

DEFINITIONS:

Certiorari: This is a writ issued by a superior court (the appeals court) to the lower court (Common Pleas) so the appeals court can inspect the proceedings or documents of the lower court.

Plaintiff in Error: Plaintiff in error is the old fashioned term for appellant.

Proceedings in error means an appeal of a decision. I don't know how the early courts came up with that one.

"Levy distress on the goods" Distress=holding of property. distrained goods [property held to compel payment or reparation]

[9 April 1818 John Varner and David Kepler/Hepler sign a note owing Solomon Wagoner/Wagner \$45]

[11 December 1818]

Westmoreland County }
Commonwealth Pennsylvania } To Const [Constable] in Huntinton Greating
Summons John Varner & David Hepler to be and appear before me at my Office on Friday next to
Answer Sollomon Wagoner A Demand not exceeding Sixety Dollers fail not wittness my hand
and seale this 11 December 1818

John Milligan

~~~~~New Document~~~~~

|                     |                 |                                                          |         |
|---------------------|-----------------|----------------------------------------------------------|---------|
| Solomon Wagoner     | }               | Summons Issued 11th Decr 1818                            |         |
| V                   | }               | Returned 18 Do [do over--ditto] Demand as for            |         |
| John Varner SS      | }               | notes under hand and Seall                               |         |
| David Hepler        | }               | Dated 9th Day of Aprile 1818                             |         |
| 18 Decr 1818        | }               | Due this 9th Octr Said year for                          |         |
|                     |                 | <u>the Sume of</u>                                       | \$45.00 |
| Just Costs          | 12 1/2 }        | Hepeler Did not Attend Const Sworn                       |         |
| <u>  </u> 12 1/2 SC | 12 1/2 }        | therfor Judgment the Defendent Hepler                    |         |
|                     | 37 1/2 }        | Day the above on Default not Attending                   |         |
| Const C             | 31 }            | Varner Apeared and Confest Judgment                      |         |
| Judg . . .          | <u>12 1/2</u> } |                                                          |         |
|                     | Total 75 }      | C__odit__ John Varner by Cash paint or point [definitely |         |
|                     |                 | not the word paid--likely interest point] of A Ritchmond |         |
|                     |                 | Note \$5 for the yuse of Solomon Wagoner                 |         |

*[The amount \$45 on the right above is definitely 45 and not 75. The "totel" 75 above left was definitely 75 and not 45]*

~~~~~New Document~~~~~

[18 December 1818]

Judgment obtained against John Varner and David Hepler--no document

~~~~~New Document~~~~~

**[17 December 1819]**

17 December 1819 I do Assigne over to John Heberger all my right and titel of forty Dollers on A Note on John Varner & David Hepeler Dated the 9th Day of Aprile 1818 and Due 9 Octr Said year with the interest thereon being A Point of that Judgment I have on your Docket wittness my hand and Seall

Attest  
John Milligan

Solomon Waggoner {SS}

~~~~~New Document~~~~~

[25 August 1820]

Westmoreland County }
Commonwealth Pennsylvania } To Const [Constable] in Huntinton Greating
Whereas Judgment was obtained before me on this 18 December 1818 Against John Varner &
David Hapeler for the Sume of 75 Debt 2 . . 70 Interest becide Costs on Sute [suit] of Solloman
Wagoner and Since on the 17 Decr 1819 Solloman Wagoner assigned over his right and titel of
70 Dollers with the interest thereon unto John Heberger ~ you are therefor commanded to
Summons the said John Varner & David Hepler to be and appear before me at my office on
Friday nexet to show cause why Judgment should not be revived and execution Issued thereon in
favour of the assinie [assignee] of Sollomon Wagoner faille not wittness my hand and sealle this
25 August 1820

John Milligan

~~~~~New Document~~~~~

[26 August 1820] [printed form--handwritten material italicized] [I believe this is a notice of  
appeal or writ of Certiorari instructing John Milligan to send all documents pertaining to this  
matter to the appeals court]

Westmoreland County, SS.

The Commonwealth of Pennsylvania to John Milligan esquire, one of our Justices of the Peace  
in and for the county of Westmoreland, Greeting: WE being willing for certain causes to be  
certified of *a certain plea of debt not exceeding sixty dollars wherein Solomon Wagner for the  
use of John Hoyberger is plaintiff and John Varner is defendant before you depending*  
Do command you, that the *plea* aforesaid, together with all things touching the same, so full and  
entire as before you they remain; You certify and have before the Judges of the Court of  
Common Pleas for the county of Westmoreland aforesaid, at Greensburgh, at a court there to be  
held for said county, the *Third* Monday in *November* next: So that we may further cause to be  
done thereupon that which of right according to the laws of the said state ought -- And have you  
likewise there this writ. WITNESS *John Young Esquire president* of our said court, at  
Greensburgh, the *twenty sixth* day of *August* in the year of our Lord one thousand eight hundred  
and *twenty*

*Allowed*  
*Wm. Jacks*

*For A. H\_\_\_\_\_*  
*Morrison Undersood*

~~~~~New Document~~~~~Reverse of above document~~~~~

To the Judges within named I do respectfully Certify that the Plea within Mentioned with all things touching the Same I Send together with this Write [Writ] as therein I am Commanded So Answers _____ John Milligan

[this document/statement certifies to the higher court that all documents for the suit are included in the file and sent to the higher court]

~~~~~New Document~~~~~Other half of above document~~~~~

[beginning of the appeal documents]

No. 36 To November Term 1820

|                    |   |             |
|--------------------|---|-------------|
| John Varner plff   | } |             |
| in Error           | } | Certiorarie |
| vs                 | } | to          |
| Solomon Wagner for | } | Justice     |
| the use of John    | } | John        |
| Hoyberger          | } | Milligan    |

\_\_\_\_\_ [appealed?] Septem 16th

Affidavit filed  
and Back to prosecute  
writ with effect &  
Entered[?]

Armstrong, AW\_\_  
[or Armstrong Atty]

November 27 1820 recd[?] \_\_[UP or WP--likely clerk's initials]

~~~~~New document~~~~~

[8 September 1820]

| | | | |
|--------------------|---|-------------------------------------|--------------|
| John Heberger | } | | |
| Assinie of Solomon | } | Show Caus Issued 25 August 1820 | |
| Wagoner | } | Returnable 1 September 1820 for the | [C=cents] C |
| V | } | Sume of _____ | \$70 . . 00 |
| John Varner & | } | Interest 1 Y 11 M _____ | 4 . . 60 |
| David Hepler | } | Just Costs S Cause _____ | 0 . . 25 |
| | } | Exetng[?] _____ | 0 . . 12 1/2 |
| 1 September 1820 | } | Const Costs _____ | 0 . . 35 |
| | | Pairties Did not Attend Const Sworn | 0 . . 12 1/2 |

Judgment that it be revived against
the Defendents 1 Sepr 1820 and that
they day this Above with Costs on former Ju 81 [judgment 81?]
plentif Heberger Apeared on the 8th Sepr
and acknowledged to have recd \$6 . . 50 of the Above 25

Hepeler Exe [unsure] 8 Sepr 1820 _____

[This document shows that John Varner and David Kepler/Hepler did not attend the hearing on 1 September 1820 so the constable was sworn in testifying that he did serve them with the subpoena]

~~~~~New Document~~~~~

[8 September 1820] [printed form--handwritten material italicized]

Westmoreland County SS }

The Commonwealth of Pennsylvania, to } *Daniel Kesler Const* [constable--handwritten]

WHEREAS Judgment against *John Varner & David Hepler* was revived before me on 1 Sepr 1820 for the sum of *forty dollers 50* debt, *4 Dollers 60 C* interest, and *1 Doller & 8.4* [unsure of 8.4] *Cents* costs, was had the *first ~~~~* day of *Sepr 1820* before me, a Justice of the Peace, at the suit of *John Heberger Assinie of S Wagoner* These are therefore to command you to levy distress on the goods and chattels of the said *John Varner & David Hepler* and make sale thereof according to law, to the amount of the said debt and costs, and what may accrue thereon, and make return to me within *20~~~~* days from the date hereof: And for want of goods and chattels wherreon to levy, you are to convey the *bod eys* of the said *John Varner & David Hepler ~~~~* to the jail of the said county, the jailor whereof is hereby commanded to receive the same, and in safe custody to keep, until the said debt and costs are paid, or otherwise discharged by due course of law. Given under my hand and seal, at *my office~~~~~* the *8th* day of *September 1820*

*John Milligan*

~~~~~New Document~~~~~

[16 September 1820]

| | | |
|-------------------------|---|----------------------------------|
| John Varner plff in Err | } | Issue Certiorarie |
| V | } | to John Milligan |
| Solomon Wagner for the | } | Esq to remove a___ |
| use of John Hoyberger | } | proceeding had in a plea of Debt |
| | | not exceeding \$60 |

_____ Esq.

Westmoreland County SS

John Warner the above plff in Error on his Solemn oath saith that he doth not apply for this Writ for the purpose of delay, but in his opinion the proceedings proposed to be _____d an unjust and illegal and if not _____ will compel him to pay more[?] money than is justly owed

| | | |
|----------------------|------|----------|
| Sworn and subscribed | | his |
| 16 Sep 1820 | John | X Varner |
| | | Mark |

~~~~~New Document~~~~~Reverse of above document~~~~~(16 September 1820)

No 36 November 1820

R\_\_\_\_\_[Receipt?] & Affidavit

Varner v Wagner

~~~~~New Document~~~~~

[8 January 1821]

There is a missing document "a rule entered" that the Plaintiff in error should file exceptions

And a document for the Defendant to do the same

Possibly other documents

~~~~~New Document~~~~~

[29 November 1828]

[My theory is that maybe John Varner and David Kepler bought the land together or John Varner is renting David Kepler's patented land so are both sued by first Solomon Wagoner, then he assigned his rights to the debt owed by Wagoner and Varner to John Hyberger.]

[Seven years later the suit is still not resolved!]

Westmoreland County

The Commonwealth of Pennsylvania to the \_\_\_\_\_  
Westmoreland County, Greetings.

Whereas John Hyberger assignee of Solomon Wagner  
That is to say on the first day of September  
eighteen hundred and twenty before John  
Milligan esquire as Justice of the Peace of the said  
County recovered Against John Varner & David Kepler late for the said County  
Yeomen as well the sum of forty dollars debt as four dollars and sixty cents inter-  
est & one dollar & eighty five cents costs as fully  
appears on the return made by the said Justice to our writ of Certiorari issued  
out of our Court of Common Pleas of said County at the instance of said John  
John Varner as Plaintiff in error And whereupon afterwards in our same  
court to wit on the eighth day January in the year of our Lord eight-  
een hundred and twenty one a rule was entered that the Plaintiff in error  
should file exceptions on the day next following or the ninth  
day of the same month in \_\_\_\_\_ of the same entered by default  
by defendant. Whereof the said John Varner & David Kepler are \_\_\_\_\_  
as appears of record and \_\_\_\_\_ a fit (?) remedy (?) on \_\_\_\_\_ and  
we \_\_\_\_\_ that those \_\_\_\_\_ which in our same court are \_\_\_\_\_ done  
and transacted (?) by due execution should be demanded on command  
\_\_\_\_\_ that be honest (?) and lawful men of your burswick you make  
known to the said John Varner that in be and appear (?) our Judge  
at Greensburgh at our County Court of Common Pleas there to be paid before  
the county aforesaid the third Monday of September next to show if any  
thing for himself he hath or knows to say why the said John Hy-  
berger assignee as aforesaid ought not to have execution  
against him of the debt and costs aforesaid as also the further sum of  
seven dollars and twenty five cents which be the consideration of  
our same court were adjudged the said charges included by  
him expended in our same court on that occasion according  
to the force and effect of the receiver aforesaid and further  
to do and receive what our said court shall consider (?) in that

\_\_\_\_\_ and have you then there the names of those by whom you shall make it known to him and this writ.

Witness John Young Esquire, President of our said court at Greensburgh twenty ninth day of November in the year of our Lord one thousand eight hundred and twenty eight.

D. Marchound Prothy