No. 14838

Supreme Court of Illinois

Gilcreest

vs.

Magill

71641

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 155

J. W. Middleton & Co., Stationers, 196 Lake St.

Guest

vs

Myers

1865

State of Illinois
Supreme Court
Third Grand Division
April Term 1865

Thomas Gilcreest
vs
Alexander W Magill } appeal from Lasalle

The said appellant ~~moves~~ asks the court to grant a writ of citiorari in the above cause directed to the clerk of the Lasalle co circuit court, because
1st The record in the above cause is defective in not containing the order of the court below allowing the appeal.

Bushnell & Avery
for appellant

State of Illinois
Lasalle county } " Julius Avery
on oath says said order granting said appeal is not in said record, and that said order is a part of the record of the said case in the ~~court~~

court below —

Julius Avery

Subscribed & Sworn
before me this 14th
April 1865

L. Leland Clerk
by J. B. Rice Deputy

155

Thomas Galcreest
vs
Alex W Mayne

Petition for
certiorari

Filed April 14. 1865
L. Leland
Clerk

Supreme court
3d Grand Divis
Apr 7 1865

Thomas Gilchrist
vs
Alex W Magill } appeal

In answer to
to motion of appellee
to dismiss the appeal
because the order allowing
the appeal is not in the
record, the appellant
refers the court to
stipulation of the parties
24 on page 24 of the record.
This an agree case and
the whole record is
not before the court

Bushnell & Avery

1515

Fulcrest
vs
Magill

Point of
appellant on
motion to appelle
to dismiss

State of Illinois } Supreme Court 3d Grand
La Salle County } ss Division, Ottawa Apl Term 1865

Thomas Gilcrest

vs

Alexander W. Magill } Appeal.

Alexander W. Magill by A.W. Cavarly his Attorney moves this Court to dismiss the Appeal in the above entitled Cause for the following reasons

1st The record does not show that Appellant prayed an appeal in the Court below.

2 The transcript of the record does not show that any order was entered in the Court below granting an appeal in said Cause.

3° There was no abstract or Brief filed with the record of this cause, nor has there been either abstract or brief filed at the entering of this motion this 13th April 1865, in violation of the Rules of this Court.

A.W. Cavarly
Atty for Defendant

No 155

Thomas Gilcrest

vs Appeal

Alexander H. Magill

Motion by Defendant
to dismiss the appeal

Filed April 13th 1865

L. Leland
Clerk

Motion denied

State of Illinois }
La Salle County } ss.

Pleas before the Honorable Madison E Hallister the Judge of the Ninth Judicial Circuit of the State of Illinois and the presiding Judge of the La Salle County Circuit Court at a Term of said Court commenced and held at the Court House in Ottawa in said County and State on the First Monday in the Month of February A.D. 1865. The same being the Sixth day of February A.D. 1865 and of the year of Independence of the United States of America the Eighty Ninth.

Present The Honorable

Madison E Hallister	Presiding Judge
Herman Silver	Clerk
Charles Blanchard	States Attorney
William Cullen	Sheriff

Be it remembered that on the 3d. day of December A.D. 1864 the same being one of the days of the November Term of said Court for the year 1864. a decree was entered. in a certain cause on the Chancery side of said Court in the words and figures following; to wit:

2

Robert Wade
v.s.
William Savage
Elizabeth Savage

It appearing to the Court that the said Complainants and each of them have been notified of the pendency of said suit more than ten days before the first day of the present term of this Court by the due publication of the notice thereof as required by law and that due proof by said publication has been duly made in open Court and that the said Defendant William E Savage was required by a rule entered of record in said cause to file his answer in said cause instanter and that he wholly failed and refused so to do and being then and there three times solemnly called came not but made default and that said bill was then and there as to him ordered to be taken for confessed. And that the said Defendant Elizabeth Savage has duly filed her answer herein and that said Complainant has filed his answer thereto. And that said cause was duly refered to the Master in Chancery of said Court to take proofs therein and that said Master has filed his report herein.

Now this day this cause came on to be heard upon said Bill. Said answer and said Replication and the report of said Master. And it appearing to the Court that heretofore. On the 1st day of

3

May A D 1858 the said Defendant William E Savage was justly indebted to one Charles T Hillyer in the sum of Six Hundred and Forty dollars for the purchase money of the following described premises. The South East Quarter of Section fifteen (15) in Township Thirty Two (32) North of Range four (4) East of the Third principal meridian, and that to secure the payment there of the said William E Savage then and there executed and delivered to said Hillyer two certain promissory Notes of that date by him subscribed each for the sum of three hundred and twenty dollars & due one Eighteen Months after date & one Thirty Months after date each with interest at the rate of six per cent per annum. And that to secure the payment of said Notes the said William E Savage then and there executed and delivered to said Hillyer his certain Mortgage Deed of that date in and by which he then and there conveyed to said Hillyer the said premises hereinbefore described in & by which said Deed it was and is provided that if the said William E Savage should well and truly pay the said Notes and each of them according to their tenor and effect that then the said deed should be void otherwise in force.

And it further appearing to the Court that on the Twenty first day of February A. D. 1861. the said Notes then and there each being due and unpaid the time of payment of same and each of them

4

one at the request of said William E. Savage then and there extended for the term of one year thereafter by said Hillyer at the rate of ten per cent interest thereon.

And it further appearing to the Court that said last mentioned time had long elapsed before the filing of said Bill herein, and that said Notes have not been paid nor any part thereof and that there is now justly due and owing thereon the sum of Eleven Hundred and five & 7/100 Dollars

And it further appearing to the Court that the said Notes and Mortgage had each been duly sold assigned, endorsed & delivered by said Hillyer to the said Complainant herein and that said Defendants and each of them had full notice of all the facts herein above mentioned & set forth

And it further appearing to the Court that there before on the fifth (5th) day of November A.D. 1855 the said Defendant William E Savage was justly indebted to the said Complainant in the sum of Three Hundred and Twenty five Dollars for money loaned which said indebtedness was and is witnessed by his certain promissory Note of that date by him subscribed in and by which he then and there promised said said Complainant to pay him the said sum of three hundred and twenty five Dollars with ten per cent interest thereon one year after the date of said Note and that to secure the payment of

3

said Note the said William E Savage and Elizabeth Savage his wife then & there executed and delivered to said Complainant their certain Mortgage Deed of that date by them duly executed and acknowledged in and by which they then and there conveyed to said Complainant the premises herein before described.

And it further appearing to the Court that in and by the said Deed it was and is provided that if said Defendants should well and truly pay to said Complainant the said Note according to the tenor & effect then said Deed to be void otherwise in force and it further appearing to the Court that said Note has long since become due and payable & is wholly unpaid. except by the application thereon of the sum of Thirty three & 66/100 Dollars received by said Complainant from said premises over and above all outlays & payments & debts therewith, and that after applying said sum as a payment thereon there is now justly due and owing to said Complainant upon said last mentioned note the sum of five Hundred and Eighty six & 42/100 Dollars ($586 42/100)

And it further appearing to the Court that the said first mentioned Mortgage was for the purchase money of said premises & that no one against said Mortgage the said Defendants are not nor are either of them entitled to any right of Homestead in said premises & that second described

6

Mortgage was for money loaned solely and that the said Defendants as against said last described Mortgage are entitled to a Homestead Exemption in said premises of the Value of One Thousand dollars.

Now Therefore it is hereby ordered ~~and~~ adjudged and decreed that the said Defendants pay to said Complainants the said sum of Eleven Hundred and five & 7/100 Dollars so found due as aforesaid upon said Mortgage first mentioned together with interest thereon and Eleven Seventeenths of the cost of this proceeding within ten days from the entry of this Decree and that in default thereof the said premises be sold by the Master in Chancery of this Court to satisfy the same as hereinafter provided.

It is further ordered adjudged and decreed that the said Defendants pay to said Complainants within ten days from the Entry of this decree the said sum of five hundred ~~three~~ and Eighty six & 42/100 Dollars so found due as aforesaid upon said Mortgage secondly above described together with the interest thereon and six Seventeenths ~~seventeenths~~ of the costs of this proceeding and that in default thereof that said Master in Chancery sell the said premises to satisfy said sum provided the said Complainants shall first have paid into said Master in Chancery as costs

dian thereof for this Court the sum of one thousand
7 Dollars the amount of the Homestead claim of
said Defendants in said premises as against said
second Mortgage. It is further ordered that said
sales and each of them may be made by said Master
after having first given notice of the time & place
thereof by posting notices thereof in at least three
public places in said County of La Salle Twenty
days before said day or days of sale. And the said
Master shall execute and deliver to purchaser
or purchasers at said sales & each of them Cer-
tificates of sale which shall entitle the holder
thereof & each of them to a deed or deeds of the prem-
ises therein mentioned unless the same shall have
been redeemed within fifteen months after said
day of sale

And the Grantee or Grantees in such Deed or
Deeds named shall be entitled to the possession of
the premises therein named as against any and
all persons holding the same or any part thereof by
through or under the said Defendants or either
of them upon presentation of said certificate or
certificates of purchase to said occupant or occu-
pants.

It is further ordered adjudged and decreed that
in case said lands or any part thereof are redeemed
from said sale, the purchaser or purchasers thereof
shall be required to account to the person or persons
so redeeming the same, for the rent & occupation

thereof the value of such use & occupation to be deducted from the money paid for the redemption of said lands from said sales, and that said Master report his proceedings herein at the next term of this Court.,,

Be it remembered that on the 4th day of January A.D. 1865. the master in Chancery made a sale under and by virtue of the foregoing decree and thereupon issued to the purchaser at said sale a certificate in the words and figures following to wit;

State of Illinois }
La Salle County } ss This is to certify that by virtue of a decretal order made and entered of record by the Circuit court of said County at the November Term of said Court A.D. 1864 in a certain cause then pending in said Court on the Chancery side thereof wherein Robert Wade was complainant and William E Savage and Elizabeth Savage were defendants I did in conformity with said decree at the South door of the County house in Ottawa ~~is~~ in said County on the Fourth day of January A.D. 1865 between the hours of 9 o'clock in the forenoon and 6 o'clock in the afternoon of said day, offer for sale at public Auction to the highest and best bidder therefor in each the following described real Estate being the same

ordered by said decree to be sold that is say all
of the South East Quarter of Section Fifteen (15)
9 in Township Thirty Two (32) North in Range
Number Four (4). East of the (3) principal meridian
in said La Salle County Illinois. containing one
Hundred and Sixty (160) acres more or less and
notice of the time and place of said sale with a
description of said real Estate was previously pub
lished in the manner and for the length of time re
quired by said decree and at said sale Charles
Cleave became the purchaser of said real Estate
above described for the sum of Three Thousand
three hundred & ten Dollars he being the highest
and best bidder therefor and that being the highest
sum bidden for the same at said sale and I fur
ther certify that said Charles Cleave will be entitled
to a deed for said real Estate above described
under said decree and sale after the Expiration
of fifteen months from the day of said sale unless
the same shall in the meantime be redeemed
therefrom according to law

Ottawa
January 2d 1865

E S Hollister
Master in Chancery

10

Be it remembered that on this 13th day of February A D 1865 the same being one of the days of the February Term of Court the Report of the Master in Chancery was filed in said Court which report is in the words and figures following, to wit:

State of Illinois } ss And Circuit Court thereof
La Salle County } to February Term A D. 1865.

Robert Wade
vs
William E Savage
et Elizabeth Savage } Foreclosure of Mortgage

To the Honorable Madison
E Hollister Judge of said Court,

The undersigned Master in Chancery who was directed by the decree entered in this cause at the November Term of said Court A D. 1864 to make sale of the mortgaged premises in said decree mentioned would respectfully report. That in pursuance of said decree I gave public notice that I should as such Master in Chancery offer said mortgaged premises for sale at public auction at the South door of the County Court house in Ottawa in said County on the Fourth day of January A D. 1865. between the hours of nine o'clock in the forenoon and six o'clock in the afternoon of said

day which notices were written and printed and contained a statement of the parties to said suit a reasonably certain description of the premises to be sold and the time place and terms of such sale and said notices were posted upon three public places in said County twenty days prior to such day of sale and on the day and at the place aforesaid at about the hour of Eleven o'clock A.M. of said day I did offer said Mortgaged premises for sale at public auction to the highest bidder for cash, and at said sale Charles Cleare bid for said premises that is to say: All of the South East Quarter of Section Fifteen (15) Township Thirty two (32) North in Range number Four (4) East of the third (3) Principal Meridian in said La Salle County and State of Illinois, containing One hundred and Sixty acres more or less, (The same having been offered in Eighty acre tracts and there being no bidders) the sum of Three Thousand Three hundred and Ten dollars ($3310.00) and he being the highest and best bidder at said sale for said premises and that being the highest sum bidden for the same at said sale, the same were by me there and there struck off and sold to him at the price aforesaid, and I issued to said Charles Cleare a certificate of said sale in the usual form, allowing fifteen months for redemption therefrom according to Law.

Further: Out of the said sum of Three

12 Thousand Three Hundred and Ten Dollars. I have paid to the said Complainant the sum of Seventeen Hundred and one Dollars and Seventy one Cents ($1701.71. being the amount of said Decree and interest to the day of sale. To the Clerk of this Court I have paid the sum of Seventeen Dollars and forty five cents ($17.45) being the Court Costs in this cause. I have retained as my costs and commissions in this cause the sum of Sixty one Dollars and Ninety Seven cents ($61.97). There is now remaining in my hands the sum of Fifteen hundred and Twenty Eight Dollars and Eighty seven cents ($1528.87) a certificate of deposite of which I have attached a copy hereto and made a part of this Report. said last mentioned sum now awaiting the action of this Court herein

Copy (Stamp) Bank of Ottawa. Certificate of Deposite
. Will H W Cushman. Ottawa Ill.
January 4d 1865.

M E Hollister Esq. has this day deposited with us Fifteen Hundred and Twenty eight 87/100 Dollars in Treas. N. payable in like funds. to the order of and for the use of the family of Wm E Savage

Bills $1528 87/100 W H W Cushman pr
W.H.C.

Respectfully submitted,
Ottawa February 13d 1865. E A Hollister
Master in Chancery

13 Be it remembered that on the 9th day of February A. D. 1865 the same being one of the February Term of Court the Affidavit of Charles Cleave was filed in said Court which affidavit is in words and figures following, to wit:

State of Illinois } Circuit Court February
La Salle County } Term A. D. 1865.

Robert Wade
v. s.
William E Savage +
Elizabeth Savage } Bill to foreclose Mortgage

Charles Cleave of lawful age being duly sworn upon his oath says: That on the 4th day of January A. D. 1865 this affiant became the purchaser of the South East Quarter of section fifteen (15) in Township Thirty Two (32) North of Range four (4) East of the 3d. principal meridian containing one hundred and sixty acres more or less at a public sale, made by E. A. Hollister Esq. the Master in Chancery of the County and State aforesaid at the South door of the Court House in the City of Ottawa in said County for the sum of Three Thousand Three Hundred and ten dollars ($3310.00) to satisfy a Decree rendered and entered of record in the above cause at the November Term of the said La Salle Circuit Court. This affiant further says: That said Tract of land was struck off to this of

14

fiant at the public sale and for the sum of money aforesaid, he being the highest and best bidder therefor, and on the same day and year last aforesaid at Ottawa in the County and State aforesaid this affiant paid over to the said E. A Hollister the Master in Chancery aforesaid the said sum of Three thousand three hundred and ten dollars in full satisfaction of his bid aforesaid and received from the said E A Hollister Master in Chancery as aforesaid a certificate of purchase a copy of which is herewith submitted marked A, dated January 4 1865, together with the assignment endorsed thereon which this affiant presents to the Court as part of this affidavit. The original of which will be offered to the Court on the hearing of motion to be submitted.

This affiant further says that he was informed by E A Hollister Master in Chancery as aforesaid at the time of the sale aforesaid that by the terms of the Decree rendered in said cause the purchaser of the Land at said sale would be entitled to possession of the premises on presentation of the certificate of purchase to the person in possession of the same. This affiant further says that he has examined the decree rendered in the above entitled cause and finds the same contains a clause entitling the purchaser to possession or his order

/5

This Affiant further says that after said land was struck off to him as aforesaid for a valuable consideration he assigned said Certificate of purchase to Alexander W Magill by endorsement under his hand and seal, on the back of said Certificate. By which this affiant transfered to said Magill all the right title and interest which he had to said certificate and the land therein described and on the 4th day of January 1865 this affiant delivered said Certificate so endorsed by him to said Alexander W Magill

This Affiant further says that afterwards, to wit: on the 1st day of February A. D 1865 this affiant as the agent of said Alexander W Magill went to the premises described in said Certificate of sale and found a man by the name of Thomas Gilchrist in possession, claiming to hold possession of said premises by virtue of an unexpired lease from Robert Wade the Complainant in the above entitled cause and Elizabeth Savage the wife of William Savage and one of the Defendants in said cause. And this Affiant says that he presented and read to said Gilchrist the Certificate of purchase so granted by the Master in Chancery to him and by him assigned to said Magill and demanded possession of said premises in the name of said Magill and the said Gilchrist refused to surrender and give up to this Affiant the possession of said premises as the agent of said Magill

16

and thereupon this affiant delivered into the hands of said Gilchrist a copy of said Certificate and also read to him that part of the Decree rendered in said cause entitling the purchaser or his grantee to the possession of the premises on presentation of said Certificate, And this Affiant says that said Gilchrist still refused to give up and surrender the possession of said premises to him or anyone else, and said, he would hold possession of said premises until he was compelled to leave them by law, or words to that effect

Subscribed and Sworn to before me this 7th day of February A.D 1865
H Silver, Clerk

Charles Cleave

Copy of Certificate

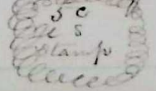
A.

State of Illinois
La Salle County } ss

This is to certify that by virtue of a Decretal order made and entered of record by the Circuit Court of said County at the November Term of said Court A.D. 1864 in a certain cause then pending in said Court on the Chancery side thereof wherein Robert Wade was Complainant and William E Savage and Elizabeth Savage were Defendants. I did in conformity to said Decree at the south door

of the County Court house in Ottawa in said County on the fourth day of January A D 1864 between the hours of 9 o'clock in the forenoon and 6 o'clock in the afternoon of said day offer for sale at public auction to the highest and best bidder therefor, in cash the following real estate being the same ordered by said Decree to be sold that is to say all of the South East Quarter of Section fifteen (15) in Township Thirty Two (32) North of Range number four (4) East of the third (3d) principal Meridian in said La Salle County Illinois, containing One hundred and Sixty (160) acres more or less. And notice of time and place of said sale with a description of the said real estate was previously published in the manner and for the length of time required by said Decree and at said sale Charles Cleaves became the purchaser of said real estate above described for the sum of Three thousand three hundred & ten dollars, he being the highest and best bidder therefor, and that being the highest sum bidden for the same at said sale. And I further certify that said Charles Cleaves will be entitled to a Deed for said real estate above described under said Decree and sale after the expiration of fifteen months from the day of said sale, unless the same shall in the mean time be redeemed therefrom according to Law

Ottawa January 4th 1864



E A Hollister
Master in Chancery

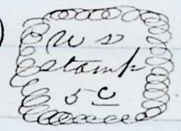
18

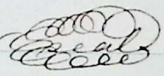
Copy of Endorsement

For value received I hereby sell assign and set over to Alexander W. Magill all my right title and interest in and to the within Certificate and the Lands described therein

Given under my hand and seal this 11th day of January

Attest
E. A. Hollister



Charles Cleare 

Be it remembered that on this 20th day of February A.D. 1865. Thomas Gilchrist filed his Bill of Exceptions in the words and figures following to wit:

State of Illinois } In the Circuit Court thereof
La Salle County } February Term A.D. 1865.

Alexander W. Magill
vs
Thomas Gilchrist } Proceeding to obtain possession under decree in case of Robert Wade vs. W^m & Savage et al.

Be it remembered that on the 13th day of February A.D. 1865. the same being one of the days of said Term of Court Thomas Gilchrist appeared before said Court to show cause why he should not deliver up possession of the

19

premises sold under the decree in said cause and presented the following affidavits and lease under the following Rule. viz:

"In the matter of the application of Alexander Magill for the possession against Thomas Gilchrist

"On reading and filing the affidavit of Charles Cleave in the above entitled cause, it appears to the Court that one Thomas Gilchrist is in possession of and occupying the South East Quarter of section fifteen (15) in Township Thirty Two (32) North of Range four (4) East of the 3d principal Meridian in said La Salle County.

Thereupon upon on motion of A W Caverly. It is ordered and ruled by the Court that said Gilchrist surrender the possession of said premises to Alexander W Magill the holder of the Certificate of purchase made by the Master in Chancery of said La Salle County of the above described tract of Land; which was sold under and by virtue of a Decree of said Court on the 4th day of Jany 1865 to satisfy the mortgage upon said premises and was purchased by Charles Cleaves and the Certificate assigned by him to said Magill or show cause by the coming in of the Court on Monday morning the 13th instant why he with holds from said Magill the possession of the said premises.

It is further ordered by the Court that a copy of the above order. be served upon said Gilchrist"

2 V

(Affidavit)

State of Illinois } ss Circuit Court.
La Salle County } Feb 7 1865.

Robert Wade
v.s.
Wm E Savage

Thomas Gilcrest on oath says that he occupyies the S E 1/4 Sec 15. T 32 N R. 4 E. 3d P.M. upon which the Mortgages in said suit were foreclosed by a decree there of at Nov. Term 1864. That this affiant occupies the same by virtue of a lease or an agreement for a lease dated Oct 20 1862 and running five years from that day & made by the complainant which said lease he is ready to show the Court, and did occupy the premises before and at the time of said suit was commenced. Affiant further says that he has been notified to deliver up possession of said premises to one Alexander W. Magill under a sale made by the Master in Chancery as is claimed by said Magill on the 4th day of January 1865. under a decree entered in the above entitled cause.

Affiant says he is willing to obey all orders of the Court in the premises but he insists

that he ought not to be disturbed in his possession for-

2/

1st. He obtained possession under Complainant

2nd. The Decree ought not to have been to give possession befor the 15 months redemption expired because the property is worth at least $4000 and sold to pay said Mortgages for $3310, and will in all probability be redeemed.

3 Said Affiant was in possession of said premises when said sale took place and the purchasers thereby had notice of his claims.

4 There is no report of sale on file, and until a report is approved the Affiant ought not to be disturbed under the present decree

Subscribed & Sworn this 13. Feb. 1865. H. Silver, Clerk } Thomas Gilchrist

#

(Lease)

Oct. 20th 1862

This is to certify that I. Robert Wade agree to Rent the farm occupied by Capt. Wm. E Savage of which I hold possession, being known as the South East Quarter of Section No fifteen (15) in Township No. Thirty Two (32) North of range No 4 (4) East of the third principal meridian Containing One Hundred and Sixty acres, to Thomas Gilchrist for the

State of Illinois } David Douglass on each says
Cadall County } that the premises above mentioned
are worth at least $4000 and he
will give that sum for the same and is able to
pay therefor.
Subscribed & Sworn
13. Feb. 1865.
H. Silver Clerk } David Douglass

29

Term of five years from this date for the sum of two Hundred dollars a year payable every six Months he paying taxes also provided they do not exceed twelve dollars a year.

I agree also to pay the said Thomas Gilchrist seven dollars a hundred for posts laid down on the farm and two dollars and a half a thousand but for hauling Lumber sufficient for a fence on the East side of the farm of one hundred and Sixty rods I agree also to pay ten cents a rod for making the said fence

Robert Wade
Elizabeth Savage
Thomas Gilcrest

And after hearing the arguments of Counsel the Court made an order to deliver possession set forth in the Record to which the said Thomas Gilchrist then and there excepted

M E Hollister
Judge

~~I have agreed by the said Alex W Magill and said Gilchrist that the Record in this case shall include the decree, the certificate of sale and its assignment to Magill the report of the Master, affidavit for sale to show cause why possession should not be given up, the order~~

23

Be it remembered that on Monday February 13th A.D. 1865. the same being one of the days of the February Term of said Court for the year 1865. a certain order was entered of record in said Court in the words and figures following, to Wit:

"In the matter of the application
106. of Alexander W. Magill for the } In Chancery
possession against Thomas Gilchrist

This day comes Alexander W. Magill by A W Cavarly his solicitor and on his motion it is ordered by the Court that Thomas Gilchrist deliver up to said Magill the possession of land described as the South East quarter of Section fifteen (15) in Township Thirty Two (32) North of Range four (4) East of the 3d principal meridian in the County of La Salle in the State of Illinois; which said land was sold under and by virtue of a decree of said Court on the Fourth day of January 1865. within Ten days after the date of this order and that a writ of possession issue therefore."

It is agreed by the said Alexander W Magill and said Gilreath that the Record in this case shall include the decree the certificate of sale and the assignment to Magill the report of the Master. Affidavit for rule to show cause why possession should not be given up the order

to show cause, the Notice and final order and bill of exceptions and this ~~his~~ agreement & appeal bond & nothing more

25

Bushnell & Avery
for Gilcrest

A W Magill by A W Caverly signs the above stipulation without prejudice to his right to possession of the premises described in his certificate of purchase.

Be it remembered that on this 20th day of Feby A D 1865 Thomas Gilcrest filed his appeal Bond in the word and figures following to wit:

Know all Men by these Presents that we Thomas Gilcrest and David Douglass are held and firmly bound unto to Alexander W Magill in the penal sum of one Thousand Dollars for the payment of which well and truly to be made we bind ourselves and our heirs executors and administrators jointly severally and firmly by these by these presents

The condition of the above obligation is such that whereas the above bounden Thomas Gilcrest has prayed an appeal from an order in the Circuit Court of La Salle County & State of Illinois in a certain cause pending in said

26

Court wherein Robert Wade is Complainant and William E Savage etal are defendants. & wherein the said Gilcreest is ordered to deliver up to said Magil the possession of the premises mentioned in the decree in said suit of Wade v.s. Savage Etal.

Now if the said Gilcreest shall prosecute said appeal with effect & without delay and shall pay whatever Judgment damages & costs may be awarded against him by reason of the dismissal of said appeal or of the affirmance if said order then this obligation to be void otherwise to remain in full force and effect

Witness our hands & seal this 20th Feb. 1865.

U S stamp 50c

Thomas Gilcreest (seal)

David Douglass (seal)

State of Illinois } ss
La Salle County }

I. Herman Silver clerk of the Circuit court in and for said county and State do hereby certify that the above and foregoing are true full and complete copies of all the papers on file and orders of court, which according to a stipulation between the parties, embodied in the bill of exceptions herein, goes to make up the record in said cause.

Witness my hand and the seal of said court at Ottawa this 3d day of April AD 1865.

H. Silver clerk
C. H. Hook Dhy

$7.50 Clks fees paid by Pfff atty Silver

27

State of Louisiana

Supreme court thereof
Third Grand Division

Thomas Gilcrest
vs
Alexander McGill
} Appeal

The said appellant by Bushnell and Avery his attorneys. Says that there is error in said record and for cause shows:

1st It was error to make the order for the appellant to deliver up possession to the Appellee

2d The appellant was not a party to the record and the court could not adjudicate upon his rights

3d The decree of foreclosure could not legally affect the rights of appellant who was in possession, under a lease from the complainant before and at the time of the commencement of the suit and not made a party to such suit, until the time for redemption had expired and a master's deed been made. And other errors.

Bushnell & Avery
Attorneys for Appellant

In the Supreme Court. Third Grand Division
at Ottawa La Salle County in the State of Illinois
April Term A D 1865.

Mary and W. Magill Appellee
ads.
Thomas Gilcrest Appellant } Appeal from the La Salle Circuit in the State of Illinois

And now at this April Term of said Supreme Court comes the said appellee by Cleary his Attorney and says that in the Record and proceedings in said cause, and in the final order therein there is no Error, and therefore said appellee prays that said judgment and final order in said cause may be in all things affirmed, April 19th 1865 A W. Cleary Appellees Attorney.

Appeal 1865
Thomas Gilcrest
vs
Alexander W. Magill

Record

Filed April 4th 1865
L. Leland
Clerk