bill of exceptions which is signed and sealed and made part of the record which is done

Edwin B. Bucher
Judge Cir Court.

Lemuel A. Ballard

vs

William R. Wilkinson

The answer of William R. Wilkinson to the petition of Lemuel A. Ballard for a writ of Certiorari would respectfully show, that it is true that he sued out a writ of attachment as alleged and that the same was levied as alleged, and a judgment obtained thereon, and the property attached sold as alleged, but that it is not true as alleged by the said Petitioner that he had no notice of said attachment being sued out, but your respondent especially avers that said petitioner had notice. Your respondent further answering says that it is not true as alleged by the Petitioner that he the petitioner had not absconded or concealed himself, but that in fact he the Petitioner had absconded. And your respondent further answering says that all other matters & things in said petition contained and not specially admitted or denied, are denied as pleaded. And having fully answered prays that said writ of Certiorari may be dismissed &c

William R. Wilkinson

Bowman & Harrow Sols

for Defts

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Be it remembered that at the April and June special Terms A.D. 1860. of the Circuit Court in and for the County of Wabash and State of Illinois the following entitled cause came on to be heard before the Hon Edwin Beecher Judge and a Jury. when the following orders of Court were made and entered of Record at the day and date specified in the said orders of Court to wit:

William A Wilkinson

vs

Lainey A Ballard

} Certiorari

At this day. (being the 11th day of April 1860 and the 3d day of the Term) came the parties by their attorneys and issue being joined on a plea in abatement, whereupon there came a Jury to wit. David Simonds, Samuel Mauk, John A. Greathouse, William Painter, Thomas L. Depuy, Philip Rasynor, Samuel Shaw, Jacob Groff, James Rigg, Samuel Brown, Nicholas Leitz and Robert G. Martin twelve good and lawful men, who being duly elected tried and sworn the truth to speak upon the issue joined upon their Oaths say "We the jury find for the defendant" Whereupon the Plaintiff by his attorney moved the court for a new trial, and the Court not being sufficiently advised took time &c.

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William A Wilkinson
vs
Lemuel A Ballard
} Certiorari

At this day (being the 14th day of April 1860 and the 6th day of the Term) again came the parties by their Attorney's, and the Court being now sufficiently advised it is considered by the Court that the motion for a new trial entered herein on Wednesday last, be granted, and a new trial awarded, and it is further ordered that this cause be continued.

William A Wilkinson
vs
Lemuel A Ballard
} Certiorari

At this day (being the 25th day of June A.D. 1860 and the 8th day of the Term) comes the Plaintiff by his Attorney's, and on their motion it is ordered by the court that this cause be continued until Thursday next, at the cost of the Plaintiff.

William A Wilkinson
vs
Lemuel A Ballard
} Certiorari

At this day (being the 28th day of June A.D. 1860 and the 8th day of the term) come the parties by their Attorney's, and issue being Joined upon the plea to the petition, there came a Jury to wit:

David Martin, Ludlow Dawson, David Worsley Keen, Uchman, Stephen D Green, Abraham Rubel, Joseph Shadle, George Sutherland, Francis Dorney, George Rank, Horatio Garrett and Samuel Lavellette twelve good and lawful men, who being duly elected tried and sworn the truth to speak upon the issue joined, retired to their room to consider of their verdict.

William A Wilkinson
vs
Quincy A Ballard } Certiorari

At this day (June 29th 1860 being the 9th day of the term) the jury empanelled ~~as aforesaid~~ in this cause on yesterday, come into court, and on their oaths say, "We the jury find for the Defendant" whereupon the Plaintiff by his attorney's moves the court for a new trial and in arrest of Judgment, and the Court not being advised takes time &c.

William A Wilkinson
vs
Quincy A Ballard } Certiorari
(July 2nd 1860 being the 12th day of term)

It is considered by the court that the motion entered herein on Friday last for a new trial and in arrest of judgment, be overruled.
It is further ordered by the Court that this cause be continued.

[1453-7]

Be it remembered that on the day of June 1860 being the day of the June special Term of the circuit Court in and for the County of Wabash and State of Illinois the following entitled cause came on to be heard before the Hon Edwin Bucher Judge and a jury to wit.

William D Wilkinson
as
Jamison & Ballard

Petition for Certiorari

And the Plaintiff in error and George W Browne a witness of lawful age who being first duly Sworn testified as follows. I wrote a letter to Ballard the defendant in the Spring of 1858 that old Billy Wilkinson the Plff had attached his the defts Books, dont know whether I said anything about his Books, that the trial would come off on the next Thursday before Esquire Woods and he might guess how it would go, the letter was written on Sunday and delivered to Nathaniel Newman to be carried by him to Ballard at New Mapillon Wayne County Ballards Books were in the hands of Enoch a Constable and I requested him Ballard to send me a receipt against my account on his books as it was said I had a conversation with Ballard (the defd) after his return and he said he had written the receipt but did not send it because the boys had acted badly with Jamison.

boys Examined." Had this conversation in Brandsville near the store of Wilkinson two or three months after Ballard returned. He commenced the conversation & opened himself for with owning the receipts. My feelings are not Kind Towards Mr Ballard's and this was all his Testimony.

The Plff (Wilkinson) also introduced Nathaniel Newman a witness of lawful age who being first duly sworn Testified That. He received the letter for Ballard from Crowely on Sunday & piloted to Clark for new Mexico on Monday but did not get off until the next Thursday and reached New Mexico on the same day & delivered the letter to Mr Ballard who read it in his presence. Witness also read the letter, in it Crowely said Old Billy Wilkie" was playing hell in Brandsville. Don't recollect That it contained anything about an attachment proceeding. Witness told Ballard That Wilkinson had commenced some Kind of proceedings against him. I did not tell him what Kind of proceedings because I did not know. Ballard said he supposed it was a sham to defeat Sellers Execution. I said perhaps it was did not know. I remained in New Mexico four weeks and this was all the testimony of said Witness.

The Plff also introduced. Francis Brown a Witness of lawful age who being first duly sworn Testified " I went with Newman to New Mexico

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and returned next day being Thursday or Friday and a message was brought by myself or Lucius Daley from Mr Ballard to Dr James Leeds don't remember which of us brought it. We stopped in a Waggon before the office of Dr Leeds in Greensville the evening we came home and delivered the message I don't remember what it was but think it was to the effect that Dr Leeds should attend to his Ballards business. and this was all his testimony.

The Plff also introduces introduces Dr James Leeds a witness of lawful age who being duly sworn testifies, to wit: I saw Brown & Daley when they returned from New Market they stopped at my office in Greensville and told me that Ballard the Defendant had employed myself & his Brother Henry Ballard to attend to his business. William Wardly an Attorney of Lawrence County and myself attended the Trial before Esquire Woods. The Trial was on the 18th of May 1858. I wrote to Mr Ballard sometime between the Trial and the day of sale informing him that Judgment had been rendered against him by Esquire Woods. The sale was on the 5th of June. This letter I directed to Mr Ballard at New Market. I was Post Master at Greensville at the time & the letter after the return of Ballard was returned to the office at Greensville having been remaining at New Market & was taken out of the office by Mr Ballard on the same day it

come back to Greensville and remember the time
between the date of the letter & its return to Greensville
I also received a letter from (Mr Ballard) written
at New Mapleton before he came home in which
he inquired how "Billy Wilkes and James Bisley came
on swearing his"
Bob examined Wilkinson objected to our Counsel
& (myself) appearance as Esquire Woods to defend
the suit, unless we would take the responsibility
Esquire Woods) also directed that we could not attend
for Ballard) unless we had a power of attorney from
him. Esquire Woods) also previously stated to me
when I obtained subpoena for Witnesses that I
could not attend unless I had a power of Attor-
ney. I am a Brother in Law of Ballard) & was
taking an interest in the hearing I rec'd the message.
and this was all his testimony

The Plff also introduced David Williams
a witness of lawful age who being sworn testified
to wit) I had a conversation with (Ballard) after
his return in which he told) me he would have been
home in time to attend the trial himself but for
the high water, and this was all his testimony

The Plff also introduced Seems Daley a witness
of lawful age who being first duly sworn testified as
follows. We left Mapleton the next morning
after Newman & Evans come there to return to
Wabash County (Ballard) came with us to Pulash

us across the water. I was present when Ballard read the letter of Browder. I read the letter over Ballard's shoulder it stated that old Billy Wilkes was staying detained in Greensville. I don't recollect that it stated any thing about attachments or other proceedings. We got home on Friday or Saturday and the trial was before Esquire Woods after we got home" and this was all his testimony

The Plff also introduced Thos Hall a witness of lawful age who being duly sworn testified as follows to wit I had a conversation with Ballard after his return home. He talked about getting up a suit against Wilkinson and he said he knew they would not stick he referred to the attachment suit of Wilkinson against him Ballard. He also ~~stated~~ talked about the suit of Dillon against him and this was all his testimony. and the Plff closed his case. This was all the evidence in the cause on both the Plff & Defts.

The Court then gave the following instructions for the Plff.

1 The question to be decided in this case is, whether Ballard had notice of the pendency of the suit or judgment before the Justice of the Peace, in time to have taken an appeal within 20 days after the judgment was rendered. And if they find that he had such notice they will say in their verdict "We the Jury find for the Plaintiff"

or if the Jury do not have such notice they will say "We the Jury find for the defendant"

Given

No 2. — If Ballard had such notice as provided for in the instruction No 1 given at the request of Wilkinson that proceedings were being prosecuted by Wilkinson against him, the fact if it exist that the water prevented his reaching home in time for appeal, will not avail Ballard in this proceeding but the verdict must be for the Pltff Wilkinson should the Jury conclude from the evidence that Ballard had notice in time to take an appeal

Given

No 3. Any notice to Ballard of legal proceedings by Wilkinson against Ballard which would put a prudent man upon inquiry is sufficient and if the Jury believe from the evidence that Ballard had such notice that such legal proceedings were being had and in time to have taken an appeal from the judgment in question within 20 days after judgment then the Jury will find for Wilkinson.

Given

No 4 If the Jury believe that Ballard had notice that legal proceedings were instituted against him by Wilkinson whether he knew the character of such proceedings or not, as a prudent man he

was bound to inquire into them & if after such notice if he had such notice, he neglected to attend to it & timely & failed to take an appeal, the Jury will find for Wilkinson

Given

No 5- If the Jury believe from the evidence that Ballard had notice of proceedings by information from any source, which would put a prudent man on inquiry that Wilkinson had commenced legal proceedings against him in this county within time to have taken an appeal from the Judgment in question, then the Jury will find for Wilkinson, whether Ballard supposed the proceedings to be a sham or not.

Given

No 6. Whether the proceedings before the Justice were regular or not, or whether the judgment was wrongfully obtained or not, is not for the consideration of the Jury they have nothing to do with the regularity or justice of the attachment proceedings. Both must find that Ballard had or had not notice & that from the testimony

Given

No 7. The Jury will decide this cause from the preponderance of testimony, and if they believe the greater weight of credible testimony, be in favor of Ballard having had notice in 20 days after Judgment rendered & within time to-

have to Run an appeal in the usual manner
their verdict must be for Wilkinson

Given

The Plaintiff also offers the following instruction

8 If the Jury believe from the evidence that Leeds was authorized to attend to the business of Ballard generally. then the Defendant (Ballard) is bound by all the legal consequences of notice to his agent.

Refused.

which instruction the court refused to give and to which refusal of the court to give said instruction the Plff by his counsel at the time excepted.

The court then also gave the following instructions on part of the defendant Ballard.

The Court instructs the Jury that it devolves upon Wilkinson in this inquiry also to show by legitimate and competent evidence that within 20 days of the time of the rendition of the Judgment in question the defendant (Ballard) had notice that Benjamin R Wilkinson had commenced legal proceedings against him and unless he has so shown the Jury should find for the defendant (Ballard)

Given

The court instructs the Jury that if there is a conflict in the evidence of two or more of

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the witness sworn in this cause, and that they are equally credible and have equal opportunities of knowing the facts about which they testify then the Jury should be controlled by the greater number and render their verdict accordingly.

Given

The court instructs the Jury that unless Wilkinson has shown by legitimate and credible evidence that Ballard did know in less than 20 days from the time of the rendition of judgment in favor of Wilkinson that Wilkinson had sued out an attachment against him, or had commenced legal proceedings against him, the Jury must find for the petitioner Ballard

Given

That the Jury in deciding this case must not be warranted in, in drawing in any presumptions not legitimately sustained by the evidence, but that it is their duty to decide this case from legitimate and competent evidence

Given

to the giving of which instructions by the court the Plff by his counsel at the time excepted.

The Jury returned into court the following verdict "We the Jury find for the Defendant" and thereupon the Plff moved the Court for a new trial and filed the following causes.

1st That the verdict is against the evidence

2d. That the verdict is contrary to the law & evidence
3d Because the court refused to give the instruction
as asked by the Plff.

Which motion for new trial the court overruled and
rendered Judgment upon the verdict. To which de-
cision of the court overruling said motion for
new trial, and the rendering of Judgment on the
verdict the Plff by his counsel at the time excepts
and here presents this his bill of exceptions which
is signed & sealed by the court & ordered to be made
a part of the record in this cause

Edwin Bucher Seal
Judge Levi Court.

Transcript of Justice of the peace and accom-
panying papers on file in this office to wit:

No 8. Transcript

Wm A Wilkinson
vs
I A Dillard
attachment

State of Illinois Wabash County ss.
Justices Court before the undersigned
attachment Issued this 8th day
of May AD 1858 in action of debt attachment
in the hands of Levi Leach Constable returnable
forthwith. And now on this 8th day of May
AD 1858 attachment returned without service on
the defendant. Levied on 2 sets blacksmiths
Tools. 9 Plow Irons. 9 Plow Moulds. 15 Bars

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Iron. 2 pieces of Plate Steel. 1 Lot Stone coal. 2 Bales 1 Balance. 2 Log Chains, also one note on Lucius Daly for $92 55/100 which has a credit of $11 33/100 on it, also one note on Ross Shroff for $20.00/100 payable in plastering, also on Box account Books all the property of J A Ballard. Notice as required by law were written out and posted up. Notice returned this 18th day of May AD 1858.

And now on this 18th day of May AD 1858 the notice returned & the defendant not appearing. It is therefore hereby ordered by the court that the have judgment by default against the defendant for the sum of ninety five dollars & ten cents & costs of suit. And that the property attached be sold to satisfy the same. Given under my hand and seal this 18th day of May AD 1858

Joseph Ward J. P.

Justices costs		Constables costs	
Docketing suit	12½	Serving attachment & Endorsing same	35
Taking Bond & issuing attachment	25	Serving 2 Subpoenas & endorsing on same	21½
2 Subpoenas	56¼	Notices	1.00
1 Oath	6¼	Levi Couch C.C.	
Entering Judgment	25	Principles examined attendance	
Transcript	25	John C Young Clerk	50

Attachment returned & sales filed this 4th day of day June AD 1858

Joseph Ward J. P.

G. A. Ballard in acct with
R. A. Wilkinson

1858					
March	27	To 18 lbs 3/4 Iron for		1	00
"	"	" 1 Plow Mould # 5		4	50
"	"	" 6 " " " 4	4 25 each	25	50
"	"	" 6 " " " 3 "	4 00 each	24	00
"	"	" 6 " " " 1 "	3 65	21	90
"	"	" 219 lbs Bar Iron 4 1/2		9	85
"	"	" 169 " Stab Steel 10 1/2		17	75
"	30	" 16 lbs " Iron 5			80
April	1	" 50 " " 5		2	50
"	2	" 8 " " 3/4 Round		0	52
"	3	" 1 pair Goat Shoes		2	00
"	6	" 18 lbs Iron 5 3/4		1	03
"	8	" 1 Bastard file		0	75
"	20	" 52 3/4 lbs Iron 6 1/4		3	30
"	22	" 20 " " 6		1	20
"	"	" 9 " 1 Brass Kettle 60		5	40
"	26	" 15 lbs " Bar Iron 4 1/2		70 =	122 70
May	7	By a note on Jacob Seibert			27 60
					$95 10

This a/c omitted in copying Record is now attached hereto
R. H. Harding Clerk

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Received above Judgment in Full this 8th day
of June AD 1858

W R Wilkinson
per Thomas Wilkinson

State of Illinois }
Wabash County } I Joseph Wood one of the Justices
of the Peace within and for said County, do hereby
certify that the foregoing transcript and Judgment
of Wm R Wilkinson vs L A Ballard is truly copied
from my docket. Given under my hand
and seal this 13th day of April 1859

Joseph Wood J.P. [Seal]

Attachment

State of Illinois }
Wabash County } John C Youngken (clerk for William
R Wilkinson) complains on his oath against
Lucinda A Ballard and says that he the said Lucinda
A Ballard is indebted to William R Wilkinson
in the sum of ninety four dollars and ten cents,
and that said debtor has absconded and con-
ceals herself so that ordinary process of law can-
not be served upon him. That he said John C
Youngken asks for an attachment.

Subscribed and sworn to
before me this 8th day
of May AD 1858
Joseph Wood J.P.

J. C. Youngken

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Writ of attachment & endorsements thereon.

State of Illinois }
Wabash County } The People of the State of Illinois
to any constable of said County Greeting:

Whereas John C Youngstein hath complained on oath before Josiah Wood a Justice of the peace in and for said County, that Lewis A Ballard is justly indebted to the said William B Wellington in the amount of ninety five dollars and ten cents and oath having been also made that the said Lewis A Ballard conceals himself so that or ordinary process of law cannot be served upon him.

And the said William B Wellington having given bond and security according to the direction of the act in such cases made and provided; we therefore command you, that you attach so much of the personal estate of the said Lewis A Ballard to be found in your county, as shall be of value sufficient to satisfy said debt and costs, according to the complaint and such personal estate so attached in your hands to secure or so to provide, that the same may be liable to further proceedings thereon according to law, before the undersigned Justice of the Peace. And in any personal property of value sufficient cannot be found that you summon Lewis Williams to appear before the said Justice, forthwith then and there to answer what may be objected against him, when

and where you shall make Known how you have executed this writ. Given under my hand and seal this 8th day of May AD 1858

Joseph Wood J.P. [seal]

I have Levied the within attachment by attaching 2 sets Blacksmith Tools, 4 Plow Irons 4 Plow Moulds, 15 Bars Iron, 2 pieces Slab Steel 1 Lot Stone coal - 2 Bills on Balance 2 Log chains I cannot find said defendant in my County the 8th day of May 1858.

Levi Couch Constable

Also by attaching sundry articles handed over to me by one David Williams Garnishee in said attachment. to wit: One note of hand given by Luzerne Ball to said L A Ballard calling for $92.50/100 on which is a credit of $11.33/100 also one note of hand given by one Rob Shroff calling for $20.00 payable in plastering one one day after date dated April 4th 1858. also two books of accounts. all levied upon as the property of said L Ballard May 8th 1858.

Levi Couch C.C.

Serving attachment 25
Endorsing 10

Levi Couch cont.

State of Illinois }
County of Wabash } On this day comes Wm B Wilkins Plaintiff in said cause & obtained a judgment for the sum of ninety five dollars and

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ten cents debt and four dollars and fifty eight cents costs in said suit. You are hereby ordered to sell the property attached to pay the same

Given under my hand and seal this 18th day of May 1858. Joseph Bord J. P. [Seal]

I have the property levied on in pursuance of law and due notice for the sum of $100.86 and return this attachment satisfied this 7th day of June 1858

Levi Couch C.C.

Attachment Notice

State of Illinois }
Wabash County } In the case of Wm. R Wilkins vs D. A. Ballard before Joseph Bord Justice of the Peace of said County. Notice is hereby given to the defendant that an attachment was issued by the undersigned on the 8th day of May AD 1858 in favor of the said Plaintiff and against the said defendant for the sum of ninety five dollars and ten cents that said attachment was returned to my office on the 8th day of May AD 1858. Levying the return thereof levied on 2 sets blacksmith Tools. 9 plow irons, 9 plow moulds. 15 bars Iron. 2 pieces of Slab steel. 1 Lot of Stone coal. 2 Bibs one balance, 2 Vise chains. One note of hand given by Lazarus Daly to said D A Ballard calling for $92.$\frac{50}{100}$ on which is a credit of $11.$\frac{27}{100}$. Also one note of hand given by one Ross

Sheriff to said G. A. Ballard calling for $ 20.00 in plastering any one day after date and dated April 9th 1858. also two books of account all levied upon as the property of said Ballard. And now on the said return day the defendant not appearing and the attachment not being served on him, the said cause was continued to the 18th day of May AD 1858 at two O clock P.M. before me at my office in Barney Prairie and unless the defendant appear judgment will be entered by default and the property attached sold to satisfy the same. Given under my hand and seal this 10th day of May 1858

Joseph Wood J.P. {Seal}

I hereby certify that I have posted up three copies of the within attachment notice. one at the crossing of the road at John Buchanan's and one at Wm. H Wilkinson Store and one at the Post office in Friendsville

May 10th 1858. Levi Couch Constable

State of Illinois }
Wabash County } Wabash Cir Court
September Term 1860

Wm. H Wilkinson }
vs } Appeal
Lemay A. Ballard }

And the said defendant in his own proper person comes and for plea says

herein says that at the time of making the affidavit and suing out the attachment herein said defendant had not absconded nor concealed himself nor done in any way evading the service of process herein but on the contrary thereof defendant was attending to his legitimate business in the County of Wayne in the State of Illinois and this defendants prayers may be enquired of by the county &c

Sworn to and subscribed in open court this 15th Sept. 1860

William Pile Clk

Lunsey A Ballard

Be it remembered that on the 15th day of September 1860 on the sixth day of the September term of the Circuit in and for the County of Wabash the following entitled cause came on to be heard before the Hon Erwin Beecher Judge to wit:

William R Wilkinson

as

Lunsey A. Ballard

} On appeal

And the defendants by his attorney moved the court to dismiss the suit, and the court having heard and considered an opinion adverse to said motion and thereupon the defendants by his attorney withdrew said motion which the court permitted to be done. Whereupon the Plaintiffs asked that said motion of the defendant

be entered of record), which the Court refused to do so entered ~~of record~~ to which refusal of the Court to have said Motion entered the Plff by his counsel at the time excepts and presents this his Bill of exceptions & prays that the may be signed and sealed and made part of the record in this cause.

The motion of the plaintiff was refused for the reason that the motion of defts had not been entered on the docket & was on the suggestion of the Court withdrawn.

Edwin Bucher PJC
Judge 3rd Court.

Be it remembered that on the trial of this cause to wit:

William D Williams
vs
Quincy A Ballard
} attachment

On the fifth day of the September Term 1860 of the Wabash Circuit Court, before the Hon Edwin Bucher Judge and a Jury

The Plff introduced as a witness David Williams of lawful age who being first duly sworn, deposed as follows that is to say "I knew the the Defendant Ballard previous to 8th May 1858 — He left in May before the suit out the attachment in this cause — I had a conversation with him on the day he left in the shop of Dr Leeds in Lincolnville Wabash County in relation to some business trans-

[8453-17]

action between him & myself. also another conversation later in said day. ~~the~~ another conversation with him in the field of his father one quarter of a mile or more from the place of the first conversation. He said he was going away, did not know when he was going, or how long he would be gone. he might be gone one month or two months, or a year or two years, and perhaps never come back. He had gone to the field to avoid meeting Cooper the Sheriff who had a process against him. Mr Cooper was in Brandsville on that day. When he (Ballard) the deft left the shop I did not know where he had gone. two or three hours afterwards he sent his brother for me to come to the field. the purpose for which he sent for me was to conclude an adjustment of his own and other partnership affairs. the adjustment was concluded — and we separated and I saw him no more, until some time thereafter, when he returned — When he left Mr Leeds shop to avoid the Sheriff he went out of the back door. Mr Newman came to the front door of the and told Ballard that Cooper had come and he started. I told Wilkinson the Pltff after (Ballard) was gone, what (Ballard) had said to me on the day he left — I had been clerking in store of Wilkinson the Pltff think the account sued on is correct. Both

cant say as to the particulars items therein, that Ballard got some plough Moulds, — dont Know precisely how many. Know that he got some Iron & steel but cant say how much. the prices charged are the prices at which such things were sold to others.

Know Ballard got a file, and one or more pair goat shoes. The credit to the note on Jacob Seibert of $ 27.66 is correct. That note had been assigned by indorsement by Ballard to me, and I assigned it to Wilkinson in payment of Ballards account to that extent — Witness on cross Examination stated, that (by the witness) did not know when Deft was going, nor did Deft inform him — Witness did not know that the Deft was going to New Massellon

Witness knew one Newman had an apparatus for taking likenesses — Dont know what kind of writ Sheriffs had. Sheriffs inquired of witness for Ballard, Sheriffs had no process in favor of Wilkinson — Williams states that aforesaid credited on the amount sued on — & which he gave Wilkinson, was not by any authority of Ballard —

James Ballard a witness for Plff of lawful age being sworn says. He was at work in fields Deft asked him to go for David Williams & ask him to come down into the fields — Williams came saw him and Deft together — did not see Deft leave

& dont know how he went off. He left on eight of May 1858 & was gone one month or six weeks before his return — Think he got home in time to be at Salem on 4th July.

I saw Hunter a witness of lawful age being sworn says — He worked in shop of Ballard by the day in Spring 1858 from last March till about first week in may he had during that time in shop one dozen or more of plough moulds they were bought by Ballard of Wilkinson he made up some of the ploughs & some were left unworked had some Cast Iron, cant say how much, more than one hundred pounds. less perhaps than two Hundred. cant say accurately — Had a piece of steel got from Wilkinson cant say how much — during the time I was there Ballard was in habit of buying iron and other materials needed from Wilkinson — was at Brandywine when Ballard went away. very soon after Wilkinson levied attachment & turned me out shop. had sold some of the ploughs Ballard when he left, left me in charge of shop. Ballard bought a part a good deal of his iron from Kinsley.

Wm Couch a witness of lawful age being sworn. Stated he levied attachment & sold the articles levied on — levied on one dozen moulds some made into ploughs. some worked

on Bench not finished. certain there was eleven levied on. some bar iron. cant say how much also levied on some steel. a piece two or three feet long four or six inches wide. ¼ of an inch thick or more.

Silas Renolph a witness of lawful age being sworn says that during the month April 1858 thinks he sold Ballard some iron axle nuts pole irons any plough moulds.— Iron worth 4½ cents— Steel 9½ cents per pound. Moulds No. 5 worth $ 4.50— and half dollar up for each number as the numbers ascends

C. Cuyler a witness of lawful age being sworn says, that he went to Evansville about first May 1858— with writ of Replevin to Replevy a Buggy pr Lilien from Ballard— axle not see Ballard.— axle not look pr him much— had no work in favor Robinson— and this was all the testimony in behalf of Pltf.

Defendant introduced as a witness Wm. Newman who stated he was acquainted with Ballard that at short time before Ballard left he made an arrangement with him, that he Ballard should go to New Mapsellem in Wayne County distant 25 miles, and make the necessary arrangement for himself & wife to live &c

[GNJS-19]

guere an Pictures — I left home on 13th May
58 went to New Madrilem there found Ballard
remained there one month Taking Pictures —
Ballard with him I then came back —
a short time thereafter Ballard came back
saw Ballard the day he left in Greensville
at several different places — last saw him at
Dr. Leeds office in back part at desk with Davis
Williams. I stood in front door watching for
Sheriff. told him Ballard when I saw Sheriff
coming and he went off I saw him no more
than is back door to the office, did not see
Ballard go out of the office, did not see
him again until we met in New Madrilem
this was all the testimony for defendant.

The Court here instructed the Jury for Pltff as
follows. The Court instructs the Jury if the
Plaintiff Wilkinson had such reason to believe
caused by the acts and conduct of the defendants
that the defendant Ballard had absconded
as would induce a reasonable man to believe
such to be true, then he was justified in
proceeding by attachment to secure any debt
which the Jury may believe from the testimony
if any was due from Defft to Plaintiff.

Given

If the Jury believe, the Defendant is shown
by the testimony to have left clandestinely

and sought to conceal himself so that ordinary process could not be served upon him for the collection of any debt, which the proof may show was owing by any to Plff then the verdict should be for the Plff for the amount shown if any to be due Plff

Wd Rivers

Given

What in determining how much is due Plff of any thing on the account, the Jury must take the items & prices proved if any and deduct all proper credits if any thereon & then if the balance proven does not exceed One Hundred dollars, a Justice has jurisdiction over the subject matter.

Given

and for Defendant as follows.

The Court instructs the Jury that a Justice of the Peace has no jurisdiction for an amount above One Hundred dollars and unless the amount proven to be just on the account in question has been reduced by fair and legal credits to or below one hundred dollars, then the Plaintiff has no right to recover in this action.

Given

The Court instructs the Jury that when witnesses are equally credible the Jury will be warranted

$ 8453-25

in Blaine more credit in the evening of the witness or witnesses who show himself or themselves best qualified to speak of the matters about which they speak.

Given

The Court instructs the Jury, that an agent cannot bind his principal by any act he may do unless such act is in the scope of his authority, and if Williams had in his hands a promissory note belonging to Ballard, and that he gave the same to Wilkinson to be credited upon an account in favor of Wilkinson, and that Williams had no authority to pay such note to Wilkinson, then Ballard cannot be bound by any such credit — And that if the account proven if it had been proven, without such credit amounts to more than one hundred dollars & if Williams had no authority to make such credit a Justice of the Peace had no jurisdiction and the verdict should be for defendant.

Given

The Court instructs the Jury that the fact as to whether attachment notice had been posted up in the case of Wm. R. Wilkinson against Ballard — is not a question for their investigation in this case.

Given

If a witness has made unreasonably and in-

consistant statements upon oath the Jury may place such reliance on the evidence of such witness that is his statements may consistant and reasonably

Given.

That if the account as proven & sued has been in this case was originally more than $100.00 and that a credit has been placed upon the same without the knowledge or consent of Ballard & to which Ballard was not by law entitled for the purpose of reducing the account to or below the sum of $100.00 & is such a fair credit & the Plaintiff cannot recover in this suit

Given

The Court instructs the Jury that they will not be warranted in believing that Ballard left Greensville in the night or secretly unless the evidence shows such to be the fact.

Given

and the Jury retired & returned into court the following verdict. "We the Jury find for the Defendants" the Plff thereupon moved the Court for a new trial for the reason "That the verdict is contrary to the evidence. That the verdict is contrary to the law. That the verdict is contrary to the law & the evidence.

and the Court having overruled such motion,

[2453-21]

to the opinion of the Court in so overruling said motion the Pltff then and there by his Counsel excepted

The defendant then moved the court to arrest the Judgt in said cause, which motion being then & there by the Court overruled. the Pltff then & there excepted and tenders this bill of exceptions which is signed & sealed & made part of the record herein.

Edwin Bucher [Seal]
Judge Circuit Court

State of Illinois
Wabash County } ss

I Richard H Hudson Clerk of the Circuit court in and for the County of Wabash and State of Illinois. do hereby certify that the foregoing is a full and perfect Transcript of the Record of our said Court in the cause of William R Wilkinson vs Dewicy A Ballard. as required to be made out by Precipe of Plaintiffs Attorney on file in this office.

In Testimony whereof I have hereunto set my hand and affixed the seal of said court this 17th day of October AD 1861.

R H. Hudson Clerk

Supreme Court of the State of Illinois

First Grand Division

William R Wilkinson Plff in Error

vs } Error to Wabash

Lucius A Ballard Defft in Error

And the Plff in error says that in the record and proceedings herein there is manifest error and for causes of reversal assigns the following errors

1 The Court erred in refusing to give the Plffs instruction No 8

2 The Court erred in giving the Defts instructions

3 The Court erred in overruling the Plffs motion for a new trial

4 The Court erred in overruling the Plffs motion in arrest of judgment.

Wherefore and for other errors appearing in the record the Plff as third said judgt may be reversed

Bozeman for Plff in Error

[8453-22]

W. R. Wilkinson

vs

L. A. Ballard

Filed Oct. 21-1862-

N. Johnston Atty

Paid by Bowman $5.00

In Supreme Court of the State of Illinois,

FIRST GRAND DIVISION, AT MT. VERNON.

NOVEMBER TERM, A. D. 1862.

WILLIAM R. WILKINSON, *Plaintiff in Error*,
vs.
QUINCY A. BALLARD, *Defendant in Error*.
} Error to Wabash.

ABSTRACT.

1] Petition for Certiorari. Alleges that the Defendant, Ballard, about the 6th day of May, 1858, left his home in Wabash county, Illinois, on a short business tour to the county of Wayne. That on the 8th of May, 1858, Plaintiff sued out an attachment before Joseph Woods, a Justice of the Peace of Wabash county, against Defendant, for $95 10. That the affidavit alleges that the defendant has absconded, or so conceals himself that the ordinary process could not be served on him. That said writ was placed in 2] the hands of Levi Couch, a constable, and by him levied on the goods, chattles, notes and accounts of Defendant, and returned on the 8th day of May, the same day it was issued. That it was not personally served on the Defendant, he being at the time absent in Wayne county. That on the 18th of May, judgment was rendered for Plaintiff vs. Defendant for $95 10.— That afterwards, on the day of , 1858, the property attached was sold for $158 28. That said property was worth $500. That at the time of suing out said writ, the Defendant had neither absconded nor was he concealing himself, but was attending to his legitimate business in 3] Wayne county. That the said judgment is grossly wrong, the Defendant at the time having a good legal and substantial defence to the said action. That the defendant, not knowing anything of the attachment, did not return home until the expiration of twenty days after judgment, too late to take an appeal. That the rendition of said judgment was not the result of negligence on part of Defendant, nor is he chargeable with negligence in not taking an appeal. That Defendant was not indebted to Plaintiff in the sum of $95 10, but in a much less sum, which he is satisfied he will show on a 4] fair trial. Prayer for writ of Certiorari. Granted by Beecher, Judge, and issued 7th September, 1858, and served 9th September, 1858.

6] Plaintiff moves the Court to dismiss the writ of Certiorari, which motion is overruled, and Plaintiff excepts. Bill of Exceptions signed, &c.

7] Plaintiff answers the Defendant's petition, denying all the material allegations.

7] At April term of said Court a trial was had on issues presented by 8] petition and answer. Verdict for Defendant. New trial granted and cause continued.

8] June special term, 1860, trial on same issue. Verdict for Defendant. Motion by Plaintiff for new trial. Motion over-ruled. Motion in arrest of 9] judgment overruled, and exceptions.

[845324]

Bill of Exceptions. The Plaintiff on the trial introduced George W.
10] Crowell, who testified: "I wrote a letter to Defendant in the spring of 1858 that old Billy Wilkinson, the Plaintiff, had attached his (Defendant's) tools; don't know if I said anything about his books; that the trial would come off on the next Thursday before Squire Woods, and he might guess how it would go. The letter was written on Sunday, and delivered to Nathaniel Newman, to be carried by him to Defendant, at New Massillon, Wayne county. Defendant's books were in the hands of Couch the constable, and I requested Defendant to send me a receipt against my account on his books, as it was paid. I had a conversation with Defendant after his return, and he said he had written the receipt but did not send it, because the boys had acted badly with him. *Cross-examined.*—Had the conversation in Friendsville, near Wilkinson's store, two or three months after Defendant returned. Defendant commenced the conversation, and excused himself for not sending the receipt. My feelings are not kind towards Defendant.

10] Nathaniel Newman, for Plaintiff, testified that he received the letter from Crowell, and delivered it to Ballard on the day following, who read it in his presence. Witness also read letter in it. Crowell said old Billy Wilks was playing hell in Friendsville. Don't recollect that it contained anything about an attachment proceeding. Witness told Ballard that Wilkinson had commenced some kind of proceeding against him; did not tell him what kind of proceeding, because he didn't know. Ballard said he supposed it was a sham, to defeat Felton's execution. Witness remained in New Massillon four weeks, and this was all his testimony.

11] Francis Crum, for Plaintiff, testified:—I went with Newman to New Massillon, and returned next day, being Thursday or Friday, and a message was brought by myself for Lucerne Dailey from Mr. Ballard to Dr. James
12] Leeds; don't remember which of us brought it. We stopped in a wagon before the office of Dr. Leeds, in Friendsville, the evening we came home, and delivered the message. Don't remember what it was, but think it was to the effect that he, Dr. Leeds, should attend to Ballard's business; and this was all his testimony.

Dr. James Leeds, for Plaintiff, testified:—I saw Crum and Dailey when they returned from New Massillon. They stopped at my office in Friendsville, and told me that the Defendant wished myself and his brother, Henry Ballard, to attend to his business. William Wardell, an attorney of Lawrence county, and myself, attended at 'Squire Woods. The trial was on the 18th of May, 1858. I wrote to Mr. Ballard some time between the day of trial and the day of sale, informing him that judgment had been rendered against him by Esquire Woods. The sale was on the 5th of June. This letter I directed to Mr. Ballard, at New Massillon. I was post master at Friendsville at the time, and the letter, after the return of Ballard, was returned to the office at Friendsville, having been re-mailed at New Massillon, and was re-taken out of the office by Mr. Ballard on the same day it came
13] back to Friendsville. Cant remember the times between the dates of the letter and its return to Friendsville. I also received a letter from Mr. Ballard, written at New Massillon, before he came, in which he inquired how Billy Wilks and James Bailey came on swearing. *Cross Examined.*—Wilkinson objected to our (Wardell's and myself) appearing at Esq. Woods' to defend the suit, unless we would take the responsibility. Esq. Woods also decided that we could not defend for Ballard unless we had a power of attorney from him. Esq. Woods also previously stated to me, when I obtained subpœnas for witnesses, that I could not defend unless I had a

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power of attorney. I am brother-in-law of Defendant, and was taking an interest in it before I received the message; and this was all his testimony.

David Williams, for Plaintiff, testified:—That he had conversation with Ballard after his return, in which he said he would have been home himself in time to attend the trial, but for high water.

13] Lucerne Dailey, for Plaintiff, testified:—We left Massillon the next morning after Newman and Crum came there to return to Wabash county. 14] Ballard came with us, to pilot us across the water. I was present when Ballard read the letter of Crowell. I read the letter over Ballard's shoulder. It stated that Billy Wilks was playing hell in Friendsville. I dont recollect that it stated anything about attachment or other proceedings. We got home on Friday or Saturday, and the trial was at Squire Woods' after we got home.

—— Shoaf, for Plaintiff, testified—I had a conversation with Ballard after he got home. He talked about getting up a suit against Wilkinson, and he said he knew they would'nt stick. He referred to the attachment suit of Wilkinson against him. He also talked about the suit of Tilton against him.

And this was all the testimony in the case.

Instructions for Plaintiff.—1st. The question to be decided in this case is whether Ballard had notice of the pendency of the suit or judgment before the Justice of the Peace, in time to have taken an appeal within 20 days after judgment was rendered; and if they find he had such notice, they will say, We, the Jury, find for the Plaintiff; or, if they find he did not have such notice, they will say, We, the Jury, find for Defendant. [Given.]

15] No. 2. If Ballard had such notice as indicated in the instruction No. 1, given for Plaintiff, that proceedings were being prosecuted by Wilkinson against him, the fact, if it exist, that the water prevented his reaching home in time for appeal, will not avail Ballard in this proceeding, but the verdict must be for Plaintiff. [Given.]

No. 3. Any notice to Ballard, of legal proceedings by Wilkinson against Ballard, which would put a prudent man upon inquiry, is sufficient, and if the Jury believe from the evidence that Ballard had such notice, that such legal proceedings were being had, and in time to have taken an appeal from the judgment in question within 20 days after judgment, then the Jury will find for Plaintiff. [Given.]

No. 4. If the Jury believe that Ballard had notice that legal proceedings were instituted against him by Wilkinson, whether he knew the character of such proceedings or not, as a prudent man he was bound to 16] inquire into them; and if after such notice, if he had such notice, he neglected to attend to it, and thereby failed to take an appeal, the Jury will find for Wilkinson. [Given.]

No. 5. If the Jury believe, from the evidence, that Ballard had notice of proceedings by information from any source, which would put a prudent man on inquiry, that Wilkinson had commenced legal proceedings against him in this county, within time to have taken an appeal from the judgment in question, that the Jury will find for the Plaintiff, whether Ballard supposed the proceedings to be a sham or not. [Given.]

No. 6. Whether the proceedings before the Justice were regular or not, or whether the judgment was wrongfully obtained or not, is not for

the consideration of the Jury. They have nothing to do with the regularity of the attachment proceedings, but must find that Ballard had or had not notice, and that from the testimony. [Given.]

No. 7. The Jury will decide this cause from the preponderance of the evidence, and if they believe the greater weight of credible evidence be in favor of Ballard having had notice in 20 days after judgment, and in time 17] to have an appeal in the usual manner, their verdict must be for Wilkinson. [Given.]

No. 8. If the Jury believe from evidence that Leeds was authorized to attend to the business of Ballard generally, then the Defendant is bound by all the legal consequences of notice to his agent. [Refused.] And Plaintiff excepts.

Instructions for Defendant.—1st. That it devolves upon Wilkinson, in this investigation, to show by legitimate and competent evidence, that within 20 days of the time of the rendition of the judgment in question, the Defendant, Ballard, had notice that Wilkinson had commenced legal proceedings against him; and unless he has so shown, the Jury should find for the Defendant, Ballard. [Given.]

No. 2. That if there is confliction in the evidence of two or more of the witnesses sworn in this case, and that they are equally credible and 18] have equal opportunities of knowing the facts about which they testify, then the Jury should be controlled by the greater number, and render their verdict accordingly. [Given.]

No. 3. That unless Wilkinson has shown, by legitimate and credible evidence, that Ballard did know in less than 20 days from the time of the rendition of judgment in favor of Wilkinson, that Wilkinson had sued out an attachment against him, or had commenced legal proceedings against him, the Jury must find for Ballard. [Given.]

No. 4. That the Jury, in deciding this case, will not be warranted in indulging in any presumption not legitimately sustained by the evidence; that it is their duty to decide this case from legitimate and competent evidence. [Given.]

Plaintiff excepted to Defendant's instructions.

Verdict for Defendant. Plaintiff moved for new trial. Causes.

1st. That verdict is against the evidence.

19] 2d. That the verdict is against the law and evidence.

3d. Because the Court refused to give the instructions asked by Plaintiff.

Motion overruled and judgment. Plaintiff excepts.

19] Transcript of Justice of the Peace in the attachment proceedings.

20] Affidavit of Wilkinson, by his agent, that Ballard is indebted to Plaintiff $95 10, and that Defendant has absconded and conceals himself, so that the ordinary process of law cannot be served on him; dated 8th May, 1858.

24] Attachment notice.

25] September Term, 1860, Wabash Circuit Court. Defendant files

plea to affidavit, denying the allegation that he had absconded and concealed himself.

Defendant moved to dismiss the suit, and the Court having expressed an opinion against the motion, the Defendant withdrew his motion, whereupon Plaintiff moved to have Defendant's motion entered of record, which the Court refused, and Plaintiff excepts.

27] Issue and Jury.

Plaintiff introduced D. Williams, who testified—"I knew the Defendant, Ballard, previous to 8th May, 1858. He left in May, before sewing out attachment in this cause. I had a conversation with him on the day he left in the shop of Dr. Leeds, in Friendsville, in relation to some business transactions between him and me; also, another conversation later in the day in his father's field, quarter of a mile from place of first conversation. He said he was going away; did not know where he was going, or how long he would be gone; might be gone a month or two, or a year, or two years, and perhaps never come back again. He had gone to the field to avoid meeting Cuqua, the Sheriff, who had a process against him. Mr. Cuqua was in Friendsville on that day. When Defendant left the shop I did not know where he had gone. Two or three hours afterwards he sent his brother for me to come to the field. The purpose for which he sent for me was to conclude an assignment of his tools and other property to me. The assignment was concluded, and we separated, and I saw him no more till sometime after he returned. When he left Dr. Leed's shop to avoid the Sheriff, he went out at the back door, Mr. Newman came to the front door of the shop, and told Ballard that Cuqua had come, and he started. I told Wilkinson, after Ballard was gone, what Ballard had said to me on the day he had left. I had been clerking for Wilkinson, and think the account sued on correct. * * * The credit on the account of Ballard, of the note on J. Seibert, is correct; it had been assigned by indorsement to witness, and witness assigned it to Wilkinson in payment of Ballard's account to that extent, but was so applied without authority of Ballard.
29] On cross examination—did not know when Defendant was going, or where; and Defendant didn't inform him. * * * Didn't know what kind of writ Sheriff had. Sheriff had no process in favor of Wilkinson.

James Ballard, for Plaintiff, testified: That he was at work in the field and that Defendant asked him to go for David Williams to come down in the field. Williams came and saw him and Defendant together, didn't see Defendant leave, and don't know how he went off. He left 6th May, 1858, was gone a month or six weeks. Thinks he got home in time for 4th July at Salem.

Isaac Hunter, for Plaintiff, testified ———— in relation to account.
Silas Kennepp " " " " " " " "

31] Chas. Cuqua, for Plaintiff testified that he went to Friendsville about 1st May, 1858, with writ of Replevin to replevy a buggy for Tilton from Ballard, did not see Ballard, didn't look for him much, had no writ in favor of Wilkinson.

32] Defendant's evidence. Mr. Newman, for Defendant, testified That he was acquainted with Ballard, that Ballard, a short time before he left, made arrangements with him, witness, that Mr. Ballard should go to Wayne county, (New Massillon) distant 25 miles, and make arrangements for him and witness to take daguerreotype pictures. I left on 13th May, 1858, went to New Massillon, there found Ballard, remained there one month

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taking pictures, Ballard with him. I then came back; a short time thereafter Ballard came back; saw Ballard the day he left Friendsville at several places, last saw him at Dr. Leed's office in back part, at desk, with Daniel Williams. I stood in front, watching for Sheriff, told Ballard when I saw Sheriff coming, and he went off and I saw him no more. There is back door to the office, did not see him go out, did not see him again till we met in New Massillon. And this was all the evidence.

Instructions for Plaintiff.

No. 1. If Wilkinson had such reason to believe, caused by the acts and conduct of Ballard, that Mr. Ballard had absconded, as would induce a reasonable man to believe such to be true, then he was justified in proceeding by attachment to secure any debt which the Jury may believe, from the testimony, was due from Defendant to Plaintiff. [Given.]

No. 2 If the Jury believe the Defendant is shown by the testimony
33] to have left clandestinely, and sought to have concealed himself so that the ordinary process could not be served upon him for the collection of any debt which the proof may show, if any, was owing to plaintiff, then the verdict should be for Plaintiff for the amount shown, if any, to be due Plaintiff. [Given.]

No. 3. That in determining how much is due Plaintiff, if anything, on the account, the Jury must take the items and prices proved, if any, and deduct all proper credits, if any, thereon, and then if balance proven does not exceed $100, a Justice has jurisdiction over the subject matter. [Given.]

Instructions for Defendant.—No. 1. That Justice of the Peace has no jurisdiction for an amount above one hundred dollars, and unless the amount proven be just, or the account in question has been reduced by fair and legal credits to or below $100, then the Plaintiff has no right to recover in this action. [Given.]

34] That when witnesses are equally credible, the Jury will be warranted in placing more credit in the evidence of the witness or witnesses who show themselves best qualified to speak of the matter about which they speak. [Given.]

No. 3. That an agent cannot bind his principal by any act he may do, unless such action is in the scope of his authority; and if Williams had in his hands a promissory note belonging to Ballard, and that he gave the same to Wilkinson to be credited upon an account in favor of Wilkinson, and that Williams had no authority to pay such note to Wilkinson, then Ballard cannot be bound by any such credit; and if the account proven, if it has been proven without such credit, amounts to more than $100, and if Williams had no authority to make such credit, a Justice of the Peace had no jurisdiction, and the verdict should be for Defendant. [Given.]

No. 4. That the fact as to whether attachment notices had been posted in the case of Wilkinson vs. Ballard, is not a question for their investigation in this case. [Given]

No. 5. If a witness has made unreasonable and inconsistent statements upon oath, the Jury may place less reliance upon the evidence of such witness than if his statements were consistent and reasonable. [Given.]

That if the account as proven, if it has been in this case, was originally more than $100, and if a credit has been placed upon the same without the knowledge or consent of Ballard, and to which Ballard was not legally enti-

tled, for the purpose of reducing the account to or below the sum of $100, it is not a fair credit and the Plaintiff cannot recover in this suit. [Given.]

No. 6. That the Jury will not be warranted in believing that Ballard left Friendsville in the night, or secretly, unless the evidence shows such to be the fact. [Given.]

Verdict of the Jury for Defendant. Motion for new trial, because verdict is contrary to the evidence. 2d. Contrary to the law. 3d. Contrary to law and evidence. Motion overruled, and Plaintiff excepts. Motion in arrest of Judgment and overruled, and Plaintiff excepts.

Assignment of Errors.—1. The Court erred in refusing to give Plaintiff's instruction No. 7.

2. The Court erred in giving the Defendant's instruction.

3. The Court erred in overruling the Plaintiff's motion for a new trial.

4. The Court erred in overruling Plaintiff's motion in arrest of judgment.

J. G. BOWMAN,

For Plaintiff in Error.

On the first issue tried by the Circuit Court, traversing the allegations of the Defendant's petition for a Certiorari, the Plaintiff insists, That the Defendant had notice of the Plaintiff's proceeding in attachment in time to have taken an appeal in the ordinary mode prescribed by the statute.

George W. Crowell testified:—That he wrote a letter to the Defendant, in which he stated that the Plaintiff had attached the Defendant's tools, and that the trial would come off on the following Thursday before Esq. Woods. This letter was delivered to Nathaniel Newman, and Newman testifies that he delivered the letter to the Defendant at New Massillon, Wayne county, Illinois, a day or two thereafter, and that Defendant read the letter in his presence. Newman also told Defendant that the Plaintiff, Wilkinson, had commenced some kind of proceeding against him, but did not say what, because he did not know. That he also read Crowell's letter, to the effect that "old Billy Wilks was playing hell in Friendsville, but don't recollect anything about any attachment." There are reasons why the witness' memory may have been at fault on that point. In his testimony detailed on page 32 of the record, we find the further fact stated that when the Defendant was about to leave home, the witness aided him in eluding the service of process in the hands of the Sheriff. He was the Defendant's particular friend, and had made arrangements to go into business with him in the cultivation of the fine arts, taking Daguerreotype pictures, in the classic shades of New Massillon. To the refined taste of the artist, the very classical expression in Crowell's letter, that the Plaintiff "was playing hell in Friendsville," would naturally make him forget so common-place a transaction as a proceeding in attachment. On the contrary, Crowell had a direct personal interest in the matter of the attachment about which he wrote. The Defendant's books had been attached, and Crowell wanted Defendant to send him a receipt against his account on the books, which he had paid; and he further testifies that Ballard, after his return home, apologized, and said he would have sent the receipt but that the boys acted badly with him.

Francis Crum testifies that he and Lucerne Dailey had gone to New Massillon with Newman, and brought a message from the Defendant to Dr. Leeds, to the effect that the Dr. should attend to the Defendant's business, and accordingly we find the Doctor at Squire Woods' making defence for the Defendant in the attachment suit. David Williams also testified the Defendant told him that he would have been at home to attend the trial, but was prevented from doing so by high water. The evidence proves beyond doubt that the Defendant had notice of Plaintiff's attachment before the trial before the Justice of the Peace, and had therefore abundant time to have taken his appeal in the ordinary way. The excuse that he was prevented by high water, is expressly contradicted by Lucerne Dailey, who testifies that the Defendant came with him and Crum, and piloted them across the water. The Plaintiff insists that the verdict upon this evidence should have been for the Plaintiff, and that the Court erred in refusing to grant a new trial.

The instruction No. 7 of Plaintiff should have been given for the reason contained in said instruction. If a party makes another his agent to attend to his business generally, he is bound by all the legal consequences of notice in regard to anything touching such business which may come to the knowledge of such agent, to the same extent as if he had received the notice himself. Story on Agency, Sec. 140.

On the 2d issue in this cause, made by the Defendant's plea in abatement to the Plaintiff's affidavit and writ, and tried by the Court below, the evidence of David Williams proved conclusively that the Defendant was evading civil process in the hands of the Sheriff, was attempting clandestinely to make an assignment of his property, and at the same time told the witness, Williams, that he was going away to be gone an indefinite period, and perhaps might never return. These facts Williams communicated to Wilkinson, the Plaintiff, who thereupon sued out his attachment.

The Defendant's witness, Mr. Newman, testifies to the same facts that Williams does, that the Defendant on the day he left home was dodging the Sheriff. That he, witness, stood at the front door of Dr. Leed's shop whilst Defendant and Williams were in the back room, and when he saw the Sheriff, he informed the Defendant, who immediately left and he saw him no more until he met him in New Massillon.

James Ballard also testified that the Defendant came to him when he was at work in the field, and desired him to go for David Williams; he did so, and saw Defendant with Williams in the field, after which Defendant left; but witness did not know where he went to. This was on the 6th of May, 1858.

With a knowledge of these facts, which Williams communicated to the Plaintiff, he was certainly justified in suing out an attachment. The statute manifestly did not require that he should first sue out process in his own case before he might make an affidavit that the Defendant had absconded or so concealed himself that the ordinary process could not be served upon him, when it is notorious that he is evading other process to the extent of leaving his home, and having on the eve of his disappearance expressed a doubt whether he would ever return again.

Young et al. vs. Nelson, 25 Ill. 566. See also Boggs vs. Rendskoff, 23 Ill. 66.

The case of Raymond vs. Strobel, 24th Ill. 113, disposes of the question of jurisdiction raised in the Court below. The amount claimed by the Plaintiff, Wilkinson, in his attachment against Ballard, was $95 60, and it is immaterial by what credit the account was reduced to that sum, or whether by any, the Plaintiff by his endorsement of that sum upon the writ was precluded from recovering more, and a judgment for that sum is a bar to another suit for the residue.

J. G. BOWMAN,

For Plaintiff in Error.

[8453-32]

28

W. R. Wilkinson

vs

D. A. Ballard.

Abstract, and Brief of Pltff in Error.

Filed Nov. 10. 1862.

A. Johnston Clk

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

The People of the State of Illinois,

To the Sheriff of Wabash 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 Wabash county, before the Judge thereof between

William R. Wilkinson plaintiff and

Quincy A. Ballard defendant it is said that manifest error hath intervened to the injury of said William R. Wilkinson 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 Quincy A. Ballard

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 Quincy A. Ballard 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-first day of October in the year of our Lord one thousand eight hundred and sixty-two.

Noah Johnston
Clerk of the Supreme Court.

[8453-33]

25

SUPREME COURT.

First Grand Division.

W. K. Wilkinson

Plaintiff in Error,

vs.

D. A. Ballard

Defendant in Error.

SCIRE FACIAS.

FILED.

Executed by reading the same to the within named
D. A. Ballard this 27th day of October A.D. 1862
Charles Cuppa Sheriff W.C. Co. Ills

Sheriff's fees
Reading $5.00
Mileage .75
Returning & Postage .13
$5.88

In Supreme Court of the State of Illinois,

FIRST GRAND DIVISION, AT MT. VERNON.

NOVEMBER TERM, A. D. 1862.

WILLIAM R. WILKINSON, *Plaintiff in Error*,
vs.
QUINCY A. BALLARD, *Defendant in Error*.
} Error to Wabash.

ABSTRACT.

1] Petition for Certiorari. Alleges that the Defendant, Ballard, about the 6th day of May, 1858, left his home in Wabash county, Illinois, on a short business tour to the county of Wayne. That on the 8th of May, 1858, Plaintiff sued out an attachment before Joseph Woods, a Justice of the Peace of Wabash county, against Defendant, for $95 10. That the affidavit alleges that the defendant has absconded, or so conceals himself that the ordinary process could not be served on him. That said writ was placed in 2] the hands of Levi Couch, a constable, and by him levied on the goods, chattles, notes and accounts of Defendant, and returned on the 8th day of May, the same day it was issued. That it was not personally served on the Defendant, he being at the time absent in Wayne county. That on the 18th of May, judgment was rendered for Plaintiff vs. Defendant for $95 10.— That afterwards, on the day of , 1858, the property attached was sold for $158 28. That said property was worth $500. That at the time of suing out said writ, the Defendant had neither absconded nor was he concealing himself, but was attending to his legitimate business in 3] Wayne county. That the said judgment is grossly wrong, the Defendant at the time having a good legal and substantial defence to the said action. That the defendant, not knowing anything of the attachment, did not return home until the expiration of twenty days after judgment, too late to take an appeal. That the rendition of said judgment was not the result of negligence on part of Defendant, nor is he chargeable with negligence in not taking an appeal. That Defendant was not indebted to Plaintiff in the sum of $95 10, but in a much less sum, which he is satisfied he will show on a 4] fair trial. Prayer for writ of Certiorari. Granted by Beecher, Judge, and issued 7th September, 1858, and served 9th September, 1858.

6] Plaintiff moves the Court to dismiss the writ of Certiorari, which motion is overruled, and Plaintiff excepts. Bill of Exceptions signed, &c.

7] Plaintiff answers the Defendant's petition, denying all the material allegations.

7] At April term of said Court a trial was had on issues presented by 8] petition and answer. Verdict for Defendant. New trial granted and cause continued.

8] June special term, 1860, trial on same issue. Verdict for Defendant. Motion by Plaintiff for new trial. Motion over-ruled. Motion in arrest of 9] judgment overruled, and exceptions.

[8453-34]

Bill of Exceptions. The Plaintiff on the trial introduced George W.
10] Crowell, who testified: "I wrote a letter to Defendant in the spring of 1858 that old Billy Wilkinson, the Plaintiff, had attached his (Defendant's) tools; don't know if I said anything about his books; that the trial would come off on the next Thursday before Squire Woods, and he might guess how it would go. The letter was written on Sunday, and delivered to Nathaniel Newman, to be carried by him to Defendant, at New Massillon, Wayne county. Defendant's books were in the hands of Couch the constable, and I requested Defendant to send me a receipt against my account on his books, as it was paid. I had a conversation with Defendant after his return, and he said he had written the receipt but did not send it, because the boys had acted badly with him. *Cross-examined.*—Had the conversation in Friendsville, near Wilkinson's store, two or three months after Defendant returned. Defendant commenced the conversation, and excused himself for not sending the receipt. My feelings are not kind towards Defendant.

10] Nathaniel Newman, for Plaintiff, testified that he received the letter from Crowell, and delivered it to Ballard on the day following, who read it in his presence. Witness also read letter in it. Crowell said old Billy Wilks was playing hell in Friendsville. Don't recollect that it contained anything about an attachment proceeding. Witness told Ballard that Wilkinson had commenced some kind of proceeding against him; did not tell him what kind of proceeding, because he didn't know. Ballard said he supposed it was a sham, to defeat Felton's execution. Witness remained in New Massillon four weeks, and this was all his testimony.

11] Francis Crum, for Plaintiff, testified:—I went with Newman to New Massillon, and returned next day, being Thursday or Friday, and a message was brought by myself for Lucerne Dailey from Mr. Ballard to Dr. James
12] Leeds; don't remember which of us brought it. We stopped in a wagon before the office of Dr. Leeds, in Friendsville, the evening we came home, and delivered the message. Don't remember what it was, but think it was to the effect that he, Dr. Leeds, should attend to Ballard's business; and this was all his testimony.

Dr. James Leeds, for Plaintiff, testified:—I saw Crum and Dailey when they returned from New Massillon. They stopped at my office in Friendsville, and told me that the Defendant wished myself and his brother, Henry Ballard, to attend to his business. William Wardell, an attorney of Lawrence county, and myself, attended at 'Squire Woods. The trial was on the 18th of May, 1858. I wrote to Mr. Ballard some time between the day of trial and the day of sale, informing him that judgment had been rendered against him by Esquire Woods. The sale was on the 5th of June. This letter I directed to Mr. Ballard, at New Massillon. I was post master at Friendsville at the time, and the letter, after the return of Ballard, was returned to the office at Friendsville, having been re-mailed at New Massillon, and was re-taken out of the office by Mr. Ballard on the same day it came
13] back to Friendsville. Cant remember the times between the dates of the letter and its return to Friendsville. I also received a letter from Mr. Ballard, written at New Massillon, before he came, in which he inquired how Billy Wilks and James Bailey came on swearing. *Cross Examined.*—Wilkinson objected to our (Wardell's and myself) appearing at Esq. Woods' to defend the suit, unless we would take the responsibility. Esq. Woods also decided that we could not defend for Ballard unless we had a power of attorney from him. Esq. Woods also previously stated to me, when I obtained subpœnas for witnesses, that I could not defend unless I had a

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power of attorney. I am brother-in-law of Defendant, and was taking an interest in it before I received the message; and this was all his testimony.

David Williams, for Plaintiff, testified:—That he had conversation with Ballard after his return, in which he said he would have been home himself in time to attend the trial, but for high water.

13] Lucerne Dailey, for Plaintiff, testified:—We left Massillon the next morning after Newman and Crum came there to return to Wabash county. 14] Ballard came with us, to pilot us across the water. I was present when Ballard read the letter of Crowell. I read the letter over Ballard's shoulder. It stated that Billy Wilks was playing hell in Friendsville. I dont recollect that it stated anything about attachment or other proceedings. We got home on Friday or Saturday, and the trial was at Squire Woods' after we got home.

—— Shoaf, for Plaintiff, testified—I had a conversation with Ballard after he got home. He talked about getting up a suit against Wilkinson, and he said he knew they would'nt stick. He referred to the attachment suit of Wilkinson against him. He also talked about the suit of Tilton against him.

And this was all the testimony in the case.

Instructions for Plaintiff.—1st. The question to be decided in this case is whether Ballard had notice of the pendency of the suit or judgment before the Justice of the Peace, in time to have taken an appeal within 20 days after judgment was rendered; and if they find he had such notice, they will say, We, the Jury, find for the Plaintiff; or, if they find he did not have such notice, they will say, We, the Jury, find for Defendant. [Given.]

15] No. 2. If Ballard had such notice as indicated in the instruction No. 1, given for Plaintiff, that proceedings were being prosecuted by Wilkinson against him, the fact, if it exist, that the water prevented his reaching home in time for appeal, will not avail Ballard in this proceeding, but the verdict must be for Plaintiff. [Given.]

No. 3. Any notice to Ballard, of legal proceedings by Wilkinson against Ballard, which would put a prudent man upon inquiry, is sufficient, and if the Jury believe from the evidence that Ballard had such notice, that such legal proceedings were being had, and in time to have taken an appeal from the judgment in question within 20 days after judgment, then the Jury will find for Plaintiff. [Given.]

No. 4. If the Jury believe that Ballard had notice that legal proceedings were instituted against him by Wilkinson, whether he knew the character of such proceedings or not, as a prudent man he was bound to 16] inquire into them; and if after such notice, if he had such notice, he neglected to attend to it, and thereby failed to take an appeal, the Jury will find for Wilkinson. [Given.]

No. 5. If the Jury believe, from the evidence, that Ballard had notice of proceedings by information from any source, which would put a prudent man on inquiry, that Wilkinson had commenced legal proceedings against him in this county, within time to have taken an appeal from the judgment in question, that the Jury will find for the Plaintiff, whether Ballard supposed the proceedings to be a sham or not. [Given.]

No. 6. Whether the proceedings before the Justice were regular or not, or whether the judgment was wrongfully obtained or not, is not for

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the consideration of the Jury. They have nothing to do with the regularity of the attachment proceedings, but must find that Ballard had or had not notice, and that from the testimony. [Given.]

No. 7. The Jury will decide this cause from the preponderance of the evidence, and if they believe the greater weight of credible evidence be in favor of Ballard having had notice in 20 days after judgment, and in time 17] to have an appeal in the usual manner, their verdict must be for Wilkinson. [Given.]

No. 8. If the Jury believe from evidence that Leeds was authorized to attend to the business of Ballard generally, then the Defendant is bound by all the legal consequences of notice to his agent. [Refused.] And Plaintiff excepts.

Instructions for Defendant.—1st. That it devolves upon Wilkinson, in this investigation, to show by legitimate and competent evidence, that within 20 days of the time of the rendition of the judgment in question, the Defendant, Ballard, had notice that Wilkinson had commenced legal proceedings against him; and unless he has so shown, the Jury should find for the Defendant, Ballard. [Given.]

No. 2. That if there is confliction in the evidence of two or more of the witnesses sworn in this case, and that they are equally credible and 18] have equal opportunities of knowing the facts about which they testify, then the Jury should be controlled by the greater number, and render their verdict accordingly. [Given.]

No. 3. That unless Wilkinson has shown, by legitimate and credible evidence, that Ballard did know in less than 20 days from the time of the rendition of judgment in favor of Wilkinson, that Wilkinson had sued out an attachment against him, or had commenced legal proceedings against him, the Jury must find for Ballard. [Given.]

No. 4. That the Jury, in deciding this case, will not be warranted in indulging in any presumption not legitimately sustained by the evidence; that it is their duty to decide this case from legitimate and competent evidence. [Given.]

Plaintiff excepted to Defendant's instructions.

Verdict for Defendant. Plaintiff moved for new trial. Causes.

1st. That verdict is against the evidence.

19] 2d. That the verdict is against the law and evidence.

3d. Because the Court refused to give the instructions asked by Plaintiff.

Motion overruled and judgment. Plaintiff excepts.

19] Transcript of Justice of the Peace in the attachment proceedings.

20] Affidavit of Wilkinson, by his agent, that Ballard is indebted to Plaintiff $95 10, and that Defendant has absconded and conceals himself, so that the ordinary process of law cannot be served on him; dated 8th May, 1858.

24] Attachment notice.

25] September Term, 1860, Wabash Circuit Court. Defendant files

plea to affidavit, denying the allegation that he had absconded and concealed himself.

Defendant moved to dismiss the suit, and the Court having expressed an opinion against the motion, the Defendant withdrew his motion, whereupon Plaintiff moved to have Defendant's motion entered of record, which the Court refused, and Plaintiff excepts.

27] Issue and Jury.

Plaintiff introduced D. Williams, who testified—"I knew the Defendant, Ballard, previous to 8th May, 1858. He left in May, before sewing out attachment in this cause. I had a conversation with him on the day he left in the shop of Dr. Leeds, in Friendsville, in relation to some business transactions between him and me; also, another conversation later in the day in his father's field, quarter of a mile from place of first conversation. He said he was going away; did not know where he was going, or how long he would be gone; might be gone a month or two, or a year, or two years, and perhaps never come back again. He had gone to the field to avoid meeting Cuqua, the Sheriff, who had a process against him. Mr. Cuqua was in Friendsville on that day. When Defendant left the shop I did not know where he had gone. Two or three hours afterwards he sent his brother for me to come to the field. The purpose for which he sent for me was to conclude an assignment of his tools and other property to me. The assignment was concluded, and we separated, and I saw him no more till sometime after he returned. When he left Dr. Leed's shop to avoid the Sheriff, he went out at the back door, Mr. Newman came to the front door of the shop, and told Ballard that Cuqua had come, and he started. I told Wilkinson, after Ballard was gone, what Ballard had said to me on the day he had left. I had been clerking for Wilkinson, and think the account sued on correct. * * * The credit on the account of Ballard, of the note on J. Seibert, is correct; it had been assigned by indorsement to witness, and witness assigned it to Wilkinson in payment of Ballard's account to that extent, but was so applied without authority of Ballard.
29] On cross examination—did not know when Defendant was going, or where; and Defendant didn't inform him. * * * Didn't know what kind of writ Sheriff had. Sheriff had no process in favor of Wilkinson.

James Ballard, for Plaintiff, testified: That he was at work in the field and that Defendant asked him to go for David Williams to come down in the field. Williams came and saw him and Defendant together, didn't see Defendant leave, and don't know how he went off. He left 6th May, 1858, was gone a month or six weeks. Thinks he got home in time for 4th July at Salem.

Isaac Hunter, for Plaintiff, testified ———— in relation to account.
Silas Kennepp " " " " " " "

31] Chas. Cuqua, for Plaintiff testified that he went to Friendsville about 1st May, 1858, with writ of Replevin to replevy a buggy for Tilton from Ballard, did not see Ballard, didn't look for him much, had no writ in favor of Wilkinson.

32] Defendant's evidence. Mr. Newman, for Defendant, testified That he was acquainted with Ballard, that Ballard, a short time before he left, made arrangements with him, witness, that Mr. Ballard should go to Wayne county, (New Massillon) distant 25 miles, and make arrangements for him and witness to take daguerreotype pictures. I left on 13th May, 1858, went to New Massillon, there found Ballard, remained there one month

[2053-38]

taking pictures, Ballard with him. I then came back; a short time thereafter Ballard came back; saw Ballard the day he left Friendsville at several places, last saw him at Dr. Leed's office in back part, at desk, with Daniel Williams. I stood in front, watching for Sheriff, told Ballard when I saw Sheriff coming, and he went off and I saw him no more. There is back door to the office, did not see him go out, did not see him again till we met in New Massillon. And this was all the evidence.

Instructions for Plaintiff.

No. 1. If Wilkinson had such reason to believe, caused by the acts and conduct of Ballard, that Mr. Ballard had absconded, as would induce a reasonable man to believe such to be true, then he was justified in proceeding by attachment to secure any debt which the Jury may believe, from the testimony, was due from Defendant to Plaintiff. [Given.]

No. 2 If the Jury believe the Defendant is shown by the testimony
33] to have left clandestinely, and sought to have concealed himself so that the ordinary process could not be served upon him for the collection of any debt which the proof may show, if any, was owing to plaintiff, then the verdict should be for Plaintiff for the amount shown, if any, to be due Plaintiff. [Given.]

No. 3. That in determining how much is due Plaintiff, if anything, on the account, the Jury must take the items and prices proved, if any, and deduct all proper credits, if any, thereon, and then if balance proven does not exceed $100, a Justice has jurisdiction over the subject matter. [Given.]

Instructions for Defendant.—No. 1. That Justice of the Peace has no jurisdiction for an amount above one hundred dollars, and unless the amount proven be just, or the account in question has been reduced by fair and legal credits to or below $100, then the Plaintiff has no right to recover in this action. [Given.]

34] That when witnesses are equally credible, the Jury will be warranted in placing more credit in the evidence of the witness or witnesses who show themselves best qualified to speak of the matter about which they speak. [Given.]

No. 3. That an agent cannot bind his principal by any act he may do, unless such action is in the scope of his authority; and if Williams had in his hands a promissory note belonging to Ballard, and that he gave the same to Wilkinson to be credited upon an account in favor of Wilkinson, and that Williams had no authority to pay such note to Wilkinson, then Ballard cannot be bound by any such credit; and if the account proven, if it has been proven without such credit, amounts to more than $100, and if Williams had no authority to make such credit, a Justice of the Peace had no jurisdiction, and the verdict should be for Defendant. [Given.]

No. 4. That the fact as to whether attachment notices had been posted in the case of Wilkinson vs. Ballard, is not a question for their investigation in this case. [Given]

No. 5. If a witness has made unreasonable and inconsistent statements upon oath, the Jury may place less reliance upon the evidence of such witness than if his statements were consistent and reasonable. [Given.]

That if the account as proven, if it has been in this case, was originally more than $100, and if a credit has been placed upon the same without the knowledge or consent of Ballard, and to which Ballard was not legally enti-

tled, for the purpose of reducing the account to or below the sum of $100, it is not a fair credit and the Plaintiff cannot recover in this suit. [Given.]

No. 6. That the Jury will not be warranted in believing that Ballard left Friendsville in the night, or secretly, unless the evidence shows such to be the fact. [Given.]

Verdict of the Jury for Defendant. Motion for new trial, because verdict is contrary to the evidence. 2d. Contrary to the law. 3d. Contrary to law and evidence. Motion overruled, and Plaintiff excepts. Motion in arrest of Judgment and overruled, and Plaintiff excepts.

Assignment of Errors.—1. The Court erred in refusing to give Plaintiff's instruction No. 7.

2. The Court erred in giving the Defendant's instruction.

3. The Court erred in overruling the Plaintiff's motion for a new trial.

4. The Court erred in overruling Plaintiff's motion in arrest of judgment.

J. G. BOWMAN,

For Plaintiff in Error.

BRIEF OF PLAINTIFF IN ERROR.

On the first issue tried by the Circuit Court, traversing the allegations of the Defendant's petition for a Certiorari, the Plaintiff insists, That the Defendant had notice of the Plaintiff's proceeding in attachment in time to have taken an appeal in the ordinary mode prescribed by the statute.

George W. Crowell testified:—That he wrote a letter to the Defendant, in which he stated that the Plaintiff had attached the Defendant's tools, and that the trial would come off on the following Thursday before Esq. Woods. This letter was delivered to Nathaniel Newman, and Newman testifies that he delivered the letter to the Defendant at New Massillon, Wayne county, Illinois, a day or two thereafter, and that Defendant read the letter in his presence. Newman also told Defendant that the Plaintiff, Wilkinson, had commenced some kind of proceeding against him, but did not say what, because he did not know. That he also read Crowell's letter, to the effect that "old Billy Wilks was playing hell in Friendsville, but don't recollect anything about any attachment." There are reasons why the witness' memory may have been at fault on that point. In his testimony detailed on page 32 of the record, we find the further fact stated that when the Defendant was about to leave home, the witness aided him in eluding the service of process in the hands of the Sheriff. He was the Defendant's particular friend, and had made arrangements to go into business with him in the cultivation of the fine arts, taking Daguerreotype pictures, in the classic shades of New Massillon. To the refined taste of the artist, the very classical expression in Crowell's letter, that the Plaintiff "was playing hell in Friendsville," would naturally make him forget so common-place a transaction as a proceeding in attachment. On the contrary, Crowell had a direct personal interest in the matter of the attachment about which he wrote. The Defendant's books had been attached, and Crowell wanted Defendant to send him a receipt against his account on the books, which he had paid; and he further testifies that Ballard, after his return home, apologized, and said he would have sent the receipt but that the boys acted badly with him.

Francis Crum testifies that he and Lucerne Dailey had gone to New Massillon with Newman, and brought a message from the Defendant to Dr. Leeds, to the effect that the Dr. should attend to the Defendant's business, and accordingly we find the Doctor at Squire Woods' making defence for the Defendant in the attachment suit. David Williams also testified the Defendant told him that he would have been at home to attend the trial, but was prevented from doing so by high water. The evidence proves beyond doubt that the Defendant had notice of Plaintiff's attachment before the trial before the Justice of the Peace, and had therefore abundant time to have taken his appeal in the ordinary way. The excuse that he was prevented by high water, is expressly contradicted by Lucerne Dailey, who testifies that the Defendant came with him and Crum, and piloted them across the water. The Plaintiff insists that the verdict upon this evidence should have been for the Plaintiff, and that the Court erred in refusing to grant a new trial.

The instruction No. 7 of Plaintiff should have been given for the reason contained in said instruction. If a party makes another his agent to attend to his business generally, he is bound by all the legal consequences of notice in regard to anything touching such business which may come to the knowledge of such agent, to the same extent as if he had received the notice himself. Story on Agency, Sec. 140.

On the 2d issue in this cause, made by the Defendant's plea in abatement to the Plaintiff's affidavit and writ, and tried by the Court below, the evidence of David Williams proved conclusively that the Defendant was evading civil process in the hands of the Sheriff, was attempting clandestinely to make an assignment of his property, and at the same time told the witness, Williams, that he was going away to be gone an indefinite period, and perhaps might never return. These facts Williams communicated to Wilkinson, the Plaintiff, who thereupon sued out his attachment.

The Defendant's witness, Mr. Newman, testifies to the same facts that Williams does, that the Defendant on the day he left home was dodging the Sheriff. That he, witness, stood at the front door of Dr. Leed's shop whilst Defendant and Williams were in the back room, and when he saw the Sheriff, he informed the Defendant, who immediately left and he saw him no more until he met him in New Massillon.

James Ballard also testified that the Defendant came to him when he was at work in the field, and desired him to go for David Williams; he did so, and saw Defendant with Williams in the field, after which Defendant left; but witness did not know where he went to. This was on the 6th of May, 1858.

With a knowledge of these facts, which Williams communicated to the Plaintiff, he was certainly justified in suing out an attachment. The statute manifestly did not require that he should first sue out process in his own case before he might make an affidavit that the Defendant had absconded or so concealed himself that the ordinary process could not be served upon him, when it is notorious that he is evading other process to the extent of leaving his home, and having on the eve of his disappearance expressed a doubt whether he would ever return again.

Young et al. vs. Nelson, 25 Ill. 566. See also Boggs vs. Rendskoff, 23 Ill. 66.

The case of Raymond vs. Strobel, 24th Ill. 113, disposes of the question of jurisdiction raised in the Court below. The amount claimed by the Plaintiff, Wilkinson, in his attachment against Ballard, was $95 60, and it is immaterial by what credit the account was reduced to that sum, or whether by any, the Plaintiff by his endorsement of that sum upon the writ was precluded from recovering more, and a judgment for that sum is a bar to another suit for the residue.

J. G. BOWMAN,

For Plaintiff in Error.

[8453-43]

28

W. R. Wilkinson

v.

D. A. Ballard.

Abstract and
Brief of Pltff. in
Error.

Offin Copy—
Estimated at
3800 Words each

Filed Nov. 10. 1862.
A. Johnston Clk

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 Wabash 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* Wabash *county, before the Judge thereof between*

William R Wilkinson *plaintiff and*

Quincy A. Ballard *defendant it is said manifest error hath intervened to the injury of the aforesaid* William R Wilkinson *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 2d 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-first *day of* October *in the year of our Lord one thousand eight hundred and* Sixty-two.

Noah Johnston

Clerk of the Supreme Court.

[8453-43]

SUPREME COURT.

First Grand Division.

Wm R. Wilkinson

Plaintiff in Error,

VS.

L. A. Ballard

Defendant in Error.

WRIT OF ERROR.

Issued & FILED. 21st of October 1862.

A. Johnston Clk

In Supreme Court
First Grand Division

William R Wilkinson
vs
Quincy A Ballard
} Error to Wabash

In this case Judgment was rendered in the Circuit Court of Wabash in favor of the Deft Quincy A Ballard & against the Plff William R Wilkinson and is brought to the Supreme Court by the Plff

William R Wilkinson Plff in Error
vs
Quincy A Ballard Deft in Error

The Clerk will issue Sci fa to Wabash County

J. J. Brownell

[ES453-44]

Wm K. Pilkinson
Deft in Error
vs
L. A. Ballard -
Deft in Error -

Error to Wabash -

Precipe

Filed Oct. 21. 1862.
N. Johnston Clk

No 28

Wilkinson

vs

Ballard

Error to Wabash

Reversed for Injunction & Remandrel.

Cost bill on Page 533.

8453