

No. 12594

Supreme Court of Illinois

Kinsley

vs.

Kinsley

George O'Kingsley } State of Illinois
v } 3^d Grand Division
John Kingsley

Appeal from Tazewell

And now comes the said petition
in error by Mead & Williamson but
alleging that in the record and pro-
ceedings aforesaid and in the judgment
aforesaid manifest error hath intervened
to his injury in this

1st Said Court erred in rendering a decree
for the complainant in said Bill

2^d Said Court erred in receiving improper
testimony on the part of complainant &
refusing proper testimony on the part
of the defendant below

4th Said Court erred in refusing to dismiss
said Bill at the complainant's cost

5th The decree rendered was erroneous

for which said errors & others said
plaintiff prays said decree may be reversed
& set aside & he restored to his rights

By Mead & Williamson
his Attorneys

And the defendant in error comes & says that
with the record heretofore, & with the evidence of the case
there is no error

Pleas to a term of the Circuit Court begun and held at the Court House in the City of Peoria within and for the County of Tazewell and State of Illinois ^{on the 14th day of October in the year 1857} before the Honorable James Harriott Judge of the Twenty first Judicial Circuit within the State of Illinois composed of the Counties of Woodford, Tazewell & C

Be it remembered that on the 14th day of April in the year of our Lord one thousand eight hundred and fifty seven John Kingsley filed in the office of the Clerk of the Circuit Court of Tazewell County a Bill Injunction Bonds and order for injunction in the words and figures following to wit:

" John Kingsley } Tazewell County Circuit Court
 " " } October Term A.D. 1857
 " George O. Kingsley } In Chancery
 " Francis W. Smith
 " To the Hon James Harriott Judge of the Eighth
 " Judicial Circuit, the petition of John Kingsley
 " respectfully represents, That in or about the year
 " A.D. 1852 George O. Kingsley caused a suit to be
 " commenced in the Circuit Court of Peoria County
 " "

" against your orator in the name of himself and
 " Francis P Kingsley for the use of the said George
 " O Kingsley. predicated upon a note purporting
 " to be signed by your orator and payable to
 " Francis P Kingsley and George O Kingsley which
 " note purports to bear date Decr 12 Ad 1838 a
 " copy of which note and the declaration in
 " said note are hereto attached. marked "A" and under
 " parts hereof. and your orator will ask leave to use
 " a certified copy of the Record of said Suits in
 " the hearing of this cause. Your orator further shews
 " that the said Francis P Kingsley did not have
 " or claim any interest in said note and utterly
 " disclaimed any ownership in any part of the
 " said note. but did admit and insist. that said
 " note was not due. that the said note was not genuine.
 " that there never was any consideration for said
 " note. that it never was due from your orator. and
 " that the said George O Kingsley well knew said
 " note was not due from your orator and well
 " knew it was unjust to have and maintain
 " said suits upon said note. and that said
 " note never was the property of the said Plaintiff
 " in said suits named. and the said Francis
 " P Kingsley made and delivered to your orator
 " a discharge of said note. and a release of all
 " claims on account of said note. but the
 " rules of law exclude the testimony or evidence

" of the said Francis P Kingsley. and such
 " proceedings were had in said suits that a
 " change of venue was taken in the same
 " to the Circuit Court of the County of Tazewell
 " and at the April term of said Court A.D. 1856 in
 " said county. such proceedings were had
 " in said cause. that the said George O Kingsley
 " recovered judgment in said cause. for
 " one half the amount of said note and interest
 " on the same at said term of said Court. and
 " amounting in the whole to the sum of three
 " hundred dollars debt. three hundred and
 " twelve dollars and eighty six cents damages
 " and forty four dollars and twenty cents costs.
 " And your orator charges that the said note
 " was not genuine - that he was never indebted
 " in that sum to the said Francis P and George
 " O Kingsley or either of them - that said note
 " was never due said parties. and was
 " never made and delivered to said George
 " O Kingsley. and that he came into the possession
 " of said note fraudulently and without
 " consideration. and that he procured said
 " suits to final judgment. fraudulently, unjustly
 " and wrongfully. and with intent to do so. that
 " he the said George O Kingsley well knew -
 " said Note was not due. that he had no right
 " to the possession of or to claim the same.

"to put the same in suit and collect the same
 "And that with intent to make use of the courts
 "of justice for the purposes of fraud wrong and
 "injustice, in the collection of said note, he did
 "so pursue said note to final judgment as
 "herein stated - Your orator further states
 "that after the recovery of said judgment, and
 "on or about the fifteenth day of May last, the said
 "George O'Kingsley, distinctly admitted to your
 "orator that he might not be able to collect said note
 "and might not be able to make your orator pay said
 "judgment, and would not if he the said George
 "O'Kingsley, had beaten the said Francis P. Kingsley
 "in a suit he had against him in the said
 "court on an old note also - in which suit
 "he was beaten and judgment was recovered
 "by the said Francis P. Kingsley, and that he had
 "lost said suit by the testimony of your
 "orator, and he must stand in the gap and
 "make him whole for his ^{own} losses - At your orator
 "further states, that on or about the twentieth
 "day of May A.D. 1856, and after the aforesaid
 "conversations, the said George O'Kingsley in con-
 "sideration of all the circumstances
 "proposed to make a deduction on said
 "judgment, if your orator would make pay-
 "ment of the balance one hundred dollars

" in one year from March 1857 and one hundred
 " dollars yearly thereafter until the sum
 " of five hundred dollars should be paid and
 " that your orator should give his notes for
 " said sum and the said George Kingsley should
 " thereupon release and discharge said judgment
 " which was finally agreed upon by the said
 " George O. Kingsley and your orator and
 " accordingly on the day aforesaid the said George
 " O. Kingsley and your orator reduced the said
 " agreement to writing and your orator made
 " and delivered to the said George O. Kingsley
 " five notes for one hundred dollars each
 " signed by your orator and dated on the day
 " aforesaid and payable the first in one year
 " from the first day of March A.D. 1857 and
 " one for the same sum yearly thereafter
 " drawn in conformity with said agreement
 " and the said George O. Kingsley made receipt
 " and delivered to your orator a release in
 " full of said judgment and all costs of the same
 " a copy of which is hereto attached marked
 " "B" and made part hereof and your orator will
 " offer the original release in evidence on the
 " trial of this cause and your orator further
 " shews that the said George O. Kingsley yet has
 " notes unless he has sold or otherwise disposed of the
 " same—

" Your orator further shews that after the said
 " notes were made and delivered and the said
 " release made and delivered, and the settlement
 " was completed and concluded the said George
 " O'Kingsley requested your orator to procure the
 " said Francis P. Kingsley to sign said notes as
 " surety, and your orator thereupon said
 " he would if he could induce the said
 " Francis P. Kingsley to do so - and your orator
 " says that he did on the same day inform
 " the said Francis P. Kingsley that the said
 " George had made such request, and the
 " said orator was about to ask the said
 " Francis P. Kingsley to sign said notes, when
 " the said Francis P. voluntarily and expressly
 " refused to sign said notes, and distinctly
 " said he would never sign them, and to the
 " best of your orator's knowledge and
 " belief the said Francis P. Kingsley never did
 " sign said notes - and your orator distinctly
 " states it was no part of said settlement
 " or the agreement for said settlement that
 " your orator should request and procure
 " said Francis P. Kingsley to sign said notes -
 " And your orator further states that the
 " said George O'Kingsley with intent to
 " defraud and injure your orator
 " on or about the 25th day of June A.D. 1836

"caused an Execution to be issued on said
 "judgment, against your orator a copy of
 "which is hereto annexed marked A and
 "made a part hereof and that your orator
 "is informed is informed and believes that
 "soon after the said George O'Kingsley put
 "or caused said execution to be put into
 "the hands of David W. Jones then Sheriff
 "of Peniarth County or his deputy with direc-
 "tions to collect the same and to levy on
 "your orator's property - and your orator further
 "shows that he is informed and believes
 "that the said Sheriff David W. Jones
 "by his deputy A. H. Kidwell did on the
 "ninth day of August A.D. 1856 by said
 "Execution on the West half of the North
 "East quarter of Section 27 in Township 9
 "North and Range 6 of East in Peniarth County
 "which was and is the property of your
 "orator and part of the farm on which
 "he lives - that your orator had no
 "notice of said levy and was not aware
 "of the same until long afterwards
 "and after the sale of said property had
 "taken place in satisfaction of said execution
 "and your orator further shows unto your
 "Honor that your orator is informed and
 "believes that said officer did advertise

" and did sell said described Real Estate
 " on the 30th day of August 1856 to the said
 " George Kingsley for the sum of Two hundred
 " and ninety one Dollars and fifty two cents
 " the said George Kingsley being the highest
 " and best bidder for said lands - and
 " Your - says he had no notice of said
 " advertisement and sale until long
 " after said Mr. Morgan orator is informed
 " and believes that said George Kingsley
 " intends to claim and hold said land by
 " virtue of said sale unless your orator
 " redeems the same from said sale. all which
 " proceeding your orator charges is contrary
 " to Equity and good conscience and that
 " the intent of the said George Kingsley in
 " said Proceeding and sale is to defraud
 " your orator and oppress and injure him
 " and to force the collection of the whole amount
 " of said unjust and fraudulent judgment
 " which your charges is contrary to Equity
 " and good conscience. Your orator is informed
 " and believes that the said Sheriff at the
 " time of said sale delivered the said George
 " O. Kingsley a certificate of sale and also
 " gives a duplicate or copy of the same to
 " in the office of the Recorder of Poria County

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" for Records a copy of which marked "H"
" is hereto attached and made part hereof, and your
" orator further shews that Francis W. Smith was
" at the elections held in the State of Illinois
" and in the County of Peoria was elected Sheriff
" of the County of Peoria aforesaid - all of which
" casts a cloud upon the title of your orator to
" said lands and tenets to his Manifest
" injury. Whereupon therefore as your orator
" is without relief at and by the ^{power of} law, and otherwise
" only in a court of Chancery where matters
" of this kind are properly cognizable, and to
" the ends that justice and equity may
" be done. Your orator prays that the said
" George O. Kingsley and the said David
" H. Davis and Francis W. Smith may be made
" parties to this Bill, that he may be summoned
" to appear and answer the same and
" all the charges and allegations therein con-
" tained as fully and perfectly as though
" thereunto particularly interrogated, he to
" note upon their oaths, their oaths to said
" answer being hereby expressly waived
" That on the final trial of this cause the
" said Execution and levy may be quashed
" and the said sale of said lands set
" aside, and that the said George O. Kingsley

" and be perpetually enjoined from claiming
 " or procuring any deeds of said lands, or
 " said certificate of purchase, and from
 " in any manner disposing of or assigning
 " or transferring the same to any other persons
 " or persons and from having, claiming
 " or setting up any title whatever to said
 " lands by virtue of said sale, and from
 " collecting or seeking to collect or enforce
 " the said judgments or executions - and that
 " in the meantime your orator may grant a
 " temporary ~~interlocutory~~ injunction, enjoining
 " and restraining the said George O. Hingley
 " and any and all other persons his creden-
 " tials or otherwise from claiming from
 " any Sheriff of Penix County, any deeds
 " of said lands, for or on account of said
 " sale and certificate of purchase, and
 " from in any manner directly or indi-
 " rectly claiming or asserting title to the same
 " by virtue of said sale or certificate of purchase
 " and from in any manner selling or
 " otherwise assigning or transferring said
 " certificate of purchase, executions or
 " judgments to any other persons whomsoever
 " and that the said Bonds W. Smith and Francis
 " W. Smith may be perpetually enjoined
 " from giving or making, and delivering

" to the said George O'Kingsley or any other
 " person or persons a debt of said tract of
 " land on account of said sale and purchase
 " and be also enjoined from transferring dis-
 " posing of assigning or in any manner
 " making use of said notes and that
 " on a final hearing hereof the said George
 " O'Kingsley be forever enjoined from con-
 " tinuing collecting or letting to collect said
 " notes either directly or indirectly - that he be
 " forever enjoined from selling assigning
 " endorsing transferring or disposing to any
 " person or persons whatsoever and for
 " such other and further relief as to justice
 " and equity appears & your order in duty
 " bound will ever pray

John Kingsley

" State of Maine

" City & County of Penobscot SS:

" On this 17th day of January A.D.
 " 1874 personally appeared before the under-
 " signed a notary public in & for the City & County
 " of State aforesaid John Kingsley who being
 " first duly sworn says that he has heard
 " the foregoing his read & who has subscribed
 " his name thereto & that the matters & things
 " therein stated are true so far as stated
 " to be of his own knowledge & as to that &c

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" Matters stated to be on his information & belief
" he believed to be true

" Geo. J. Blakely, att.

Order for
Writ

" State of Illinois

" Tazewell County

" vs Let an injunction issue
" as prayed for in said bill restraining
" & prohibiting the said defendants as therein
" prayed upon the complainant, entering
" into bond with Francis P. Kingsley, as security
" in the penal sum of Fourteen hundred
" Dollars, conditioned according to the Statute
" in such case made and provided

April 12/54

E. C. Powell

Judge of the 16th Circuit

Bonds

" Know all men by these presents that We John
" Kingsley as principal and Francis P. Kingsley
" as surety of the city and county of Peoria
" and State of Illinois are held and firmly
" bound jointly and severally unto George O.
" Kingsley of the same county and State in the
" sum of Fourteen hundred Dollars for
" the payment of which well and truly
" to be made, We bind ourselves and each
" of our heirs, executors, administrators and
" assigns firmly by these presents. Signed with
" our hands and Seals with our Seals

" this fifth day of February A.D. 1857

" The conditions of the above
 " bond is such that if the above bond John
 " Kingsley shall pay or cause to be paid
 " to the said George O. Kingsley his executor
 " administrator or assigns all money and
 " costs, to be due on a judgment recovered
 " at the April term of the Circuit Court of
 " Izard County in favor of George O. and
 " Francis P. Kingsley for the use of George
 " O. Kingsley against the said John Kingsley
 " the collection of which said judgment is
 " this day enjoined and also all such
 " costs and damages as shall be awarded
 " against the said John Kingsley in case
 " said injunction shall be dissolved then
 " this bond to be void otherwise to be and
 " remain in full force and effect

" John Kingsley Exec

" Francis P. Kingsley Exec

" And at law and date on the 15th day of
 " April in the year of our Lord one thousand
 " Eight hundred and fifty seven a summons
 " and writ of injunction issued in the
 " words and figures following: to wit:

" State of Illinois vs The People of the State of
 " Izard County vs Illinois to the Sheriff of
 " Davis County greeting:

"We command you to summon George O.
 "Kingsley, Daniel W. Brown and Francis
 "W. Smith if found in your county personally
 "to 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 the City of Pekin on the second Monday
 "of the month of October next, to answer
 "to a certain bill of complaint filed in
 "our said Circuit Court in the chancery
 "file thereof against them, by John
 "Kingsley And to do and receive whatsoever
 "our said Court may order and decree
 "in the premises. And you ^{have} then and there
 "this writ, and make return thereon in
 "what manner you execute the same.

"Witness Myself Young Clerk of the
 "said Circuit Court and the Seal
 "of said Court hereunto affixed, at Pekin
 "this 15th day of April in the year of
 "our Lord Methousand Eight hundred
 "and fifty Seven

"M. C. Young Clerk
 "J. W. Brown W. C."

Which said

Summons was returned Oct 13th 1857

Returned

"Served on the within named George O. Kingsley
 "W. Brown & F. W. Smith Sept 27 1857
 "F. W. Smith J. W."

Note

State of Illinois The People of the State of
Jazwell County S Illinois to George O. Kingsley
his confederates, counsellors, attorneys
Solicitors and agents greeting;

Whereas John
John Kingsley has lately exhibited his Bill of
complaint to the Honorable Elihu Chase
Judge of the 16th Judicial Circuit, which
said Bill is filed in the Circuit Court of
said County of Jazwell on the Chancery side
thereof against you the said George O. Kingsley
Wm. W. Dms. and Francis W. Smith defendants
wherein among other things it is alleged
that you unjustly prosecute the said complaint
at law touching the matters and things therein
stated and set forth.

We therefore in consideration
of the premises do strictly enjoin and command
you the said George O. Kingsley and all
and every the persons above mentioned
or otherwise, that you and each of you do not
claim from any Sheriff of Penna County
a deed for the West half of the North East quarter
of Section Twenty Seven in Township three
and North Range Seven in Penna County
for or on account of a sale of said land
made by the Sheriff of Penna County on the 3rd
day of August 1856 and a certificate of

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Purchase thereon, and that you and each
and every of you do not in any manner directly
or indirectly claim or assert any title to the
said lands by virtue of said sale or certificate,
and that you do not in any manner sell
or otherwise assign or transfer said estate
of purchase, or a judgment rendered at
the April term 1856 of Sequeville County District
Court in favor of you the said George
O. Kingsley against the said complainant
and also an execution issued thereon
dated the 25th day of June 1856, under
which said sales sale aforesaid was
made, to any other person or persons
whomsoever until you and each of you
shall appear to and fully answer the
Complainant's Bill, and the said Court make
other order to the contrary. Hereof failure
made penalty of what the law directs.

At the Court of Sequeville County to be executed

Witness Minnie C. Young Clerk and the Seal
of the said Circuit Court of Sequeville
County hereto affixed at the City of Kansas
this 15th day of April A.D. 1857

Minnie C. Young Clerk
for Wm. M. M. R. R. C.

Which said summons was returned October 13 1857
Return and word Service, this writ by giving to George O. Kingsley

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a copy of the same April 27th 1857.
J. W. Smith Sheriff

And Sir afterwards I wrote, on the 13th day of October in the year of our Lord one thousand Eight hundred and Fifty Seven, the said Defendant George O. Kingsley filed his answer in the words and figures following to wit:

"The Separate answer of George O. Kingsley one of the defendants to the bill of Complaint, filed by John Kingsley in the Circuit Court of Izewell County, wherein John Kingsley is complainant and George O. Kingsley and others are defendants for injunction.

This defendant now makes at all times hereafter saving to himself all such all manner of advantages of captives or otherwise that can or may be have relation to the many errors uncertainties and imperfections of the service contained for answer thereto or to so much thereof as he is advised it is material or necessary to answer said to

That it is true that this respondent died on or about the year 1852, the precise time this respondent does not recollect to

= commenced suite in the Circuit Court
 = of Bond County against the Complainant
 = and that said suite was afterwards taken
 = to the Circuit Court of Jackson County, by
 = change of Venue as charged in said Bill of
 = Complaint, and that said suite was commenced
 = and instituted and prosecuted in the name of
 = this respondent and Francis P. Kingley for the use
 = of this respondent, and which said suite was
 = for the recovery of the amount due this respondent
 = on a certain promissory note executed and
 = bearing date December 12th 1838, as charged
 = in Complainant's bill, and which said note was
 = executed by the complainant to this respondent
 = and Francis P. Kingley — This Respondent
 = further answering said that he does not know, and
 = is not informed whether said Francis P. Kingley
 = claimed any interest or ownership of said note
 = or note, nor does he know, nor has he any
 = information or belief whether said Francis
 = P. Kingley did admit or insist, that said
 = note was not due or not genuine, or that there
 = never was any consideration for said note
 = or that it never was due from complainant
 = or that the said George O. Kingley knew the
 = said note was not due from complainant
 = but if said Francis P. Kingley did at any time

" make any such admissions and declarations
 " as to was to defraud and prejudice this res-
 " pondent in the collection of said note - and
 " this respondent further answering saith
 " that admissions and declarations if made
 " were utterly untrue and false, and this respondent
 " saith that the said note was due at the time
 " said note was brought thereon, and that said
 " note was genuine, and given for a good
 " and valuable consideration, being for amount for
 " the purchase of the said lands in said bill
 " mentioned, and which was sold by this res-
 " pondent and Francis P. Kingsley to the Com-
 " plaintant, and by which sale and deed thereupon
 " executed, said Complainant acquired an
 " indefeasible estate in fee simple to said
 " lands in said bill mentioned. This respondent
 " further avers that there was no other or further
 " price or a grade to be paid for said lands. This
 " Respondent further avers that said lands was owned
 " by this respondent and said Francis P. Kingsley
 " jointly as tenants in common before said sale
 " to said Complainant and Francis P. Kingsley
 " in whom said title was vested for himself, and
 " this Respondent therefore executed to said John
 " Kingsley a deed for the same, in consideration of
 " which sale and conveyance of ^{lands} said Complainant
 " said Complainant executed to said Respondent

= and said Francis P. Kingsley, said note above mentioned
 = on which said note was brought and Judgments ob-
 = tained, as charged in complainant's bill of Complaint

= This Respondent further answering that that
 = said note was the property of this respondent
 = at the time said note was brought, and that
 = the amount thereof was justly and honestly
 = due him together with interest thereon

= This Respondent is informed and believes that
 = said Francis P. Kingsley did attempt to execute
 = a release to said complainant for said note and
 = is informed & believes that the said writings
 = charged ^{in said bill} as having been executed by Francis
 = P. Kingsley, to release and discharge complainant
 = from the payment of said note were in fact ex-
 = ecuted. but denies that they are in law or equity
 = any release of said note and this respondent
 = avers that if any such releases were executed
 = they were intended to defraud this respondent
 = and prevent him from collecting the amount
 = justly due him on said note - This Respondent
 = admits that a change of venue was taken in
 = said cause to the Circuit Court of Tazewell County
 = Illinois, and that in said Court such proceedings
 = were had that this respondent recovered judgment
 = against the complainant at the April Term of said
 = Court A.D. 1856 against complainant for the
 = sum of three hundred dollars debt and three

- hundreds and twelve dollars & 86 cents damages
 - and costs of suit as charged in said bill
 - of Complaints. - And this Respondent avers
 - that said Judgment was obtained after
 - and upon full and due consideration of said
 - merits, and that said Complainant had notice
 - and defended said suit, and that said cause
 - was contested and defended by him and
 - that the Judgment was just and equitable
 - and legal - obtained without any fraud or
 - unjust dealing whatever and this Respondent
 - insists is final and binding upon the parties
 - thereto - This Respondent also denies that
 - said note was wrongfully or fraudulently obtained
 - by him and avers that it was delivered
 - to this Respondent for the consideration above
 - specified, and sets forth and avers that he had
 - full right and authority to put the same in suit
 - and recover ^{upon} the same.

- This Respondent denies that after
 - the recovery of the Judgment above mentioned
 - or at any other time this Respondent admitted to
 - Complainant or any other persons, that he ought
 - not to collect the said Judgment, or that he ought
 - not to make ^{said} Complainant pay said Judgment - and
 - he denies he ever admitted to Complainant or any
 - other persons that he would not make said Complainant
 - pay said Judgment if this Respondent had

" beating the said Francis P. Kingsley in a
 " suit he had against him in said Court
 " on an old note - and denies that he ever at
 " any time made declarations or admissions
 " of the like purport or meaning to any
 " person whatever of or concerning any suit
 " whatever between the Respondent and
 " Francis P. Kingsley or any other persons -
 " or that he has lost said suit by the
 " testimony of Complainant, and he must
 " stand in the gap and make him whole
 " for his losses - and said Respondent denies
 " that he ever used any words whatever
 " of like purport or meaning. This Respondent
 " denies that he died on or about the 20th
 " day of May A.D. 1886 or at any other time
 " proper to make a deduction of said
 " judgment if Complainant would pay the
 " balance, one hundred dollars in one year
 " from March 1887 or any other time or times
 " and one hundred dollars yearly thereafter
 " until the sum of five hundred dollars
 " should be paid, and that the Complainant
 " should give his notes for said bond, and
 " he also denies that this Respondent
 " ever agreed upon the giving of the note of
 " Complainant, to release said judgment.
 " But your Respondent in fact swears that

= for the purpose of aiding complainant, who is the
 = brother of this Respondent, ^{he} did agree with
 = complainant that on the execution of
 = notes for the sum of \$100. yearly amounting to
 = \$500. by complainant with Francis P. Kingsley
 = as security, that this Respondent would
 = release said judgment - and this Respondent
 = saith in fact that the said notes were
 = drawn and signed by the complainant
 = and that said release was also drawn
 = and signed by this Respondent, a copy of
 = which release this Respondent believes is
 = marked Exhibit "B" to said Bill of Complaint
 = and which said release was delivered to
 = complainant with the full understanding of
 = both parties, that said complainant should
 = procure said Francis P. Kingsley to sign said
 = notes, as security immediately and without delay
 = and that it was the understanding and express
 = agreement of said complainant of said
 = complainant with this Respondent, that said
 = release should not be operative or have any
 = effect or validity in law or equity whatever
 = until said Francis P. Kingsley should execute
 = and sign said notes as security thereon,
 = That this Respondent was informed on the
 = next day after said release and notes
 = were executed as aforesaid, that said Francis

- I Kingly declined and refused to go security
- on said notes, as by the agreement of complainants
- with this Respondent was agreed - and that
- this Respondent thereupon immediately
- on the next day after said release was exe-
- cuted as aforesaid returned said notes back
- to complainants, and demanded the aforesaid
- Release to be delivered up to Respondent to be
- cancelled as by agreement, the same shall
- have been, and said Complainants absolutely
- refused to receive said notes or to give up to
- this Respondent the aforesaid release, and
- this Respondent now herewith brings said notes
- into Court, ^{and} offers to return them to said
- complainants, and asks that the Court
- require and decree said Complainants to
- deliver up said release to be cancelled
- and that the same be ordered as paid for
- and decrees cancelled by this Court -
- And this Respondent denies that he ever
- did enter into and sign or execute said
- said release upon any other conditions
- with any other understanding, or upon any
- other contract, than that Francis P. Kingly
- was to execute and sign said notes
- aforesaid immediately as security for
- the same, and this Respondent further avers

and charges that said release was obtained
 of him fraudulently by complainant, and with
 intent to cheat and defraud this Respondent
 and that said complainant is wholly irres-
 ponsible, and your Respondent denies that
 the said release, did in any wise release
 or cancel said judgment in law or Equity
 and says that the judgment was at the
 time of issuing the execution thereon and
 the time of the Sale as charged in said
 Bill in full force and virtue, and in no wise
 released or discharged either in law or
 equity. And this Respondent further avers
 that it was part of said agreement at the
 time said notes and release were executed
 that said complainant should procure said
 Francis O. Kingley to sign said note as
 security. This Respondent further answering
 admits that he did on or about the 25th day of June
 A.D. 1856, the precise time he does not recollect
 cause execution to be issued on said Judgment
 as charged in said Bill, but denies that
 the same was done with intent to defraud
 the complainant, but for the purpose of enforcing
 the collection of said judgment, and as it
 so he lawfully might - and he further admits
 that the same was afterwards put into the hands

of the Sheriff of Penins. County. and that the
 premises in complaint are described were
 sold by said Sheriff or his deputy to satisfy
 the same on or about the 9th day of August
 1856 as charged. This Respondent does
 not know whether complainant had actual
 notice of said levy and sale or not but
 he is informed and believes he has,
 he avers that the Certificate of levy was
 duly filed and returned in the office of
 the Recorder of Penins. County. and that
 the said premises were duly advertised
 by said Sheriff as required. and this
 Respondent avers that all said doing of said
 Sheriff in the premises are the legal, valid and
 binding upon complainant, and avers that it
 was not necessary for the Sheriff or any
 other persons to give complainant actual
 notice of his doing under said Execution.
 This Respondent further answering
 saith that he did take on the 30th day of
 August 1856 purchase said premises at
 Sheriff's sale on said Execution for the sum
 of \$691. 67/100 dollars. the said Respondent
 then and there being the highest and
 best bidder for said premises as charged
 in said Rec. and that upon such sale
 said Sheriff did execute to this Respondent

Page 2P

a certificate of purchase for the same
as required by law This Respondent
further admits that he intends to deliver
and hold the same as charges in
said fee unless the same are redeemed
according to law and this Respondent
denies that it is contrary to law Equity or
good conscience for him so to do, and
this Respondent further denies all or any
frauds or fraudulent intent in obtaining
or enforcing said judgments or in the sale
under the said executions, but avers that
all proceeding had in said cause
everywhere and in all its stages were
conducted fairly and openly and
honestly by this Respondent and also
by the Officer and all other persons
connected therewith to the best of
Respondent's knowledge information and
belief - This Respondent admits that
Francis W. Smith was elected Sheriff of
Pima County and is yet acting Sheriff of said
County - And this Respondent further
answering denies that the said John
Knigley is safe or responsible for the ^{payments} ~~payments~~
of the amount of said notes - That this Respondent
only agrees to release said judgments upon
the express condition that the same shall

- be fully secured by the signature of said
 - Francis P. Kingsley, and that it would be
 - clearly unjust to compel your respondent
 - to relinquish his said judgment and all the
 - security upon said notes, and that there
 - never was any consideration for the
 - relinquishment of any part of said judgment
 - & that the same ought not to be
 - enforced. And now having fully answered
 - this respondent prays that said judgment
 - may be dissolved, and said Bill may
 - be dismissed & that this Respondent
 - may recover his costs

Geo. O. Kingsley

And now afterwards, to wit: on the 23rd
 day of October in the year of our Lord
 One Thousand Eight hundred and
 fifty seven the Complainant filed
 his Replications in the words and
 figures following, to wit:

John Kingsley } In Chancery in
 George O. Kingsley } Jersey County
 Et others } Equity Court

And the said Complainant

- Says that his said Bill of Complaint and
 - the matters therein contained and set forth
 - are true as therein set forth, and the answer
 - of John Kingsley contrary thereto are false &
 - untrue & this replicant is ready to make appear
 - as by this Court shall be directed

Prove for Complaint

And now afterwards, to-wit: at a term
 of the Circuit Court begun and held at
 the Court house in the City of Peoria within
 and for the county of Peoria and State
 of Illinois on the eleventh Monday
 of the month of October in the year of
 our Lord one thousand Eight hundred
 and fifty seven. Present the Hon James
 Hannote Judge of the 2nd Judicial
 Circuit of the State of Illinois. Hugh
 Fullerton Prosecuting Attorney, Chapman
 Williamson Shurtz and Merrill Young
 Clerk, and on the 23rd day of said month
 of October being the 11th day of said term
 the following proceedings were had
 in said cause: to-wit:

" John Kingsley	}	In Charge
" George Kingsley		
" Charles W. Smith	}	For Defenses
" Francis W. Smith		

This day this cause came on to be heard
 upon the Bill Exhibits & replications and
 proofs of the complainants, the
 answer of the defendants George O. Kingsley,
 and the defendants David D. Irons
 and Francis W. Smiths having been duly
 summoned in this cause, and having
 been three times solemnly called came
 not but made default, and the said Bill
 & the matters therein contained as to the
 defendants W. D. Irons & F. W. Smiths are
 by the Court here held taken considered
 decrees and adjudged as true and
 confessed. It was therefore admitted
 and stipulated by the parties, that the said
 George O. Kingsley, and Francis P. Kingsley
 for the use of the said George O. Kingsley
 recovered judgments against the said
 John Kingsley complainant in this cause
 for the sum of Three hundred Dollars
 & Noths, and three hundred and Twelve Dollars
 and eighty cent damages and forty four dollars
 and twenty cents costs in the Circuit Court
 of Tazewell County, in the State of Illinois
 at the April term of said Court, in the
 year of our Lord A.D. 1836, and that on
 the 25th day of June A.D. 1836, An execution

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= was issued under said Indorsement
= by the Clerk and under the Seal of said
= Court directed to the Sheriff of Peoria
= County & that said Executions came
= into the hands of the Sheriff of said
= County, and was by him levied on the
= 9th day of August A.D. 1856 on the West
= half of the North East quarter of Section
= number Twenty Seven in Township number
= Nine North of Range Seven East of
= the fourth principal Meridian in the
= County of Peoria and State of Illinois, and
= that the same was sold and struck off
= by said Sheriff of Peoria County to the
= defendant George O. Kingsley on the 30th
= day of August A.D. 1856 for the sum of
= Five hundred ^{and} no ninety one dollars and fifty
= two cents as stated in said Bill. The
= Complainant then offered in evidence
= which was admitted without objection
= a release of said Indorsement dated May
= 20 1856 in words and figures following.
= "In Consideration of five hundred
= dollars to me in hand paid by John
= Kingsley of Peoria County and State of Illinois
= I hereby release and discharge a judgment
= in my favor against the said John Kingsley
= recovered in the Circuit Court at Peoria

= in Jay's County Illinois, at the last
 = April Term of said Court, in my
 = favor and a suit wherein George
 = O. Kingsley and Francis P. Kingsley were
 = Plaintiffs, and I hereby acknowledge
 = to have received the amount of five
 = hundred dollars in full of all damages
 = and costs recovered in said action
 = and I hereby release and discharge
 = said judgment. Given May 20. 1856

Geo. O. Kingsley Clerk.

= The complainant then called Francis
 = P. Kingsley who being sworn, without objection
 = on oath stated that he was acquainted
 = with the complainant John Kingsley and
 = the defendant George O. Kingsley, that on
 = the day the parties settled, witness met
 = John Kingsley, about five miles from
 = Perma, and that John told witness
 = that George, would be along with the
 = notes, for witness to sign and witness
 = refused to sign them, that complainant
 = was and is the owner of one hundred
 = acres of good land & is worth five thousand
 = dollars over and above his debts. It was
 = then admitted that soon after the settlement
 = George O. Kingsley turned back the
 = notes to complainant & the latter refused

to take to take them & said note were in
 possession of the defendants but he had not
 brought them with them to Court. This with the
 exhibits filed with complainant Bill was
 all the Evidence. On consideration whereof
 the Court finds the equity of the case is with
 the complainant, and that said judgment
 should be satisfied and discharged & said
 execution levy & sale of said land should be
 annulled set aside & wholly for naught
 & void. It is therefore ordered directed and
 adjudged and decreed by the Court here that
 said judgment in said Bill mentioned
 rendered April Term 1856 in the Circuit
 Court of Pageau County, in the State of Illinois
 wherein said Defendants George O. Kingsley
 and Francis P. Kingsley for the use of George
 O. Kingsley Plaintiffs against John Kingsley
 defendants for the sum of three hundred
 dollars debt, and three hundred and twelve
 dollars and Eighty cents Damages and
 forty four dollars and Fifty cents costs
 be and the same is hereby cancelled, set
 aside, set aside and fully discharged.
 And it is further ordered that said levy
 and sale be made by the said David H. Jones
 Sheriff of said Pageau County to the defendant
 George O. Kingsley of said premises in

- said Bill of Complaint mentioned, being
 - the West half of the North East quarter
 - of Section number Twenty Seven, in Township
 - number nine, North of Range number
 - Seven East in the County of Peoria
 - and State of Illinois, be and the same is
 - hereby let aside vacated annulled and
 - wholly for naught esteemed. And it
 - is further ordered that said George
 - O'Kingsley, within ten days from the
 - date of this decree, convey and transfer
 - all his interest in said premises to
 - the Complaint, & that in default of such
 - conveyance, that E. G. Johnson be and he
 - is hereby appointed a commissioner to
 - execute such conveyance, in the name
 - of said George O'Kingsley, which conveyance
 - when so executed, shall vest in the Complai-
 - nant all the interest said George O'Kingsley
 - acquired under such sale, and it is
 - further ordered as follows and decreed
 - by the Court here, that the defendants
 - and each of them, be and they are hereby
 - forever restrained prohibited and barred
 - from executing making signing issuing
 - or sealing any deed Certificate of Sale
 - or purchase or any other instrument con-

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"veying asuring. in chumbeering or in any
"manner disposing of said premises
"and every part or parcel thereof and
"that the defence unto George O. Kingsley
"be taken with the costs of this proceeding."

And now afterwards to wit on the day and year
last aforesaid: a further order was
entered in said cause to wit

"John Kingsley
"George O. Kingsley } Injunctions

"It is ordered by the Court
"that either party may appeal in thirty
"days by giving Bond in the sum of Two
"hundred Dollars to be approved by
"Clerk."

And now afterwards to wit
on the 11th day of November in the year of our
Lord one thousand Eight hundred and
fifty seven the Defendant filed his appeal
Bond and Bill of Exceptions in the words
and figures following to wit:

Appeal Bond

"I am all men by these presents that We
"George O. Kingsley and Hezekiah M. Mead
"are held and firmly bound unto John Kingsley
"in the sum of Two hundred Dollars

for the payment of which well and truly to
 be made. We bind our selves our heirs, executors
 and administrators jointly and severally
 firmly by these presents. Witness our hands
 and seals this 11th day of November A.D. 1867
 The conditions of the above obligations is such
 that whereas a decree rendered by
 the Circuit Court in and for the County
 of Piggewell and State of Illinois against
 the above borrower George O. Kingsley in
 a certain cause on the chancery side of
 said Court at the October Term A.D. 1867 then
 wherein John Kingsley was complainant and
 George O. Kingsley and others were defendants
 and from which said decree the said
 George O. Kingsley prayed an appeal to
 the Supreme Court of the State of Illinois.
 Now if the said George O. Kingsley shall duly and
 with effect prosecute said appeal, and
 shall pay the judgment costs interests and
 damages in case the said judgment shall
 be affirmed in said Supreme Court then
 this obligations to be void. otherwise to be &
 remain in full force & virtue in law
 approved by me this 11th day of November A.D. 1867
 Geo. O. Kingsley Esq
 H. W. Wells Esq
 M. Young clerk

Bill of Exceptions. John Kingly

" m

" George O. Kingly et al

In the Supreme Court
of the State of Illinois, October
Term A.D. 1837. Bill
for injunctions

" Be it remembered, that on this day of October
" A.D. 1837 at a term of the Circuit Court in and
" for the County of Tazewell and State of Illinois
" at the October term A.D. 1837 of said Court, this
" cause came on to be heard upon the bill
" answer and evidence in said cause
" When the complainant offered the following
" testimony to wit:
" Francis P. Kingly being sworn testified
" as follows to wit:

" Witness is acquainted with
" the complainant and defendants.
" That he was coming into Peoria and
" met John Kingly about five miles
" from Peoria and complainant told
" witness that he had that day settled
" with George O. Kingly, and that
" George O. Kingly would be along
" to get witness to sign the notes he had
" given. Witness refused to sign the notes
" told complainant he never would sign
" them. That complainant was and
" is the owner of one hundred acres of good
" land and is worth five thousand dollars

above his indebtedness. The Settlement spoken
of was the settlement in which the note and
release was given that are in controversy.
The complainant then offered in evidence
the following release in the words and figure
following to wit:

"In consideration of five hundred
dollars to me in hand paid by John Kingsley
of Pemiscott County and State of Illinois. I hereby
release and discharge a judgment in my
favor against the said John Kingsley rendered
in the Circuit Court at Pekin in Peoria
County at the last April Term of said Court
in my favor and in a suit wherein George
O. Kingsley and Francis P. Kingsley were plaintiffs
and I hereby acknowledge to have received
the amount of five hundred dollars in full
of all damages and costs rendered in
said actions, and I hereby release and
discharge said judgment.

Given May 20th 1866

George Kingsley Esq.

Which said Testimony of Francis P. Kingsley
aforesaid, and said Release was all the testimony
offered in said cause.

The defendant then agreed with
Complainant and admitted that George O.

Kingsley and Francis P. Kingsley, for the use
 of George O. Kingsley recover a judgment
 against John Kingsley in the Circuit Court
 of Tazewell County Illinois at the April term
 of said Court 1856 for the sum of three hundred
 dollar debt, and three hundred and Twelve
 dollar and eighty cents damages, and fifty four
 dollar and twenty cents costs, and that on the
 25 day of June A.D. 1856 an execution was issued
 upon said judgment directed to the Sheriff of
 Peoria County, Illinois, and by said Sheriff levied
 on the 9th day of August 1856 on the West half of
 the North East quarter of Section number twenty
 seven in Township MME North Range Seven
 East of the 4th P.M. in Peoria County - and that
 the same was sold and struck off by the
 Sheriff of Peoria to the defendant George O. Kingsley
 on the 28th day of August 1856 for the sum of
 Two hundred dollar and sixty two cents.

The Complainants then admitted and it was
 stipulated by the parties that on the next day
 after the settlement in which the notes & bills are
 were received by the parties, that George O.
 Kingsley turned back to John Kingsley the
 notes given on the settlement and demanded
 his release to be given up to him, and further
 that the notes were in possession of the defen-
 dant George O. Kingsley ready to abide the decree
 of the Court -

= This was all the evidence in the case And
= because the matter aforesaid do not appear
= of Record, it is ordered that the same be in-
= corporated into a Bill of Exceptions & allowed
= signed & sealed & made of Record - All which
= is done

James Harriott Jrg. Sec.

State of Illinois
Jazewell County Ills.

I Menill. C. Young Clerk
of the Circuit Court within and for said county
do hereby Certify that the foregoing 39 1/4 pages
contain a true perfect and accomplished
copy of the Pleasings and Records of the Pleasings
in the cause therein named as the same
appear of Record in my Office —

In Testimony Whereof I have hereunto
Set my hand and the Seal of
Said Court at Pekin in said
county & State aforesaid this 26th
day of February A.D. 1858.

Menill. C. Young Clerk
By Wm. Maud. Deputy Clerk

¹⁸³
John Kingsley

^m
George O. Kingsley
and others

Transcripts of
Records-----

Filed April 20, 1858
L. Leland
clerk

Fee \$12.50

Kings, Kingsley

A release once executed and delivered can never afterwards be avoided at law from a failure of consideration

7. Branch 19.

A release cannot be impeached except on a bill charging fraud or where the court can see that it is void

2 Decr. Ch. 181

2 Eq. Dig. 505 § 12.

Jay v. Wurtz 2 Wash. C.C.R. 266

A release under seal is a good discharge of a judgment

Barker v. St. Quintin 12 M. & W. 441

Co. Litt. 291 (a). Shep. Touch (Boston, Ed) 322-23.

A covenant never to sue releases

And all these without any necessary consideration

The court will not set aside a release by one of several plaintiffs except in cases of fraud between the releasor & releasee

Wils v. Williams 6 M. & W. 490. — Rawstone v. Glandell
15 M. & W. 304 — 11 M. & W. 93

Kingday v. Kingday

[Faint, illegible handwritten text, likely bleed-through from the reverse side of the page.]

Kingsley v. Kingsley

John Kingsley complainant &
George O'Kingsley deft.

1st Q. Q.

Release without consideration

1. He must prove want of consideration
2. Answer no evidence
3. The seal is evidence of consideration
4. Is a release under seal, no mere want of consideration can be shown.
The seal is an estoppel.

Q. Q.

Smith's leading cases - accord and satisfaction of less cannot be pleaded in discharge of a greater sum.

Ans. This is not a mere accord & satisfaction - it is a release

2. He received the notes without the security, and delivered the release without any such condition.
It took effect, by his own agent.

3. ~~The sec. J. P. Kingsley - don't leave the complainant to get him for security~~
He takes the notes to get the security to sign them. - Receives them as the consideration of the delivery of the release

4, The bill sets up the release.
The release and not taking the notes
constituted the discharge

In case of a deed you can prove
a different consideration, in action
in regard to the consideration -

But not to defeat the deed.

This merely shows that Conpl't did
not fulfil his contract in regard to
obtaining security - but this would
not avoid a deed, especially as
deft took delivery & possession of
the notes: It is not shown that
his acceptance was only conditional

13 Ills. Gard v. Whitcomb?

41 Gil 544. & cases cited

Superior Court

~~Massachusetts~~

George Kingsley

vs

John Kingsley

Brief of deft in error

Manning Merriman

Filed April 28, 1858

S. Deland

CLK

George O Kingsley }
vs } In the Supreme
John Kingsley } Court April Term
Ado. 1858

Authorities for Plaintiff

1 Payment of a less sum is no satisfaction for a greater

1 Smiths Leading Cases 320, 325
Bedmick vs Leman & al 9 Johnson 332
Hamels vs Hatch & al 1 New Jersey 391
Hardy & al vs Lee & al 5 Gill (Maryland) Rep 189
2 Metcalf 283,

2 Taking a Note is no discharge of a prior debt 1. Smiths Leading cases 334

Mc Leouel vs Stethams & al 2 Gilman 713

Wend & Williamson for
Plaintiff in Error

George O. Kingsley
v2

John Kingsley

Authorities for P.M.
by

Wend & Williamson

GEORGE O. KINGSLEY,

vs.

JOHN KINGSLEY.

} *In Chancery.*

APPEAL FROM TAZEWELL.

ABSTRACT.

The Defendant, John Kingsley, commenced suit in the Circuit Court of Tazewell County, by Bill in Chancery and injunction on the 14th day of April 1857, against George O. Kingsley and David. D Irons.

The case was tried before Hon. James Harriott, at the October Term 1857, and a decree rendered against the Defendant, in the Court below, from which an appeal was prosecuted.

The Complainant's bill alleges, that in the year 1852, George O. Kingsley commenced in the Circuit Court of Peoria County, against Complainant, in the name of George O. Kingsley and Francis P. Kingsley, for the use of George O. Kingsley, upon a promissory note executed by Complainant, to George & Francis P. Kingsley. That Francis P. Kingsley did not have any interest in said note, and utterly disclaimed any ownership of said note, and did admit that the note was not genuine, that it was not due, and that there was no consideration for the said note, and that Francis P. Kingsley executed to complainant a discharge of said note. It alleges that a change of venue was taken in said cause, and tried at the April Term of the Tazewell Circuit Court, when a judgement was rendered in favor of the Plaintiff, for the sum of three hundred dollars debt, and three hundred and twelve dollars and eighty-six cents damages, and forty-four dollars and twenty cents costs.

Complainant alleges that the note upon which the judgment was obtained was not genuine, that there was no consideration for the same, that it was fraudulent, and that George O. Kingsley admitted that he ought not to collect it. That he also admitted that if he had beaten Francis P. Kingsley in a certain suit previously tried between George O. and Francis P. Kingsley, he would not have prosecuted suit on said note against the Complainant.

That afterwards, the said George O Kingsley proposed to Complainant to make

Need
1 Smiths Lead Case 820-5. This release being
executed for mtr of lps amount
then the Indgt. is not supported by a

This is not a payment
or accord & satisfaction

It is a technical release
under seal & depends on other
principals.

a deduction on the said judgment if the Complainant would pay the balance ; one hundred dollars to be paid on the 1st of March 1858, and the remainder in sums of one hundred dollars annually, until the sum of five hundred dollars was paid, in satisfaction of said judgment.

That said complainant, in pursuance of said agreement, executed his notes for the sum of five hundred dollars, in notes of one hundred dollars each, falling due as aforesaid, and that thereupon, George O. Kingsley executed a release of said judgment, in pursuance of said agreement, in full of said judgment and costs. &c.

That after the settlement as aforesaid, George O. requested complainant to have Francis P. Kingsley sign said notes as security, and John Kingsley could not be induced to do so. That on the same day that the settlement was made, complainant told Francis P. Kingsley that Geo. O. had requested Complainant to procure the signature of said Francis P. Kingsley, and was about to ask him to sign the same as security, when said Francis P. Kingsley expressly refused to sign the notes, and distinctly said he would never sign them, and never did.

Complainant avers it was no part of the agreement that said notes should be signed by said Francis P., as security.

That about the 25th day of June 1856, George O. Kingsley had execution issued on the said Judgment against Complainant, which was put in the hands of David D. Irons, Sheriff of Peoria County. That on the 9th day of August 1856, the said execution was levied W. $\frac{1}{2}$ N. E. 27. 9 N. 7 E. as the property of complainant, and that said premises were sold without his knowledge.

That the Sheriff advertized for sale, and sold the said land on the 30th day of August 1856, to George O. Kingsley, the Plaintiff in the execution, for the sum of \$691 62, who was the highest and best bidder for the same. And avers he had no notion of the sale until afterwards.

Avers that said George O. Kingsley intends to hold the said premises, unless complainant redeems from said sale.

That at the time of the sale, a certificate of purchase was given by the Sheriff to George O. Kingsley, and another filed in the Recorder's office. That Francis W. Smith is now Sheriff of Peoria County.

The bill prays for George O. Kingsley, David D. Irons, and Francis W. Smith to be made parties ; and that David D. Irons, and Francis W. Smith be enjoined

from executing a deed to George O. Kingsley, under said note. That Kingsley be enjoined from transferring his certificate of purchase; and that George O. Kingsley be decreed to convey to complainant.

An injunction was issued on said bill, as prayed for.

At the October Term, 1857, George O. Kingsley filed his answer to said bill.

He admits the recovery of the Judgment in 1852, against complainant, as charged, and that the suit was taken by change of venue, to Tazewell County, where it was tried, and a judgment rendered against complainant as charged in the bill; but denies that the note upon which the Judgment was obtained, was fraudulent, or that there was no consideration, or that it was not genuine; and alleges that it was given for full and valuable consideration, that it was genuine, that there was no fraud either in the obtaining the note or prosecuting the same to final judgment, that every thing in relation thereto was honest and fair, but alleges that the Judgment is conclusive between the parties, and cannot be reviewed in this cause.

Respondent does not know whether Francis P. Kingsly claimed any interest or ownership in said note or not, or whether he admitted the same was not due, or was not genuine or not, but alleges if ever any such admissions were made it was to defraud respondent and prejudice the collection of the same, and avers if any such admissions were made as charged in the bill they are untrue. Respondent sets out the consideration of said note which was the sale by respondent to complainant of the land sold under the execution as charged in the bill, and that the note was the property of respondent at the time the suit was brought in, and that it was justly and honestly due him, and that the said judgment was justly and honestly obtained after a fair trial and mature consideration by the Court.

Respondent denies that he ever admitted to complainant or any other person that he ought not to collect the note or enforce the judgment; denies all fraud or unfair dealing; denies that he ever said if he had recovered in a suit against Francis P. Kingsley that he would not have collected said note.

Respondent denied that he agreed to take or did take complainant's notes for \$500, due yearly, in satisfaction of the judgment; but avers that he did agree to take five notes for the sum of \$100 each, payable annually, the first to become due on the first of March, 1858, executed by complainant with Francis P. Kingsly as security, and that such was the positive and express understanding of the parties. That Francis P. Kingsly utterly refused to sign said notes as security. That respondent executed said release upon that consideration and none other. That the

said five promissory notes of \$100 each were the only consideration for the release of said judgment, and that they were to be signed by Francis P. Kingsly as security, which was never done; and that it was understood and expressly agreed that the release should be of no validity until the notes were signed by Francis P. Kingsly as security.

That the next day after the execution of said release, upon the refusal of said Francis P. Kingsly to execute said notes as security, he tendered complainant the said notes and demanded said release to be given up to respondent, but both of which complainant refused to do; offers to bring said notes into court to be returned to said complainant, and asks the release to be decreed to be given up and cancelled, and charges that the same was obtained of him fraudulently, and denies that the same is any satisfaction or release of the said judgment whatever either in law or equity.

He admits that he had execution issued, and that the same was levied upon the land described in the bill, and that it was purchased by him for \$691 62. The proper notices were given of the sale of said property, but does know whether complainant had actual notice or not.

Admits that David D. Irons was Sheriff and sold the land, and that Francis W. Smith is present Sheriff of Peoria county. The answer was not under oath, it being waived by the bill.

It was then admitted by the parties that George O. and Francis P. Kingsly, for the use of George O. Kingsly, obtained a judgment against complainant for the sum of \$300 debt, and \$312 80 damages, and \$44 20 costs, in the Circuit Court of Tazewell county, at the April term, 1856. That execution was issued and levied upon W. half N. E. 27, 9 N. 7 E., which was sold to satisfy the execution by the Sheriff of Peoria county.

That George O. Kingsly purchased the same on the 30th day of August, 1856, for the sum of \$691 62.

The complainant then offered in evidence the following release, which was admitted, to-wit:

"In consideration of five hundred dollars, to me in hand paid by John Kingsly, of Peoria county and State of Illinois, I do hereby release and discharge a judgment in my favor against the said John Kingsly, recovered in the Circuit Court at Pekin, Tazewell county, Illinois, at the last April term of said Court in my favor, and a suit wherein George O. Kingsly and Francis P. Kingsly were plaintiffs,

and I hereby acknowledge to have received the sum of five hundred dollars, in full of all damages and costs recovered in said action, and I hereby release and discharge said judgment."

GEORGE O. KINGSLEY. [SEAL.]

Peoria, May 20, 1856.

Complainant then called FRANCIS P. KINGSLEY, who was sworn: testified that he was acquainted with the parties. That on the day the parties settled witness met John Kingsly about five miles from Peoria, and John told witness that he had settled with Geo. O. Kingsly, and that George would be along with notes for witness to sign. That witness refused to sign them. That complainant was and is the owner of 100 acres of good land, and is worth \$5,000 over his debts. The settlement spoken of was the one in which the notes and release were given.

It was then admitted that on the next day after the settlement George O. Kingsly tendered back the notes to complainant and demanded the release to be given up to him, and further that the notes were in the possession of defendant, George O. Kingsly, ready to abide the decree of the Court. This was all the evidence in the case.

The Court then decreed that the judgment recovered by George O. Kingsly and Francis P. Kingsly, for the use of George O. Kingsly, against John Kingsly be decreed satisfied and discharged, and that the execution, levy and sale be vacated, annulled and set aside, and that said George O. Kingsly within ten days from the date of the decree execute a deed to complainant to said premises, or in default that E. G. Johnson be appointed commissioner to execute the same, and also decree a perpetual injunction against Irons and Smith from executing George O. Kingsly any deed or certificate of purchase for the same, and that George O. Kingsly pay all costs.

To which decision of the Court respondent excepted at the time, and filed his bill of exceptions.

He then prayed an appeal to the Supreme Court, which was allowed.

WEAD & WILLIAMSON,

For Plaintiff in Error.

For Plaintiff in Error.

WEAD & WILLYMANSON.

He then prayed an appeal to the Supreme Court, which was allowed.

Bill of exceptions.

To which decision of the Court respondent excepted at the time, and filed his

Kingsley pay all costs.

O. Kingsley may deed or certificate of purchase for the same, and that George O. also decree a perpetual injunction against Irons and Smith from executing George's default that E. C. Johnson be appointed commissioner to execute the same, and from the date of the decree execute a deed to complainant to said premises, or in case, annulled and set aside, and that said George O. Kingsley within ten days be decreed satisfied and discharged, and that the execution, levy and sale be void and Francis P. Kingsley, for the use of George O. Kingsley, against John Kingsley.

The Court then decreed that the judgment recovered by George O. Kingsley

in the case.

O. Kingsley, ready to abide the decree of the Court. This was all the evidence up to him, and further that the note was in the possession of defendant, George, is returned back the note to complainant, and demanded the release to be given.

It was then submitted that on the 21st of April, 1838, after the settlement George O. Kingsley, more spoken of was the one in whose name the notes and release were given.

owner of 100 acres of good land, and is worth \$5,000 over his debts. The settlement sign. That witness refused to sign them. That complainant was and is the deed with Geo. O. Kingsley, and that George would be along with notes for witness John Kingsley about five miles from Boston, and John told witness that he had settlement not sustained with the parties. That on the day the parties settled witness met complainant then called F. P. Kingsley, who was sworn; testified that he

Filed April 21, 1838
L. Learned
Clerk

Prima, May 30, 1838.

discharge said judgment.

GEORGE O. KINGSLEY. [seal.]

ing of all damages and costs recovered in said action, and I hereby release and and I hereby acknowledge to have received the sum of five hundred dollars, in

153 = 54

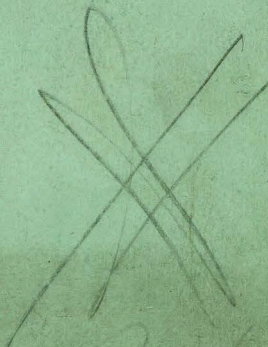
John Kingly
vs
George C. Kingly

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Kinsley
v
Kinsley

1858

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Payable