

No. 13748

Supreme Court of Illinois

Tolmes

vs.

Stolenberg

71641  7

Tuesday March 22^d. A.D. 1859
United State, of America
State of Illinois }
McHenry County }
Plas before the
Hon. Isaac G. Wilson
Judge of the thirteenth Judicial Circuit of the
State of Illinois, our Presiding Judge of the
McHenry County Circuit Court, at a Circuit
Court began and held at the Court House
in Woodstock in said County on Tuesday
the twenty second day of March A.D. 1859

Present
Hon. Isaac G. Wilson Judge
Edwin C. Thomas Sheriff
Geo. W. Haffner clerk.
attest
Geo. W. Haffner clerk.

And hereafter to wit on the 2^d day of
April A.D. 1858 with filed in the Office
of the Clerk of said Court a Process for
writ of Fine Facias, which is in the words
of figures following to wit:

State of Illinois } McHenry Circuit Court
McHenry County } April Term 1858

Statenberg & Gilley
&
Job Tolles.

Will the Clerk of
Said Court
please issue Sci. Fac. on
mortgage filed in the above entitled cause
& oblige.

J. H. Murphy
D. H. Murphy
Horseshoe Apr. 2^d. 1858. Plffs. Atty.
(Entered) Filed April 2^d. 1858.

T. H. Kason clerk.

And thereupon there was issued out of the
office of the Clerk of Said Court under the
Seal thereof a writ of Sci. Fac. in
which is in the words & figures following
to wit:

State of Illinois
McHenry County

The People of the State
of Illinois, to the
Sheriff of Said County, Greeting;

Whereas Job Tolles the defendant
in this suit of the County of McHenry
State of Illinois, did on the first day of
August in the year of Our Lord One
thousand eight hundred and forty nine

Execute said acknowledge and deliver unto
David Stotenberg & J. S. Cilley known by
the name of Stotenberg & Cilley the Plaintiff,
in this fact his certain Indenture of
Mortgage upon certain Real Estate therein
described to secure the payment of the
Sum of four hundred and Seventeen Dollars
and fifty nine cents and which said
Mortgage is in the words & figures
following to wit:

This Indenture made this
first day of August in the year
of our Lord one thousand eight hundred
and forty nine, Between Job Tolles
of the first part of the County of
McHenry and State of Illinois and
David Stotenberg & J. S. Cilley known
by the name & firm of Stotenberg &
Cilley. Whereas the said Job Tolles
party of the first part is justly indebted
to the said party of the second part in
the sum of four hundred & Seventeen
& 59/100 Dollars secured to be paid
by one certain promissory note for
said amount and due fourteen
months after bearing even date herewith,

Now therefore this Indenture witnesseth
that the said parties of the first part
for the better securing the payment of
the money aforesaid with interest thereon
according to the tenor and effect and true
intent and meaning of the said promissory
note above mentioned, And also in
consideration of the further Sum of one
dollar to him in hand paid by the said
party of the second part at the delivery
of these presents the receipt whereof is
truly acknowledged have granted bargain
Sold, remise aliened and conveyed and by
these presents do grant bargain sell remise
alien and convey unto the said parties
of the second part their heirs and assigns
forever all the following described lands
to wit: The West half of the South West
quarter of Section Eleven in Township
forty five Range Seven East of the 3^d
principal Meridian reserving one acre
of said land where the house of W^m Marvin
now stands, Also so much of the South
East corner as lies East of the Road
running North & South.

Also so much as his fourth of the Nopersville
Creek also fifty two rods of ground deeded by
said Job Tolles March 29th 1849 to Stephen
H. James. Also eighty rods of ground deeded
to Alfred Dr Kay the above premises lying
in the County of McHenry aforesaid being
subject to the Mortgage, one to Scofield being
given for the purchase money also one
Mortgage to J^m Marvin dated June, 5th,
1848. To Have and to hold the same together
with all and singular the tenements, heredita-
ments, privileges, and appurtenances, thereto
belonging or in any wise appertaining with
the rents, issues, and profits thereof. And
also all the Estate interest and claim what-
soever in Law as well as in Equity which
the party of the first part has in and to the
premises hereby conveyed unto the said
parties of the second part his heirs and
assigns unto their only proper use benefit
and behoof forever.

Provided always unto these presents are
upon this Express condition that if the
said Job Tolles, party of the first part his
heir, Executor, or administrator shall well
and truly pay or cause to be paid.

to the said parties of the second part his
Executors administrators or assigns the
aforesaid Sum of money with the such
interest thereon at the time and in the
manner specified in the above mentioned
promissory note according to the tenor
and Effect and true intent and meaning
thereof that thus and in that case these
presents and Every thing herein contained
Expressed shall be absolutely null
and void. In Witness whereof the said
party of the first part hereunto set his hand
and Seal the day and year first above
written. Job Talles Seal

That said Mortgage was duly acknowledged
before Joel H. Johnson Clerk of the Circuit
Court of said County with appeal by
reference to the Certificate of said Clerk
in the words and figures following to wit
State of Illinois
McHenry County }
} ss. I Joel H. Johnson
Clerk of the Circuit
Court in and for the said County in the
State aforesaid do hereby certify that
Job Talles is personally known to me

as the same person whose name is
Subscribed to the above instrument of
writing appeared before me this day in
person and acknowledged that he signed
Sealed and delivered the said instrument of
writing as his free and voluntary act
for the uses and purposes therein set forth
Given under my hand and seal this Ninth
day of August A.D. 1849

J. W. Johnson Clerk
per. P. W. Platt Deputy

That said Mortgage was duly recorded in
the Recorder's Office of said County will
appear by reference to the certificate of A.
S. Lansing Recorder of said County in the
words and figures following to wit

Received for Record Aug. 9th 1849 at 10 o'clock
30. P.M. and duly Recorded in the McKenry Co.
Recor. Book C. Pages 62. & 63.

A. S. Lansing Recorder
per Martin Small Deputy

That all the money intended to be
Secured to be paid by said Mortgage
has become due and unpaid. Now
therefore we being willing that what
is just in this behalf should be done.

do command you that you summon
the said Job Toller if he shall be
found in your county 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 Woodstock in said County
on the Third Tuesday of April inst,
and then and there answer unto the said
Statenberg & Gilley the Plaintiffs, in this
Suit and show cause if any they have
or can why Judgment should not
be rendered against him for the am-
ount due upon and by virtue of
said Mortgage

And have you then and then this
writ with an endorsement thereon as to
the manner in which you execute the
same.

Witness Geo. W. Kesson Clerk
of our said Court and the Seal
thereof at Woodstock this 2^d
day of April A.D. 1858

G. W. Kesson C.M.

(Endorsed)
Served by reading to the within named Job Toller
this 10th day of April A.D. 1858 John W. Dwy, Sdf
Fils. 205 50. mil 40 Ret 10 By J. I. Smith Sdf
1001

Filed April 29 1858 Geo. W. Kesson C.M.

And then comes the defendant by Church who
files a plea which is as follows:

Job Toller

vs

Davis Stotenberg &

J. S. Lilley

McHenry Circuit Court

April Term A.D. 1858

And the said Job Toller
defendant in this suit by Church & Kern
his attorneys comes and defends the wrongs
and injury whereof, and says that there is
not any Record of the said supposed Indenture
of Mortgage in the said Scire Facias mentioned
remaining in the Recorder's Office of the County
McHenry aforesaid in manner and form as
the said plaintiffs have above in their said
Scire facias set forth and of this he the
said Defendant puts himself upon the country
Church & Kern

(Entered) Hil^d Mar 22. 1859
T. F. Kaphanck.

Atty for R. C. H.

And thereafter to wit on the twenty fourth
day of March A.D. 1859: it being one
of the days of the March Term of said Court
aforesaid the following among other proceedings
were had to wit,

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David Steubens
John F. Hilley
Job Toller

Sei facias

And now

come the parties, to this

suit, the plaintiffs by Murphy their
Attorney and the defendant by Church
and upon being joined submit this cause
to the Court for trial without the intervention
of a jury by agreement. And the Court
being fully advised upon the proofs herein
submitted finds the issue for the
Plaintiff. It is therefore ordered ~~and~~
~~considered~~ that the Plaintiff have judgment
for his Debt in the sum of Four Hundred
" & Seventeen Dollars and fifty nine cents
and his Damages for the detention thereof
And the Court having assessed and
reported the sum of two hundred fifteen
Dollars and forty cents his Damages It
is therefore ordered and considered that the
plaintiffs have and recover of the
defendant the sum of Four Hundred
and Seventeen Dollars and fifty nine
cents his Debt and the sum of two

hundred and sixteen dollars and forty
cents his damages for the detention thereof.
So assessed as aforesaid amounting in
all to the sum of Six Hundred and
thirty three Dollars and Ninety nine
cents debt and damages, as also their
costs & charges herein expended and that
they have a special execution therefor com-
manding the Sheriff of said County
to sell the following described premises
to satisfy the same to wit: The West half
of the South West quarter of Section Eleven in
Township forty five Range Seven East of
the 3^d Principal Meridian reserving one acre
of land where the house of Wm. Maron
now stands. Also so much of the South
East corner as lies East of the Road running
north & South. Also so much as lies south
of the Kopersink Creek. Also fifty two
rods of ground deeded by said Job Tolley
March 29th 1849 to Stephen H. James, also
eighty Rods of ground deeded to Alfred Kay
the above premises lying in the County of McKean,
aforesaid being subject to two mortgages,
one to Seaford being given for the purchase
money. Also one mortgage to Wm. Maron

dated January 5. 1848.. To all which returns
of the Court the Defendant by Church his
Counsel then and there excepted, and prayed
an appeal to the Supreme Court of this
State which was allowed on condition
that he enter into Bonds conditioned according
to Law in the Sum of Fifteen Hundred
Dollars with William M. Murphy
as Surety to be filed within ten days
from Date.

And there comes the Defendant and files
an Appeal Bond which is in words
and figures as follows to wit:

I do hereby certify that we
Job Toller and William M. Murphy of the
County of McHenry and State of Illinois
are held and firmly bound unto Daniel
Montgomery & James S. Silley in the penal
Sum of fifteen hundred Dollars Lawful
money of the United States for the payment
of which well and truly to be made we
bind ourselves our heirs, Executors, administrators
and assigns jointly and severally firmly

by these presents sealed with our seals
and dated this 31st day of March A.D. 1859
The condition of the above obligation is
such that whereas the above named
David Stoutenburgh and James S. Cilley
did at the March Term of the McHenry
Circuit Court recover a judgement against
the above bounded Job Toles for the sum
of Six hundred thirty three & 99/100 Dollars
from which judgement the said Toles has
taken an appeal to the Supreme Court, now
if the said Job Toles shall prosecute his
appeal with effect and shall pay the
judgements costs interest and damages
in case the said judgement shall be affirmed
then the above obligation to be void otherwise
of effect

Job Toles Seal
J. H. Murphy Seal

Endorsed filed Apr 1. 1859

G. W. H. Clerk.

And also the defendant filed his Bill
of Exceptions which is in words and
figure as follows to wit:

McHenry Circuit Court

March Term 1859.

David Stutenberg
J. S. Cilley

vs
Job Toles.

Scire Facias.

Be it remembered
that on the 24th Day
of March A. D. 1859 being one of the days
of the March Term of the McHenry Circuit
Court the above cause came on to trial
before the Hon. J. G. Wilson Judge, without
the intervention of a Jury and upon said
trial the plaintiff offered in evidence
a note in the words and figures following

"Fourteen months after date I promise
to pay Stutenberg & Cilley four hundred &
seventeen & ⁵⁴/₁₀₀ dollars for value Received
August 1st. 1849" Job Toles."

and also a Mortgage and the certificates
thereon which Mortgage and certificates are
in the words and figures following:

This Indenture made this first
day of August in the year of Our Lord
One thousand eight hundred and forty four
between Job Toles of the first part
of the County of McHenry and State of Illinois
and David Stutenberg & J. S. Cilley known

by the name of firm of Stottery & Cilley
Whereby the said Job Totes party of the first
part is justly indebted to the said parties of the
Second part in the sum of four hundred
& Seventeen $\$71/100$ Dollars, Secured to be paid
by one certain promissory note for said
amount and due fourteen months ~~from~~
after bearing every date herewith. Now
therefore This Indenture Witnesseth that
that the said parties of the first part for
the better securing the payment of the
money aforesaid with interest thereon
according to the tenor and effect and
true intent and meaning of the said
promissory note above mentioned, And
also in consideration of the further sum
of one dollar to him in hand paid by
the said party of the Second part at the
delivery of these presents the receipt
whereof is hereby acknowledged have
granted bargain'd sold remised, aliened
and conveyed and by these presents
do grant bargain sell remised alien and
convey unto the said party of the second
part their heirs and assigns forever
all the following described land, to wit

The West half of the South West quarter
of Section eleven in Township forty five
Range Seven East of the 3^d. principal Meridian
reserving one acre of land where the house
of W^m Marvin now stands. Also so
much of the South West corner as lies East
of the Road running North & South also so
much as lies South of the Stephens Creek
also fifty two rods of ground deeded by
Saml Job Tolles March 29th. 1849 to Stephen
W. Jones. Also eighty rods of ground
deeded to Alfred DeKey the above premises,
lying in the County of McKeaney aforesaid
being subject to two mortgages, one to
Scufield being given for the purchase money
Also one Mortgage to W^m Marvin dated
January 5th. 1848.

To Have and to hold the Same, together with
all and singular the tenements, hereditaments,
privileges and appurtenances, therunto belong-
ing or in any wise appertaining with
the rents issues and profits thereof; And also
all the Estate, interest and claims whatsoever
in Law or well as in Equity which the
party of the first part has in and to the

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premises hereby conveyed unto the said parties of the second part his heirs and assigns and to their only proper use benefit and behoof forever. Provided always and these presents are upon this Express condition, That if the said Job Toller party of the first part his heirs Executors or administrators shall well and truly pay or cause to be paid to the said parties of the second part his Executors administrators or assigns the aforesaid sum of money with such interest thereon at the time and in the manner specified in the above mentioned promissory note according to the tenor and effect and true intent and meaning thereof that then and in that case these presents and every thing herein expressed shall be absolutely null and void.

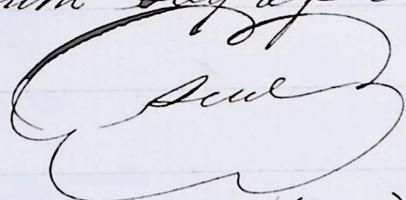
In Witness whereof the said party of the first part hereunto set his hand and seal the day and year first above written

Job Toller. Seal

State of Illinois }
McHenry County } H. Joel W. Johnson
Clerk of the Circuit Court

in and for the said County in the State aforesaid
do hereby certify that Job Tolles is personally
known to me as the same person whose
name is subscribed to the above instrument of
writing appeared before me this day in
person and acknowledged that he signed said
and delivered the said instrument of writing
as his free and voluntary act for the use,
and purposes therein set forth

Given under my hand and seal this
ninth day of August A.D. 1849



J.W. Johnson Clerk
for P.M. Platt, Deputy

(Entered) Received for Record Aug. 9th 1849 at
10'clock 30^{min}. P.M. and duly recorded in the
McHenry Co. Recor. Book C. Pages. 62-63.

A.S. Langford Co. Recorder

By Martin Hoall Deputy

To the introduction of which said Mortgage
and certificate, in evidence the defendant
by his Counsel objected which objection
was overruled by the Court and the
Mortgage and certificate were received
by the Court in evidence to which
Judgement of the Court in overruling
the said objection and receiving the

Said Mortgage and certificates in Evidence the defendant then and there by his Counsel accepted.

The above note mortgage and certificates were all the Evidence offered or received on the trial of the cause whereupon the Court rendered final Judgment in favor of the plaintiffs and against the defendant which Judgment is in the following form.

David Stenburgh }
John S. Lilley }
Job Tolles } Dea. Facies

And now
Come the parties
to this Suit the plaintiffs by Murphy
their Attorney and the defendant by
Church and ifus being joined submit
this Cause to the Court for trial without
the intervention of a Jury by agreement
and the Court being fully advised upon
the proofs herein submitted finds the
issue for the Plaintiff. It is therefore
ordered that the Plaintiff have judgment
for his Debt in the Sum of four hundred

reserving One Acre of land where the
house of Wm. Marvin now stands, also
so much of the South East corner as
lies East of the Road running North
& South. Also so much as lies South
of the Sepusink Creek. Also fifty
two rods of ground deeded by said Job
Toller March 29th. 1849. to Stephen H. June,
also eighty rods of ground deeded to
Alfred Kay the above premises lying
in the County of McHenry aforesaid
being subject to two mortgages one to
Scoville being given for the purchase mo-
ney. Also one mortgage to W^m. Marvin
dated January 5. 1848. To &

~~Stephen H. June~~
~~Alfred Kay~~ }
Attorneys }
for the Plaintiff }
in the County of McHenry }
V. }
Wm. Marvin }
Defendant }

To the opinion of the Court in rendering
said judgment the defendant by his
counsel. then and there excepted and
prays the Court to sign and Seal this
his Bill of Exceptions which is done
in open Court this 24th. day of March
1849 during the trial of said Cause and
order to be made a part of the Record.

of this Cause

Saml. G. Wilson Seal

(Entered.) Filed March 29, 1859

W. H. Kappan C. M.

State of Missouri }
McHenry County } W. H. Kappan
Clerk of the Circuit

Court in and for said County in the State
aforesaid do hereby certify that the above
and foregoing is a true & complete copy
of the Record of this Court in a case
of Siro Hacias wherein David Stenburgh
and J. S. Cilley are Plaintiffs and Job
Tales defendant or Distress appears by
a diligent Examination thereof



In Witness whereof I hereunto
set my hand and Seal of
said Court at Woodstock
this 28th day of April
A. D. 1860

W. H. Kappan C. M.

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Tales of Stoltenberg etc

Transcript.

13748

Filed April 27. 1860
L. Deland
Clerk

633,89
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\$ 31,6995