No. 8566

Supreme Court of Illinois

People, for use of V.Keyser

vs.

Charles Cugua et al

71641 7

Maj Noah Johnston
Mt. Vernon
Jefferson Co
Mo

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1850
11

1.

Pleas had before the Honorable Edwin Beecher judge of the 13th Judicial Circuit of the State of Illinois, comprising among others the county of Wabash.

Be it remembered that on the 24th day of March 1859, The People of the State of Illinois for the use of Valentine Keyser, by their Attorneys Robinson & Crebs filed in the Clerk's Office of the Circuit Court of said county of Wabash their Praecipe towit:

"State of Illinois } Of the April Term of the
Wabash County } ss Wabash Cir Court A.D. 1859

The People of the State of Illinois
for the use of Valentine Keyser
vs
Charles Orgera, Augustus P. Lavilette,
Francis P. Manley, Gabriel S. Goldlingh,
Abraham Mauck, John Mauck, George Copp,
Robert Parkinson, Edwin S. Russell

Debt on Bond
Debt $10,000
Damages $5000.

Clk of Wabash Cir Court will please issue Summons in above case returnable according to law

& oblige Robinson & Crebs
Attys for Pltff."

[9822-1]

And on the same day term: on the 24th day of March 1859, filed this Bond for Costs term:

"The People of the State of Illinois
who sue for the use of Valentine Keyser
vs
Charles Eugene et al

Wabash Circuit Court
April Term
A.D. 1859
Debt $10,000.00
Damages $5000.00

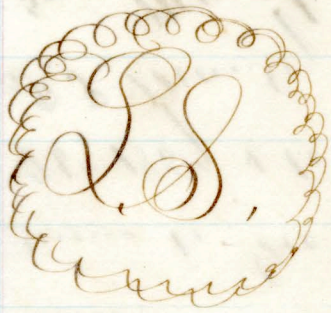
We hereby enter ourselves security for all costs that may accrue in the above entitled cause either to the opposite parties or to any of the officers of this Court, and we hereby bind ourselves to pay a cause to be paid the same in pursuance of the laws of this State.
Dated this March 16th 1859

John Keyser
J. J. Leaches"

And also on the said 24th day of March 1859 the following summons was issued by the Clerk of said Court term:

"State of Illinois
Wabash County } Sct The People of the State of Illinois to the Sheriff of said County, Greeting:
We command you to summon Charles

Engra, Augustus T. Lardell, Francis T. Manly, Gabriel S. Goldtwaite, Abraham Marsh, John Marsh, George Copp, Robt Parkinson, and Edwin S. Russell if they shall be found in your County personally to be and appear before our Wabash Circuit Court on the first day of the next term thereof to be holden at the Court House in Mount Carmel on the Second Monday in April next, to answer the People of the State of Illinois for the use of Valentine Keyser of a plea that they render to the said People for the use aforesaid, the sum of Ten thousand dollars, which they owe to and unjustly detain from the said People of the State of Illinois for the use of the said Valentine Keyser, to their damage Three thousand dollars as they say. And have you then and there this writ; and make return thereof in what manner you executed the same.—



Witness Hiram Bell Clerk of our said Circuit Court, and the seal thereof at Mount Carmel this 24th day of March A.D. 1859.

Hiram Bell Clerk

Upon which said Summons the Sheriff of said

Wabash county made the following endorsement
to wit: "Executed by reading the within Sum-
mons to Geo Copp & Abraham Marsh, March
26th 1859 & to Edwin Rupell, Gabriel Goldsmith &
F. P. Manley March 28th 1859 & to Robert Parkin-
son March 29th 1859.

J. N. Jaques Shff W. Co. Ill."

And afterwards to wit: at the April term
of the Wabash Circuit Court in the year
1859, to wit: on the 12th day of April 1859,
the following Order of said Court was made
and entered of Record to wit:

"The People &c for the use of
Valentine Keyser
vs
Charles Cuques & others
} Debt on Bond

At this day came the
parties by their attorneys and the Plaintiffs
are ruled by the Court to file a declaration
by Friday morning next."

And afterwards to wit: at the September Term
of the said Court in the year 1859, to wit: on the
12th day of September 1859, the following order
of said Court was made and entered of

record text:—

"The People &c for the use of Valentine Keyser

vs

Charles Eugene &c others

Debt on a Bond

At this day came the Plaintiffs by their Attorneys and on their motion it is ordered by the Court that this cause be continued; and it is ordered and adjudged by the Court that the Defendants recover of the Plaintiffs their costs and charges occasioned by reason of said continuance."

And afterwards to wit: on the 19th day of March 1860, the Plaintiffs by their Attorneys Whiting & Crebs filed in the Clerks Office of the Circuit Court of said County of Wabash, their declaration in debt to wit:

"Wabash County & Circuit Court

April Term 1860

The People of the State of Illinois, who sue for the use of Valentine Keyser Plaintiffs in this suit complains of Charles Eugene Augustus St. Lavellette Francis P. Manley Gabriel G. Goodberg Abram Manck, John Manck George Copp Robert Parkinson and Edwin A. Russel the—

Defendants in this suit of a plea that they render unto the said Plaintiffs for the use aforesaid the sum of Ten Thousand Dollars which they owe to and unjustly detain from them the said Plaintiffs

For that whereas heretofore to wit on the 26 day of November 1856 to wit at the County of Wabash and State of Illinois said defendants by name and style following that is to say Charles Eugene Augustus Lavellette F. P. Stanley G. S. Goldburg George Coffee and said Abram Manck and John Manck by style and name of A. and J. Manck and the said Robert Parkinson and Edwin G. Russel by name and style of R. Parkinson & Co. made their certain writing obligatory signed in manner last aforesaid and sealed with the seals of said defendants respectively in manner last aforesaid (a certified copy of which writing obligatory is here shown to the Court bearing date a certain day and year therein mentioned to wit the day and year last aforesaid which said writing obligatory was then and thereby said defendants delivered to said Plaintiffs whereby they the said defendants acknowledged themselves held and firmly bound unto the People of the State of

7.

Illinois in the penal sum of Ten Thousand Dollars lawful money of the United States for the payment of which well and truly to be made and performed they bound themselves their heirs executors and administrators jointly severally and firmly by such presents which said defendants made a certain condition to said Bond which condition was there under written wherein it was declared that whereas the above bounden Charles Bugna has been elected and commissioned sheriff of Wabash County. Now if the said Charles Bugna should faithfully discharge all the duties required or to be required of him by Law as such sheriff as aforesaid then such obligation to be void otherwise to remain in full force and virtue and said Plaintiffs aver that as such sheriff of Wabash County as aforesaid it became and was the duty of said defendant Charles Bugna to receive all executions and other process issued from the offices of clerks of the Circuit Court of the several Counties in this State that might be to him directed and placed in his hands and to execute the same according to law, and said Plaintiffs further aver that under and by virtue of the laws of this state it became

[8 [illegible]]

and was the duty of said Charles Cugnot as such sheriff aforesaid on receiving an Execution against the goods and chattels lands and tenements of any citizen of said County of Wabash to there and there proceed to levy the same first upon the real estate of said defendant in such execution to be found in said County of Wabash (except the Homestead) and in case no real estate be found in his said County there to levy said Execution upon the personal property of such defendant in such execution And said Plaintiffs further aver that under and by virtue of the laws of this state it became and was the duty of said Charles Cugnot so acting and being such sheriff as aforesaid whenever an execution should be placed in his hands to execute and the same should be by him levied upon personal property in his said county, and such property should be claimed by any person or persons other than the defendant or defendants in such execution so levied. That whenever and wherever any such person or persons not defendants in such execution aforesaid should claim such property so by him Charles Cugnot levied upon as the property of such person so claiming the same and should there and there give to him said Charles

Cugnas notice in writing of his or her claim and intention to prosecute the same it then and there became his duty as such sheriff forthwith to summon a jury of twelve respectable householders of his county to meet at a place designated by him the said Charles Cugnas so acting as such Sheriff as aforesaid the said time to be before the day appointed for the sale of said property and then and there proceed to inquire by the oath of said jury whether the right of such property be in such claimant or not. And said Plaintiffs avers and charge that heretofore to wit on the 13th day of April 1857 two executions were issued from the office of the Clerk of the circuit court of White County Illinois directed to said defendant Charles Cugnas so being sheriff of Wabash County to execute the first of said executions numbered 2196 in favor of Isaac Reeve and Cyprian Preston trading by name and style of Reeve and Preston and against Washington Wood and John Albeitz the record of said executions numbered 2197 in favor of Charles G. Shaw Lucius C. Bull Lucius P. Barlow and Goodrich H. Barlow trading by style and firm of Shaw Bull & Barlow and also against said Washington Wood and John Albeitz which said executions came to the hands of said defendant Charles Cugnas to execution

the 16th day of April in said year 1859 aforesaid.

10. And said Plaintiffs further avers that afterwards to wit on the 21st day of said month of April 1859 said defendant Charles Engna so being such sheriff of Wabash County as aforesaid unlawfully and wrongfully levied said Executions upon a large stock of Dry Goods Groceries Boots and Shoes Hats & Caps Hardware Queensware Glassware and Woodenware of great value to wit of the value of Three Thousand dollars the same then and there belonging to said Valentine Reyser for whose use the said Replee sue of which the said defendant then and there had notice and said defendant Charles Engna so being sheriff of Wabash County thereupon proceeded to advertise said property of said Valentine Reyser for sale to satisfy said executions against said Woods and Allcity.

And said Plaintiffs further avers that in pursuance of the Statute in such case made and Provided said Valentine Reyser for whose use the said Replee sue then and there to wit on the day and year last aforesaid and before the day fixed by said Charles Engna for the sale of said property gave to him the said Charles Engna so being such sheriff as aforesaid a notice in writing of the claim of him the said Valentine Reyser to the

property aforesaid so by him said defendant Charles Cuqua levied on, and said Valentine Keyser for whose use the said Plaintiffs sue as aforesaid then and there gave said defendant Charles Cuqua a notice in writing of his intention to prosecute such claim to said property according to Law.

And said Plaintiffs further aver that said defendant Charles Cuqua so having notice of the claim of said Valentine Keyser and of his intention to prosecute the same unlawfully and knowingly did then and there refuse to said Valentine Keyser for whose said use the People sue a trial of the right of said property as allowed to said Keyser by law and as it was then and there the duty of said Cuqua to do. Whereby said stock of goods and every part and parcel thereof became and was wholly lost to said Valentine Keyser By means whereof and by force of the statute made and provided an action hath accrued to said Plaintiffs to demand and have of and from the said defendant the said sum of Ten Thousand Dollars above demanded for the use aforesaid.

Yet the said defendant although often requested so to do hath not as yet paid the same or any part thereof but have hitherto wholly neglected and refused and still do neglect and refuse to pay the same for the use aforesaid or any part thereof. And also for that

whereas heretofore to wit ~~at the County of Wabash and State of Illinois~~ on the 26th day of November 1856 to wit at the County of Wabash and state of Illinois the said defendants by their certain attest writing obligatory signed as last aforesaid and sealed with the seals of said defendants as aforesaid (a certified copy of which is now shown to the Court the date whereof is a certain day and year therein mentioned) to wit the said 26th day of November 1856 aforesaid acknowledged themselves held and firmly bound unto the People of the State of Illinois in the penal sum of Two Thousand Dollars lawful money of the United States for the payment of which well and truly to be made and performed they bound themselves their heirs executors and administrators jointly severally and firmly by such presents. To which said bond said defendants then and there made a certain condition which condition was there underwritten wherein it was declared that whereas the above bounden Charles Cugua has been duly elected and commissioned sheriff of said County of Wabash.

Now if the said Charles Cugua should faithfully discharge all the duties required or to be required of him by law as sheriff as aforesaid then said obligation to be void otherwise to remain in full force and virtue. And said Plaintiffs aver that as such sheriff of

Wabash County as aforesaid it became and was the duty of said defendant Charles Cuqua to receive all executions and other process issued from the office of the Clerk of the Circuit Court of the several Counties of the State that might be to him directed as such sheriff and place in his hands and to execute the same according to law. And said Plaintiffs further aver that it became and was the duty of said Charles Cuqua as such sheriff of Wabash on receiving an execution against the goods and chattels lands and tenements of any citizens of said County of Wabash to them and there proceed to levy the same first upon the real estate of said defendant or defendants in such execution lying and being in said County of Wabash (except the homestead of said defendant or defendants in said execution) and in case no real estate be found in his county then to levy such executions upon the personal property of such defendant or defendants in such execution And said Plaintiffs further aver that when an execution should be placed in the hands of said Charles Cuqua as such sheriff to execute and the same should be by him levied upon personal property, and the property so by him levied on be claimed by some person or persons other than the defendant in execution, and the person so claiming the same should give him said defendant Charles Cuqua as

such sheriff before the day fixed by him for the sale of such property so by him levied upon notice of such claim and further notice of his her or their intention to prosecute the same. At then and there became the duty of such defendant Charles Cugna forthwith to summon a jury of twelve respectable householders of the County to meet at a place to be by him the said Charles Cugna designated before the day fixed by him for the sale of the property so by him levied on and then and there proceed to inquire by the oath of said jury whether the right to such property be in such claimant or not.

And said Plaintiffs aver that heretofore to wit on the 13th day of April 1857 two executions were issued from the office of the Clerk of the Circuit Court of White County Illinois and placed in the hands of said defendant Charles Cugna first no 2196 in favor of Keen & Preston the second No 2197 in favor of Shaw Buell & Barbour and both against Washington Woods and John Albeitz which said executions came to the hands of said defendant Charles Cugna on the 16th day of April 1857 and said Plaintiffs further aver that afterwards on the 21st day of April 1857 said defendant Charles Cugna without calling on said Defendants on executions for real estate as

the law bound him unlawfully and knowingly levied said executions upon a stock of Dry Goods Groceries Boots & Shoes Hats & Caps then and there belonging to said Valentine Keyser of great value to wit of the value of Three Thousand Dollars for whose use the said Plaintiffs sue of the ownership of which said personal property said defendant Charles Cugua then and there had notice. And said Plaintiffs further aver that said defendant Charles Cugua having so levied upon the personal property of said Valentine Keyser aforesaid then and there proceeded to advertise the property so levied upon for sale. And said Plaintiffs further aver that in pursuance of the statute in such case made and provided said Valentine Keyser for whose use said Plaintiffs sue gave notice to said Charles Cugua so being sheriff as aforesaid of his claim to said property therein and of his intention to prosecute such claim. And said Plaintiffs further aver that said Charles Cugua so being sheriff as aforesaid and having notice of the claim to said property levied on by him unlawfully and wilfully did then and there refuse to allow said Valentine Keyser a trial of the rights of property in and to said personal property so by him levied upon as aforesaid and as by the statute in such case made and

provided said Valentine Keyser has a right to thereby said stock of goods aforesaid and every part and parcel thereof were wholly lost to said Valentine Keyser. By means whereof and by force of the statute in such case made and provided an action hath accrued to demand and have of and from the said defendants the said sum of Ten Thousand Dollars above demanded.
Yet said defendants although often requested so to do hath not as yet paid the same or any part thereof, but have hitherto wholly neglected and refused and still do neglect and refuse to pay the same for the use aforesaid. To the Damages of said Plaintiffs three thousand dollars and therefore they sue for the use aforesaid

Whiting & Crebs attys
for Plaintiffs."

And also on the said 19th day of March 1860 the following Summons was issued by the Clerk of said Wabash Circuit Court, viz:
"The State of Illinois
Wabash County } ss. The People of the State of Illinois, to the Sheriff of said County, Greeting: We command you that you summon Charles Lengua, Augustus T. Tardell and John Manck if they shall be found in your

ment, personally to be and appear before the Circuit Court of said County on the First day of the next term thereof to be holden at the Court House in Mount Carmel on the Second Monday in the month of April next to answer the People of the State of Illinois who sue for the use of Valentine Keyser of a plea that they render to the said People for the use aforesaid the sum of Ten thousand dollars which they owe to and unjustly detain from the said People of the State of Illinois for the use of the said Valentine Keyser to their damage three thousand dollars as they say, and have you then and there this writ, and make return thereof in what manner you execute the same.

Witness Hiram Bell Clerk of our Circuit Court at Mount Carmel this 19th day of March in the year of our Lord one thousand eight hundred and sixty

Test: Hiram Bell Clerk
Circuit Court

Upon which said Summons the Sheriff of Wabash county aforesaid, made the following endorsement to wit: "Executed

by reading the within Summons to Charles Lengua & John Marsh on the 21st day of March 1860 & by reading the within Summons to the within named A. T. Sandells on the 2d day of April 1860.

M. Jagers Shff W. Co. Ill.

And afterwards to wit: at the April term of the Wabash Circuit Court in the year 1860 to wit: on the 11th day of April 1860 the following order of said Court was made and entered of record to wit:

"The People for the use of
Valentine Meyer
vs
Charles Lengua et al
Debt on a Bond

At this day came the parties by their Attorneys, and it is ordered by the Court that this cause be continued for want of a copy of bond being filed herein, at the costs of plaintiffs."

And on the same day to wit: on the 11th day of April 1860, the following copy of the official bond of Charles Lengua was filed in said Court to wit:

"Know all men by these presents that we Charles Lengua, Augustus T. Sandells

19.

Francis P. Manly, Gabriel S. Goldsmith, A. & J. Marsh, George Copp & R. Parkinson & Co of the County of Wabash and State of Illinois are held and firmly bound unto the People of the State of Illinois in the penal sum of Ten thousand dollars lawful money of the United States for the payment of which well and truly to be made and performed, we bind ourselves our heirs, executors and administrators jointly, severally and firmly by these presents. Witness our hands and seals this 26th day of November A.D. 1856.

The condition of the above obligation is such that whereas the above bounden Charles Lengers has been duly elected and commissioned Sheriff of said County of Wabash. Now if the said Charles Lengers shall faithfully discharge all the duties required or to be required of him by law as Sheriff aforesaid, then the above obligation to be void, otherwise to remain in full force and virtue.

Witness
Henry Stees
Edward Schmanthausen

Charles Lengers (Seal)
Augustus P. Tarbell (Seal)
F. P. Manley (Seal)

SP544-10

20.

F. G. Cougna
James S. Johnston

G. S. Goldtwaite (Seal)
A. J. Mauck (Seal)
George Copp (Seal)
R. Parkinson 860 (Seal)

State of Illinois
Wabash County } ss. I, Hiram Bell Clerk of the Circuit Court of said County do certify the above to be a correct copy of the Official Bond of Charles Cougna late Sheriff of said County on Record in my Office

(L.S.)

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Mount Carmel this 11th day of April 1860.

Hiram Bell Clerk"

And afterwards to wit: at the Special June term of said Wabash Circuit Court in the year 1860, to wit: on the 28th day of June 1860, the defendants by their Attorneys filed the following demurrer to the Plaintiffs declaration to wit:

"Wabash County } Circuit Court ss
Special June term 1860

Charles Cougna et al

21. Charles Lingenfelt
vs
The People &c who use
for the use of V. Ryan &c

Plas

And the said
Defendants come & defend &c & say that said
first count in said declaration & the matters & things therein alledged, are not sufficient in law & this &c Wherefore &c

Beaman & Warren Attys

And further the Defts come & defend & say that the matters & things in said second count alledged are not sufficient in law Wherefore &c

Warren Atty

And for special demurrer the Defts say that the allegations in said 1st & said 2nd count in sd declaration are too general. 2d 3d first & 2d counts dont state when any notice was given of damages of Ryan for whose use sd suit was brought

Warren."

And afterwards to wit: at the September Term of said Wabash Circuit Court in the year 1860, to wit: on the 10th day of September 1860, the following order of said Court was

made and entered of record, viz:

"The People for the use of
Valentine Geyer
vs
Charles Gegner et al
Action on a Bond

At this day the parties by their Attorneys, and it is ordered by the Court that the demurrer to Plaintiffs declaration be sustained. It is therefore considered by the Court that the defendants recover of the Plaintiffs their costs and charges about this defence herein sustained and therefor have execution &c."

State of Illinois
Wabash County } ss. I Hiram Bell Clerk of the Circuit Court of said county, do hereby certify that the foregoing twenty two pages contains a full and complete transcript of the record and proceedings in the case of The People of the State of Illinois for the use of Valentine Geyer vs Charles Gegner & others.

In testimony whereof I have here-

23.

unto subscribed my name and affixed the seal of said Circuit Court at Mount Carmel this 26th day of October A.D. 1860.

Hiram Bell Clerk

Fee as estimated by Judge Beckwith $4-50

And the said plaintiff in error come and say there is manifest error in said record in this.

1st. The court erred in sustaining defendants demurrer to the declaration of plaintiff.

2d. Said record is in other respects erroneous and informal.

J. M. Crebs &
E. Beckwith for
Plff. in Error.

And the said defendants say there is no error in said record. Wherefore, &c.

J. G. Bowman and
Atty for Defts
in Error.

[0566-12]

People for use of
Valentine Keyser
Pltffs in error
vs
Charles Cougen &
others - Defts in error

Error to Wabash -

Filed 15th March 1861 -
N. Johnston Clk
Paid by Crabbs $5.00

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* The People of the State of Illinois for the use of Valentine Keyser *plaintiff and* Charles Eugene, Augustus T. Lavelette, Francis P. Stanley, Gabriel J. Goldburgh, Abraham Mauck, John Mauck, George Epp, Robert Parkinson and Edwin J. Russell *defendants it is said manifest error hath intervened to the injury of the aforesaid* People of the State of Illinois for the use of the said Valentine Keyser *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* first Tuesday after the second 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* fifteenth *day of* March *in the year of our Lord one thousand eight hundred and* Sixty-One.

Noah Johnston
Clerk of the Supreme Court.

[5526-12]

13

SUPREME COURT.

First Grand Division.

The People &c. use of
Valentine Kayser

Plaintiff in Error,

VS.

Charles Cooper et al

Defendant in Error.

WRIT OF ERROR.

Issued & FILED 15 March 1861

N. Johnston Clk

The people use &c

v

Cuquea et al

Location of

The principal question in this case which we have maturely considered is the constitutionality of the inquest by the sheriff to determine the right of property. That question has been decided by the Court in the case of Rowe v Bowen ante. ~~This determines the liability of the sheriff in refusing to hold the inquest but it remains to be determined the sufficiency of the pleas to which the Court overruled a demurrer.~~

The other objections to the declaration we do not think well taken. It was not necessary for the plaintiff to set out in his declaration a full inventory of the goods taken. Nor was it necessary under our statute that the liability of the sheriff should first be fixed in an action against him alone. But one action ~~alone~~ is necessary. Neither sound policy nor the law requires this multiplicity of actions. The demurrer should have been overruled.

The judgment is reversed and the cause remanded

[8511-14]

The People &c
v
Cuque

Opinion
Caton

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

The People of the State of Illinois,
To the ~~Sheriff~~ Coroner 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 The People of the State of Illinois for the use of Valentine Keyser plaintiff and Charles Cuqua, Augustus T. Loulette, Francis P. Manley, Gabriel S. Goldburgh, Abraham Manck, John Manck, George Cupp, Robert Parkinson and Edwin S. Russell defendant it is said that manifest error hath intervened to the injury of said People of the State of Illinois for the use of said Valentine Keyser 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 Charles Cuqua, Augustus T. Loulette, Francis P. Manley, Gabriel S. Goldburgh, Abraham Manck, John Manck, George Cupp, Robert Parkinson and Edwin S. Russell that they 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 they 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 Charles Cuqua and others 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 fifteenth day of March in the year of our Lord one thousand eight hundred and Sixty-One.

Noah Johnston
Clerk of the Supreme Court.

[8544-15]

Served the within Summons by reading the same to the within named Charles Lenguel. Augustus L. Lovette Gabriel S. Goldburgh Abraham Meacke George Coff Robert Parkinson & Edwin S. Russell, on Wednesday October 15th 1861 the within named John Meacke and Francis P. Manly not found in my County.

Coroners fees.
Serving $3.50
mileage.
Returning 60
$4.20

Wm A Voluntine Coroner Hancock Co. Ill

SUPREME COURT.
First Grand Division.

The People of the State of Illinois
for the use of
Volantine Keyes
Plaintiff in Error;

vs.

Charles Lenguel
Augustus L. Lovette
Francis P. Manly
Gabriel S. Goldburgh
Abraham Meacke
John Meacke
George Coff
Robert Parkinson
Edwin S. Russell
Defts in error

In the Supreme Court, State of Illinois.

FIRST GRAND DIVISION,

At Mount Vernon----November Term, A. D., 1861.

THE PEOPLE, &c. *for use of Valentine Keyser* vs. *CHARLES CUQUA, et al.*	Error to Wabash.

ABSTRACT.

This was an action of debt commenced by plaintiff's against defendant, Cuqua, as principal, and the other defendants as securities, on the official bond of said Cuqua as Sheriff of Wabash County.

5] The declaration sets forth the election of defendant Cuqua, and the 7] execution of the bond in the usual form, and after setting forth that it 8] was the duty of said Cuqua to execute all process, &c., proceeds as follows: "And said plaintiff's further aver, that under and by virtue of the laws of this State it became, and was the duty of said Cuqua, so acting and being such Sheriff as aforesaid, whenever an execution should be placed in his hands to execute and the same should be by him levied upon personal property in his said County, and such property should be claimed by any person or persons other than the defendant or defendants in such executions so levied; that whenever and wherever any such person or persons not defendants in such execution aferesaid should claim such property so by him, Charles Cuqua, levied upon as the property of such person so claiming the same, and should then and there give to him, said Charles Cuqua, notice in 9] writing of his or her claim and intention to prosecute the same, it then and there became his duty, as such Sheriff, forthwith to summon a jury of twelve respectable householders of his County to meet at a place designated by him, the said Charles Cuqua, so acting as such Sheriff as aforesaid, the said time to be before the day appointed for the sale of said property, and then and there proceed to inquire by the oath of said jury whether the right of such property be in such claimant or not. And said plaintiff's aver and charge that heretofore, to wit: on the 13th day of April, 1857, two executions were issued from the office of the Clerk of the Circuit Court of White County,

Illinois, directed to said defendant, Cuqua, so being Sheriff of Wabash County, to execute, the first of said executions numbered 2,196, in favor of Isaac Keen and Cyprian Preston, trading under name, &c., and against Washington Wood and John Albeitz—the record of said executions numbered 2,197, in favor of Charles G. Shaw and others, trading, &c., and also against said Washington Wood and John Albeitz, which said executions came to the 10] hands of said defendant, Charles Cuqua, to execute on the 16th day of April in said year 1857, aforesaid,

And said plaintiff's further aver that afterwards, to wit: on the 21st day of said month of April, 1857, said defendant, Cuqua, so being such Sheriff as aforesaid, unlawfully and wrongfully levied said executions upon a large stock of dry goods, groceries, boots and shoes, hats and caps, hardware, queensware, glassware and woodenware, of great value, to wit: of the value of three thousand dollars, the same then and there belonging to said Valentine Keyser, for whose use the said People sue, of which the said defendant then and there had notice; and said defendant, Cuqua, so being Sheriff of Wabash County, thereupon proceeded to advertise said property of said Valentine Keyser for sale to satisfy said executions against said Wood and Albeitz.

And said plaintiff's further aver that in pursuance of the Statute in such case made and provided, said Keyser, for whom the said People sue, then and there, to wit: on the day and year last aforesaid, and before the day fixed by said Cuqua for the sale of said property, gave to him, the said Cuqua, so being such Sheriff, a notice in writing of the claim of him, the said Keyser, to the property aforesaid, so by him said defendant Cuqua levied on, and said Keyser then and there gave said defendant, Cuqua, a notice in writing of his intention to prosecute such claim to said property according to law.

11] And said plaintiff's further aver that said defendant, Cuqua, so having notice of the claim of said Keyser of his intention to prosecute the same unlawfully and knowingly did then and there refuse to said Keyser a trial of the rights of said property as allowed to said Keyser by law and as it was then and there the duty of said Cuqua to do. Whereby said stock of goods and every part and parcel thereof became, and was wholly lost to said Keyser. By means whereof and by force of the statute made and provided, an action hath accrued to said plaintiff's to demand and have of and from th e said defendants the said sum of ten thousand dollars above demanded for the use aforesaid. Yet the said defendants, although often requested so to do, hath not, as yet, paid the same or any part thereof, but have hitherto wholly neglected and refused, and still do neglect and refuse to pay the same for the use aforesaid or any part thereof."

12] The second count of the declaration sets forth the execution of the bond and duties of the Sheriff's substantially as in the first count, and then proceeds as follows:

"And said plaintiff's aver that heretofore, to wit: on the 13th day of April, 1857, two executions were issued from the office of the Clerk of the Circuit Court of White County, Illinois, and placed in the hands of said defendant, Cuqua, first No. 2,196, in favor of Keen and Preston; the second No. 2,197, in favor of Shaw, Buell and Barbour, and both against Washiugton Wood and John Albeitz, which said executions came to the hands of said defendant, Cuqua on the 16th day of April, 1857, and said plaintiff's further aver that afterwards, on the 21st day of April, 1857, said defendant, Cuqua, without calling on said defendants in execution for real estate, as the law bound him, unlawfully and knowingly levied said executions upon a stock of dry goods, groceries, boots and shoes, hats and caps, then and there belonging to said Keyser, of great value, to-wit, of the value of three

thousand dollars, of the ownership of which said personal property said defendant, Cuqua, then and there had notice. And said plaintiffs further aver, that said defendant, Cuqua, having so levied upon the personal property of said Kyser aforesaid, then and there proceeded to advertise the property so levied upon for sale. And said plaintiffs further aver, that in pursuance of the statute in such case made and provided, said Kyser gave notice to said Cuqua, so being Sheriff as aforesaid, of his claim to said property, and of his intention to prosecute such claim. And said plaintiffs further aver that said Cuqua, so being Sheriff as aforesaid, and having notice of the claim to said property levied on by him, unlawfully and wilfully did then and there refuse to allow said Kyser a trial of the right of property in and to said personal property so by him levied upon as aforesaid, and as by the statute in such case made and provided said Kyser has a right to. Whereby said stock of goods aforesaid, and every part and parcel thereof, were wholly lost to said Kyser. By means whereof," &c., closing with the usual breach.

21] The defendants demurred to the declaration and assigned the following causes: "That the allegations in said 1st and said 2d counts in said declaration are too general. 2d. Said first and second counts do not state when any notice was given of damages of Keyser, for whose use suit was brought."

22] The Court sustained the demurrer, and entered judgment against plaintiff's for cost.

The only error assigned is:

"The Court erred in sustaining defendant's demurrer to the declaration of plaintiff's.

BRIEF FOR PLAINTIFFS IN ERROR.

It was contended on the argument below, that the liability of the Sheriff should first be established by an action against him alone, before his securities can be made liable. This may once have been the practice; but if so, is now, we think, changed by our statute. Scates Comp. p. 1125, sec. 15. And in *The People* v. *Wardlaw et al.*, 24 Ill. Rep. 570, a declaration against the Sheriff and his securities was sustained.

The first special cause of demurrer is, that the declaration is too general. Under this assignment it was urged that the declaration ought to have described *particularly* each article of goods claimed by Kyser. From the very nature of the property in question, that would be almost an impossibility. It could not be expected that Kyser would know every article in a stock of goods amounting to $3,000. After the levy, the goods were in Cuqua's possession, and Keyser had no means of obtaining any more definite description. Before the levy he could not be expected to know that a levy would be made, and therefore provide himself with a more full description of each article. The declaration describes the property sought to be recovered as fully as he was capable of doing.

As to the second cause of demurrer, its force is not perceived, and we presume it was inserted for form.

JOHN M. CREBS,

EDWIN BEECHER,

For Plaintiffs in Error.

Guardian Office print, Mt. Vernon.

13-

The People

v.

C. Cuyler et al.

Abstract

Office

Filed Nov. 14-1861.

Wm. Johnston Clk

8566

Canton March 12 1861

Major Johnson

Dear Sir

Enclosed find a writ which please file and issue Summons to Defts in Error, also find enclosed 5$ the amount I believe your charge on filing writs

Yours respectfully

John M Crebs &
John E Whiting

13

People use of
Valentine Keyser
vs

Charles Langen
et al –

Praecipe

Filed March 15. 1861
A. Johnston Clk

In the Supreme Court, State of Illinois.

FIRST GRAND DIVISION,

At Mount Vernon----November Term, A. D., 1861.

THE PEOPLE, &c. *for use of Valentine Keyser* vs. *CHARLES CUQUA, et al.*	Error to Wabash.

ABSTRACT.

This was an action of debt commenced by plaintiff's against defendant, Cuqua, as principal, and the other defendants as securities, on the official bond of said Cuqua as Sheriff of Wabash County.

5] The declaration sets forth the election of defendant Cuqua, and the 7] execution of the bond in the usual form, and after setting forth that it 8] was the duty of said Cuqua to execute all process, &c., proceeds as follows: "And said plaintiff's further aver, that under and by virtue of the laws of this State it became, and was the duty of said Cuqua, so acting and being such Sheriff as aforesaid, whenever an execution should be placed in his hands to execute and the same should be by him levied upon personal property in his said County, and such property should be claimed by any person or persons other than the defendant or defendants in such executions so levied; that whenever and wherever any such person or persons not defendants in such execution aferesaid should claim such property so by him, Charles Cuqua, levied upon as the property of such person so claiming the same, and should then and there give to him, said Charles Cuqua, notice in 9] writing of his or her claim and intention to prosecute the same, it then and there became his duty, as such Sheriff, forthwith to summon a jury of twelve respectable householders of his County to meet at a place designated by him, the said Charles Cuqua, so acting as such Sheriff as aforesaid, the said time to be before the day appointed for the sale of said property, and then and there proceed to inquire by the oath of said jury whether the right of such property be in such claimant or not. And said plaintiff's aver and charge that heretofore, to wit: on the 13th day of April, 1857, two executions were issued from the office of the Clerk of the Circuit Court of White County,

Illinois, directed to said defendant, Cuqua, so being Sheriff of Wabash County, to execute, the first of said executions numbered 2,196, in favor of Isaac Keen and Cyprian Preston, trading under name, &c., and against Washington Wood and John Albeitz—the record of said executions numbered 2,197, in favor of Charles G. Shaw and others, trading, &c., and also against said Washington Wood and John Albeitz, which said executions came to the 10] hands of said defendant, Charles Cuqua, to execute on the 16th day of April in said year 1857, aforesaid,

And said plaintiff's further aver that afterwards, to wit: on the 21st day of said month of April, 1857, said defendant, Cuqua, so being such Sheriff as aforesaid, unlawfully and wrongfully levied said executions upon a large stock of dry goods, groceries, boots and shoes, hats and caps, hardware, queensware, glassware and woodenware, of great value, to wit: of the value of three thousand dollars, the same then and there belonging to said Valentine Keyser, for whose use the said People sue, of which the said defendant then and there had notice; and said defendant, Cuqua, so being Sheriff of Wabash County, thereupon proceeded to advertise said property of said Valentine Keyser for sale to satisfy said executions against said Wood and Albeitz.

And said plaintiff's further aver that in pursuance of the Statute in such case made and provided, said Keyser, for whom the said People sue, then and there, to wit: on the day and year last aforesaid, and before the day fixed by said Cuqua for the sale of said property, gave to him, the said Cuqua, so being such Sheriff, a notice in writing of the claim of him, the said Keyser, to the property aforesaid, so by him said defendant Cuqua levied on, and said Keyser then and there gave said defendant, Cuqua, a notice in writing of his intention to prosecute such claim to said property according to law.

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