

No. 12460

Supreme Court of Illinois

Swift

vs.

Coughron , et al

71641  7

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Washington Coughron et al.

vs

Richard R. Swift

1857

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1857

X

12460

Vol. 1.

State of Illinois }
County of Cook } Here before the Honorable
John M. Wilson Judge of the Cook County Court
of Common Pleas within and for the County of Cook
and State of Illinois at a Vacation Term of
said Cook County Court of Common Pleas
begun and begun at the Court House in
the City of Chicago in the County and State
aforesaid on the first Monday being the seven-
teenth day of April in the year of our Lord
one thousand eight hundred and fifty six
and of the Independence of the United States
the eighth.

Present the Hon. John M. Wilson Judge,
Attorney } James S. Beach Counselor
Walter Churchill Clerk } acting Sheriff of Cook County

Be it remembered that heretofore to wit on the
twenty seventh day of February in the year
of our Lord one thousand eight hundred and
fifty four came Richard H. Swift complain-
ant by Callins & Shumway his Solicitors and
filed in the office of the Clerk of the Cook County Court
of Common Pleas his Bill of complaint in and against

To the Honorable Mark Skinner
Judge of the Cook County Court
of Common Pleas -
In Chancery Sitting -

Complaining shew unto you. Honor your Orator
Richard H. Swift of the City of Chicago County of
Cook & State of Illinois -

That John Bates one of the defen-
dants hereinafter named being indebted unto your
Orator in the sum of nine hundred forty nine dollars
& twenty five cents (\$949.25) did on the eighteenth
day of April in the year one thousand eight hun-
dred forty six together with one Reuben Whaples make
a certain promissory note bearing date on the said
18th day of April 1846 for the said sum so as aforesaid
due your Orator and which said note was made
payable to your Orator or to his order on or before
the 18th day of April A.D. 1847. and your Orator fur-
ther shews that on the said eighteenth day of
April eighteen hundred forty six the said John
Bates and Reuben Whaples and their respective
wives made executed and delivered to Reuben
S. Morris of the said City of Chicago a certain
deed of trust bearing date on that day by which
said deed of trust the said Bates and Whaples
in order to secure the payment of the said note
so as aforesaid made to your Orator according

to the tenor and effect of the said note granted bargained sold aliened cleared conveyed & confirmed unto the said Morris his heirs executors administrators & assigns forever certain tracts pieces or parcels of land situated in the County of Cook aforesaid, and among other the following described piece or parcel of land & appurtenances to wit The Farm House called "Gates Cottage" and the Barn and out houses used therewith and also the Land on which the same is situated described as follows commencing at the South East corner of the north West Quarter of Section Eleven (11) Township thirty nine (39) Range Twelve (12) East of the 3^d Principal meridian, running West on the South line of said Quarter section twelve rods thence north on a parallel line with the east line of said Quarter section to the Ironpike run built and known as the Steam Mill and Salt Creek Ironpike leading towards Elgin; thence east twelve rods to the east line of said Quarter section; thence South on the East line of said Quarter section to the place of beginning, together with all and singular the tenements hereditaments and appurtenances therunto belonging or appertaining and the revenues, rents, issues and profits thereof and all the Estate right title interest down right of down property possession claim and demand and whatsoever as well in law as in equity upon the following trust as set forth in said deed that is

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to say in case default should be made by the
said Gates & Staples in the payment of the said
promissory note so as aforesaid made by them
according to its tenor and effect then on the
application of you orator or the legal holder of
said note and after having first given ten days
notice by publishing the same in the nearest
newspaper printed in the said State of Illinois
or by pasting up handbills notices in three pub-
lic places in the county where said premises were
situated it should be lawful for the said
Morrison the trustee named in the said deed his
personal representatives or his attorney duly auth-
orized by virtue of said deed of trust to enter in to and upon
all & singular the premises granted by said deed and
to sell and dispose of the same, or any part share or
portion thereof and all right benefit and equity
of redemption of the said maker of said trust deed
their heirs or assigns at public sale at such hour &
place as said trustee his legal representative or attorney
might think proper and to adjourn said sale from
time to time as might be thought proper and as the
attorney of the said parties in said deed for that
purpose duly constituted irrevocable in the name
of the said trustee his executors or administrators or
in such other manner as might be thought
proper to make and deliver to the purchaser or pur-
chaser of said premises a good and sufficient
deed or deeds of conveyance in the law for the

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same in fee simple by which said trust deed it was further declared that such sale should forever be a perpetual bar both in law and equity against the said grantors their heirs and assigns and all other persons claiming or to claim the premises in any part thereof by from or under them or either of them and in by said deed of trust the said grantors covenanted granted bargained and agreed that at the time of the execution and delivery of the said deed they were well seized of the premises mentioned and set forth therein as of a good simple perfect and indefeasible estate of inheritance in the law in fee simple and that the same were free & clear from all incumbrances of what kind or nature soever and it was further in and by said deed further stipulated that the property of the said Gates described in said deed was to be advertised and offered for sale before any sale was made of the property described therein as being the property of the said Whaples, which said deed of trust was on the twentieth day of April A.D. 1846 eighteen hundred & forty six filed for record in the recorder's office of the said county of Cook, and is recorded in said office in Book 19 of Deeds on page 223vc as by said deed or a certified copy thereof ready to be produced as the court may direct. will more fully and at large appear reference being thereby had.

And your orator further shews unto your Honor that the said Ira Gates & Kimball Whaples

failed to pay the said promissory note so as aforesaid made by them to your Orator at the time the same became due and payable according to its tenor effect but made default therein and that afterwards upon such default having been made the said Buckner & Morris the trustee named in the said deed so as aforesaid made by them the said Gates and Whaples and their respective wives as above particularly set forth and specified and in pursuance of the power & authority to him in and by the said deed given advertised the premises and set forth in said trust deed for sale at public auction at the door of the Court House in the city of Chicago in the county of Cook and State of Illinois and that the premises above described were together with other premises mentioned and set forth in the said deed on the 17 day of June 1847, sold to your Orator who was the highest and best bidder thereof the said premises first above particularly described being bid in by your Orator for the sum of Five Hundred Dollars which said premises so purchased by your Orator were a portion of the premises specified in the said deed as belonging to the said Ora Gates and your Orator further shews unto your Honor that the said Morris in pursuance of a further power contained in the said deed of trust by deed bearing date on the said seventeenth day of June 1847, conveyed to your Orator, all the right title and interest of the said Ora Gates and wife in & to the premises

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Just above mentioned & particularly described in
pursuance of the sale so as aforesaid made to your
Orator, as will more fully & at large appear in reference
to said deed or of a certified copy thereof ready to
be produced & proved as this Honorable Court shall
direct and to which for greater certainty reference
is made -

And your orator further shews unto your Honor
that after the conveyance by the said Archibald Munro
of the said premises first above described to your orator
as aforesaid your orator by deed duly executed & deliv-
ered bearing date on or about the twenty sixth day of
June eighteen hundred & forty seven & for the con-
sideration of the sum of Nineteen Hundred Dollars
the consideration money expressed in the said deed
granted bargained sold conveyed & confirmed unto
one Miss Hutchins certain land & premises amongst
others the house and premises known as Gales Cottage
including the barn and out houses connected or
used therewith described substantially as follows
Beginning at the South East corner of the north West
Quarter of Section Eleven Township Thirty nine North
Range Twelve East of sd principal meridian
thence running West on the line of said Quarter
section twelve rods thence North parallel with the
East line of said Quarter section to the Ironpike
now built known as the Steam Mill and East
Creek Ironpike leading towards Elgin - thence
East Twelve rods to the East line of said Quarter

section; thence south on the East line of said
 Dwarta section to the place of beginning toget-
 her with all and singular the tenements heredi-
 taments and appurtenances therunto belong-
 ing or appertaining and the reversions rents
 issues profits thereof which said premises are
 the same lands & premises first above particu-
 larly described which deed contained the usual
 covenants of Warranty of title with a release
 of dower of Melissa the wife of your Orator as
 will more fully and at large appear on refer-
 ence to said deed or a certified copy thereof
 to which your Orator prays leave to refer —

And your Orator further sheweth unto your
 Honor that on or about the 20th day of February
 1848 one Henry G. Hubbard & Isabel C. his wife
 by deed bearing date on that day for the
 consideration of five hundred dollars the
 consideration money therein expressed bargained
 sold conveyed to your Orator the premises first
 above mentioned & set forth in this your Orator's
 bill of complaint as by reference to the
 said deed of conveyance or a certified copy
 thereof ready to be produced or proved as
 this honorable court shall direct will more
 fully and at large appear; and your Orator
 further sheweth unto your Honor that as your
 Orator is informed & truly believes to be true &
 so charge the fact to be: on or about the 26th

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day of May 1841 John F. Randolph & Sherdon Crane received a judgment in the Circuit Court of the said County of Cook against one Ashbel Steele for the sum of One Hundred & Seventy Dollars & ninety eight cents damages besides costs which Judgment as your Orator is informed & truly believes became & was a lien upon any lands & tenements of the said Steele from and after the 7th day of June A.D. 1841. That on or about the 16th day of June A.D. 1842 execution was issued out of said Circuit Court of said Cook County to the Sheriff of said County for the making of said damages & costs on the said Judgment specified which said execution was returned by the Sheriff with an endorsement thereon that he could find no property of the said Steele out of which the damages & costs could be made as will fully appear by said execution & the return thereon endorsed on file in the said Circuit Court to which your Orator for greater certainty refers.

And your Orator further shews unto your Honor that on or about the 31st day of October A.D. 1844 the said Ashbel Steele became seized by receipt of the said premises first above herein set forth and described by virtue of a certain deed bearing date on that day executed by Joel Parker to him said Steele and by which deed the said Parker conveyed or intimated to convey the said above mentioned and described

premises to said Steele as will more fully and at large appear on reference to the deed of said Parker recorded in the Recorder's office of said Cook County in Book No 21 of deeds on page 257, and to which your orator prays leave to refer —

And your orator further shews unto your Honor that as your Orator is informed & believes to be true; on or about the sixth (6th) day of March 1846, a certain writ of Execution was issued out of the said Circuit Court commonly called an alias *Fi. fac.* whereby the Sheriff of said Cook County was commanded as he had before been commanded to make the amount of the said Judgment so as aforesaid rendered in the said Court in favor of the said Randolph Crane and that the said premises first heretofore particularly mentioned & described were on the 24th day of March A.D. 1846 duly advertised by said Sheriff sold and sold by virtue of said alias writ of *Fi. fac.* that the above named Henry G. Hubbard was the purchaser thereof and the said premises not having been redeemed in pursuance of the Statute in such case made & provided the said Sheriff on or about the 6th day of July A.D. 1847 made executed and delivered to the said Henry G. Hubbard a deed for the said premises which said deed is recorded in the Recorder's office of said Cook County in Book 24 of Deeds on page 33 to which for greater

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certainly your Orator begs leave to refer —

And your Orator further shews unto your Honor that by deed bearing date the first day of October Eighteen hundred & sixty six the said Ira Gates for the consideration as expressed in the said deed of Five Hundred dollars granted bargained sold released & confirmed unto your Orator the said premises in this your Orator's Bill first above particularly described among other premises in the said deed set forth as will more fully and at large appear on reference to the said deed duly acknowledged by the said Gates and recorded in the Recorder's Office in Book 20 of Deeds on page 440 and to which for greater certainty your Orator prays may be produced & proved as this Honorable Court shall direct —

And your Orator further shews unto your Honor that as your Orator is informed and believes on or about the thirtieth day of May Eighteen hundred & sixty eight Washington Birghman one of the defendants hereinafter named caused to be issued out of the Cook County Court in and for the County of Cook in said State of Illinois a certain writ commonly called a summons bearing date the said 30th day of May A.D. 1868 which writ was issued by James Curtis then Clerk of the said Court & tested in the name of Hon Hugh S. Dickey then Judge of said Court and under the seal thereof of which said writ was

directed to the sheriff of said Cook County where
 in and whereby the said sheriff was commanded
 to summon Ora Bates one of the defendants
 in this your Orator's bill of complaint and the
 only defendant named in the said writ if he
 should be found in the said County of Cook
 personally to be appear before the said the Cook
 County Court of said County on the first day after
 term thereof to be holden at the Court House
 in the City of Chicago on the first Monday of Octo-
 ber (then) next to answer unto the said Washington
 Coughman in a petition for a mechanics lien and
 in which said writ the said Washington Coughman
 as plaintiff claimed damages in the sum of Two
 Hundred dollars on the back of which said
 writ appears an endorsement in the words and
 figures following: Returned Sept 12 1848 and
 executed by reading the within in the presence of
 Ora Bates July 8. 1848 fees \$0.50 & mileage 0.06 1/4 Return
 0.12 1/2 \$1.68 1/4 Isaac Cook Sheriff of C. C. & Rich-
 ard Dwyer shff as by the said writ and the return
 of the sheriff of said Cook County will in reference
 more fully and at large appear and to which your
 Orator begs leave to refer -

And your Orator further shews unto your honor
 that a petition of the above named Washington
 Coughman was filed in the above proceedings
 on the seventh day of September A.D. 1848 setting
 forth in substance that on or about the first day of

December in the year of our Lord one thousand eight
 hundred forty six Ira Gates pretended to be the
 owner of the premises described in the said petition
 and which are the same premises just above in this
 your orators bill of complaint set forth particularly
 described that the said petitioner was a mechanic
 viz: a carpenter & joiner and that he entered in to
 a verbal agreement with the said Ira Gates to do
 certain work in his trade upon the dwelling house
 barn & other out buildings situated upon said
 premises above referred to said work to be perform-
 ed at a certain stipulated price per day & that at
 no particular time was specified when said work
 was to be done completed but that said petitioner
 was to receive for each days work bestowed upon
 said premises in pursuance of said contract one
 Dollar and a half per day and that the said petiti-
 oner worked upon said premises to the amount of
 eighty five days and a half for which said
 petitioner claimed the sum of One hundred & two
 eighty eight dollars & twenty five cents, and it was in
 and by said petition further set forth and alleged
 that the said work was done fully completed on
 or about the middle of January A.D. 1847 &
 that said work was fully accepted & received
 by the said Ira Gates, as soon as the same was
 completed, and that at the time of the completion
 & acceptance of the said work as aforesaid it was
 agreed by and between the said petitioner

Washington Coughran) and the said Gates that the payment of the same should not be demanded until the first day of January next following and that on the first day of January the day and date when the said sum of money became due and payable according to the said agreement had then long since elapsed and that the said Ira Gates had not paid the said sum of money in any part thereof and said petitioner asked in by said petitioner that an order might be made for a sale of the premises described in the said petition to satisfy the lien of said petitioner according to the Statute in such case made and provided which premises are the same premises put above particularly described and are a part of the same premises sold and conveyed to your Orator by the said Morris and by the said Hubbard as aforesaid. A copy of which said petition is annexed to this your Orator bill of Complaint and is marked Exhibit "A" and which your Orator prays may be taken as part of this his bill of Complaint.

And your Orator further shews unto your Honor that amongst the papers filed in the said suit so as aforesaid, commenced by the said Washington Coughran against the said Ira Gates in manner aforesaid for the said Mechanics Lien there appears a certain paper writing signed

with the name of the said Gates and sealed with his seal wherein & whereby the said Gates as defendant in the said suit authorized & empowered any attorney of any Court of record in the said State of Illinois or in the United States to appear for him and confess Judgment for the amount claimed by the plaintiff in said suit to release all errors in the proceedings or in the Judgment for him and in his name and also to stipulate that execution might issue on the said Judgment immediately which said paper writing bears date the sixth day of September 1848 & purports to be filed in the said suit on the seventh day of September 1848, as appears by an endorsement thereon by the Clerk of the said Court as will more fully and at large appear on reference to said paper writing and to which your Orator pray leave to refer for greater certainty — — —

And your Orator further shews unto your Honor that also amongst said papers filed in said suit appears a writing commonly called a cognovit signed with the name of Henry A. Clark and bearing date the sixth day of September 1848. wherein & whereby the said Henry A. Clark the attorney for the said Ira Gates the defendant in the said proceedings or suit & confesses that he cannot deny the action of the said Washington Conger as plaintiff thereof against him said Ira Gates

nor but that he promised & undertook in manner
and form as the said plaintiff had complained
against him nor but that the said plaintiff
had complained against him, nor but that the
said plaintiff had sustained damages by occasion
thereof over and above his costs & charges by him
incurred & expended in and about the said suit
to one hundred & twenty eight dollars and twenty
five cents for which sum he confessed
Judgment and released all errors in the entry
thereof & the proceedings connected therewith
and agreed that execution on the Judgment
so confessed might issue immediately which
said paper writing or cognovit was filed with
the Clerk of said Court on the said seventh
day of September A.D. 1848 as appears by the
indorsement of the clerk upon the back thereof
to which said paper or cognovit your orator
for greater certainty prays leave to refer —

And your Orator further shews unto your
Honor that also among the papers in the said
suit appears a certain affidavit purporting to
be made by O. R. W. Lull and to be sworn before
James Britton, Clerk of said Court wherein & whereby
the said Lull did depose & say that he was present
when the said defendant O. R. Gates meaning
executed a power of attorney for confession
of Judgment & for immediate issuing of execution,
and releasing all errors in Judgment

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& proceedings & that he saw him said Gates sign
said power of attorney which affidavit purports
to be sworn to on the 7th day of September 1848 as
will on reference to said affidavit more fully &
at large appear and to which your orator prays
leave to refer.

And your orator further shews unto
your honor that as he is informed and believes
to be true on the said seventh day of September
1848 a judgment was entered in the said suit
by the said court upon the Cognovit or confession
above referred to for the sum of one hundred &
twenty eight dollars & twenty five cents as damages
besides costs and on the same day a certain
writ of fieri facias or execution was issued by
the clerk of the said court & under the seal
thereof directed to the sheriff of Cook County
wherein & whereby the said sheriff in the name
of the people of the said state of Illinois was
commanded out of the goods & chattels lands
& tenements of the said Ira Gates defendant
described in the said execution or writ of fieri
facias & which are the same premises mentioned
& set forth in the petition of the said Washington
Bingham to the said Cook County Court above
referred to to cause to be made the sum of one
hundred & twenty eight Dollars & twenty five
cents which Washington Bingham as plaintiff
received on the seventh day of September then

instant against the defendant (the said Pro Gato
 meaning) and which sum had been adjudged
 to the said plaintiff as damages and also the
 further sum of four dollars & ninety three & $\frac{1}{4}$ cents
 which were adjudged to the said plaintiff for
 his costs & charges by him about his suit in that
 behalf expended & to make return of the said writ
 with an endorsement thereon in what manner
 the said Sheriff had executed the said writ in
 ninety days from the date of the said writ with an end-
 orsement thereon for return from said seventh day
 of September 1848 and accompanying which said
 writ of Juri Facias was a fee Bill for the said
 plaintiff's costs amounting to the above mentioned
 sum of four dollars & ninety three and three fourth
 cents and also for the defendant's costs amount-
 ing to the sum of one dollar & seventy five cents
 which said fee Bill was issued by the clerk of said
 court & under the seal thereof bears date the seventh
 day of September 1848 & was directed to the Sheriff
 of the said county of Cook commanding him that
 if the fee Bill for the defendant's costs amounting
 to one dollar & seventy five cents should not be
 paid within thirty days after being demanded
 that he cause the same to be levied of the goods
 & chattels lands & tenements of the said Pro Gato
 in his county according to the Statute & that
 he make return of said writ within ninety days
 as directed by law with endorsement thereon in

what manner he had executed the same ---
 And your Orator further shews unto your Honor
 that as your Orator is informed & believes to be true
 afterwards & on or about the sixth day of October
 1848 such proceedings were had in the said
 court from which the said writ of execution
 issued that by an order entered therein on the
 said 6th day of October 1848, the sale of the prop-
 erty specified in said execution and which had
 been advertized for sale under and by virtue
 thereof on the sixth day of October 1848 was ordered
 to be stayed until the order of the court upon the
 hearing of the motion for that purpose entered
 in said court by James H. Collins Esquire as the
 attorney for the above named Morris Gutcheon
 and that in pursuance of the order of the court
 so made the said sale of said premises was stop-
 ped & the execution of the bill so as aforesaid named
 were returned to the said court without a sale
 having been made or the amount of the said
 judgment having been obtained as appears
 by an endorsement upon the back of said
 execution on file among the papers in the said
 suit as by reference thereto & to the proceedings
 of said Court will manifestly appear ---

And your Orator further shews unto your Honor
 that as your Orator is informed & believes to be
 true on or about the 30th of October 1848 an order
 was entered by the said Court in the said suit

sustaining the motion so as aforesaid entered by or on behalf of the said Morris Gutcheon as aforesaid and ordering the said Judgment so as aforesaid entered up to be opened & the subsequent proceedings thereon had vacated and set aside and that the said cause be placed upon the docket for further proceedings and that the said Morris Gutcheon be at liberty to come in & become a party defendant to the petition in the said cause as well more fully and at large appear on reference to the records & proceedings of said Court in the said cause & to which your orator for greater certainty prays leave to refer —

And your orator further shews unto your honor that on or about the first day of March A.D. 1850 such proceedings were had by the said Court in the aforesaid cause that on the motion of Mr. Callin the attorney for the said Morris Gutcheon that the said cause was ordered to be stricken from the Docket of said Court —

And your orator further shews unto your honor that on or about the fifteenth day of November A.D. 1850 as your orator is informed & believes to be true a certain other and further order was on the application of the attorneys for the said Washington Loughran entered by the said Cooks County Court in the said cause from which it appears that it was in and by the said last mentioned order, ordered that the order theretofore entered on the 30th

day of September 1848 stayings proceedings and setting aside the Judgment entered on the said cause on the 7th day of September A.D. 1848 be vacated and set aside and that Execution should issue on the said Judgment as will more fully appear on reference to the said order in the records proceedings of the said court and to which for greater certainty your Orator prays leave to refer

Said your Orator further shews unto you him that as your Orator is informed and truly believes to be true a certain other special Fine Facias in execution was issued out of and under the seal of the Cook County Court of Common Pleas about the 17th day of March 1851, tested in the name of the clerk of said Court and bearing date the said seventeenth day of March 1851 in and by which said writ the Sheriff of said Cook County was commanded as he had before been commanded out of the goods & chattels lands and tenements of the said Ira Gates defendant therein described in the said writ and which were the same premises land and tenements mentioned and set forth in the said petition of the said Washington Coughran above referred to, to cause to be made the sum of one hundred and twenty eight Dollars & twenty five cents which the said Washington Coughran as plaintiff recovered on the seventh-

day of September A.D. 1848. for damages and also the further sum of six Dollars and fifty one and one quarter cents which were adjudged to the said Washington Coughran by his costs charges by him about that suit in that behalf expended and to make return of the said suit with an inventory thereof in what manner the said Sheriff had executed the said suit; and accompanying said suit of Execution or *Exi* Facias and a True Bill for the said costs of the said defendant Ira Gates amounting to the sum of Two Dollars and eighty five cents and also for the above mentioned sum of six Dollars fifty one and one quarter cents for the said Coughran costs as will more fully appear in reference to said Execution and True Bill which your orator prays may be produced in evidence on the suit -

And your orator further shews unto your Honor as your orator is informed & believes to be true now about the 8th day of April A.D. 1857 William L. Church as Sheriff of the said County of Cook caused all the right title and interest of the said Ira Gates in and to the said premises so as aforesaid ordered to be sold under and by virtue of the said several executions to be advertised for sale on the 28 day of April A.D. 1857 at ten o'clock in the forenoon at the Sheriff's office in the City of Chicago and as your orator is informed

& believes to be true the said premises were some time during the said day offered for sale at public auction pursuant to said notice of sale and the said right title and interest of the said Gates were then and there struck off to the said Washington Conghram for the sum of one hundred and sixty five Dollars & ninety five cents being the amount of the damages & cts in said suit.

And your Orator further shews unto your Honor that your Orator is informed & believes to be true the said William L Church as such sheriff still holds the said Execution and that the certificate of such sale to the said Conghram are not nor are either of them delivered to the said Conghram & that no duplicate thereof has been filed in the office of the recorder of said county and that the costs of the suit and sheriff fee have not been paid by said Conghram or any one for him, but your Orator shews and so charges the fact to be that the said Washington Conghram or his attorney threatened to procure said Certificate take possession of said Lands & premises so as aforesaid sold under and by the virtue of the said Execution to said Conghram unless the same ^{shall} be redeemed by the payment of the amount bid by said Conghram at such sale pursuant to Law. And your Orator further shews unto your Honor and expressly charges the fact to be that at the time the said pretended

work and labor was performed by the above named defendant Washington Coughran as set forth and alleged in his said petition the said Ira Gates had not title or interest in said premises and appurtenances in which the said lien is by said petition sought to be enforced and that whatever right or interest the said defendant Ira Gates ever had in and to said premises was conveyed to your orator by the said Buckner S. Morris as is above particularly alleged and set forth and that the amount of the purchase money bid by your orator upon the sale of the said premises by said Morris as aforesaid under and by virtue of the said Trust Deed as above stated has never been paid to your orator by said Gates or any person for him nor the said premises in any manner been redeemed by said Gates or any one for him —

And your orator further shews unto your Honor that as your orator is advised and truly believes to be true and to charge the fact to be no petition was filed in the said suit so as aforesaid undertaken to be commenced to obtain said lien at the time of the issuing of the summons thereon and that said petition was not filed till on or about the 1st day of September 1848 being the same day on which the judgment was entered in the said suit as aforesaid and that the said proceedings in said suit were otherwise irregular

and erroneous.

And your orator further shews unto your Honor and charges the fact to be that during the time or soon after the said work was done by the said defendant Conghman for which the claim is made in the said petition. Your Orator paid to the said Conghman eighty five dollars in cash for and on account of said work and labor and in payment there for, that the said sum was so paid upon three several orders drawn by said Gates upon your orator in favor of the said Washington Conghman and specifying that the same were for said work so done by said Conghman one of which said order bears date November 28, 1846 and is for the sum of fifteen Dollars, another bears date the 9th day of December 1846 and is for the sum of thirty Dollars and the other bears date December 20, 1846 and is for the sum of forty Dollars and that said sums were respectively received by said Conghman for and on account of said work as will more fully appear reference to said Orders and the receipts of said Conghman evidence thereunto which your orator begs leave to refer and your Orator believes & charges the fact to be that no credits were ever given on account of said payments.

Your orator further shews unto your Honor that no further or other sums or amounts

of money were ever given required from your
 estate or from the said Morris Butchers for the
 payment of said work and as your estate truly
 believes and so charges the fact to be the said
 amounts so paid by your estate on the said
 order, was the full value of the work done
 and performed by the said defendant Cong-
 huan upon said buildings and that in the said
 suit so as aforesaid commenced in the said Court
 by the said Washington Conghuan against said
 Gates and for which the said Ira Gates confessed
 judgment as is above herein specified and particu-
 larly stated your estate had no means of presenting
 his said account for money paid to the said
 Conghuan as aforesaid nor of showing to the
 said Court the unjustness or illegality of the said
 pretended claim on and against said premises
 And your estate believes and charges the fact
 to be that the said judgment was obtained
 in fraud of your estate and those claiming
 under him and by collusion of the said defen-
 dants Washington Conghuan with Ira Gates
 to cheat and defraud your estate and that
 the same is in case your estate in the premises
 should be obliged to pay the said amount of the
 said damages cost and expenses of in case then
 claiming under your estate should be obliged
 to pay the same, oppressive, inequitable and
 unjust to your estate and those claiming under

him - And your orator believes and expressly charges the fact to be that at the time of the commencement of the said suit by the issuing of the summons in favor of said Congham against the said Ira Yates the said Congham was not legally or equitably entitled to a lien upon the premises described in his said petitions under and according to the provisions of the statute under which the said lien is sought to be enforced and that his seeking to enforce such pretended lien is a fraud ^{upon} your orator & those claiming under him, who took the said premises without any notice from said defendant Washington Congham or any other person that said pretended lien existed -

And your orator well hoped that the said defendant Washington Congham would have refrained from endeavoring to ~~enforce~~ ^{enforce} said lien and from obliging your orator or those claiming under him to remove the said judgment - But now so it is may it please your Honor that the said Washington Congham combining and confederating with the said Ira Yates and with divers other persons at present unknown to your orator whose names when discovered your orator prays may be inserted in this your orator's bill of complaint with apt words to charge them as parties thereto to injure and grieve your orator in the premises in and upon the collection of the said judgment so as aforesaid confessed by the

said Ira Gates in favor of the said Washington
 Conghram for justification thereof pretend that
 the said judgment is a legal and valid
 lien upon said premises - Whereupon Orator
 charges that such allegation is wholly unfoun-
 ded and untrue and that the said defendant
 Washington Conghram acquired no right title
 or interest in the said premises under and by
 virtue of the sale so as aforesaid made by the said
 Sheriff of said County of Cook to him upon the
 said execution issued on the said Judgment
 so as aforesaid obtained against the said Ira Gates
 and your Orator expressly charges & insists that the
 actings, doings & pretences of the said Conghram in
 and about the premises are contrary to equity
 and good conscience and tend to the manifest
 injury and ruin of your Orator and to the ma-
 nifest prejudice of your Orator this grants title to
 said premises - In tender consideration whereof
 and for as much as your Orator is amiable in
 the premises by the strict rules of the common
 law and can only obtain relief in this honor-
 able Court where matters of this nature are prop-
 erly cognizable and relievable.

It is the end therefore that the said Wash-
 ington Conghram Ira Gates and William
 L Church and the confederates of Washing-
 ton Conghram and Ira Gates when discovered
 may full true direct and perfect answers

make to all & enjoin in the matter hereinafter stated & charged (Your Orator hereby moving the necessity of the answers of such defendants being put in under the oath of such defendants or the oath of either of them) and that as fully and particularly as if the same were here repeated and they thereto severally and ^{specifically} ~~expressly~~ interrogated and that they shall so answer not only as to their respective knowledge and remembrance but also as to the best of their several and respective hearsay information and belief; and that the said defendant Washington Conghron may be restrained by injunction issuing out of and under the seal of this court from proceeding in the collection of the said judgment so as aforesaid obtained against said Trov Gates, and that the said William L. Church may be enjoined to desist and refrain from delivering the certificate of the sale of said premises herein before first described to the said Washington Conghron or any other person or persons whomsoever and from making, executing & delivering any deed of said premises to said Conghron or any other person or persons or corporation whomsoever and that the said Washington Conghron may be decreed to cancel the said judgment so far as the same may be deemed to effect the said premises, and that the certificates of the sale of said premises may be surrendered

upto be cancelled, and to pay the cost of this suit and that your orator may have such further or other relief in the premises as may seem agreeable to Equity and good conscience -

May it please your Honor to grant unto your orator the Peoples writ of Injunction issuing out of and under the seal of this Honorable Court directed to the said Washington Conghron Ira Gales and William L. Church their & each of their agents attorneys and deputies commanding them and each of them to desist & refrain from proceeding further in the collection of the amount of said Judgment so as aforesaid, obtained by said Conghron against said Gales out of the premises described in the said petition and against which said judgment was specifically rendered and from selling or assigning said Judgment and the certificate of the purchase of said premises at such Sheriff's sale and that the said William L. Church and his successors in office and deputies may especially be restrained from making & delivering any deed or deeds of said premises to any person or persons or corporation and from delivering the certificate of purchase at such sale to said Conghron or any person or persons or corporation whatsoever until the further order of this Court -

May it please your Honor to grant unto

your orator the People's suit of summons com-
manding the said defendants Washington
Coughman Ira Bates & William L. Church
and each of them to be and appear before
the Cook County Court of Common Pleas
at the next term thereof and answer this
your Orator's Bill of Complaint & to stand to
and abide such order and decree herein as
shall seem meet & agreeable to Equity -
And your Orator will ever pray &c

Callins & Shumway
Sols for complt

R. H. Swift

State of Illinois }
Cook County ss } Richard H. Swift being
duly sworn deposes & says that he has heard
the above bill of complaint subscribed
by him read & knows the contents thereof
and that the same is true as therein stated
as of his own knowledge except as to the
matters which are therein stated to be on his
information or belief and as to those matters
he believes it to be true

R. H. Swift

Sworn to & subscribed before
me this 24 day of April 1853

George Manning, Master in Chancery
of Cook County

Walter Kimball Clerk of the Court of common Pleas

The Clerk will issue an injunction in the following foregoing Bill as prayed for by the Complainant upon his entering into a bond in five hundred dollars in pursuance of the Statute with H. G. Shumway as his surety for the performance of said bond —
Apr 27, 1852

George Munroe,
Master in Chancery

The Judge of the circuit court & the Judge of this Court being absent from the county —

"Exhibit A"

Copy of Petition

Now Hugh T. Dickey Judge of Cook County Court of in the State of Illinois —

The petition of Washington Burgham of the County and State aforesaid Respectfully sheweth
That on or about the first day of December in the year of our Lord one thousand eight hundred forty six, Ira Gates of Weyerville in Cook County in the State aforesaid claimed and pretended to be the owner and your petitioner verily believes was seized in fee simple of the following described premises viz: all that piece of

Land commencing at the south East corner of the north West Quarter of section number eleven (11) in Township thirty nine (39) north Range twelve (12) East of third principal meridian running thence West on the south line of said Quarter section twelve (12) rods thence north on a line parallel with the East line of said Quarter section to the Township line leading towards Elgin thence East twelve (12) rods to the East line of said Quarter section thence south on the East line of said Quarter section to the place of beginning together with the tavern stand situated thereon with the out buildings and all appurtenances thereto belonging which place is known commonly as Bates Cottage -

And your petitioner further sheweth that being at the day & date last aforesaid a mechanic or a carpenter & joiner working at his trade in the County aforesaid he did enter into a verbal agreement to and with the said Ora Bates to do certain work in his trade upon the dwelling house Barn & other out buildings situated upon said lot and piece of land above described which said work was to be performed at a certain stipulated price per day and that no particular time was specified when said work was to be completed but that your petitioner was to receive for each days work bestowed upon said premises in pursuance of said

contract one dollar & a half per day -
 And your Petitioner further sheweth that the
 number of days which he bestowed in labor
 upon said premises amounts to eighty five
 days and a half for which your Petitioner
 claims now to be due to him the sum of one
 hundred & twenty eight Dollars & twenty five
 cents as by the bill of items hereto annexed
 may appear -

And your orator Petitioner further
 sheweth that the said work was fully comple-
 ted on or about the middle of January in the
 year of our Lord Eighteen Hundred & forty seven
 and that the same was fully accepted and
 received by the said Dr. Gates as soon as the
 same ^{was} completed - And your Petitioner would
 further shew that at the time of the comple-
 tion and acceptance of the work as aforesaid
 it was agreed by & between your Petitioner and
 the said Gates that the payment of the same
 should not be demanded until the first day
 of January next following -

And your Petitioner would further state
 that the first day of January the day & date
 when the said sum of money ^{became} justly due & pay-
 able according to the said agreement has long since
 elapsed and that the said Dr. Gates although
 justly indebted hath not kept his promise to
 pay the same and hath not paid the said

sum of money or any part thereof although
often requested so to do but hath hitherto wholly
neglected and refused to the great detriment
and damage of your petitioner -

Your petitioner would therefore pray your Honor
to make an order that the said Lot of Land
above described together with all appurtenances
thereunto belonging may be sold to satisfy
the lien of your Petitioner according to the
form of the Statute in such case made &
provided to satisfy the lien of your petitioner
and that the proceeds of said sale or so
much thereof as may be necessary be applied
to the payment of your petitioner's claim to
the discharge of his lien - And your Petitioner
further prays that your Honor will make such
further or other order in the premises as to your
Honor may seem meet and right -

Wm Washington Congham
By or H Luce his atty

Copy of ac

True Date

J. Washington Congham Dr
For twenty one & a half days work for self @ \$1.50 per day \$32.25
" Fourteen and a half work for son at do 21.75
" Sixteen days work for Shirley " do 24.00
" Thirty three & a half for Leavitt " do 50.25
\$128.25

And thereafter to wit: on the twenty seventh day of April in the year of our Lord one thousand eight Hundred and fifty four - comes the Plaintiff R. H. Swift by his solicitor H. G. Shumway and filed in the office of the Clerk of the Cook County Court of Common Pleas his precept for injunction and summons, which said precept is in words and figures as follows to wit:

Richard H. Swift

Washington Coughman
Ira Bates and
William L. Church

The Cook County Court
of Common Pleas

The Clerk will please
file Bill & issue Injunction as prayed for
and Summons to Corner of Cook County

H. G. Shumway
Compt. Sol

And thereupon: on the day and year last aforesaid, there issued out of the office of the Clerk of said Court the peoples writ of summons which said summons is in words and figures as follows to wit:

State of Illinois } vs. The People of the State of Illinois
Cook County } To the Corner of said County,reeting

37

We command you that you summon Hap-
 gton Goughran Ora Gate and William L. Church
 if they shall be found in your County personally
 to be and appear before the Cooks County Court
 of Common Pleas of said county on the first day
 of the ^{next} term thereof to be holden at the Court House
 in the City of Chicago in said County on the
 first Monday of September next to answer unto
 Richard H. Swift in his certain Bill of complaint
 filed in our said Court on the Chancery side
 thereof against them And have you then and
 then this writ with our endorsement thereon in what
 manner you shall have executed the same -

Witness - Walter Kimball Clerk of our
 said Court and the seal thereof at the City of
 Chicago in said County this 29th day of April
 A.D. 1852

E. L. 3

Walter Kimball
 Clerk

'Endorsed thereon'

Executed by reading
 the within in the hearing of the within named
 Deft. H. Goughran and W. L. Church and by
 leaving copies with the said Deft and Ora Gate
 not found

Chicago April 30 1852

A. Berdel
 Croner Cook County

And thereupon on the day and year last aforesaid there was also filed in the office of the clerk of said Court by the said Complainant by his said attorney, An affidavit and Bond which said affidavit and Bond are in words and figures as follows to wit;

Richard H. Swift	} In Cook County Court of com- mon Pleas In Chancery
Washington Coughran	
Orin Gates and	
William L. Church	

State of Illinois }
County of Cook } Horatio G. Summay of said
County State being duly sworn say that he is
solicitor for the Complainant in this suit that
the deft William L. Church is Sheriff of the
County of Cook aforesaid and interested in
said suit

Subscribed & sworn to } H. G. Summay
this 27. day of April 1852 }
Before me }
W. Kimball clk.

Know all men by these presents that we
Richard H. Swift and Horatio G. Summay
of the City of Chicago are held and firmly
bound unto Washington Coughran Orin Gates

William L. Church in the several sums of Five Hundred Dollars lawful money of the United States to be paid to the said Bingham, Hales and Church their Executors administrators or assigns - For the payment of which said sum well and truly to be made we bind ourselves jointly & severally, and our respective heirs, executors and administrators firmly by these presents - sealed with our seals and dated this 29th day of April 1852 -

Whereas on or about the 28th day of April A.D. 1851, the said William L. Church sold certain lands and premises on or execution issued out of the Cook County Court of Common Pleas in a certain suit therein in favor of the above named Washington Bingham against the said Ira Hales and the same were bid in by said Bingham for the sum of one hundred sixty five Dollars and seventy five cents; and whereas the above bounden Richard K. Swift has filed his bill of Complaint against the said Washington Bingham Ira Hales and William L. Church in the said Cook County Court of Common Pleas on the Chancery side thereof praying amongst other things for an injunction restraining the said Church from making, executing & delivering any deed of said premises to the purchaser thereof or to any other person or persons from delivering the certificate of purchase

Now therefore the condition of this obligation is such that if the above boundend Richard H. Swift and Horatio G. Shumway their executors administrators or any of them shall and do well and truly pay or cause to be paid to the said Washington Congham Ira Gates and William L. Church all such costs and damages as shall be awarded against the said Swift in case ^{the} Judicition shall be dissolved then this obligation to be void otherwise to be and remain in full force and virtue —

R. H. Swift Seal
H. G. Shumway Seal

And therefore on the same day and year last aforesaid, there issued out of the office of the Clerk of said Court, and Injunction which said Injunction is in words and figures as follows to wit:

State of Illinois } ss.
Cook County }

Cook County Court
Of Common Pleas

The People of the State of Illinois
To Washington Congham Ira Gates and William
L. Church their agents Attornies and Deputies
Greeting —

Whereas Richard H. Swift com-
plainant has filed in the office of the Clerk
of our Cook County Court of Common Pleas

This certain Bill of complaint on the Chancery side of said Court praying among other things that a writ of Injunction may issue out of our said Court against you restraining & enjoining you as hereinafter set forth. And Whereas the said Bill of complaint has been laid before and exhibited to Honorable George Mannire Master in Chancery in and for our said Court and for the said County of Cook the Judges of the Circuit Court of our said Court being absent from said County and the said Master having made an order thereon that the said Writ of Injunction issue as prayed for in said Bill of complaint.

You therefore we do hereby command and enjoin you the said Washington Brougham Iron Gate and William L. Church your agents attorneys and deputies & each & every of you that you do not and refrain from proceeding further in the collection of a certain Judgment rendered in the Cook County Court of common pleas in a certain suit wherein the said Washington Brougham was Plaintiff and the said Iron Gate Defendant for a mechanics lien out of the premises sold by the said William L. Church as Sheriff of said Cook County on the 28th day of April 1857 under and by virtue of a Special Execution issued on said Judgment said Judgment being for the sum of one hundred

and twenty eight Dollars & twenty five cents - besides costs - And from selling or assigning said Judgment or the certificate of purchase at such sale to any person or persons or corporation whomsoever - And that you William L. Church especially refrain & desist from delivering any Certificate of purchase at the sale made under said execution to said Washington Coughran or to any other person or persons or corporation and from making, executing & delivering any deed or deeds of the premises sold under and by virtue of said Execution to said Washington Coughran or to any other person or persons or corporation whomsoever until the further order of our said Court in the premises -

Witness Walter Kimball Clerk of our said Court and the seal thereof at the City of Chicago in said County this 27th day of April A.D. 1852.

W.L.C.

Walter Kimball

Clerk

For the Coroner of Cook County to execute

"Condoned Return"

Executed by reading the within in the hearing of the within named Jeff W. Coughran and W.L. Church and the Deft Ira Galt not found

Chicago April 30 1852

A. Berdel Coroner
Cook County Illinois

And thereafter to wit: on the twenty eight day of June in the year of our Lord one thousand Eight hundred and fifty two, comes the complainant by his said solicitor and filed in the office of the clerk of said court, an affidavit which said affidavit is in words and figures as follows to wit:—

Richard H. Swift	} In Cook Co. Court of Common Pleas
Washington Conaghan	
Dr. Gates & William	} In Chancery
L. Church	

State of Illinois } ss
Cook County }

Aratio A. Shumway of Chicago in said County & State being duly sworn deposes & says that he is solicitor for the complainant in the above suit—that as he is informed & truly believes to be true Washington Conaghan & Dr. Gates two of the above named defendants are non residents of the said State of Illinois so that process cannot be served on them or either of them and further this deponent saith not—

Subscribed & sworn to
this 26. day of June
1852 Before me

Walter Stamball

Clk

H. A. Shumway

And thereafter to wit: on the sixth day of February in the year of our Lord one thousand Eight hundred and fifty four - come the said Defendants and filed in the office of the Clerk of said Court their answer to the Bill of complaint in this cause which said answer is in words and figures as follows to wit -

Richard H. Swift	In the Court County Court of Common Pleas Bill for Injunction
vs	
Sam Yates Washington Congham William L. Church	

The joint & several answers of said Yates
& Congham to the Bill of complaint
in this cause -

These defendants saving and reserving to themselves all and all manner of benefit & advantage of exception to the said Bill of complaint and the matter & things therein alleged on account of the many errors uncertainties & imperfections therein contained for answer thereto or unto so much & such parts thereof as they are advised it is material for them to answer jointly and severally each for himself say - That they deny that the said Yates was on the 18th day of April 1846 or at any time

since, indebted unto the said Richard E. Swift
 in the sum of Nine Hundred and forty three
 dollars & twenty five cents - but they admit
 that at that time he held the note of said Ira
 Gates & one Remsen Whaples for that amount - and
 payable as stated in said bill - the consideration
 for which was not an indebtedness due the said
 Swift by either of said makers of said note - to
 that amount, but was as follows - the said Gates
 had applied to said Swift for the loan of
 six hundred dollars, which the said Swift
 refused to let him have unless he would pay
 interest at the rate of about fifty five per cent
 per annum for the loan thereof - whereupon the
 said Whaples to go his security in a note, and
 make such conveyances of certain real estate
 owned by him & Whaples to said Swift to secure
 the repayment of said money & interest & about
 ten dollars for drawing up the papers as the said
 Swift should require to which the said Gates
 acceded and thereupon the said Swift ad-
 vanced or agreed to advance from time to time
 as herein after stated the said six hundred
 dollars to said Gates & the said Gates & Whaples
 executed said Note & Trust Deed to said Morris
 And these defendants expressly deny that any
 other or different consideration than as above
 stated existed for the making of said Note
 & Deed - And these Defendants further

Answering say that they admit that the said
 Debt Due was made by said Gates & Whaples &
 then moved to said Morris, but whether or not the
 same is correctly stated & set out in said bill
 they can neither admit or deny as they have not
 the original to compare such statement with
 & they ask that the same may be produced
 & filed with the clerk of this court for inspection.

And these Defendants further answer-
 ing deny that any default was made in the
 payment of said note but that previous to
 the time when the same was to be paid accor-
 ding to its term, the said Gates & one Morris
 Hutchins made and executed a lease and
 agreement in writing a copy of which is here-
 unto annexed and which these defendants
 pray may be taken as part of this their answer
 That the said Swift at the time of making
 the same well knew thereof and assented thereto
 and did then make an arrangement with
 said Hutchins by which he took said Hutch-
 ins note for four hundred Dollars the first
 payment of rent due, under said agreement
 to apply on said note by Gates & Whaples to him
 and agreed to wait upon said Hutchins for
 a short time until he could go East and raise
 the money to pay up the Balance of the lien
 or claim of said Swift on said real Estate.

she said Hutchins agreeing to pay the same as soon
 as he could go and raise the money & come back though
 no time was distinctly set for the purchase. That while
 said Hutchins was absent for the purchase the said
 Swift caused a sale of said premises to be made &
 bid the same in himself at such sale for the sum of
 five hundred dollars or there abouts but whether
 the directions of said deed as to time place manner of
 sale were complied with they have no knowledge &
 can neither admit or deny. But they charge that
 said premises were sold at greatly under their value
 the same then being then worth two thousand dollars
 & upwards & were bid in by said Swift without the
 consent of said Gates, and in violation of his duty
 in Equity as a Mortgagee holding and having a lien
 upon the premises sold. And these Defendants
 further answering say that they admit a Deed was
 upon said sale made by said Morris to said Swift
 but the particular contents thereof they cannot
 state and pray that the original may be filed
 with the clerk of the Court for inspection.
 And they further admit that a few days
 after said Swift & his wife made a deed
 to said Morris Hutchins in the the intention
 of conveying said premises to him but
 the particular contents thereof they cannot
 state & they pray that the original may
 be filed with the clerk for inspec-
 tion

And they further say that they have knowledge as to what or how or how much consideration was paid by said Gutchens to said Swift upon making said deed to him - but they charge that under the terms of said contract the said Gutchens acquired the title to said land as a trustee for said Gates & held the same as a security for the advances that he had to make to said Swift to discharge the same from the lien of said trust deed and that any & whatever sums of money he paid beyond that he paid in his own money and that he cannot establish any specific lien upon said premises therefor - but must rely upon his right to recover the same as so much money paid to the use of said Gates if ever requested by said Gates to pay the same which said Gates denies and states that the same were paid if paid at all against the will & without the consent of said Gates

And these defendants further answering say that the said Gutchens went in to the possession of said premises under & in pursuance of said contract and lease by the permission & with the consent of said Gates and has ever since, either by himself or those claiming under him been in the actual & exclusive occupation thereof and that the rents that have accrued for the use & occupation of said premises have long since fully paid & amounted to the amount of the

him held by said Swift upon said premises
 And these defendants for the answering
 say that whether or not the said Henry T.
 Hubbard & wife conveyed the premises as in
 said bill alleged to the said Swift in
 manner & for the consideration therein charg-
 ed they have no knowledge but from
 information they deny that he paid said
 Hubbard any consideration whatever therefor
 further charge that the whole matter of the
 sale by the Sheriff to said Hubbard was a
 contrived matter ^{done} with the knowledge & at the
 request of said Swift to perfect his security
 upon the land for the advances that he
 had made to said Gates -

And that as to the contents of said
 deed from said Hubbard & wife to said Swift
 they can neither admit or deny the same
 & they pray that the same may be filed
 with the clerk for inspection by them -

And these defendants further answer-
 ing as to the recovery of a Judgment by said
 John J. Randolph & Theodore Crane against
 said Ashbell Steele that they have no know-
 ledge except what appears by the records
 of said Court now remaining in the Clerk's
 office thereof but they expressly deny that any
 execution was in fact ever issued in said cause
 until long after the lapse of one year from the

rendition of the Judgment thereon; and they deny that the premises described as the Gates Cottage were ever sold under an execution on said Judgment.

And they admit that said Ashbell Steele became seized of said premises at the time stated in said bill but charge that at the same time he acquired other real estate and that at the rendition of said Judgment & afterwards and until the levy in said bill mentioned under the execution therein last referred to upon the said premises said Steele was possessed of owned and was entitled to other real estate & personal property in said county upon which said Execution should have been levied and that therefore said levy & sale are irregular & should be set aside.

And these Defendants further aver and say that they deny that the said Gates did on the 1st day of October 1846 make execute and deliver the said deed to the said Swift as in said Bill charged or that if any such and ever was made it was done only by way of additional & further security for the advances made by said Swift to said Gates by way of & in the ^{execution} ~~XXXXXX~~ of a mortgage.

And these Defendants further answering say that the said Washington Bingham did cause a summons to be issued out of said Cook County Court now styled the Cook County Court of Common Pleas dated returnable to the contents as stated in said Bill & that he filed his petition on the seventh day of September 1848 to establish a mechanics lien for work & labor done by him as a mechanic on buildings on said premises as charged in said Bill the copy of which attached to said Bill & made a part thereof, they believe to be correct - and that on the same day September 7, 1848 he also filed in said cause a Power of Attorney to confess judgment presented by said Gates an affidavit of the due execution thereof by said Gates, a cognovit actionem presented by Henry A. Clark Attorney for said Gates, under said power confessing the amount due said Bingham from said Gates in said suit to be one hundred and twenty eight dollars & twenty five cents, besides costs as will more

fully appear on reference to the papers in said cause now on file in this court therein.

And that such proceedings were had in said cause; that on the said 7th day of September 1848 a judgment was entered in the said said suit by the said court upon the said cognovit for the said sum of \$138 ²⁵/₁₀₀ cents and thereupon execution was forthwith issued to the Sheriff of Cook County commanding him to make the same out of the premises described in said petition with a fee Bill for defendants costs and that Morris Gutchens by his attorney James H. Collins Esqr appeared in court and on his motion & on affidavit of said Richard G. Swift therein an order was made by said court in said cause staying the sale of said premises under said execution until the further order of the court which order was granted on or about the sixth day of October A.D. 1848 and that in consequence of said order said execution was returned 'Stayed by order of court' that on the 30th day of October 1848 upon a further hearing of said motion an order was made that said judgment and

the subsequent proceedings be opened and that the said Morris Hutchins be at liberty to come in & become a party defendant to the said cause & the cause ^{reinstated} ~~reinstated~~ ~~on~~ on the Docket for further proceedings and that on the 3rd day of March 1856 the said plea of said Hutchins was on his motion ordered to be stricken from the Docket and that afterwards on the 5th of November 1856 the said previous order made on the motion of said Hutchins was vacated & the said judgment ordered to stand in full force & that exception taken thereon all which matters & things will more fully appear on reference to the records of this court in said cause —

And these Defendants further ^{admit} answering that on the 17th day of March 1857 an execution was again issued on said judgment & placed in the hands of William L. Church then Co-Defendants for execution. that he duly advertised said premises for sale on the 28th day of April 1857 at the Sheriff's Office in the City of Chicago at which time & place the said Coughman bid the same off for \$165.00 being the amount of the damages interest & costs in said cause as he well might for the causes aforesaid.

And they further admit that no certificate of sale has been executed nor any costs paid to the Sheriff nor said execution returned owing to the intervention of the Injunction granted by this Court in this cause preventing the same being done.

And these defendants further answering charge that the said Gates at the time said Work Labor was done by said Longman was the owner of said premises wherein the same was done subject only to the lien given by him to said Morris to secure to said Swift the payment of the moneys advanced by said Swift to him said Gates and that the bid made by him said Swift upon said sale has since been fully paid up & satisfied to him & the premises redeemed from such sale by the said Gutchers acting under the covenant contained in said agreement.

And they further say that whether or not a petition was filed at the time of issuing said summons is a matter of indifference as the said Gates could have entered his appearance to a petition of that kind without any summons whatever - & which was actually the facts in the case and that the confession of judgment by him waived all errors therein so far forth as they affected him or his rights, or those claiming under him.

5-5-

And these defendants further answering say that the said Kitchens came in to court entered his appearance in said cause & had his day in court to defend said suit on his own motion, and that he subsequently voluntarily withdrew and had his in trip lead dismissed and that he is now estopped from setting up or insisting upon any rights adverse to the judgment rendered in said cause, and the rights subsequently acquired thereunder.

And these Defendants further answering, say that the said Swift never paid the said Conaghan any sum of money whatever to apply on said work & labor mentioned in said petition - but that some payments were made by him on account of said Gates to said Conaghan for work & labor done by him said Conaghan under a special contract with said Gates for doing other work & not included in the work claimed for in said petition that these payments are included as part of said six hundred dollars advanced by said Swift to said Gates - and were made as a part thereof so agreed to be done at the time of making said deed of trust.

But whether the same amount to eighty five dollars or not they cannot admit doing

No proof of this }

No proof of this }

but the facts will appear from the receipts which they pray may be produced for inspection.

And these defendants further answering deny that any payments were ever made by any body at any time to said Loughran for the work labor done or caused to be done by him & set forth in said petition.

And these defendants further answering say that the said Swift had an opportunity to present in said Mechanics Lien suit any claims he might have had having himself sworn to the affidavit upon which the motion to vacate the judgment was based and his ward Morris Gutches for whose interest in this matter said Swift has undertaken to act as guardian ad litem had like opportunity. that the statute under which such proceedings instituted gives all parties in interest the right to come into court & contest the plaintiff having interposed the claims of said Gutches & voluntarily withdrawn the same is now concluded from setting up ~~or~~ charging that said judgment was in any manner erroneous or fraudulent.

And these Defendants further answering deny that said judgment was the result of any fraudulent conspiracy between

them to defend said complainant or any body else but was upon a good fair honest consideration in hard labor performed by said Congham & those in his employ for said Gates and out of which by the machinations of the said Swift & the said Butchers he has been kept until the present time.

And these Defendants further answering say that said Morris Butchers acquired said Real Estate and held the same merely as a security to reimburse him for such sums of money as was necessary to advance to redeem the same from the lien of said Swift which they charge was the amount by said Swift advanced & loaned to said Gates and interest - that the same has long since been fully paid by accruing rents, and the said Gates entitled to a remittance that the said Judgment was a valid lien upon said premises and the same liable to be sold to satisfy the same and that whatever interest the said Gates had therein on the expiration of fifteen months from said sale vested in said Congham and that he is now the owner in fee of said premises entitled to hold the same against said Swift Butchers and all others claiming or to claim under them.

And they pray to be herein dismissed.

with their reasonable costs in this behalf
most wrongfully sustained -

This Article of agreement entered into
this thirteenth day of March one thousand
and eight hundred and forty seven
Between Ira Gaty & Morris Hutchens both
of the State of Illinois and counties of
Cook & Kane.

The conditions is as follows
to wit; The said Ira Gaty is to rent or hire
the tavern stand with the privilege of get-
ting fire wood sufficient for the use of
the house which he now occupies and
known as Gaty Cottage, situate in Cook
County near the Oplam River at the Junction
of the St Charles & Elgin Road for the sum
of four hundred dollars a year which is
to be paid on or before the twenty fifth
day of March inst - And it is agreed that
the four hundred dollars shall draw twelve
per cent per annum after the payment
thereof - And it is further agreed that
the said Gaty shall leave all of his furni-
ture which he now has with the exception
of two beds, two bedsteads and bedding
and other necessary furniture for the use
of his own private family - And it is
agreed that the said Hutchens shall
have the said tavern stand for the time

of one year with the privilege of two years more by his paying the same amount of money annually in advance thereafter on the same day of the month as above named drawing interest at twelve percent when paid.

And it is further agreed that the said Butchers shall finish off the barn which is now up and the frame which is nearly ready to be raised in a good workmanlike manner promising to do the same which shall be done on or before the first day of Oct - next as above directed. And it is further agreed that the said Galt at the expiration of the time agreed on for the rent of said barn, shall pay to the said Butchers the amount of money which the said Lumber & Nails shall cost in Chicago, and also a good carpenter which the said Butchers shall hire the sum of one dollar per day which shall be paid for at the of the lumber for the barn and it is further agreed that the said Butchers shall get everything in readiness for stopping the two wells that is now dug between the Horse & Barn promising the stopper the spot for stopping the same and then the said Galt shall either lay the said Stone in the two wells or furnish

a hand to do the same.

And it is further agreed as a condition hereinafter mentioned between the said Gates & Gutchers that the said Gutchers shall furnish money sufficient to clear the tavern stand from the incumbrance which R. H. Swift has pledged for money due said Swift by the said Gates by the fifteenth day of May next - The said Gutchers is to furnish the money as above mentioned to pay the debt to R. H. Swift and the said Gates is to allow the said Gutcher the interest which he may have to pay for the money which shall be deducted out of the rent of the said tavern which shall not exceed twelve per cent after the first day of Nov next -

And the said Gutchers shall lay down the bar-room floor by the said Gates, paying the said Gutchers what the lumber shall cost at the yard, at the same time of the payment for the lumber for the bar - and the said Gates is to furnish rails in the woods to fence the yard and garden spot -

And it is agreed that Gates shall pay to Gutchers a reasonable compensation for his trouble in procuring the loan of said money - And for the fulfillment of ~~and~~ the above named articles of agreement we bind ourselves our heirs, administrators

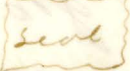
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assigns under a penalty sum of five hundred dollars which, shall be paid by the one party to the other, which shall fail to fulfill the conditions of the within articles of agreement. And for the security for the money which the said Gutchens shall promise to release the Tavern stand from the hands of R E Swift be the said Gutchens shall have a deed from R E Swift free from incumbrance. And the said Gutchens shall give the said Gato a bond for a deed when the money shall be repaid by rent or otherwise. And all the money that the said Gutchens cannot raise on their his own means the said Gato shall pay the entry interest over and above twelve percent after the first day of Nov next.

Given under our hands and seals this thirteenth day of March one thousand eight hundred and forty seven.

Witness

J H. Gouley
J. E. Egan

Chas Gato 
Morris Gutchens 

And thereafter to wit on the sixth day of ^{February} ~~March~~ in the year of our Lord one thousand eight hundred and forty seven the following among other proceedings were had in this cause and entered of record to wit

Richard H Swift	}	In Chancery
Washington Coughran		Bill
Dra Gates and William L. Church		

And now come the said defendants Washington Coughran and Dra Gates by Harcourt H Burges their solicitors and file their answer to the said complainants Bill herein - and the said defendants enter their motion herein to dissolve the injunction issued in this cause and for leave to file a cross Bill herein -

And thereafter to wit; on the ninth day of March in the year last aforesaid; come the said Defendants by O. R. M Lull their Solicitor, and files in the office of the Clerk of said Court Suggestion of Death &c, which said suggestion is in words and figures as follows to wit;

Richard H Swift	}	In the Court of Chancery
Washington Coughran		Court of Common Pleas
Dra Gates & William		In Chancery
L. Church & Co.		

And now comes O. R. M. Lull for Defendants and enjoin to

the Court now here that in the month of September Eighteen hundred fifty three said Ira Gates departed this life intestate; and that letters of administration have been granted upon his estate to him -

O. R. W. Lull

Sole for Deft

And thereupon on the same day and year last aforesaid, said day being one of the days of the February term of said Court the following further proceedings were had in said cause and entered of Record to wit:

Richard H. Swift

Washington Congdon et al

} In Chancery

} Bill

This day came Harry Smith & George solicitors for Ira Gates one of the defendants herein and on their motion leave is given them to withdraw the answer of said Gates filed herein and thereupon said solicitors suggest to the Court the death of the said Ira Gates and leave is hereby given to make the Representatives of said deceased parties defendants to this cause -

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And thereafter to wit: on the fourteenth day of March in the year of our Lord one thousand eight hundred and fifty four; there is filed in the office of the Clerk of said Court the answer of O R W Lull administrator of Ira Gates deceased & which said answer is in words and figures as follows to wit:

Richard H Swift	In the Court County Court of Common Pleas In Chancery
Washington Congham	
William L Church	
Survivors of Ira Gates deceased & Oliver R. W Lull Admin of said Gates	Bill for Injunction

The answer of Oliver R. W. Lull administrator of Ira Gates deceased to the Bill of complaint in this cause filed by said Richard H Swift against said Congham Church & Gates —

Thy respondent as such administrator as aforesaid saving and reserving all exceptions to the said Bill & for answer thereto or such parts as are material for him to answer, says that he has no knowledge information or belief as to the several matters & things therein stated other than the facts set out and stated in the answer of

65-

the said Congham to the said bill filed
on the sixth day of February A.D. 1854
he prays that the answer of the said
Congham thereto may be taken as his
answer to said bill —

Congham John

O. R. W. Lull

Adm'r &c

And thereafter to wit: on the 16th day
of July in the year last aforesaid
said day being one of the days of the
July Vacation Term of said Court the
following further proceedings were had
in said Cause and entered of Record
to wit:

Washington Congham and Oliver
R. W. Lull administrators of Dr. Gates
deceased —

Richard B. Swift Morris Gutches
Buckner S. Morris Ann Gates the
Widow and the children and next
room heirs at law of said Dr.
Gates Theodore Hubbard and
Juliet E. Hubbard administrators
and Horatio G. Shumway
Administrator of Henry G.
Hubbard deceased

In Chancery

Sup. Bill

And now come the complainants by their
 complainants by their solicitors Harnsworth
 Bunge and the said Defendants Richards
 H. Swift Theodore Hubbard and Alice Hub-
 bard administratrix and Horatio G. Shum-
 way administrator of Henry G. Hubbard dec-
 eased by their attorneys Solicitors H. G. Shum-
 way also come and the defendant Morris
 Kitching by his Solicitors Scamman & McGuffey
 and the said Buckner S. Morris in his own
 person also come and thereupon on motion
 of the said complainants it is ordered that
 the said last named defendants file their
 answers to said Bill of Complaint in this
 cause by the fifteenth day of August next
 or that the same be taken as confessed against
 them. And the said complainants having
 read an affidavit on file showing that said
 Ann Gates is a non resident of this State
 and made due proof of publication
 of a notice of the pendency of this suit
 in the Chicago Tribune a newspaper publi-
 shed in the City of Chicago for six weeks
 successively the first publication thereof
 being more than sixty days before the first
 day of this term - it is on their motion
 Ordered that said Ann Gates answer
 said Bill by the opening of the Court on
 Tuesday Morning next or that the same

be taken as confessed against her.

And the said Complainant having also read the affidavit of said Complainant filed herein on the twentyeth day of March last past - showing that said ~~Gates~~ Ira Gates who had previous to his death an interest in the estate therein described and in controversy between the parties in this suit had departed this life intestate leaving children his heirs at law whose names were unknown to the said Complainant, and on reading and filing proof of a publication for six weeks successively of a notice to said unknown children and heirs at law of said Ira Gates of the pendency of this suit in the said newspaper the first publication thereof being more than sixty days before the first day of this term and the said unknown heirs at law of said Ira Gates being minors - It is ordered that they be made parties defendant to this suit as the "Unknown heirs at law of said Ira Gates deceased" and that a Guardian ad litem be appointed for them and thereupon Walter Chinball is appointed such Guardian ad litem, he consenting herein Court so to act, and ordered that he answer the said Bill as such Guardian.

C. 8

And thereafter to wit, on the eleventh day of September in the year last aforesaid came the said complainant, by their said solicitors, and filed in the office of the clerk of said Court, their Replication of Richard R. Swift to the answer of Oliver R. W. Sull administrators of Ira Gates & Washington Loughron Defendants which said Replication is in words and figures as follows to wit;

In Chancery } Cook County Court of
Common Pleas

The Replication of Richard R. Swift to the answer of Oliver R. W. Sull administrator of Ira Gates & Washington Loughron defendants to the bill of complaint of the said Richard R. Swift complainant -

The replicant saving & reserving to himself all manner of advantage of exception to the manifold insufficiencies of said answer for replication thereto says - That he will aver & prove that his said bill is true certain & sufficient in the law to be answered unto; and that the said answer of said defendants is uncertain & untrue & insufficient to be replied unto by this replicant; without this that any other matter or thing whatever in the said answer contained material or affected in the law to be replied unto confessed and avoided.

traversed or denied is true - All which matters & things these replicants are & will be ready to aver & prove as this Honorable Court may direct & he prays ^{as} in & by his said bill he has already prayed -

M. G. Shumway
Solicitor in Chancery

And thereafter to wit; on the twenty seventh day of November in the year last aforesaid comes W. L. Church by his Solicitors Laurence Borgey and files his demurrer to the Bill of Complaint - which said Bill Demurrer is in words and figures as follows to wit;

Richard H. Swift	In the Court County Court of Common Pleas In Chancery Bill
Washington Cyngheam	
William L. Church et al	

The Demurrer of said William L. Church to the bill of Complaint in this cause -

This defendant by protestation not confessing or acknowledging all or any of the matters and things in the said Complaints bill to be true in such manner as the same are therein set forth & alleged doth demur thereto and for cause

of demurrer sheweth that the said complainant hath not in and by his said bill made or stated such a case as doth or ought to entitle him to any such discovery or relief as is thereby sought and prayed for from or against the defendant and also that it appears by said bill that Morris Gutchen therein named is a necessary party to said Bill inasmuch as it is therein stated that the said Swift hath conveyed all his interest in said premises in controversy by warranty deed to said Morris Gutchen but the said complainant hath not made the said Morris Gutchen a party to the said Bill wherefore this defendant demands the judgment of this Honorable Court whether he shall be compelled to make any further or other answer to the said bill or any of the matters and things therein contained and prays to be hence dismissed with his reasonable costs in this behalf sustained.

Gull Binges
 Solicitor for Church

And thereafter to wit on the fourth day of April in the year of our Lord one thousand Eight Hundred and fifty five - said day being one of the days of the February term of said court the following further proceedings were had and entered of Record to wit:

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Washington Coughran and
Oliver R. H. Lull Adms^r of
Eva Gates Deceased

²¹
Richard H. Swift Morris
Gutcheon ^{Blackman & Morris} Theodore Hubbard
Juliet C. Hubbard Admi-
nistratrix & Horatio G. Shumway
Adms of Henry G. Hubbard
deceased Ann Gates Widm
and the unknown heirs of
Eva Gates deceased. Ruben
Whaples John H. Randolph
Thos. Crane Ashbel Steele

Mr Chancery

Crop Bill

And now come
the said complainants by their solicitors and
as filing proof of publication of a notice
of the pendency of this suit in the Chicago
Journal a newspaper printed and published
in said County for six weeks successively the
first publication thereof being more than
sixty days previous to the first day of the last
February term of this Court to which time
said notice required said Defendants last
named to appear, and also due notice of
service on the said defendant Ashbel
Steele. It is Ordered, that said last named
defendants appear and answer said bill
forthwith, And the said Ashbel Steele

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Sharon Crane and John Randolph being solemnly called come not nor does ~~not~~ does any one for them it is therefore Ordered that their default for want of an appearance and answer be entered, and that the bill of complaint in this cause be taken as confessed against them —

And thereafter to wit; on the sixth day of February in the year of our Lord one thousand eight hundred and fifty six: come the complainants by their said solicitors and filed in the office of the clerk of said court their notice to take Depositions & depositions of H. Ingals Esq. Murrell Charles Brooks Stephen Archer and C. Freeman &c which said Depositions & notice are in words and figures as follows to wit:

Markington Longman	} In the Cook County Court of Common Pleas
Richard H. Swift	
Mimi Hutchins	
Buckner S. Morris et al	

To Buckner S. Morris & other Defs in this cause
 You are hereby notified that on the thirty first day of January instant so. O'clock P.M. & so from day to day until completed—the complainants in this cause will attend before William

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D. Barry County Judge of Kane County at his
said office in St Charles Kane County Illinois
to take the Depositions of W. S. Burgis Eva Morris
Charles Brooks Stephen Archer and C. Freeman
John S. Burchell witnesses in this cause resident
in said Kane County when you may attend
& cross examine

Dated Aug 19, 1856

W. S. Burgis
Compl'ts Sale

We admit service on us of a notice of which
the within is a copy this 19 Jan'y 1856

A. S. Morris
Walter Kimball
Guardian ad litem

Deposition of Elisha Freeman of Kane County
State of Illinois a witness aged about forty years
produced sworn and examined before W. D.
Barry Judge of the County Court in and for
the County of Kane and State aforesaid on
the 31st day of January of 1856 at about
10 o'clock P. M. at his office in the Town
of St Charles in said County in a suit pending
in the Cook County Court of Common Pleas
wherein Washington Corbhan is complainant
and Richard W. Swift Morris Hutchins & Elisha
S. Morris et al - are defendants in pursuance
of the notice hereto attached - J. H. Ferguson

appeared as attorney for the ~~Defendants~~ ~~complainant~~ ~~no one~~ for the Defendants -
 Qnt 1 What is your age place of residence and occupation

Ans 1 My age is about forty years my place of residence is in St Charles my business a Banker -

Qnt 2 Do you know the parties to this suit; if any which of them and how long have you known each of them respectively -

Ans 2 I do not know the plaintiffs I do know the defendants Swift and Morris by sight Hutchins ten or twelve years -

Qnt 3 State whether you are acquainted with the hand writing and signature of the Defendant Morris Hutchins if Yes: state your means of knowledge -

Ans 3 I am acquainted with it so far that some years since I have seen his signature to some papers such as notes a number of different times which he said Hutchins) recognized as such -

Qnt 4 Look upon the paper writing now shown to you & state your belief from your knowledge of the hand writing of the said Morris Hutchins whether the signature purporting to be that of Morris Hutchins

73- is the signature of the said Morris Hutchens
(witness examined the paper) marked "A" hereto
attached)

Ans 4 From my knowledge of what I have seen
of his hand writing I believe it to be his and
have no doubts of it -

Elisha Freeman

State of Illinois
Kane County ss I, the Subscriber Judge
of the Kane County Court do certify that the
above Deposition was taken by me at the time
and place mentioned in the caption thereof
the said witness was first duly sworn and that
the said Deposition was carefully read to
the witness and signed by him -

Dated January 31st 1856

W. D. Barry
County Judge

Richard B. Smith

Washington Congham
Oliver R. W. Lull Adm^r
of Ora Gates & William L. Church

In the Cook County
Court of common Pleas
On Chancery
"Bill"

I, John M. Wilson Judge of said Court do
hereby certify that at the hearing of this cause
the Defendant Congham & Lull introduced

with the consent of the Jff the within depo-
sition & made the same as evidence in this cause
the 2^d Jffs also introduced & read the Record
of this court in the case of Conghran vs Gates
General Docket No 2090 -

John M. Wilson *read*

Copy of Writing Marked 'A' referred to in
Deposition of Elisha Greenman

This Article of agreement entered into this
thirteenth day of March one thousand eight
hundred and forty seven. Between Ira Gates
and Morris Butchers both of the State of Illinois
and parties of Book and Name -

The conditions is as follows to wit: The said
Ira Gates is to rent or hire the tavern stand
with the privilege of getting firewood suffi-
cient for the use of the House which he now
occupies and known as Gate Cottage situa-
ted in Cook County near the plain over at the
junction of the St. Charles and Elgin roads
for the sum of four hundred dollars a year
which is to be paid on or before the twenty
fifth day of March next. And it is agreed
that the four hundred dollars shall draw
twelve per cent per annum after the paym-
ent thereof. And it is further agreed
that the said Gate shall leave all of his

furniture which he now has with the exception of two beds, two headsteads and bedding and other necessary furniture for the use of his own private family -

And it is agreed that the said Gutchens shall have the said town stand for the term of two years more by his paying the same amount of money annually in advance thereafter on the same day of the month as above named, drawing interest at twelve per cent when paid - And it is further agreed that the said Gutchens shall finish off the barn which is now up and the frame which is nearly ready to be raised in a good workmanlike manner furnishing means himself to do the same which shall be done on or before the first day of Oct next as above described - And it is further agreed that the said Gals at the expiration of the time agreed on for the rent of said town shall pay to the said Gutchens the amount of money which the said lumber and nails shall cost in Chicago and also a good Carpenter which the said Gutchens shall hire the sum of One dollar per day which shall be paid for at the of the lumber for the barn -

And it is further agreed that the said Gutchens shall get every thing in readiness

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In stonning the two wells that is now dug betw
een the House and barn furnishing the
stone on the spot for stonning the same
and then the said Gatis shall either lay the
said stone in the two wells or furnish a hand
to do the same - And it is further agreed
as a condition hereinafter mentioned between
the said Gatis and Gutchens that the said
Gutchens shall furnish money sufficient
to clear the town stand from the incum-
brance which R. H. Swift has in pledge for
money due said Swift by the said Gatis
by the fifteenth day of May next -

The said Gutchens is to furnish & the
money as above mentioned to pay the debt
to R. H. Swift and the said Gatis to allow
the said Gutchens the interest which he
may have to pay for the money which
shall be deducted out of the next Rent
of the said town which shall not exceed
twelve percent after the first day of November
and the said Gutchens shall lay down
the bar room floor by the said Gatis
paying the said Gutchens what the
lumber shall cost at the yard at the
same time of the payment for the lumber
for the barn - And the said Gatis is to
furnish nails in the woods to fence the
yard and garden spot - And it is agreed

that Gates shall pay to Hutchins a reasonable compensation for his trouble in finding the loan of said money. And for the fulfillment of the above named articles of agreement we bind ourselves our heirs and assigns under a penalty sum of five hundred dollars which shall be paid by the one party to the other which shall fail to fulfil the condition of the within articles of agreement in

And for the security for the money which the said Hutchins shall furnish to release the taxym stand from the hands of R. E. Swift he the said Hutchins shall have a deed from R. E. Swift free from encumbrances, and the said Hutchins shall give the said Gates a bond for a re-deed when the money shall be refunded by him or otherwise - And all the money that the said Hutchins cannot pay within his own means the said Gates shall pay the extra interest over and above twelve per cent after the first day of Nov next - given under our hands and seals this thirteenth day of March one thousand eight hundred and forty seven -

Wm Gates { Seal }
 Wm Hutchins { Seal }
 J. H. Souley
 J. E. Smith

And thereafter to wit: on the twenty second day of April in the year of our Lord one thousand eight hundred and fifty six, said day being one of the days of the Hil-
 vacation then the following further proce-
 dings were had in said cause and ent-
 ered of Record to wit:

Richard H. Smith	} In Chancery
Washington Cunningham	
Dr. Yates & William	
L. Church	
	} Bill

And now come the
 said parties by their solicitors and this
 cause came on for hearing, upon the bill
 answers and exhibits and proofs and
 was argued by counsel and the court
 being fully advised in the premises do
 find that the equity of said case is with
 the complainant and do order ad-
 judge and decree that the injunction
 heretofore granted in this case be and
 the same is hereby made perpetual
 And that the said Washington Cunningham
 be forever restrained from the collecting
 of debts in said bill described out of
 the premises herein after mentioned said

decree or judgment being a decree of the
 Court County Court rendered in vacation
 on the seventh day of September A.D. eig-
 hteen hundred forty eight in favor of
 Washington Congham against Ira Gates
 for the sum of one hundred and twenty
 eight dollars and twenty five cents and
 costs of suit, and ordering an execution
 against complainant's land described
 as follows to wit: all that piece of land
 commencing at the South East corner
 of the North West Quarter of Section Eleven
 (11) Township thirty nine (39) North of Range
 Twelve East of the third principal meri-
 dian running thence West on the south
 line of said Quarter Section Twelve (12)
 rods, thence North on a parallel line
 with the East line of said Quarter sec-
 tion to the township road leading
 towards Elgin thence East twelve (12)
 rods to the East line of said Quarter
 section; thence South on the East
 line of said Quarter section to the
 place of beginning together with
 the Survey stand situated thereon
 with the out buildings and all
 the appurtenances belonging to the
 premises being the premises commonly
 known as the Gates Cottage in Cook

County: and that the said William L Church and his successors in office be forever enjoined and debarred from delivering the certificate of sale of the above described premises to said Washington Cunningham or any other person whatsoever or from executing or delivering any deed of said premises under the sale made by him as Sheriff to said Cunningham or any one else - and that the defendant Washington Cunningham pay the costs of this suit on or before twenty days after the adjournment of this court and in default thereof that execution issue thereon

State of Illinois
County of Cook } S. S.

I Walter Kimball Clerk of Cook County Court of Common Pleas in and for said County do hereby Certify that the foregoing Transcript is a full true and perfect Copy of the Record proceeding and Decree in a certain cause lately pending in said Court on the Chancery side thereof and Bill filed by Richard K Swift Complainant against Washington Conger son. Oliver R M Lull Administrator of Ira Gates and William Church. Defendants in the said suit and of the whole thereof as the same now remain on file of Record in my office

In Witness Whereof I have hereunto set my hand and affixed the Seal of said Court. at the City of Chicago this 11th day of June A.D. 1856.

Walter Kimball



In the Supreme Court
of the State of Illinois for the 3^d Grand
Division. of June Term A.D. 1856

Washington Congdon
Oliver R. N. Pull Adm^r of
Jas Gates deceased and
William L. Church

vs
Richard H. Swift } Error to the
Cook County
Court of Com=
mon Pleas.

And now come the said
Plaintiffs in error by Counsel with
through their Attorneys and say
that in the proceedings now
pending & above said there
is manifest & material error ap=
pearing of record therein in this

That the bill of complaint does
not make or state such a case as
entitles the party complainant there
in to any relief in a court of equity

That the bill is defective in
not making Morris Gutchens a
party defendant or complainant

3

That no disposition is made
of the depositions filed by said
church to said Bill of complaint
and a decree taken against him
after his appearance without an
order or his default for want
thereof interest.

4

That the evidence upon the
court below did not justify the
decree rendered by the court and
such decree was rendered upon
insufficient evidence.

5

That the decree of the court
below should have been for the
defendants below dismissing the
Bill of complaint and not against
them in favour of complainant
below.

6

That the court erred in sustaining
decree to Cross bill.

And in other respects said
proceedings are erroneous against
law & the equity of the case.

Wherefore they may judgment
and that said decree may be
wholly reversed &c.

Samuel H. May Jr
for Off in error

It is conceded that at the hearing of
this case the papers in the case
of *Coughron vs Gates*. No 2090, of the
Common Pleas Court & the different
deeds & conveyances, ^{judgments} although to as well
in Bill of complaint as answer of
defendants, were not in evidence &
was not further embodied in this
record, also that the absolute deed referred
to in Bill as of date of Oct. 1846 was
taken merely as security for advances
incurred in the trust and -

Wm. O. Morris
for Defs in error

Wm. H. May Jr
for off in error

Richard D. Swift
at
Warminster, Cuyahoga

Richard D.
Swift of B. S. Means

H. J. Davis will
file one on the
same side in today

W 32.

Washington Courthouse

Richard Swift

Filed June 16 1856

by Leland
Clerk.

Fees Drawn \$18.00
paid by Depts. Secy

RICHARD K. SWIFT, <i>vs.</i> WASHINGTON COUGHROH ET AL.	}	SUPREME COURT. <i>Erro to Cook County Court Common Pleas.</i>
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ABSTRACT AND ARGUMENT.

On the 27th Feb., 1851, Swift filed his bill in the nature of a bill of review, against Coughron, Gates, and Church, then sheriff, to enjoin them from the making and receiving of the certificate and deed for the sale of the property in question. The junction was granted and perpetuated on hearing, etc.

The bill shows, that, on April 18th, 1846, Gates was indebted to Swift, in the sum of \$949 75. To secure the payment thereof, Gates and one Whaples, made their note for that sum, payable in one year; and also a deed of trust to Morris, of said property, with other estate, with a power of sale thereof in case of default in payment of their note when due, etc. Coughron, in answer, admits the due execution of the note and deed, but denies there was any such indebtedness; and says, the note was given for a loan of six hundred dollars, and the balance was for interest added to the note. (*Of which there is no proof*).

The bill also shows, that, on 17th June 1847, the property in question was sold on that day in pursuance of the power in the deed, and conveyed to Swift by Morris for \$500, and upon the 26th June, Swift, ^{sold} by deed, with full covenants of seizure, warranty of title against liens, etc., unto Gutchees for \$1900. (*All which the answers admit.*)

The bill then states, that Swift, for \$500 purchased in the outstanding better title from Hubbard, on 28th Feb., 1848, who was the purchaser thereof from the Sheriff, under a prior judgment lien, against one Steel, who held the legal title, while the judgment lien ^{existed} ~~rested~~ when he deeded the property to Gates. Coughron admits the legal title was in Steel as alleged, but say, the sale to Hubbard was at Swift's request, and by fraud and collusion. (*Which are not proved*),

The bill states, that, on the 1st October, 1846, Gates made a deed of all his interest in the property to Swift for \$500. Gates and Coughron deny this, and say: If any such deed was

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[It appears he was not made a party by amendment of the petition or otherwise; so the case stood on docket for a year and a half, consequently]. On 1st March, 1850, on motion of Mr. Collins, Attorney for Gutchees, the cause was stricken from the docket at Coughron's costs, judgment so entered on record, in the presence of his counsel, as appears by their own affidavits; (and I would here remark that this order and judgment has never to this day been set aside, cancelled, or in any manner vacated.)

At the next Fall Term, Mr. Lull, Attorney for Coughron, gave notice to Collins, that they would on the 13th Nov, move the court for a *new judgment*. But it appears on 15th Nov., on motion of Coughron's Attorney, the court *set aside* the order of the 30th Oct., 1848, and reinstated the *old* judgment or decree; on which an alias execution was issued, and the property sold to Coughron on 28th April, 1851, for the amount, interest, and costs, but no certificate or deed was made to him by Church, the sheriff, or costs paid, or execution returned, when the injunction was granted in this case.

Argument.

This order of 15th Nov., 1850, is fraudulent and void; nor had the court the power so to make it; for the reason that neither Gates or Gutchees had any notice of the intended motion, and the notice to Collins was after his relation as Gutchees' Atty.

had ceased with the striking of cause from docket, at Coughron's costs, as aforesaid. And for the further reason, that the Court could not make such an order as that, of the 15th November, without first setting aside the order and judgment of 1st March, 1850, aforesaid, all which Lull well knew to exist, and which are admitted by the answers 11 R. Ill. 646, Goodrich vs. Huntington, in point

The bill then proceeds, to-day, that Swift had paid Coughron for this work by Gates' orders, and had Coughron's receipts therefor, to-wit: in three sums, amounting to \$85, which was all they had asked him to pay, and which has not been credited on the account filed.

This is denied by the answers. But they admit the payment of the \$85, by Swift, and alledge it was paid for other work not stated in the petition. But what other it was, and when done, and where done, and on what account done, is not stated in the answers. Yet there is another answer to this point that is conclusive—in fact two others—each of which is sufficient against this claim of Coughron's.

1st. It is a rule in equity, that if a defendant admits the charge of payment alleged in the bill, but sets up new matters in ~~in evidence~~ *in evidence* ~~thereof~~ thereof, he must prove this new matter, otherwise the Court must find the fact to be against him. No such proof has been made, Secondly: The bill proceeds in charging, that the old judgment was obtained by collusion and fraud between Gates and Coughron, to cheat and defraud Swift, and to oblige him to pay the demand, and that Coughron was not entitled, either legally or equitably, to a lien on the premises, under the Statute. — The answers deny these two allegations. [But, the only evidence of the existence of the demand is the judgment confessed on it.— No satisfactory or credible proof is made of its justice, or that it was for a full, or legal, or valuable, or bona fide consideration, notwithstanding Swift charges it to be the product of fraud and collusion as aforesaid, without legal or equitable foundation. Proof must be made that the debt is a just demand in all such cases as this. See 2nd Dana, R. 476. Roberts on Frauds, 487, [old addition] are in point.

This point is conclusive in this case, showing that the decree as to Coughron should be affirmed.

But Coughron sets up a lease and agreement by Gates to Gutch-

ees under his void judgment and sale, and claims the right as judgment creditor to redeem the ; remises : and that Gutchees is a mere Trustee for Gates, in taking ; and holding the property.— [Before Coughron can assail Gutchees' title, he must first show a valid judgment, founded upon a bona fide debt, against Gates.

A judgment or decree founded upon fraud and collusion, is a poor affair to assail even, a fraudulent conveyance of Gates.— Courts of equity do not aid such parties, or such judgments. Here we have no proof of the validity of this demand, out-side of the collusive confession. The whole proceeding from beginning to end is a mass of irregularities and imperfections, *and are void.*

Mr. Lull is attorney and counselor throughout for Coughron—he is Administrator and Attorney for Gates' estate, filing answers, making concessions,—does not know the heirs of Gates, or where they are. But again, Coughron's solicitors file a demurrer for Church, a defendant, who can not otherwise answer. They then file a cross-bill—then file another bill, independent, both asking to compell Church to convey the lands to Coughron under these void proceedings, claiming the title in fee to be in plaintiff in error. Although the Court ought, it is true, to have disposed of the demurrer filed in Gutchees' name, by Coughron's solicitors before hearing and deciding the cause, yet it is a rule of practice in the Supreme Court, of this and other States, not to allow a party to take advantage of an error, that is not to his prejudice. See Hardins' R. 76. 11th Ill. 229, 1st Scam. 301, 5th Gil. 26, 4th Gil. 511.

Gutchees alone can complain of this. So, when upon the whole record, if it appears that the decree is right, although the errors assigned, exist, the decree will be affirmed. 1st Bibb, 322, 6 Mon. 295, 609.

Besides the decree is not to Gutchees' prejudice; but is for his beneficial interest. It was Swift's duty to protect him. He is not necessary ^{party} in this case. There is a distinction between active and passive parties. The former is such as are so involved that no decree can be made without their being in Court. The latter are such that complete relief can be had to those who seek it, without effecting the interest of the passive parties. 1st Wash. R. 517, Joy vs. Wortz.

So if the absent parties have nothing to perform in the decree, the rule requiring all to be made parties is founded on public policy, yet courts of equity will not suffer it to defeat justice, if they can dispose of the merits of the case, without prejudice to the rights of absentees. Story, Eq. Pl. 77, **SS.**
—————228, 542. **SS.**

With these suggestions, we submit the case on our part to the consideration of the Court.

B. S. MORRIS,
For Defendant, in Error.

STATE OF ILLINOIS,

Supreme Court,

ss.

The People of the State of Illinois,

To the Sheriff of the County of Cook — Greeting:

BECAUSE in the record and proceedings, and also in the rendition of the judgment of a plea which was in the ~~county~~ ^{Cook County} court of ~~Common Pleas for Cook County~~, before the Judge thereof, between Richard R. Swift Plaintiff & Washington Boughron & William Church & Oliver R. W. Lull ~~admr. of Ira Gates deceased~~

Defendants it is said that manifest error hath intervened, to the injury of the said Defendants

as we are informed by ~~their~~ complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the state of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said Richard R. Swift

that ~~he~~ be and appear before the Justices of our said Supreme Court, at the next term of said court, to be holden at Ottawa, in said state, on the ~~Second~~ Monday in ~~June~~ next, to hear the records and proceedings aforesaid, and the errors assigned, if ~~he~~ shall see fit; and further to do and receive what said court shall order in this behalf; and have you then there the names of those by whom you shall give the said Swift

notice, together with this writ.

Walter B. Scates

WITNESS, the Hon. ~~Samuel H. Treat~~, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this ~~8th~~ day of ~~June~~ in the Year of Our Lord One Thousand Eight Hundred and Fifty-six

A. Leland

Clerk of the Supreme Court. Dr.
By J. B. Rice Deputy

Washington et al
as
Richard K Swift
Sci fa.

Served this writ on the
within named Richard
K Swift by reading to
him the 16th June 1856.

Fees	1 Service	50 ^c	
	1 Miles	5	
	1 Return	10	65 ^c

James S. Beach Coroner &
acting Sheriff of Cook Co.
By J. W. Snow Deputy

Filed Oct. 9th 1856

L. Leland
Clerk

Washington Congress

Richard K. Supt

In Supr. - In Supreme
Court

And now comes the said
Richard K. Supt defendant in
the said that there is no such
in said record of proceedings
as is alleged; and he prays
that said judgment may be
affirmed with costs

Shirley W. W. W. W.
Att'y for defendant
in Supr.

In Supreme Court

Richard R. Swift

- vs -

Washington Bankers

Do and others

Filed May 15, 1887

L. Seland
Clerk

Shimura, Arato, Dames
Attys for Defendants
where

Chicago Jan^y 27th 1854

New A. B. Seater

C. J. Sup Court Ill

W. H. L.

Enclosed you have
a stipulation in two cases at Ottawa-
to withdraw the files. The object of this
is, that A is as dependants attys
say an imperfect record. Both are answer
to by them on the first call of the clerk,
and hence have agreed, with the permission
of the judges, to have the records sent to me
to be corrected. No think by doing so, we
will save ourselves some trouble. Please
let the records be sent to me by express
Very truly

W. H. L.

Springfield
Feb 2/57

The Clerk will send records by Express
to Mr. Waite as per agreement
filed

W. B. Scates, Clerk

Mr. Coughnon

O R Sullivan of Gates.

vs

Richard K Smith.

Memoranda of

cases may be sent by exp. prep to
the attys of either of the parties
at Chicago.

Sup Court

2 Cases

It is agreed that

the records in these

cases may be sent by exp. prep to

the attys of either of the parties

at Chicago.

Wm J. Bump

attys for R. Smith

127 N. Dearborn

for defendants

No.

THE

**UNITED STATES
 EXPRESS CO.**

WILL FORWARD
 BANK-NOTES,
 GOLD, SILVER,
 MERCHANDISE & PACKAGES

DAILY TO

NEW YORK,	PHILADELPHIA
BOSTON,	ALBANY,
BUFFALO,	DUNKIRK,
CLEVELAND,	COLUMBUS,
DAYTON,	CINCINNATI,
SANDUSKY,	TOLEDO,
CHICAGO,	ROCK ISLAND,
St. LOUIS,	MUSCATINE.

AND OTHER PRINCIPAL

Towns and Cities

Of the West and South-West,

CALIFORNIA

AND

EUROPE.



UNITED STATES EXPRESS COMPANY.



GENERAL EXPRESS FORWARDERS.

Received of

L. B. Rice

Marina Feb. 4th 1857

One Package

said to contain

Records

valued at

Dollars, and marked

No. 10. White

Chicago

which we undertake to forward to

Chicago

only perils of navigation excepted.

And it is hereby expressly agreed that said United States Express Company are not to be held liable for any loss or damage, except as forwarders only, nor for any loss or damage of any box, package or thing for over \$150, unless the just and true value thereof is herein stated; nor for any loss or damage by fire; nor upon any property or thing unless properly packed and secured for transportation; nor upon fragile fabrics, unless so marked upon the package containing the same; nor upon any fabrics consisting of or contained in glass

FOR THE PROPRIETORS.

Rathbone & Co. Agents.

RICHARD K. SWIFT, vs. WASHINGTON COUGHROH ET. AL.	}	SUPREME COURT. <i>Erro to Cook County Court Common Pleas.</i>
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ABSTRACT AND ARGUMENT.

On the 27th Feb., 1851, Swift filed his bill in the nature of a bill of review, against Coughron, Gates, and Church, then sheriff, to enjoin them from the making and receiving of the certificate and deed for the sale of the property in question. The junction was granted and perpetuated on hearing, etc.

The bill shows, that, on April 18th, 1846, Gates was indebted to Swift, in the sum of \$949 75. To secure the payment thereof, Gates and one Whaples, made their note for that sum, payable in one year; and also a deed of trust to Morris, of said property, with other estate, with a power of sale thereof in case of default in payment of their note when due, etc. Coughron, in answer, admits the due execution of the note and deed, but denies there was any such indebtedness; and says, the note was given for a loan of six hundred dollars, and the balance was for interest added to the note. (*Of which there is no proof*).

The bill also shows, that, on 17th June 1847, the property in question was sold on that day in pursuance of the power in the deed, and conveyed to Swift by Morris for \$500, and upon the 26th June, Swift, by deed, with full covenants of seizure, warranty of title against liens, etc., unto Gutchees for \$1900. (*All which the answers admit.*)

The bill then states, that Swift, for \$500 purchased in the outstanding better title from Hubbard, on 28th Feb., 1848, who was the purchaser thereof from the Sheriff, under a prior judgment lien, against ^{*one*} Steel, who held ~~the~~ legal title, while the judgment lien ^{*existed*} ~~rested~~ when he deeded the property to Gates. Coughron admits the legal title was in Steel as alleged, but say, the sale to Hubbard was at Swift's request, and by fraud and colusion. (*Which are not proved*),

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1st. It is a rule in equity, that if a defendant admits the charge of payment alleged in the bill, but sets up new matters in ~~ev~~ *avoidance* thereof, he must prove this new matter, otherwise the Court must find the fact to be against him. No such proof has been made. Secondly: The bill proceeds in charging, that the old judgment was obtained by collusion and fraud between Gates and Coughron, to cheat and defraud Swift, and to oblige him to pay the demand, and that Coughron was not entitled, either legally or equitably, to a lien on the premises, under the Statute.—The answers deny these two allegations. [But, the only evidence of the existence of the demand is the judgment confessed on it.—No satisfactory or credible proof is made of its justice, or that it was for a full, or legal, or valuable, or bona fide consideration, notwithstanding Swift charges it to be the product of fraud and collusion as aforesaid, without legal or equitable foundation. Proof must be made that the debt is a just demand in all such cases as this. See 2nd Dana, R. 476. Roberts on Frauds, 487, [old addition] are in point.

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A judgment or decree founded upon fraud and collusion, is a poor affair to assail even, a fraudulent conveyance of Gates.— Courts of equity do not aid such parties, or such judgments. Here we have no proof of the validity of this demand, out-side of the collusive confession. The whole proceeding from beginning to end is a mass of irregularities and imperfections, *and are void.*

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So if the absent parties have nothing to perform in the decree, the rule requiring all to be made parties is founded on public policy, yet courts of equity will not suffer it to defeat justice, if they can dispose of the merits of the case, without prejudice to the rights of absentees. Story, Eq. Pl. 77, 55 228, 542. 55

With these suggestions, we submit the case on our part to the consideration of the Court.

P. S. MORRIS,
For Defendant, in Error.

Richard K. Supt-
at
Washington Cyprian
in Chancery

~~W. F. M.~~
B. S. Morris
Prof.

W. F. M. will
file one on the
same side as on
day or two

WASHINGTON COUGHROHON

vs.

SWIFT ET AL.

This bill is brought to set aside and vacate the entry of a judgment in the case of Coughron *vs.* Gates, for \$125.28, in vacation Sept. 7, 1848—on the ground that it injuriously affects the interest of the Grantee of said Swift, Gutchues, who not made a party.

The whole record of the case of Conghron *vs.* Gates is set out in the bill, and if it shall appear that on the face of that record the rights of Swift or Gutchues could in no way be injuriously affected by these proceedings, the bill should have been dismissed for want of equity and the judgment of the Court must be reversed. This is the first error assigned.

From the bill in this case it appears that the petition sets up the doing of work under contract with Gates, made the 1st Dec. 1846—work done about the middle of January, 1847.—Then an arrangement was made to extend time of payment to January 1st, 1848, and this petition filed Sept. 7, 1848, and Swift and Gutchues not parties. Now, upon this state of facts, it is too clear to admit of doubt that there was not the shadow of a claim as a lien on the property.

As a general judgment against Gates any sale of the property was a mere trespass, and could give no one a shadow of claim under the state of facts presented by the bill.

Gates' title is by the bill shown, by conveyance duly recorded, to be out of him and in Gutchues, when this Coughron *vs.* Gates proceeding was commenced. They, Swift and Gutchues, not being parties to that proceeding, it could not affect their title (17 Ills. 300) and the only operation of the judgment and proceedings under it would be, to vest in the purchaser at the sale what, if any, interest Gates had in it.

2d. Then does the evidence introduced change this result? It only shows the additional fact that Gates, by the contract with Gutchues, recorded May 15th 1848, before Whaples or Morris acquired title, had an interest in the premises.

Now if Swift was liable to Gutchues on his warranty to him, and the tendency of the facts proved showed that Gates had an interest which might be taken and sold, and that interest proceed from the act of Gutchues himself, any consequence of a sale thereof could not be assigned as a breach of Swift's warranty, and the Court should have dismissed the bill as the whole case is based upon a possible injury to Swift as warrantor of Gutchues, and the whole case has been made to turn upon the regularity of the proceedings in the suit of Coughron *vs.* Gates. If the execution in that case can be sustained, we are entitled to hold whatever interest Gates may have in the land—consequently the proceedings in that case have received the principal attention of the counsel on both sides.

W. T. BURGESS.

Off. argt.

Filed May 3rd 1887
L. Leland
Clerk

104

Supreme Court.

WASHINGTON COUGHRON,

VERSUS

MORRIS GUTCHUES Interpleading with
IRA GATES.

ERROR TO COM. PLEAS COURT,

Cook County.

This case comes here upon the decision of the Court below in refusing to correct a record entry.

The first question is, were all such persons as were interested in the motion, notified of its pendency? To answer this it will be necessary to ascertain the state of the original record, and who were thereby affected, or to be affected by enforcing it.

The parties were originally Coughron, Plff., and Gates, sole Deft. to a judgment by confession for \$128.25, and costs, with an order for special execution. This is all that the original judgment amounted to; calling it a mechanic's lien don't make it so. The party sues out a summons on the common law side of the Court, to answer "in a petition for a mechanic's lien, to the damage of said Plaintiff of \$200." Before the term of the Court when that writ was returnable, the Defendant authorizes an Attorney to appear for him in that cause, and confess a judgement for the amount of the Plaintiff's claim, and thereupon a petition is filed containing a sufficient statement to entitle the party to recover, if filed as a declaration, and the plea of the general issue interposed alone. To this the Defendant, by his Attorney, files a *cognovit actionem* for \$128.25, amount of the items of Plaintiff's demand as attached to his petition, and the Court in vacation renders a common-law judgment for that amount, and a special execution.

It is not pretended or claimed for the purposes of this case, that the Court could render any decree on the chancery side of the Court, establishing a lien, as such, on property in vacation. It is a question of doubt whether the Court at that time possessed power to render a decree upon confession of parties in vacation; something would depend upon the character of the decree. If it was upon a mere money demand, to be satisfied by an ordinary execution, it is difficult to see any good reason why, under the broad language of the statute giving a Court having both chancery and common-law jurisdiction, power to render judgment upon confession, why it cannot as well render a money decree as a money judgment. And in any event, such a decree would render our Statute to be nothing but a judgment, and in case of doubt, would be referred to that power of the Court, under which it might stand consistently with the law and the intention of the parties.

But the language used in the entry is nothing but the language of a common-law judgment, establishes no lien, and directs that execution issue to make it of certain lands, describing them.

This, then, as between the parties, is merely a judgment. Can it be anything else as to third persons? Are they at liberty to treat it as a decree establishing a mechanic's lien adverse to their interests, when upon its face it is no such thing? Under the mistaken view that this judgment did, or might effect injuriously, their rights, Gutchues files the affidavit of Swift and makes a motion to set aside this judgment, and be let in to defend, and discloses the fact that Swift had, under trust deed from Gates, sold the property described in the judgment, bid it in himself, and made a Warranty Deed to Gutchues. In reply to that, Coughron discloses the fact that Gutchues had leased the premises and agreed to take up the incumbrance to Swift, receive a deed from him, and when repaid by rent or otherwise, to reconvey to Gates—these facts as to state of title are not denied.

At this time, then, when the motion to interplead was first made, the only parties interested were Gutchues, holding warranty deed from Swift, and Gates and Coughron.

The petition states facts upon its face that show that no proceedings under it could by any possibility affect Gutchues' interest in the land, whatever it might be, as more than six months had elapsed after work done and time for it to be paid for had elapsed. (Sec. 24 of Lien Law.)

The work was done under a general employment, and no time set for its payment; it was then under the law to be paid for as soon as completed. The petition then says that when the work was done it was then agreed that Coughron should not be paid for it until one year from that time, January 1st, 1848—in other words, the original contract was modified, and payment of the money that was then due at the time of completing the work, for it was extended for one year. By this extension Coughron lost his lien, under the decision of 3 Scam. 179. The original contract is what controls in these cases of liens, as to the time when they attach and how soon they must be enforced to save them.

This state of the case, that is, that Coughron had a lien but had lost it, that Gutchues as a prior incumbrancer on the property, could not be injured, appeared on the face of the papers, and it must be presumed was within the cognizance of the Court below, and therefore is important in correctly understanding the character and effect of the orders made by the Court and their construction.

I am under obligation to the counsel (Mr. Morris) for his admissions on page 3rd of his printed brief, as to the law of the case, and the rights of the parties.

It is clear under the facts as presented in the record then before the Court—1st, That Gates had an interest that might be sold on an execution. 2nd, That Gutchues was but an incumbrancer. 3rd, That the defect in his title converting him to an incumbrancer, was not the act of Swift, but his own act. 4th, That his interest as an incumbrancer was by laches of Coughron prior to his (C's) lien as a mechanic, and must be redeemed by him. 5th, That Swift had no longer any occasion to take care of Gutchues' interest.

Upon this motion on the affidavit of Swift, and nothing to show that Gutchues interposed in the matter personally, except that Collins, as his Attorney, moves to open the judgment, &c., a cause is placed on the docket entitled "Washington Coughron vs. Morris Gutchues, who interpleads with Ira Gates." This is not Coughron vs. Gates, but Coughron vs. Gutchues. The case under this entitling remains on the docket of the court without further action taken by either party until March, 1850, when the order is made to correct the record entry of which this motion is now interposed.

Execution was issued and parties' land sold, and redemption about to expire, when Swift still troubled with the nightmare of a mechanic's lien, files, April 27th, 1851, a bill to restrain the sheriff from making deed, and to set aside sale. After this bill was filed Gutchues sells to Whaples, July 7th, 1853, and Whaples to Morris, Sept. 9, 1853.

Then Morris, Whaples, Gutchues, Swift and Gates are, or may be, interested in resisting this motion to correct, and they are all notified and appear—Gates consents—the others resist.

There are two constructions to be put on the order of March 1st 1850; one that it merely dismissed the interpleader; the other, that it dismissed the original cause. If the latter, then the question is, did the order of Nov. 15, 1851, on notice to Collins, the Attorney of Gutchues, authorise the order that was then made? If it did, then the execution and sale are regular; if it did not, does it lie in the mouth of the resisters, who are mere incumbrancers to object?

Which of the two constructions shall we put on the order? It is clear from the affidavit filed, that so far as the interests of Gutchues and Swift were concerned, there was no object to be gained by their interpleading. Coughron could not establish a lien upon his own showing; they were not parties to it, and could not be affected by it. They, even if made parties, the proceeding conceding that their claims were prior to the claimant's, could not be affected by it. This interpleader, then, being a useless proceeding, is it not to be presumed that the parties and the court were dismissing the auxillary motion to the original cause, correctly entitled in the motion itself, and not the original case. Again, under that motion, the Court had no power to interfere as between Gates and Coughron. Gates admits his indebtedness and gives a judgment. The Court might stay that judgment, as to third persons, but could not upon their motion set it aside as to the party defendant confessing it, and yet Swift, the guardian of Gutchues, not content with taking care of his interest, also wants to protect Gates and set aside a judgment as to him, when there is not a shadow of pretense that Gates, ever contended that it was wrong.

This should have been the character of the orders of Oct. 6 and Oct. 3, 1848; they should not have affected the whole proceeding of Coughron vs. Gates, but only so far forth as it affected Gutchues' interests in the land; and it is to be presumed that the reason why, as Chickerling says in his affidavit nothing further was done at the time because probably the counsel supposed those orders did not affect the rights of Coughron as against Gates at all, under that view dismissing the interpleader, would be sufficient, nothing further would have been necessary, Coughron could at once take out his execution. But when after court the matter is investigated, it is found that those orders were broader than were necessary, and operated to stay execution as against Gates himself, the counsel applies to the Judge, he says you had better wait until term time and then the proper orders can be entered so as not to be any question about it. The counsel, to do nothing in the dark, give notice to Gutchues' counsel of what they intend to do, and he makes no objection.

If, however, the Court should view this as an order dismissing the case of Coughron vs. Gates—then was the notice of Nov., 1851, to Collins, sufficient. At that time the only party outside of the record interested was Gutchues; so far as Gates was concerned, the papers on file were then sufficient to warrant a judgment against him,—and Whaples and Morris had not yet had their conveyances, they had notice when they acquired title, as the order was then made of record, the lease between Gates and Gutchues of record, and they notified by *les pendeus*—for from Oct. 1848, to the present, this property has been in litigation.

The notice is to Collins, the attorney of record for Gutcheus, entitled in Coughron vs. Gates, is directed to "J. H. Collins, Esq., att'y for Morris Gutcheus, who interpleads in above case with above defendant," is for the entering of a "new judgment in above suit," and service accepted by him. Was this sufficient notice? As to the time and manner and person, it was for the Court below to say—see 11 Ills., 59—and no objection seems then to have been taken to it. We are upon this question of notice cited by the counsel to 4 Scam. 409. The Court say that to reinstate a cause upon the docket, notice, accompanied by copies of the affidavit on which it is founded, should be given to the opposite party. The point of the case is that a copy of the affidavit must be served,—not that it must be served on the party and not the attorney—for in that case the notice was upon the attorney.

But a much clearer case is that of 11 Ills. 59, O'Conner vs. Mullen,—under which this notice is clearly sufficient, and the giving of notice is a matter for the Court below to regulate.

It is not now charged that Collins was not the attorney of Gutcheus, that he did not give him notice, or that he did not attend to the interest of his client. The motion is made before the Judge who made the original order; he seems to have been satisfied with the correctness of the notice, and the propriety of the order he then made. What was it? The order dismissing the interpleader still left the orders of Oct. 6, 1848, and Oct. 30, 1848, standing; they had to be vacated first, or such an order entered by the Court as was equivalent to it; until that was done no execution could issue upon that judgment. The dismissal of the interpleader, without further order, would not have that effect, and this is evidently what Judge Spring meant when he said it should be done in term. The attorney of Gutcheus is notified that such an application would be made, for I think that so far as he, Gutcheus, is concerned, the setting aside of those orders would come clearly within the notice. Its effect was substantially the same; no objection was made; Collins was an attorney practicing in that Court, and it is to be presumed that if he had objection to make he would have made it. He made none then,—the Court who was familiar with the matter, whose attention is shown to have been called to it in particular by application in vacation, allows it to be done. And who objects to it now, and for what reason? Gutcheus and his grantees who have acquired this property from him, with notice object to Coughron collecting his debt, subject to their rights whatever they may be. The reason assigned is that this was originally a mechanic's lien suit; that summons was issued before petition filed; that judgment was entered in vacation. Now these are mere irregularities; might be heard in the mouth of Gates, but not from third parties, who can only show that a judgment is as to them unjust, not irregular—against conscience, not against the practice of the Court.

This judgment as to Gates is final—it concludes him; no mere irregularity can vitiate it; his confession waived all that. The Court will as to him, presume that the parties intended what they did and could do. His, (C.'s,) lien was gone, but he had a claim upon Gates. Gates could say take your execution against this land and I will confess a judgment for the amount of your claim. There is nothing in this that is illegal—12 Iredell. N. Car. 88. If Gates had no interest, the judgment was a nullity as to the land. If he had, Coughron was entitled to it in satisfaction. And it is competent for the parties to stipulate as to the extent of a judgment, and it don't lie in the mouth of third persons to object.

The counsel in this case are extremely unwilling that we should confess our errors; they can't let us surrender—they will not accept a truce on any terms. We baptized our proceeding in its infancy "a mechanic's lien suit," and though even in that character, which it can hardly be said ever to have had, they not being parties to it, are and can be in no way bound by it, yet they still call it so, for unless they can harp on mechanics lien, they have no basis for their argument. They don't deny their character of prior incumbrancers—whom we now have a right to redeem from, but seek to raise a question upon the bona fidis and regularity of the assignment from Gates to us. Admit if you please that Gates confessed a judgment which was without any consideration whatever, yet such a judgment is competent for the redemption of lands from Sheriff's sales; is it not equally so for a redemption from a mortgage?

Could Gates, had he been disposed, set aside this judgment? Does not enough appear in the record up to and at the confession, to show that Coughron had a valid demand in contract for services rendered to \$128.25? Was not Clark sufficiently authorized to appear and confess it? If so, Gates himself cannot interfere—see 8 Blackford, 133. The judgment is good and final as to him—and is so as to all claiming under or through him.

The cases in chancery hinge upon this—that by their bill they charge that this suit is to enforce a mechanic's lien, and if a lien is established by it, it casts a cloud upon their title. But under the argument of the counsel on his third page, from the references to "3 Gibon" to "17 Ill. 424", and his remarks, it is difficult to see how they are to be injured, or that there is any equity in Swift's bill.

Coughlin et al.
vs
Swift

The argument of Mr. Waitt in my judgment utterly fails to show that Swift can by any possibility of means be injured by these proceedings of Coughlin. That is the first & main point to be discussed and upon that he does not say a word pertinent to the subject.

The Property in the case is described as the "Gates Cottage" it is so described in the trust deed in Morris deed to Swift & in Swifts deed to Gutchins.

Our Statute disposes of the effect of this case as noted. It is unlucky for the gentlemen that the Statute laws of 1822 are not the law when these matters were in course of being done ^{as in that case} ~~otherwise~~ // He. 300 might be in point.

They cannot redeem from us but we can from them. They are men in circumstances under our judgment we take the law.

W. J. Briggs

Coughlin's Bar

Swift

Pff. Reply

any

Mr. J. D. Smith
Coughlin's Bar
Swift
Pff. Reply
any

Supreme Court

Coughron et al

Suiff

vs } Error to Cook Corn. Phas-

I return this as a reply to points made by R. S. Morris Esq in his argt. which I did not see until after mine was printed.

So far as the Hubbard and is concerned it is as between the parties to this suit the buying in of an incumbrance for which in taking the accounts an allowance is to be made.

As to the charge of Fraud made by Suiff in the Coughron vs Gatis judgment, the Court made no proof whatever on the subject - Fraud is not to be presumed but must be proved. But fraud is a relative term - A thing that is fair & right between the parties Gatis & Coughron may or may not be fraudulent as to third persons & that depends upon whether or not the act injuriously affects the rights of such third persons. - In this case we say that Coughron claiming under his judgment must merely such rights as Gatis had in the lands subject to the rights of Gatchers, whether or not there was a consideration for his payment is a matter of indifference to Gatchers so long as

he gets his money upon the redemption
whether from Gales or his assignee even
a purely voluntary one - The fact that
he is voluntary don't prejudice them
It don't lessen their security or diminish
him of a dollar - If Gales had a
mind to give away his property he
don't give away any thing that belongs
to Gutchens or in which he has any
interest after his debt is paid which
congruous offers to do if not already paid
under the lease.

The principal point made by the
Defendant was the want of Gutchens as a
party. The facts disclosed upon the face
of the bill show the necessity of his being
a party - And the question can be
raised at the hearing upon the proofs
in the case, & then the party who
really should be the party complainant
is not before the Court at all. No reason
assigned why he is not - nor any reason
why Swift takes the part of complainant
as that Gutchens has vouched him
over to defend title - The difficulty is
that the passive party has suddenly
become active without any cause
as appears by the whole case.

The annex sufficiently shows
that the objection ~~for~~ the want of
party was taken in the Court below

W. S. Pugh

Coughron et al

vs

Swift

Reply to Argmt
of B. S. Morris
H

Filed May 19. 1857

L. Leland
Clerk

STATE OF ILLINOIS, SUPREME COURT,

To JUNE TERM, 1856.

WASHINGTON COUGHROH, OLIVER R. W. LULL, Administrators of IRA GATES, and WILLIAM CHURCH, Plaintiffs in Error, *vs.* RICHARD K. SWIFT, Defendant in Error.

Error to Cook Common Pleas.

ABSTRACT OF THE RECORD.

RECORD.

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APRIL 27, 1852, bill filed by Swift against Coughron, Gates, and Church, Sheriff of Cook Co.; sets forth that Gates, being indebted to Swift in \$949.25 on 18th April, 1846, made a note to him for that amount due one year from date, with Reuben Whaples as security; and also a trust deed by them, Whaples and Gates, to Buckner S. Morris, of that date, to secure the payment of said note upon certain tracts of land, among others what was known as "the Gates Cottage," with power, in case default in payment of said note, to advertise and sell said lands at public sale and convey the same to purchaser, and such sale to bar all right of redemption, &c.; said deed also contained covenants of warranty and seisin, &c., and that the property of Gates should first be sold; which deed was recorded April 20, 1846.

That said note was not paid, and said Morris advertised said premises for sale, (but does not say how,) and on 17th June, 1847, sold to Swift for \$500 the Gates cottage, the property of Ira Gates, and on same day Morris, under said trust deed, conveyed the said premises to Swift by deed, &c.

That on 26th June, 1847, Swift, for the sum of \$1900, conveyed said Gates cottage and other premises to Morris Gutchues.

On 28th February, 1848, Henry G. Hubbard *et ux.*, by deed of that date for \$500, conveyed to Swift "Gates cottage."

On 28th May, 1841, Randolph & Crane recovered a judgment in Cook Circuit Court against Ashbel Steele for \$170.98 and costs, which became a lien on lands of said Steele from and after 7th day of June, 1841. That on or about 6th day of June, 1842, execution to Sheriff of Cook County upon said judgment, and was returned by said Sheriff "no property found," and filed in Clerk's office.

That on 31st October, 1844, Steele became seized in fee of said premises by deed from Joel Parker, conveying said Gates cottage to him, as appears from deed of record.

That on 6th March, 1846, *alias fi. fa.*, issued on said judgment to Cook County, under which said lands sold to Hubbard, and on 6th July, 1847, lands not redeemed, Sheriff makes a deed to Hubbard, which is recorded.

By, and bearing date October 1, 1846, Gates, in consideration of \$500, "as expressed in said deed," conveyed said Gates cottage, among other premises, to said Swift.

On 30th May, 1848, Coughron sues out a summons against Gates to appear in the Cook County Court, to answer him in a petition for a Mechanic's lien, damages \$200, returned executed by reading, July 8, 1848.

RECORD.

Page 13.

On 7th September, 1848, petition filed by Coughron, setting forth that, in December, 1846, Gates pretended to be the owner of the Gates cottage; that he, Coughron, was a mechanic, and was employed by Gates to do work on the buildings on said premises by the day, at \$1.50 per day, but no time specified for payment, in pursuance thereof he did 85 and one-half days, amounting to \$128.25, which he claimed to be due him; that said work was completed by middle of January, 1847, and accepted by Gates; that, at the time of acceptance and completion of the work, he and Gates agreed that payment therefor should not be demanded until January 1, 1848; that said sum of money had not been paid, and he prayed that an order might be made for the sale of the premises, according to the statute in such case made and provided.

Page 14.

Page 15.

That among the papers in said cause is a power of attorney, authorizing any attorney to confess judgment for the amount claimed by said Coughron, dated Sept. 6, 1848, filed Sept. 7, 1848; also, a *cognovit*, signed by Henry A. Clark, dated Sept. 6, 1848, by which Clark, attorney of said Gates, confesses that Gates undertook and promised, as plaintiff had complained against him, and that he had sustained damages to \$128.25 over and above costs, for which he confessed judgment with release of errors, consenting execution might issue forthwith. Filed Sept. 7, 1848.

Page 16.

Page 17.

Affidavit by Lull that he saw Gates sign a power of attorney for confession of judgment, sworn to Sept. 7, 1848.

Page 18.

On 7th Sept., 1848, judgment entered in said Court for \$128.25 and costs upon said *cognovit*. On same day, a *fi. fa.* issued to Cook county to make out of said Gates cottage the said sum of money and costs, \$4.93, accompanied by a fee bill.

Page 19.

On 6th Oct., 1848, said Court ordered that a sale of said property which had been advertised for that day under said writ, should be stayed until the hearing of a motion made by Collins, attorney of said Gutchues. Accordingly sale was stopped, and execution returned without sale.

Page 20.

On the 30th Oct., 1848, the said Court ordered said judgment to be opened and the subsequent proceedings thereon vacated and set aside, and that Morris Gutchues be at liberty to come in and become a party defendant to the petition.

Page 21.

On the 1st March, 1850, on motion of Collins, attorney for Gutchues, said cause was ordered to be stricken from the docket.

Page 22.

On 15th Nov., 1850, on application of Coughron, order of 30th Sept., 1848, staying proceedings, vacated and set aside, and execution ordered to be issued on judgment.

Page 23.

On 17th March, 1851, *alias* special *sci. fa.* issued to Cook county on said judgment against said Gates cottage.

Page 24.

On the 8th April, 1851, property advertised for sale thereunder by William Church, sheriff, on 28th April, 1851, and on that day sold to said Coughron by the sheriff for \$165.91.

That the execution is still in hands of sheriff—no certificates of sale filed or delivered to Coughron, but he threatens to procure certificate and take possession of lands sold unless the same are redeemed according to law.

Page 25.

That, at time Coughron did the work set forth in petition, Ira Gates had no title to said lands upon which a lien could attach therefor, and whatever interest Gates had in premises was conveyed to said Swift and

RECORD.

Page 24.

Morris as is above therein set forth; that the amount loaned by Swift on sale to him by Morris has never been paid nor land redeemed therefrom.

That no petition was filed when summons issued by Coughron, and not until Sept. 7, 1848. Proceedings therefore irregular.

Page 25.

Swift paid Coughron for said work \$85, upon orders drawn by Gates on him for that purpose, in Swift's possession, receipted by Coughron.

Page 26.

No other sums were ever required from Swift or Gutchues for payment of said work, and the amount so paid full value of work done, and that in said suit by *Coughron vs. Gates*, Swift had no means of presenting his account for money paid to said Coughron as aforesaid, nor of showing injustice of said claim; That the judgment was obtained by fraud and by collusion between Gates & Coughron to cheat him, and unjust that he or those claiming under him should pay it.

Page 27.

That, at time of issuing said summons, Coughron not entitled to lien thereon, and his enforcing it is a fraud on Swift and those claiming under him, who took without notice of said lien.

Page 28.

General charge of combination about to enforce judgment, and pretend that said judgment is a valid and legal lien on said premises. Charges that Coughron acquired no right under the same to said premises.

Page 29.

Prayer. Answer without oath, that Coughron may be restrained in collection of judgment; that Church may be enjoined from delivering certificate of sale, and from making deed under sale; that Coughron may be decreed to cancel judgment so far as same may affect said premises; that the certificates may be surrendered up to be cancelled, and for further or other relief.

Page 30.

Process of summons and injunction against Coughron, Gates, and Church.

Page 31.

Bill sworn to April 27, 1852.

Page 32.

Injunction allowed by master.

Exhibit "A" sets out at length the petition of Coughron.

Page 37.

Summons and injunction writs issued and served on Coughron and Church.

Page 44.

Feb. 6, 1854, answer of Gates and Coughron filed.

Page 45.

Saving exceptions, denies Gates indebted to Swift to amount of \$947.29, admits he held note of Gates and Whaples for that amount, the consideration of which was Swift had loaned Gates \$600. Whaples went his security for the repayment thereof, with interest at about 55 per cent., and gave said trust deed to Morris, but whether correctly set out or not they do not know.

Page 46.

Deny any default in payment of note, but that previous to the time it fell due Gates and Morris, Gutchues made a lease in writing, a copy of which is made part of answer. That Swift knew of the making of it, assented to it, and took Gutchues note for \$400, the first payment of rent to apply on said note, and agreed to wait upon Gutchues a short time till he could go east and get the money to pay up balance of his, Swift's, lien, Gutchues agreeing to pay the same as soon as he could go and return. That while Gutchues was absent, Swift caused a sale of the premises to be made and bid them in for \$500, but whether directions of deed and as to time, place, and manner of sale complied with do not know, but charge premises sold at a great sacrifice, being then worth \$2,000, bid in by Swift, without consent of Gates, and in violation of his duty as a mortgagee.

Page 42.

RECORD.

Admit a deed was made by Morris to Swift, but require its production. Admit Swift and wife made a deed to Gutchues, but require its production.

Page 48.

Have no knowledge how much Gutchens paid Swift, but charge that he acquired the land in trust for Gates under the agreement, and whatever sums he paid beyond those paid to satisfy Swift's lien were paid in his own wrong, and cannot establish a specific lien on them therefor, but must look to Gates, who denies he ever requested him to pay the same.

That Gutchues went into possession of said premises under said lease with the consent of Gates; has ever since, by himself, or those claiming under him, been in possession thereof; and that rents that have accrued have long since paid Swift's lien.

Page 49.

Have no knowledge as to Hubbard's deed to Swift, but charge that the whole thing was a contrivance to perfect Swift's security upon the land.

Page 50.

Have no knowledge of Randolph & Crane's judgment, save as it appears by the record, but deny any execution issued thereon until after a year after its rendition; and deny Gates cottage was ever sold thereon; admits Steele's seisin, but charge he had other property liable to execution; deny the making of deed by Gates to Swift of October 1, 1846, or if made, done by way of additional security and in nature of mortgage.

Page 51.

Admits the proceedings in the petition of Coughron as charged in bill, as they appear by the records.

Page 53.

Except, that the interpleader of Gutchens was on his motion stricken from docket, and on 15th November, 1850, the previous order granted; on motion of Gutchues, vacated judgment ordered to stand in full force, and execution ordered to issue; admits issuing of *alias* sale of land thereunder for \$165.25 as lawfully might be done for the causes aforesaid; costs not paid, nor *fi. fa.* returned, owing to intervention of injunction.

Page 54.

That when said work and labor done, Gates was owner of the premises, subject to the lien of Swift; that the bid made by said Swift at said sale to him has since been fully paid, and the premises redeemed therefrom by Gutchues acting under covenants in said lease.

That whether or not petition was filed when summons issued is a matter of indifference, as Gates could waive that, and was actually the fact; that the confession of judgment waived all errors as far as he was concerned.

Page 55.

That Gutchues came into Court; on his motion had opportunity to defend; voluntarily withdrew his interpleader; and is now estopped from insisting upon any rights adverse to the judgment.

Deny any payments by Swift to Coughron for this work; payments made were for other work; the amount thereof will appear by receipts.

Page 56.

That Swift made the affidavit upon which Gutchues' motion founded; had an opportunity to appear and defend; and his ward, Morris Gutchues, by him, as G. *ad C.*, had like opportunity; having withdrawn are now estopped.

Page 57.

Deny any fraud in obtaining judgment; that it was fair; and for a *bona fide* indebtedness.

That Gutchues acquired title, and held the same as security for his advances; necessary to redeem property from Swift; that the same has been fully paid by rents; that Gates entitled to a conveyance; that the

RECORD.

judgment was a valid lien, and whatever interest Gates had therein, at the expiration of 15 months from sale vested in Coughron ; that he is now the owner, and entitled to hold the same against Swift, Gutchues, and all others.

Page 58.

Agreement between Gates and Gutchues.

Page 62.

Motion to dissolve judgment on answer filed.

Page 63.

Suggestion of death of Gates in September, 1853 ; leave granted to withdraw answer ; suggest death of Gates, and make his representatives a party defendant.

Page 64.

Answer of Oliver R. W. Lull, administrator of Gates, adopts answer of Coughron.

Page 65.

July 6, 1854, order for answers under cross bill.

Page 68.

Replication to answers of Coughron and Lull, filed Sept. 11, 1854.

Page 69.

Nov. 27, 1854, demurrer of Church to bill filed. General, and for want of Gutchues as party.

Page 73.

Deposition of Elisha Freeman, taken before Judge Barry, of Kane County Court, on notice in *Coughron vs. Swift et al.*

Page 74, 75.

Knows Gutchues, his hand writing, and has not doubt the signature to lease is his.

Certified by the Judge to have been used by consent, in this cause, with the records of this Court in case of *Coughron vs. Gates*, mentioned in bill.

Page 76.

Annexed is the original lease, recorded May 15th, 1848. This lease is set out in abstract in the other case.

Page 80.

Final decree upon bill, answers, exhibits, and proofs. Court finds equity of case with complainant, orders injunction to be made perpetual, and that Coughron be restrained from collecting out of Gates Cottage the judgment of 7th Sept., 1848, and that Church be enjoined from making deed, &c. That Coughron pay costs.

The records in the case of the judgment of 7th Sept., 1848, were read by defendants, (see folio 76,) at hearing. This cause is now before Court. See records in case of *Coughron vs. Gutchues and Lull*, and abstract.

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Coughron

Swift

Filed May 4. 1857
A. Deland
Clerk

RICHARD K. SWIFT,	}	SUPREME COURT.
vs.		<i>Erro to Cook County Court</i>
WASHINGTON COUGHROH T. AL.		<i>Common Pleas.</i>

ABSTRACT AND ARGUMENT.

On the 27th Feb., 1851, Swift filed his bill in the nature of a bill of review, against Coughron, Gates, and Church, then sheriff, to enjoin them from the making and receiving of the certificate and deed for the sale of the property in question. The junction was granted and perpetuated on hearing, etc.

The bill shows, that, on April 18th, 1846, Gates was indebted to Swift, in the sum of \$949 75. To secure the payment thereof, Gates and one Whaples, made their note for that sum, payable in one year; and also a deed of trust to Morris, of said property, with other estate, with a power of sale thereof in case of default in payment of their note when due, etc. Coughron, in answer, admits the due execution of the note and deed, but denies there was any such indebtedness; and says, the note was given for a loan of six hundred dollars, and the balance was for interest added to the note. (*Of which there is no proof*).

The bill also shows, that, on 17th June 1847, the property in question was sold on that day in pursuance of the power in the deed, and conveyed to Swift by Morris for \$500, and upon the 26th June, Swift, ^{sold} by deed, with full covenants of seizure, warranty of title against liens, etc., unto Gutchees for \$1900. *All which the answers admit.*

The bill then states, that Swift, for \$500 purchased in the outstanding better title from Hubbard, on 28th Feb., 1848, who was the purchaser thereof from the Sheriff, under a prior judgment lien, against one Steel, who held ~~the~~ legal title, while the judgment lien ^{existed} ~~rested~~ when he deeded the property to Gates. Coughron admits the legal title was in Steel as alleged, but say, the sale to Hubbard was at Swift's request, and by fraud and colusion. (*Which are not proved*),

The bill states, that, on the 1st October, 1846, Gates made a deed of all his interest in the property to Swift for \$500. Gates and Coughron deny this, and say: If any such deed was

32 admitted
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made, it was *intended* as a mortgage to secure advances, etc. (The denial thus qualified is an implied admission of the truth of the charge).

The bill says, that, on the 30th May, 1848, Coughron sued out a summons to Gates, to appear and answer a petition for a mechanics' lien, claiming \$2000 damages. But, no petition was filed until the 7th Sept., 1848, which claimed \$128 25, for work on the building on the land, between 1st Dec., 1846, and 15th Jan., 1847 (forty-five days) That Gates, on 6th Sept., 1848, gave a power to any Attorney to confess judgment for the amount claimed." On the same day H. A. Clark gave a cognovit (in his own name only] confessing for \$128 25, on which petition, power and cognovit, the Clerk in *vacation* entered a judgment on decree, same day for \$128 25 damages, with an award of special execution to sell the property. It was advertised, but stayed by judge's order, on affidavit; the judgment, execution, etc., on the 30th Oct., 1848, were set aside and vacated by the court. The cause was then placed on the docket, with liberty for Gutchees to become a party.

[It appears he was not made a party by amendment of the petition or otherwise; so the case stood on docket for a year and a half, consequently]. On 1st March, 1850, on motion of Mr. Collins, Attorney for Gutchees, the cause was stricken from the docket at Coughron's costs, judgment so entered on record, in the presence of his counsel, as appears by their own affidavits; (and I would here remark that this order and judgment has never to this day been set aside, cancelled, or in any manner vacated.)

At the next Fall Term, Mr. Lull, Attorney for Coughron, gave notice to Collins, that they would on the 13th Nov, move the court for a *new judgment*. But it appears on 15th Nov., on motion of Coughron's Attorney, the court *set aside* the order of the 30th Oct., 1848, and ^{by order} reinstated the *old* judgment or decree; on which an alias execution was issued, and the property sold to Coughron ^{or bid off by} on 28th April, 1851, for the amount, interest, and costs, but no certificate or deed was made to him by Church, the sheriff, or costs paid, or execution returned, when the injunction was granted in this case.

This order of 15th Nov., 1850, is fraudulent and void; nor had the court the power so to make it; for the reason that neither Gates or Gutchees had any notice of the intended motion, and the notice to Collins was after his relation as Gutchees' Atty.,

had ceased with the striking of cause from docket, at Coughron's costs, as aforesaid. And for the further reason, that the Court could not make such an order as that, of the 15th November, without first setting aside the order and judgment of 1st March, 1850, aforesaid, all which Lull well knew to exist, and which are admitted by the answers, 11 R. Ill. 646, Goodrich vs. Huntington *in point*.

The bill then proceeds, to ~~say~~ pay, that Swift had paid Coughron for this work by Gates' orders, and had Coughron's receipts therefor, to-wit: in three sums, amounting to \$85, which was all they had asked him to pay, and which has not been credited on the account filed.

This is denied by the answers. But they admit the payment of the \$85, by Swift, and alledge it was paid for other work not stated in the petition. But what other it was, and when done, and where done, and on what account done, is not stated in the answers. Yet there is another answer to this point that is conclusive—in fact two others—each of which is sufficient against this claim of Coughron's.

1st. It is a rule in equity, that if a defendant admits the charge of payment alleged in the bill, but sets up new matters in ~~avoidance~~ *avoidance* thereof, he must prove this new matter, otherwise the Court must find the fact to be against him. No such proof has been made. Secondly: The bill proceeds in charging, that the old judgment was obtained by collusion and fraud between Gates and Coughron, to cheat and defraud Swift, and to oblige him to pay the demand, and that Coughron was not entitled, either legally or equitably, to a lien on the premises, under the Statute.—The answers deny these two allegations. [But, the only evidence of the existence of the demand is the judgment confessed on it.—No satisfactory or credible proof is made of its justice, or that it was for a full, or legal, or valuable, or bona fide consideration, notwithstanding Swift charges it to be the product of fraud and collusion as aforesaid, without legal or equitable foundation. Proof must be made that the debt is a just demand in all such cases as this. See 2nd Dana, R. 476. Roberts on Frauds, 487, [old addition] are in point.

This point is conclusive in this case, showing that the decree as to Coughron should be affirmed.

But Coughron sets up a lease and agreement by Gates to Gut-

ees under his void judgment and sale, and claims the right as judgment creditor to redeem the premises: and that Gutchees is a mere Trustee for Gates, in taking and holding the property.— [Before Coughron can assail Gutchees' title, he must first show a valid judgment, founded upon a bona fide debt, against Gates.

A judgment or decree founded upon fraud and collusion, is a poor affair to assail even, a fraudulent conveyance of Gates.— Courts of equity do not aid such parties, or such judgments. Here we have no proof of the validity of this demand, out-side of the collusive confession. The whole proceeding from beginning to end is a mass of irregularities and imperfections, *and are void.*

Mr. Lull is attorney and counselor throughout for Coughron—he is Administrator and Attorney for Gates' estate, filing ^{answers} ~~answers~~, making confessions;—does not know the heirs of Gates, or where they are. But again, Coughron's solicitors file a demurrer for Church, a defendant, who can not otherwise answer. They then file a cross-bill—then file another bill, independent, both asking to compell Church to convey the lands to Coughron under these void proceedings, claiming the title in fee to be in plaintiff in error. Although the Court ought, it is true, to have disposed of the demurrer filed in Gutchees' name, by Coughron's solicitors before hearing and deciding the cause, yet it is a rule of practice in the Supreme Court, of this and other States, not to allow a party to take advantage of an error, that is not to his prejudice. See Hardins' R. 76. 11th Ill. 229, 1st Seam. 301, 5th Gil. 26, 4th Gil. 511.

Gutchees alone can complain of this. So, when upon the whole record, if it appears that the decree is right, although the errors assigned, exist, the decree will be affirmed. 1st Bibb, 322, 6 Mon. 295, 609.

Besides the decree is not to Gutchees' prejudice; but is for his beneficial interest. It was Swift's duty to protect him. He is not necessary ^{party} in this case. There is a distinction between active and passive parties. The former is such as are so involved that no decree can be made without their being in Court. The latter are such that complete relief can be had to those who seek it, without effecting the interest of the passive parties. 1st Wash. R. 517, Joy vs. Wortz.

So if the absent parties have nothing to perform in the decree, the rule requiring all to be made parties is founded on public policy, yet courts of equity will not suffer it to defeat justice, if they can dispose of the merits of the case, without prejudice to the rights of absentees. Story, Eq. Pl. 77, ~~SS~~.

—228, 542.

With these suggestions, we submit the case on our part to the consideration of the Court.

B. S. MORRIS,
For Defendant, in Error.

Richard K Swift } In the Supreme
at } Court
Washington Coughron.

Brief for Richard K
Swift the defendant in Error

We make the printed brief of the Hon
B. S. Morris a part of ours to save repetition
The first Error assigned is that Satchis
ought to have been made a party
We deny the necessity

Admitting for the sake of argument
that the court below might have
ordered him made a party it does
not lie in the mouth of Washington
Coughron to assign that error & it
comes to late to do so. in error - we say
Admitting for the sake of argument
(which we deny) that Satchis was a nec-
essary it is no ground of error. it comes
to late in this court

In Edwards on Parties it is said "An
"exception for want of parties to a bill
"in Chancery is in the nature of a plea
"in abatement at law but if you go
"upon the merits there you can never
"take it up again" In the East Indiana
Company v Bodham 9 Vesey & says the
Lord Chance^{lor} Page 467 In the present
case all parties liable are not brought

before the Court but that objection cannot be taken as the cause has been brought to a hearing." He further cites on this point.

Nash v Smith 6 Conn R 427

Crane v Deming 7 Conn R 387

Dras v Burchards 10 Paige R 459

says the Chancellor "But a person may be a necessary party within the meaning of the rule requiring all persons interested to be made parties although the proper decree may be made as to the subject matter of the litigation in his absence if the defendant makes no objections." He further cites

Mechanics Bank v Louisa & W Seton 1 Peters 305

In Hutchinson v Reed 1 Hoff CR 316

The Vice Chancellor says. "Since the decision in the House of Lords in Green v Poole a bill is never dismissed for want of parties at least when the objection is not raised till the hearing. Except when the court sees that the bill would be dismissed if the parties were before the court or they have been omitted in bad faith."

This shows that 1st The objection comes too late in the appellate court

2^d It would not have availed anything below

The next error assigned is that the court failed to dispose of the demurrer of William L Church

^{1st} We say this is not true - Church was ^{not} the real defendant. he only held the execution as sheriff - the real defendant was Coughron. The decree would have been good without Church being made party. All the rights & interest Church had in the matter was what his official character & the execution to him directed gave him. See the decree of the court. The decree first finds all the equities of the bill ~~of the bill~~ to be with complainant ~~et~~ and "that Washington Coughron be forever barred from collecting the decrees ~~in~~ said bill described ~~et~~" and then decrees that "the said William L Church and his successors in office be forever enjoined and debarred ~~et~~" delivering the certificate of sale of the above described premises to said Coughron ~~et~~ In the very words of the bill. Now here is a disposition to all intents and purposes of the demurrer. It disposes of the case finally & completely so far as Church is concerned.

Second The demurrer is improperly in the

case. The case was commenced in April 1852 and was returnable to the term A D 1853. It became the duty of the defendant Church to plead answer or demurrer on the return term of the writ. He did not do either, till November 1854 over two years after he had been in default. No ~~law~~^{case} is granted but after remaining in default for that length of time he comes in and files a demurrer. It may be treated as informally made 'a'. After overruling the demurrer Church the defendant was not of course entitled to answer. The Court would not permit him to do so, when he was only a formal defendant when the principal defendant whom he represented had answered when proof had been taken. when the only defence that he could possibly make was settled against him. The Court would not permit him to answer over nothing could be gained to him by doing so. The exact question is settled in Morgan v Scott Minn (Alabama R 81. This volume is not in the law library by reference to the United

Equity Digest Volume 2 Page 484 Section
375. A bill may be finally heard on
the demurrer of one several defendants
when enough is disclosed to determine
as to the rights of all the parties.

At most the proceedings below come
under the head of irregularity and
consequently cannot be assigned for
error in this Court. Rucker v Howard
2 Bell R, 66. We call the Court's at-
tention to the last case cited.

3. The grounds assumed in regard
to Church's demurrer are in the
nature of proceedings at law.
Then there are issues of law & fact.
These are to be disposed of differently.
That is not the case in Equity. They
are disposed of alike both by the
Chancellor. But the Court will
never reverse a decree if the
error complained of does no hurt.
It is injured by the omission
to formally dispose of the demurrer.
It cannot be *Coughron*. His case
is disposed of. It cannot be
Church for he is a mere formal
party made a party because of an
Execution in his hands - which
~~property~~ by the decree is killed?

X And the record in the proceedings in ^{the} ~~the~~ ^{Mrs Chamis case}
are in this Court on a motion to amend and
now used in the hearing Arlow and are to
be treated as part of this case.

If the demurrer filed by him was sustained what would be gained by it.

This Court can render any decree which may be necessary or right. They can affirm it as to all but Church as to him reverse the decree. He is by no means a necessary party.

Another assignment of error is that the decree is not supported by the proof. We call the Court's attention to an endorsement on the records at its close that complainant proved the deeds & conveyance &c in his bill described &c. So that complainant proved the case made in his bill - hence the only question is - does complainant's bill make out a case in Equity which is another assignment of error.

Again The Equity of the bill is denied
Was Swift a right to maintain this
suit? He ^{had} owned the land effected
by the judgment. He acquired title to
it by independent titles of Gato
and also through Gato he conveyed
the same by deed with full cove =

-nant of Warranty. By the covenants of which he was bound to defend the title. If any one had to provide for this claim he was the one if any one was to redeem the money came from his pocket. He was the party to be affected in the matter Dutches relying upon the known promptness and responsibility of Swift - knowing himself to be safe & secure by the covenants of Swift, cared nothing for the fraud of Bates & Dutches. He was safe - Does these facts constitute a right to go into Equity to enjoin the proceeding? The grounds of the jurisdiction are
1st An injury would result to Swift from the acts of Coughron
2^d He had no redress at law
3^d He alleges fraud on the part of Coughron

In 13 Ill R 206. says Caton J. Jurisdiction to quiet title is entertained when the party applying for relief is not in a position to force the one claiming the adversary title into a court of law to contest its validity
In 1 Paige R 90 Whenever the remedy

at law is doubtful and difficult
a court of chancery has jurisdic-
tion. In *Seymour vs Delaney* 3
Cowen Reports 446 It is the peculiar
province of courts of equity to interfere
when the remedy is defective at law
Also cite 1 Wood C.R. 247. In *Ande-
-son vs Anderson* 8 Ohio 109. Fraud
in obtaining a judgment can
only be impeached in equity by
those not a party to it. So in *Cooch vs
Cooch* 18 Ohio Reports 146. In addition
we cite *Culbertson vs City of Cincinnati*
16 Ohio Reports 574.

Again this bill was filed before the
time of redemption expired and hence
admitting the validity of the claim of
Coughron under the general prayer
for relief. Swift would be permitted
to redeem

The irregularities and illegality of
the proceedings we have fully ex-
- amined in a brief filed in the case
of *Washington Coughron vs O.R. & Lull
et al* at the present term of this
Court and ask the Court to consider
it a part of the argument in this
case

The plaintiff in error claims that the Lease from Bates to Gatches constitutes notice to all the world that when Gatches acquired the title it was in trust for Bates and consequently Bates had an interest which could be levied on

1st He says this does not create a trust. That though Gatches may have acquired the property still the lease will not make him a Trustee nor will the property be deemed to be held by him in trust says Lord Nottingham the law never implies a trust. The Court never presumes a trust but in cases of absolute necessity otherwise the Chancellor might construe or presume. Belliard on Real Property Vol 1 P 306

2^d Admitting (that for argument sake it creates a trust) still the making the Lease and recording the same will not effect the rights of third persons because the recording not notice - not a fit instrument for record Registration does not operate as constructive notice unless the instrument is one which the laws requires to be recorded nor unless the formalities

are observed which are presented as
preliminary to registration
Hilliard & Real Estate Page 430 Vol 2 Note a
Blood vs Bloods 23 Pick 80
De Witt vs Moulton 5 Shepley 418
Dunn vs Gaines 1 McLean A 520
Hilliard Real Property 80 71 Page 436 Vol 2
Sec 83

19 Vermont A 230

1 Stock Eq 393

9 Smead & Marshall A 201

The Case is no notice as it contains no
description of the property it might be
one acre & it might be fifty

The correction of the deed cannot be
done by parol because it would be
the creating a trust Estate by parol

The registration of an unacknowledged
deed gives it no validity or
Effect or is an implied notice

Chatter vs Jones 11 Ill A 300

Shumway Waite & Torone,
Atty for Deft in Error

No 37.

Richard K. Sings

at

Washington Conference

Pres of R. K. Sings

My
Sings

Filed May 18, 1887

L. Leland
Clerk

Summary Walter Home

Atty for defendant in
Ex