

12687

No. _____

Supreme Court of Illinois

Robertson, et al

vs.

Dennis

71641  7

263-109

Thomas C. Smith
et al

vs

William C. Smith

263

Robertson, et al

vs

Harris

1858

~~1262~~

12687

X

Refused

State of Illinois

Winnebago County Winnebago County Circuit Court:

Page 1st

Held before the Hon Benj R Sheldon Presi-
ding Judge of the Circuit of the County of Winnebago in the State
of Illinois at a regular term of said Court began and held at the
Court House in Rockford in said County on the 21st day of Novem-
ber A.D. 1833.

Present Hon Benj R. Sheldon Judge

William Brown States Attorney

King S Millikin Sheriff.

Attest C. S. Spafford Clerk

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Hennepago Circuit Court: Of the Term of November in the year of
our Lord one thousand eight hundred & fifty three:

Hennepago County. S. S. Thomas D. Robertson John S. Coleman
and John A. Holland Co partners doing bus-
iness under the name Style & firm of Robertson Coleman & Co Plain-
tiffs by Geo. W. Wright their Attorney Complain of William P. Dennis
defendant being duly Summoned of a plea of trespass on the case
on promises &c.

For that whereas one Arminter Davidson on the twenty
third day of July in the year of our Lord one thousand eight hun-
dred & fifty three to wit at Rockford in the County of Hennepago afo-
resaid made according to the usage & custom of Merchants made his cer-
tain bill of exchange in writing bearing date the day & year aforesaid
and then & there directed the said bill of exchange to one George H. Har-
ris by the name & addition of G. H. Harris Esq. 716. Water St New
York by which said bill of exchange the said Arminter Davidson
then & there requested the said George H. Harris three months after
the date thereof to pay to the order of the defendant the sum of one
thousand dollars value received and then & there delivered the
said bill of exchange to the Defendant, which bill of exchange the
said George H. Harris then & there accepted under his hand in writ-
ing: And the said defendant then & there under his hand in writing
endorsed the said bill of exchange to the plaintiffs delivered the same
to them and ordered & appointed the amount of money therein
mentioned to be paid to them:

And the said plaintiff aver that afterwards when the said

the bill of exchange became due & payable according to its tenor & effect to wit on the twenty sixth day of October in the year aforesaid at the same place where the same by its terms was made payable to wit at 716. Water Street in the City of New York in the State of New York aforesaid the said bill of exchange was duly presented and shewn to the said George W. Harris for payment thereof and the said George W. Harris was then & there requested to pay the said sum of money therein specified according to the tenor & effect of the said bill of exchange and of his said acceptance thereof but the said George W. Harris did not nor would at the said time when the said bill of exchange was so presented & shewn to him for payment thereof as aforesaid or at any time afterwards pay the said sum of money therein specified or any part thereof but wholly neglected & refused so to do whereupon & by reason whereof the said bill of exchange was afterward to wit on the day and year last aforesaid at the City of New York aforesaid (in consequence of such nonpayment) in due form of law protested for nonpayment thereof according to the usage & Custom of merchants of all which said several promises the said defendant afterward to wit on the day last aforesaid at the place first aforesaid had notice:

And whereas also afterward to wit on the day and year first aforesaid and at the place first aforesaid to wit the twenty third day of July in the year of our Lord one thousand eight hundred & fifty three to wit at Rockford in the County of Hennepago aforesaid the said Arminter Davidson according to the usage & Custom of merchants from time immemorial made & approved

Page 4^r made his certain other bill of exchange in writing bearing date the day and year last aforesaid and then & there directed the said bill of exchange to one George H Harris (by the name & addition of G. H Harris Esq. 716. Water St New York) (meaning a certain locality in the City of New York in the State of New York), by which said bill of exchange he the said Arminius Davidson then & there requested the said George H Harris three months after the date thereof to pay to the order of the Defendant the sum of One thousand dollars value received and then & there delivered the said bill of exchange to the Defendant and the Defendant then & there under his hand in writing endorsed said bill of exchange to the Plaintiff delivered the same to them, and ordered & appointed the amount of money therein mentioned to be paid to them.

And the said Plaintiff aver that afterward to wit when the said bill of exchange became due and payable according to the tenor & effect thereof to wit on the twenty sixth day of October in the year aforesaid at 716. Water Street in the City of New York where said bill of exchange was payable the said bill of exchange was duly presented & shown to the said George H Harris for payment thereof and the said George H Harris was then & there requested to pay the said sum of money therein specified according to the tenor & effect of said bill of exchange but that the said George H Harris did not nor would at the said time when the said bill of exchange was so presented and shown to him for payment thereof as aforesaid or at any time afterward pay the said sum of money therein specified or any thereof but wholly neglected & refused so to do wherefore and in consequence of such neglect

and refusal the said bill of exchange was afterwards to wit on the day & year last aforesaid at the City of New York aforesaid in due form of law protested for nonpayment thereof according to the usage & custom of merchants: of all which several promises the said defendant afterwards to wit on the day and year last aforesaid to wit at Rockford aforesaid had notice: By means whereof the said Defendant then & there became liable to pay to the said plaintiff the sum of money in said bills of exchange specified when he the said defendant should be thereunto afterwards requested and being so liable he the said defendant in consideration thereof afterwards to wit on the day and year last aforesaid undertook & promised the plaintiff to pay them the said sums of money in said bills of exchange specified on request:

And whereas also the defendant on the twenty third day of July aforesaid to wit at Rockford ^{aforesaid} ~~at~~ was indebted to the Plaintiff in the sum of fifteen hundred dollars for so much money then & there lent & advanced by the Plaintiff to the Defendant at his request and in fifteen hundred dollars for so much money then & there paid laid out & expended by the plaintiff for the use of the defendant at his request and in fifteen hundred dollars for so much money then & there had & received to the use of the plaintiff by the Defendant and in fifteen hundred dollars for so much money then & there found to be due & owing by the Defendant to the plaintiff on an account then & there stated between them:

And whereas also afterwards to wit on the twenty sixth day of October in the year aforesaid at Rockford aforesaid the

defendant in Consideration of the promises respectively promised the Plaintiff that he would pay them the several monies aboves mentioned respectively on request. Yet he hath disregarded his promises and has not paid any of the said monies to the Plaintiff or any part thereof though often requested so to do to the damage of fifteen hundred dollars & therefore they bring suit &c
S^r M. Night Att^y Ally.

Endorsed "Filed March 9. 1834. W^m Spafford Clerk"

Then to her Court
William P. Dennis

As
Thomas D. Robertson & als

Of the Term of April 1834.

And the said defendant by Marks & Baker his Attornies comes & defend the wrong saying when &c & says that he did not undertake & promise in manner & form as the said Plaintiff have above thereof in their said declaration alleged against him &c of this he puts himself upon the Country &c
Marks & Baker Att^y for Defs.

And for a further plea on this behalf the said defendant by leave of the Court says Actio Non because he says that the said bill of exchange in the said first & second Count of the said Plaintiff declaration mentioned was made & given by said Defendant without any good & sufficient Consideration & that the same was made payable to & endorsed by said Defendant for the

Page 7th Accommodation of said Davidson that said Defendant then when
became & was only an Accommodation endorser for said Davidson
& that said bill of exchange was endorsed to & received by said Plain-
tiff without any Consideration paid or recorded to or received by
said Plaintiff without any Consideration paid to or Davidson or
said Def^t. & that the same was received by the said Plaintiff after
the same became & was due & this the said Defendant is ready to
swear wherefore &c

And for a further plea in this behalf the said Defend-
ant says Action non because he says that the said bill of exchange
in the first and second Counts of the said Plaintiff declaration
mentioned (which is the same & only Cause of action in this suit
of the said Plaintiff) was not nor ever was properly presented to &
payment demanded of the said George H. Harris (nor was the same
at any time properly & sufficiently protested: And of this he puts
himself upon the Country &c.

And for a further plea in this behalf the said Defendant
says Action non because he says that the said Bill of exchange
was not presented to & payment demanded of the said George
H. Harris on the day & at the place the said bill of exchange
became due & payable and of this he puts himself upon the
Country &c

Marsh & Baker

Attys for Def^t

Endorsed Filed May 1. 1834

Ch^l Stafford Cl^k

Winnebago Circuit Court

Thomas D. Robertson
vs
others.

vs
William P. Dennis

And the said plaintiff as to the third of fourth pleas of the Defendant above pleaded whereof he hath put himself upon the Country doth the like &

And as to the second plea of the Defendant by him secondly above pleaded the plaintiff say in conclusion because they say that the said bill of exchange in said plea mentioned was not enclosed to or received by said plaintiff without any consideration paid to or received by said Davidson or said Defendant as the defendant hath in his said plea alleged & this he prays may be enquired of by the Country &c.

In W. Right Plff. Atty.

Endorsed Filed May 3rd 1834

C. H. Stafford Clk.

And afterwards to wit on the 9th Oct 1834 A being one of the days of the September term of the Winnebago Circuit Court the following entry was made:

Thomas D. Robertson John L. Coleman & John W. Holland

vs
William P. Dennis

Assumpsit

And now come the Plaintiff by

Page 9th Right their Attorneys & the Defendant by Marsh his Attorney also
come and issue being joined by agreement of the parties this Cause
is submitted to the Court for trial without the intervention of a
Jury. And the Court being fully advised in the premises & having
heard the evidence finds the issue for the Plaintiff and awards
them Damages against the said Defendant at the sum of One
thousand one hundred eight dollars & twenty seven Cents. It is there-
fore ordered & considered by the Court that the said Plaintiff have
& recover of the said Defendant the said sum of One thousand one hun-
dred eight Dollars & twenty seven cents damages as aforesaid
also his their costs & charges herein expended & that they
have execution therefor.

STATE OF ILLINOIS, }
COUNTY, } ss.

Page 10^F

The People of the State of Illinois, to the Sheriff of said County, Greeting:

WE COMMAND YOU, That of the Lands and Tenements, Goods and Chattels of *William P. Dennis*

Defendant in your county, you cause to be made the sum of

Dollars and

Cents, which

Plaintiff's lately, in the

Court of said county, at a term thereof begun and held at

in said county, on the *25th day of September A.D. 1854*

last past, recovered against the said Defendant

and which by the said Court was adjudged to the said Plaintiff for

AND ALSO, the further sum of

Dollars and

Cents,

which were adjudged to the said Plaintiff for his costs and charges in that behalf expended, whereof the said

Defendant *was* convicted, as appears to us of Record: And have you these moneys ready to render to the

said Plaintiff for *their Damages* and costs aforesaid,

and make return of this writ with an endorsement thereon in what manner you

shall have executed the same, in ninety days from the date hereof.

WITNESS,

the seal thereof, at

Clerk of our said Court, and

in said county, this

A. D. 1854

day of

CLERK.

Thurs Court
Feb. 1st 2589.

Thos. D. Robertson
John S. Coleman
John C. Holland

Helen P. Dennis

Damages \$1108.27
Costs Off 10.50
Defts 2.50

\$1121.27

Judt paid Oct. 15. 1834
E. D. Oct. 25. 1834

Return Day Jan'y 24. 1835.

Made four hundred dollars
on the within execution
by sale of the two first de-
scribed parcels of land & the
balance in cash & interest
this court satisfied as filed
Rec my fees this 14th day of July
1835 R. M. McKim's law Shuff.

Rec'd by order of the Court two hundred & thirty dollars in full of the execution of the writ of Debt
the 14th day of July, 1835
R. M. McKim's law Shuff.

Received this Execution for collection this 26 day of
October A.D. 1834. R. M. McKim's Shuff.

Page 11² By virtue of the Attached execution I have this day levied upon
the following real estate to-wit: The north west quarter of section
twenty seven (27) town twenty six (26) Range ten (10) east 4th Pm
And that part of the west part of the north west fractional quar-
ter of section twenty six (26) town forty four (44) range one east
3rd Pm which lies west of Rock River and north of Kins Creek
Also part of the west part of the north east quarter of section
nineteen (19) town twenty seven (27) range ten (10) east fourth
Pm bounded as follows Commencing at a post on the north east
bank of Pecatonica River four Chains & fifty links downstream
from where the quarter section line running north through the
middle of said section intersects the north bank of said River
thence south twenty eight degrees east sixteen chains & eighty
six links to an elm tree fifteen inches in diameter standing on
the north bank of said river thence up stream along said
bank to the place of beginning containing six acres of land:
this 2^d day of November A.D. 1834.

RN Milliken Sheriff

Rec^d for Milliken Sh^{ff} One hundred & fifty dollars on within
Jan 20. 1835. Robertson Coleman & Co.

United States of America

State of Illinois Venuebag County ss } Pleas before the Hon
Benjamin R Sheldon Judge of the fourteenth Judicial Circuit
of the State of Illinois at a term of the Venuebag County
Circuit Court began & held at the Court house in Rockford

Page 12th in said County of Hennepin on the 11th day of ^{Feb} April in the
year of our Lord one thousand eight hundred & fifty seven

Present Now Benj R Sheldon Judge

" W D. Meacham State Attorney

Saml Church Sheriff

Attest M B Derrick Clerk ³ The Plaintiffs by their Attorney comes file their notice of motion

for a rule on the Sheriff of Hennepin County requiring him to convey certain lands sold by virtue of an execution in the above entitled cause

And afterward to wit on the 11th day of May 1857. It being
one of the days of the April term of the Hennepin Circuit
Court the following entry was made

Robertson Coleman & Co

vs
William P Dennis

This day comes the Plaintiff by their
Attorney & the Defendant by his Attor-
ney and thereupon the motion heretofore made in this cause
by the Plaintiff for a rule upon the Sheriff requiring him to
convey to Thomas D Robertson one of the Plaintiff certain lands
bought by him at Sheriff's sale under and by virtue of an execution
issued in the above entitled cause (To wit the north west quar-
ter of section No twenty seven in township No twenty six in range
ten east of the fourth principal meridian. And all that part
of the north west quarter of section twenty six in township forty
four north in range one east of the third principal meridian
which lies west of Rock River and north of Kents Creek so
called) coming on to be heard & the Court having heard Counsel

thereon as well in support of as in opposition to said motion as to 2^d tract & the Court being advised in the premises grants the said motion as to the first tract above mentioned and denies the said motion as to the last tract above mentioned: It is therefore considered that the Plaintiff take nothing by the said motion in respect to said last described tract & that the Defendant go hence thereof without day & that the defendant have & recover of the Plaintiff his Costs & charges by him about his defence in this behalf expended & that he have execution therefor

Winnebago Circuit Court

Page 14

Thomas D. Robertson &
others

William P. Dennis

Be it remembered that on the first day of May of the Term of Appear in the year of our Lord one thousand eight hundred & fifty seven of the Circuit Court of the County of Winnebago the plaintiff by their Attorney appeared in the above Cause and moved the Court for a rule upon the Sheriff requiring him to make execute & deliver to Thomas D. Robertson one of the above named plaintiff a Sheriff deed for divers lands sold by the Sheriff of said County to the said Robertson at Sheriff sale in pursuance of an execution in the above entitled Cause. And the said Defendant also appeared in said Cause by his Counsel to oppose said motion as to the last described tract sold making no objection as to the first described tract sold and the plaintiff by their Counsel then read in support of said motion the affidavit of said Thomas D. Robertson in words & figures as follows to wit:

Winnebago Circuit Court

Robertson Coleman & Co

William P. Dennis

Winnebago County S. S. Thomas D. Robertson one of the plaintiff in the above entitled cause being duly sworn deposes & says that he

Page 15 and his coplaintiffs being John S. Coleman & John W. Holland
(the said Holland being ^{since} deceased at the September Term of
the Court above mentioned of the year one thousand eight hun-
dred fifty four recovered in the above entitled Cause a judg-
ment against the defendant above named for the sum of Eleven
hundred eight dollars & twenty seven Cents damages & Costs of suit
That on or about the 25th day of October of the same year an ex-
ecution was issued to the Sheriff of said County of Hennepago which
was afterwards levied by said Sheriff on lands in said County. That
on the 14th day of February A.D. 1853. a balance of four hundred
dollars remained due and unpaid on the damages and Costs due
on said judgment and execution and for the purpose of making
said money so due as aforesaid the said Sheriff in due form of
Law sold at Sheriff sale two parcels of land described as the
north west quarter of section twenty seven in Township twenty
six in Range ten east of the fourth principal meridian, and
that part of the north west fractional quarter of section twenty
six in township forty four north in range one east of the third
principal meridian which lies west of Rock River & north of
Kent's Creek. All of which lands lie and are situated in the
County of Hennepago aforesaid.

And this deponent further says that the two par-
cels of land were sold separately & were both struck off to this de-
ponent by said Sheriff he being the highest & best bidder for the
same, that the parcel of land first above described was struck off
to this deponent for the sum of One hundred fifty dollars and

that the other parcel of land was struck off to this deponent for the sum of Two hundred fifty dollars and that a certificate of said sale was immediately made out and delivered to this deponent by the said Sheriff and a duplicate thereof was in due form of law filed & recorded in the Recorder's Office of said County in pursuance of and within the time required by the Statute in such case made & provided: And this deponent further says that he bought in said land for the joint benefit of himself & his Co-plaintiff in this suit who then & there credited the Sheriff with the amount of damages due them on said execution & paid to said Sheriff the Costs due on the same being the whole amount of Costs due in the above cause: And this deponent further shews that the whole amount paid & bid by this deponent for the parcels of said land and interest thereon at the rate of ten per cent per Annum was not paid either to the plaintiff to this deponent or to the Sheriff for their use within one year from the day of said sale as required by law in that behalf nor have the said lands been redeemed by any owner or judgment Creditor thereof in pursuance of law and (as this deponent insists) the said lands never have been redeemed by any person entitled to redeem the same in pursuance of law and that this deponent is now entitled to a Sheriff's deed from the same: And this deponent further shews that defendant pretending to be entitled to redeem one tract of land sold as aforesaid without redeeming the other on the 13th or 14th day of February 1836 deposited with John D. Taylor then Sheriff of said County (but now deceased) a sum of money the precise amount of

Page 17 which is not known to this deponent but which he has been informed & believes was the sum of two hundred fifty dollars and interest thereon at the rate of ten per cent per Annum, which said sum of money was received by said Sheriff and was deposited with the said Sheriff for the purpose of redeeming the parcels of land last above described the said defendant claiming the right to redeem said parcels of land without redeeming the other parcels of land sold at the same time and on the same judgment execution.

And this deponent further says that he has been advised by Counsel & truly believes that said Defendant could not lawfully redeem one of the parcels of land sold as aforesaid without at the same time redeeming the other & so believing this defendant this Co Plaintiff has refused to receive the moneys deposited with the Sheriff for the purpose aforesaid & that the same is now on the hands of the representatives of said Sheriff as this deponent believes and this deponent further says that in consequence of the aforesaid pretended redemption by the said defendant he this deponent has been unable to obtain from the Sheriff a deed of the premises sold him as aforesaid and he insists that the said Defendant had no right to redeem one of the aforesaid parcels of land without redeeming the other one & that the pretended redemption of the said Defendant of one parcel thereof was of no force effect or validity whatever and that this deponent is entitled to a Sheriff deed from the Sheriff of the County of Pennebago of both parcels of said land notwithstanding said pretended redemption & this deponent further says that the title

Page 18 of the parcel of land not redeemed by the defendant bought
by this deponent as aforesaid is doubtful & uncertain & that the
attempt of said defendant to redeem one parcel of land without
redeeming the other will subject this deponent & his Co-plaintiffs
to great wrong and injustice the prays your honorable Court
for a rule on the Sheriff that he make & deliver to this deponent
an ordinary Sheriff deed of the premises above mentioned inclu-
ding both parcels of land sold as aforesaid

Sworn before me this 6th

day of February A.D. 1837

Wm P. Dennis Dep. Clerk

Endorsed "Filed" in July 6 1837. Wm P. Dennis Dep. Clerk

And the said plaintiff further in support of said
motion read the Affidavit of James M. Night in words
& figures as follow to wit

Hennepin Circuit Court

Robinson Coleman & Co

William P. Dennis

Hennepin County ss:

James M. Night being
duly sworn deposes & says that he has been informed & believes
the condition of the judgment in the above entitled cause had
been sold & conveyed to one Hicks the parcel of land sold on and
execution in the Affidavit of Thomas D. Robertson described as
the north west quarter of section twenty seven in township

Page 19 To twenty six north in range ten east of the 4th principal
meridian but that the Conveyance to said Hicks at the time
of said sale under said execution had not been recorded in
the records Office of said County and that said defendant
at the time of said sale had in fact notice to said land
Sworn before me this 28th

day of February A D 1837

Morris D Derrick

Saml Wright

Alld

Enclon filed July 28. 1837. M B Derrick Alld

And the said plaintiff further in support
of said motion read to the Court the original entry of judgment
in the above cause which is in words of figures as follows to
wit:-

Thomas D Robertson

John S Coleman

John A Hollance

Assumpst

vs

William P Dennis

And now come the plain
tiff by Wright their Attornies & the
Defendant by Marsh his Attorney

Also come before being joined & by agreement of the parties
this Cause is submitted to the Court for trial without the in
tervention of a jury. And the Court being fully advised in
the premises having heard the evidence find the issue for
the Plaintiff and assess their damages against the said

Page 20 Defendant at the sum of One thousand one hundred eight dollars & twenty seven Cents: It is therefore ordered & Considered by the Court that the said Plaintiff have & recover of the said Defendant the said sum of One thousand one hundred eight dollars & twenty seven Cents Damages as aforesaid as also their Costs & Charges herein expended & that they have execution therefor:-

And the said Plaintiff further in support of the said motion by their Counsel read to the Court an execution is sued in the above Cause with a Certificate of Levy by the Sheriff and the Sheriff return thereon endorsed which execution & Certificate of Levy & return are in the words of figures following to wit:-

State of Illinois

Hennepago County S. S. The People of the State of Illinois, to the Sheriff of said County, Greeting: We Command you that of the lands & tenements, goods & Chattels of William P. Dennis Defendant in your County, you Cause to be made the sum of Eleven hundred eight dollars & twenty seven Cents, which Thomas & Robinson John S. Coleman & John A. Holland Plaintiff lately in the Circuit Court of said County, at a term thereof begun & held at Rockford in said County, on the 25th day of September A.D. 1834, last past, recovered against the said Defendant, and which by the said Court was adjudged to the said Plaintiff for their damages: And also, the further sum of ten Dollars & fifty Cents which were adjudged to the said Plaintiff for his Costs & Charges in that behalf expended, whereof the

Defendant was convicted, as appears to us of record: & have you these
money ready to render to the said Plaintiff for their damages
& costs aforesaid & make return of this writ with an endorsement
thereon in what manner you shall have executed the same, in
ninety days from the date hereof:

Witness Our Spafford Clerk of our said Court & the seal
S. S. thereof, at Rockford in said County this 25th day of
October A.D. 1834.

Our Spafford Clerk

Endorsed "Damages \$1108.27. Costs Plff 10.50.

Defts 2.80. \$1121.27. Jud^t rend Oct 15 '1834.

Ex isd Oct 25. 1834. Return Day Aug 24. 1833:

"Made four hundred dollars on the within execution
by sale of the two first described parcels of land & the balance in
cash & I return this writ satisfied in full. Recd my fee this 14th
day of July 1833. W. H. Milliken late Sheriff

Recd this execution for Collection this 26th day of
October A.D. 1834. W. H. Milliken Sheriff:

Recd by sale of the first two described tracts of land des-
cribed four hundred dollars in full of this execution this
14th day of July 1833:

Recd Cash of Plff

Robertson Coleman & Co.

W. H. Milliken late Sheriff

By virtue of the Attached execution I have this day

Page 22 levied upon the following real estate to wit: The north west
quarter of section twenty seven (27) town twenty six (26) range ten
(10) east 4th Pm. And that part of the west part of the north
west fractional quarter of section twenty six (26) town forty
four (44) range one east 3^d Pm. which lies west of Rock River
and north of Kents Creek: Also part of the west part of the
north east quarter of section nineteen (19) town twenty seven
(27) range ten (10) east fourth Pm. bounded as follows Commenc-
ing at a post on the north east bank of Pecatonica River four
chains of fifty links down stream from where the quarter section
line running north through the middle of said section intersects
the north bank of said river thence south twenty eight degrees
east sixteen chains eighty six links to an elm tree fifteen chains
inches in diameter standing on the north bank of said River
thence up stream along said bank to the place of beginning con-
taining six acres of land this 2^d day of November A.D. 1834
K.H. Milliken Sheriff

Rec^d for Milliken Sh^{ff} one hundred & fifty dollars on within
Jan'y 20. 1833. Robertson Coleman & Co

And thereupon the plaintiff by their Counsel
further to support said motion read to the Court a Sheriff
Certificate of sale delivered to the plaintiff Thomas D Robertson
in words & figures as follows to wit:-

State of Illinois

Hennepago County S. S. J. K.H. Milliken late Sheriff of said
County do hereby certify that by virtue of an execution & fee bill to

me directed and delivered by the Clerk of the Circuit Court of
 Hennepago County dated on the 25th day of October A.D. 1834. in
 favor of Tho^s D Robertson John S. Coleman & John W. Holland
 and against William P. Dennis I did in pursuance of the
 Statute in such case made & provided on the 14th day of February
 A.D. 1835. between the hours of 11 O'clock A.M. and 4 O'clock
 P.M. of said day offer at Public sale the following described prop-
 erty to wit: The north west quarter of section twenty seven town
 twenty six Range ten east 4th P.M. And that part of the west
 part of the north west fractional quarter of section twenty six town
 forty four range one east 8th P.M. which lies west of Rock River &
 north of Kinto Creek & Tho^s D Robertson having bid one hundred
 of fifty dollars for the first described tract & two hundred of fifty
 dollars for the second described tract he being the highest & best
 bidder at sale became the purchaser. Now if the aforesaid prop-
 erty shall not be redeemed within fifteen months from this date ac-
 cording to law then the said Tho^s D Robertson will be entitled to a
 Deed for the same: Witness my hand & seal at Rockford this
 14th day of February A.D. 1835

W. H. Meliken late Sheriff (Seal)

And thereupon the defendant in opposition to said mo-
 tion in part as above named produced and read to the Court the
 affidavit of the Defendant in words of figures as follows to wit:
 Winn les les Court

W^m P. Dennis

On motion

Thomas D Robertson & John Coleman vs. State of Illinois Hennepago County.

Page 24 William P. Dennis being duly sworn doth upon his oath depose & say that the judgment on which the land mentioned in the affidavit filed in support of this motion for about the sum of eleven hundred dollars & was obtained against this defendant as acceptor of a draft for the benefit or convenience of a third person & that this defendant had no interest in said draft that soon after said judgment was obtained this defendant paid said judgment to said Robertson Coleman & Co except about four hundred dollars that being unable to pay said balance as soon as said Robertson Coleman & Co required an execution was issued on said judgment & as this defendant learned a long time thereafter certain real estate was sold by the Sheriff of this County as stated in said Affidavit but this defendant did not then know what real estate had been so sold: And this defendant further says that some time about the month of October previous to the time said premises were redeemed, he left this State for the State of Massachusetts intending to return in a short time but was necessarily detained & did not return to Illinois until a few days perhaps one week before the time of said redemption when for the first time this defendant learned what parcels of land had been sold on said execution: And this deponent further says that the parcel of land mentioned in said Affidavit as not having been redeemed was land which this defendant had sold & conveyed to George & Thomas Kirk by deed & this defendant at the time he redeemed said land supposed said Robertson Coleman & Co had no right or authority to sell said other parcel of land & therefore he had no occasion to redeem the same. but this defendant has been informed that

Page 25 his said grantees had neglected to put their said deed on record
therefor said Robertson Coleman & Co may have supposed said
land was subject to said execution: And this defendant further
says that within the time required by Law he paid to the Sheriff
of this County the Amount required by Law to redeem said last
mentioned parcel of land & has since sold & conveyed the same
for the sum of One thousand dollars as he supposed he had a right
to do: And the Defendant further says that he has been informed
& has reason to believe & does believe that about the time the right
to redeem said first mentioned parcel of land was expiring the
said Kirk came to said Robertson Coleman & Co & they paid them
the amount for which the same was sold, or made some arrange-
ment satisfactory to both parties to answer the purpose of redeem-
ing said parcel but this deponent has reason to believe that
some secret arrangement was made between said parties whereby
it might appear as if said ^{un}parcel ^{un}remained redeemed the better
to enable said Robertson Coleman & Co to carry out their purpose
against this defendant to defraud him of said first mentioned par-
cel of land And this defendant further says that said first men-
tioned parcel is worth not less than \$2000. & was worth not less than
\$1500. at the time of said sale as this defendant believes: & this de-
fendant further believes that if he can have the benefit of the testi-
mony of said Kirk on this motion he can show said above men-
tioned arrangement:

Subscribed & sworn to before me

H. P. Dennis.

this 28th day of February 1857. Maria B. Daniels Clerk

Page 26 And the Defendant by his Counsel further to oppose said motion in part read to the Court the Sheriff Certificate of said sale filed with the recorder of this County in words & figures following to wit
Tho D Roberson vs

vs
William P. Dennis

State of Illinois Mennebago County ss.

I J. W. W. Miller late Sheriff of said County do certify that by virtue of an execution and return to me directed & delivered by the Clerk of the Circuit Court of this Mennebago County dated on the 25th day of October A.D. 1834. in favor of Thomas John S. Coleman & John W. Holland & against William P. Dennis I did in pursuance of the Statute in such case made & provided on the 14th day of February A.D. 1833. between the hours of 10 O'clock A.M. & 4 O'clock P.M. of said day offer at public sale the following property to wit The north west quarter of section twenty seven (27) Town twenty six (26) range ten east 4th P.M. And that part of the west part of the north west fr quarter of section twenty six (26) town forty four range one east 8th P.M. which lies west of Rock River and north of Kents Creek & Tho D. Roberson having bid one hundred & fifty dollars for the first described tract & two hundred & fifty dollars for the second or last described tract he being the highest & best bidder at sale became the purchaser. Now if the aforesaid property shall not be redeemed within fifteen months from this date according to Law then the said Tho D. Roberson will be entitled to a deed for the same.

Witness my hand & seal this 14th day of

Page 27 July 1855.

W. H. Milliken Late Sheriff: Seal.

And the said Defendant further to oppose said motion as aforesaid by his Counsel read to the Court a certain receipt by the Sheriff of redemption money for the last described tract sold endorsed on said last mentioned Certificate in words & figures as follows to wit: Here follows receipt - out.

Rockford July 13th 1856.

Received of William P. Dennis Two hundred & seventy five dollars being the Redemption money in full on the last described tract mentioned in the within Certificate

John D. Taylor Sheriff

Page 28 And the Court having heard argument on said motion in support thereof and also in opposition thereto overrules the said motion, ^{and denies the same} as to the said last described tract of land sold, & sustains it as to the said first described tract of land sold to which decision of the Court in overruling and denying said motion in part as aforesaid the plaintiff by their Counsel excepts & pray that their bill of exceptions may be sealed & made part of the record which is done accordingly

Benj R Sheldon Seal

And afterward to wit on the 4th day of May 1837. It being one of the days of the April Term of the Vermont Circuit Court the following entry was made:

Robertson Coleman & Co

vs
William P. Dennis

And now comes the Plaintiff by their Attorney of pray and appeal to the Supreme Court of this State from the judgment entered in this cause, which appeal is granted them by the Court on condition that the Plff or either of them within sixty days enter into bond to the Defendant with Selden W Church as surety in the penal sum of two hundred dollars conditioned as the law directs:

Know all men by these presents that Thomas D Robertson & John S. Coleman principal and Selden W Church as security are held of firmly bound unto William P. Dennis in the penal sum of Two hundred dollars for the payment of which well &

Page 29 Truly to be made we bind ourselves our heirs executors and administrators jointly & severally firmly by these presents: Sealed with our Seals & dated this 17 day of June A D. 1837.

The Condition of this obligation is such that whereas the above named William P. Dennis at the Assize term of the Hennepago County Circuit Court in an Action wherein the above bounden Thomas D. Robertson & John S. Coleman Survivors of John W. Holland dec'd were plaintiff & the said William P. Dennis was Defendant on a certain motion therein made by said plaintiff for a rule on the Sheriff of Hennepago County requiring him to convey certain real estate which had been sold under an execution in the said Cause to the said Thomas D. Robertson judgment was given against the said plaintiff denying the said motion in respect to a portion of said real estate and also for costs:-

And whereas the said Thomas D. Robertson & John S. Coleman Survivors then & there prayed an appeal to the Supreme Court of the State of Illinois which was granted them upon condition of their entering into bonds with Elden M. Church as security in the penalty of Two hundred dollars conditioned as the law directs & now therefore if the above bounden Thomas D. Robertson & John S. Coleman Survivors as aforesaid shall duly prosecute their said Appeal and shall well & truly pay said Judgment and all costs interest & damages which may be awarded or assessed against them in case the said Judgment shall be affirmed then this obligation to be void else to remain in full force & virtue: Sealed & delivered in presence of Jas M. Night

Thos D. Robertson

Seal

John S. Coleman

Seal

Selden W Church

Seal.

Enclosed Sealed June 25. 1837

M B Derrick At

By Attnmoyer Dep Clerk

State of Illinois

Winnebago County Circuit Clerk's Office S B

I M B Derrick Clerk of

the Circuit Court in & for the County aforesaid do hereby certify the foregoing to be true copies from the papers on file & the entries of the Court record in the foregoing entitled Cause now in my office.

Witness my hand & the seal of said Court at the City of Rockford this 23^d day of March A.D. 1838.

M. B. Derrick Clerk

By Attnmoyer Dep Clerk

\$8.50 Fms:

Supreme Court
 Thomas & Robertson et al
 appellants
 vs
 William P Dennis
 appellee

} appeal from Birmingham
 Court
 April Term 1858

And now come the ap-
 pellants by Jas Mc Wright their attorney and
 say that therein the proceedings and records
 and in the final determination and judgment of
 the Court below on the motion above mentioned
 manifest error ~~that~~ in this:
 1st That in and by said proceedings ~~thereof~~ and the

resolves thereby it appears that the Court below
reversed and disallowed the motion of the ap-
pellants for a new order of the Sheriff requiring him
to convey the land above mentioned; whereas by
the law of the land the said Court below ought
in all respects to have granted and allowed said
motion and the rule thereby sought

2 Because the said Court below only allowed
the said motion in part and as to one tract
of land whereas by the law of the land the said
Court ought in all respects and wholly to have al-
lowed the said motion and the rule thereby
sought

3 Because the Court below refused to grant a
new order of the said Sheriff that he convey all of the
tracts of land sought by said motion and only
granted and allowed said new order as to one tract of
land and refused it as to the other

4 Because said Court below decided said
motion for the appellants ~~whereas~~ in part whereas
the same ought to have been wholly and in
all respects decided for the appellants

5th Because the Court below in deciding said
motion gave judgment against the appellants
and for the appellees for costs whereas the said
Court ought to have given judgment for the ap-
pellants and against the appellees for costs

6. And that there are other errors, and
Record

Jas. M. Wright attorney
for appellants

8.50 Fees

20 35
Supreme Court

Monroe & Robertson
John J. Coleman
vs. the A. H. and Appellants

William P. Dennis
appellant

Appellants from Court
Nobogo Amato

Record

Filed April 22, 1855

1855

Wight.

1 Must give a counter bond to 13 Sept. if not paid I am =
cations R. L. Redemption to be made to the purchaser
into the Sheriff who sold the land and no one else -

3 Scam. 207 -

In the Supreme Court.

2 Must redeem all the land sold - his entitled to
the whole of his money on all the land - where
Record made in parcels - vs. not include - } Appeal from Winnebago Circuit Court.
WILLIAM P. DENNIS, APPELLEE.

2 Story's Eq. Jurisprudence

365 note 5 - 2 Vesey 376
ABSTRACT OF THE RECORD.

Page 1 to 11

ASSUMPSIT on a Bill of Exchange by endorsees vs. endorser.

2 Vesey

285-3
207

NARR. filed March 9th, 1854, by Appellants on a Bill of Exchange, as endorsees vs. Appellant as endorser.

PLEAS filed May 1st, 1854.

REPLICATIONS filed May 3d, 1854.

SEPTEMBER TERM, 1854; Cause tried and Judgment for Appellants for \$1,108 27 and costs.

OCTOBER 25th, 1854; Execution issued on the above Judgment, and returned satisfied on the 14th day of February, 1855, by sale of two pieces of land.

Page 11 to 13

FEBRUARY TERM, 1857; Motion made for a rule upon the Sheriff of Winnebago County, requiring him to convey to T. D. Robertson, one of the Plaintiffs, by Sheriff's Deed the two tracts of land sold.

APRIL TERM, 1857; Motion heard by the Court and denied as to one tract and allowed as to the other and judgment against plaintiff for costs of the proceeding.

BILL OF EXCEPTIONS taken to the ruling of the Court on said motion, and appeal taken to the Supreme Court; Appeal Bond filed.

BILL OF EXCEPTIONS

Page 14

Shows that the Motion in this cause for a rule on the Sheriff of Winnebago County came on to be heard on the first of May, of April Term, 1857, before the Court. That Plaintiffs appeared by Counsel in support of the motion; and Defendants also appeared by counsel to oppose it as to one tract of land, and did not oppose it as to the other. That the plaintiffs read in support of the motion an affidavit of Thomas D. Robertson, one of the plaintiffs, an affidavit of James M. Wight, plaintiffs' attorney, the entry of the judgment in this cause, the execution issued on said judgment, the certificate of levy, and return thereon endorsed, and a certificate of the Sheriff, K. H. Milliken, who made the sale to said Robertson.

ROBERTSON'S AFFIDAVIT

14 to 18

Shows that he was one of the plaintiffs, the recovery of the above judgment, the time and amount of such recovery, and the issue of the above described execution. That February 14th, 1855, \$400 remained due on said execution, and to make that sum the Sheriff of said County levied on the north-west quarter section 27, township 26, in range 10 east of fourth principal meridian; and that part of the north-west fractional quarter of section 26, in township 44, range 1 east of third principal meridian, which lies west of Rock River and north of Kent's Creek, all in Winnebago County.

That the tracts were sold by said ^{Sheriff} plaintiffs, separately, on said 14th day of February, 1855, and both bought in by deponent for the joint benefit of all the plaintiffs. The first tract for \$150, and the other tract for \$250; he being the highest bidder for said lands.

That duplicate certificates of said sale were immediately made out by the Sheriff; one copy thereof delivered to deponent and the other filed with the recorder, pursuant to Law.

That plaintiffs paid the costs of the suit, and credited the Sheriff with the amount of damages then still due on the execution.

That the whole amount of the purchase price bid for the two parcels of land, and interest thereon at the rate of ten per cent. per annum, had not been paid to the deponent, the plaintiffs or Sheriff of said County within one year from the day of sale.

And that said lands had not been redeemed by any owner or judgment creditor in pursuance of Law; and insists that the lands had not been redeemed by any person authorized to redeem them; and that deponent was entitled to a Sheriff's Deed of both parcels.

Record

That the defendant, pretending to be entitled to redeem one tract of the land sold without redeeming the other, on the 14th or 15th day of February, 1856, deposited with John F. Taylor, then Sheriff of Winnebago County, (but since deceased,) a sum of money, the precise amount not known to deponent. But he had been informed that it was \$250, and interest thereon at the rate of ten per cent. per annum, which money was received by Sheriff, and was deposited for the purpose of redeeming the tract of land last above described; Defendant claiming the right to redeem that parcel without redeeming the other sold at the same time on the same judgment and execution.

That he had been advised by counsel that the defendant could not redeem one parcel without redeeming the other, and so believing the plaintiffs and deponent had refused to receive said redemption money, which was still in the hands of the Sheriff's representatives. That in consequence of such pretended redemption, deponent was unable to obtain a deed from the Sheriff of both parcels of land as he was entitled to, and insists that defendant had no right to redeem one tract without redeeming the other, and that such pretended redemption was of no force or validity, and that deponent was entitled to a Sheriff's Deed of both parcels.

That the title of the land first above mentioned (being the land not redeemed,) was doubtful and uncertain, and that the attempt of the defendant to redeem one tract without redeeming the other would subject the plaintiffs to great wrong and injustice, and asks for a rule on the Sheriff to convey both parcels.

This affidavit was made on the 6th of February, 1856, and filed the same day.

JAMES M. WIGHT'S AFFIDAVIT

Shows ^{on} information and belief that prior to the rendition of judgment in this cause, that the first tract of land above described had been sold and conveyed by defendants to one Hicks, which land is described as the north-west quarter of section 27, township 26, range 10 east fourth principal meridian.

That at the time of said Sheriff's sale, said conveyance to said Hicks had not been recorded, and that defendant at the said time had in fact no title to the said parcel of land.

This Affidavit was made on the 28th day of February, 1857, and filed on the same day.

Entry of judgment is sufficiently stated above.

EXECUTION

Is the same above described, dated October 25th, 1854, directed to the Sheriff of Winnebago County, and returnable in 90 days, and commands the Sheriff to make the damages in this suit and costs.

The certificate of levy read in support of this motion is dated Nov. 22d, 1854, and states that the Sheriff had levied on the north-west quarter of section 27, township 26, range 10 east fourth principal meridian; that part of the west part of the north west fractional quarter of section 26, township 44, range 1 east third principal meridian, lying east of Rock River and north of Kent's Creek, and a parcel of land which was not sold.

The return on said execution is in these words :

"Made four hundred dollars on the within execution by sale of the two first described parcels of land, and the balance in cash, and I return this writ satisfied in full. Received my fee this 14th day of February, 1855. K. H. Milliken, late Sheriff."

There are divers receipts on the Execution, from the Plaintiffs, acknowledging payment of the said Judgment.

SHERIFF'S CERTIFICATE

Is signed K. H. Milliken, late Sheriff; is under seal, and is dated February 14th, 1855. It states that by virtue of an Execution and Fee Bill to him directed and delivered, (giving its date and the names of the parties, Plaintiffs and Defendant,) on the 14th day of February, 1855, between 10 o'clock A. M. and 4 o'clock P. M., he offered at public sale the northwest quarter of section 27, town 26, range 10 east of the 4th principal meridian, and that part of the northwest fractional quarter of section 26, town 44, range 1 east of the 3d principal meridian, which lies west of Rock River and north of Kent's Creek.

That Thomas D. Robertson having bid \$156 for the first tract, and \$250 for the second described tract, he being the highest and best bidder, became the purchaser, and would be entitled to a deed, if said land was not redeemed according to law. The two tracts sold are described in the said certificate in the same order as above.

Defendant, to oppose the said motion, read his own affidavit, copy of the Sheriff's certificate, filed with the Recorder, and a receipt endorsed on said certificate by John F. Taylor, (then late) Sheriff of said County.

DENNIS' AFFIDAVIT

Shows some immaterial matters about the nature of the suit and the issue of Execution. That he paid said Judgment except about \$400. That he heard a long time thereafter that real estate had been sold by the Sheriff, but did not then know what real estate had been sold. That in the month of October, before said premises were redeemed, he left this State for Massachusetts, intending to return in a short time, but was necessarily detained, and did not return

Page 18 to 19

19

20 & 21

22 & 23

24 & 25

Recd

until a few days, perhaps a week, before the time of redemption, when he learned what parcels of land had been sold on the Execution.

That the land stated in Robertson's affidavit as not having been redeemed was land which he had sold to Kirk, and conveyed to them by deed, and supposed that Plaintiffs had no right to sell it, and therefore that he had no occasion to redeem it.

That he has been informed that said Grantees had neglected to record their deed, and that Plaintiffs may have supposed it belonged to him, and was subject to said Execution.

That within the time required by law, he paid to the Sheriff of the County the amount required by law, to redeem the last mentioned parcel of land, and had since sold and conveyed it for \$1,000.

Other immaterial matters, such as that he had been informed and believed, and had reason to believe that there was some secret arrangement between Plaintiffs and Kirk, when the time of redemption was expiring, under which the said Kirk had redeemed the land, while it showed that the said land had not been redeemed, and that he could show it if he could have benefit of the testimony of said Kirk, that the land sold then was worth \$2,000, and at time of sale was worth \$1,500.

This affidavit was made on the 28th February, 1857, and was filed same day.

SHERIFF'S CERTIFICATE

Page 26

Is an exact copy of the other one, and was filed in the Recorder's Office, February 23d, 1855.

THE RECEIPT

Is endorsed on Sheriff's certificate filed with the Recorder, and is in words and figures as follows :

"ROCKFORD, FEBRUARY 13th, 1856.

27 Received of WILLIAM P. DENNIS two hundred and ^{Twenty}~~twenty~~ five dollars, being the redemption money in full on the last described tract mentioned in the within certificate.

JOHN F. TAYLOR, Sheriff."

Exception was taken to the decision of the Court upon the motion, and a bill of Exception showing the facts into which all the above documents made in support of or in opposition to said motion were introduced.

In the above Abstract and in the whole record the land described as the north-west quarter 27, 26, 10 is intended as the first described parcel of land, being the land not redeemed; and that part of the north-west fractional quarter section 26, 44, 1 west Rock River and north Kent's Creek, is intended as the last described tract; the one pretended to be redeemed, and the one in respect to which the motion was denied.

ERRORS ASSIGNED.

That the Court denied the motion in respect to the last described land when it should have granted the same.

That the Court gave judgment for costs against the plaintiff, when the judgment for costs should have been against the defendant.

JAMES M. WIGHT, Attorney for Appellant.

268
Supreme Court

Thomas & Robertson ^{vs}
appellants

William P. Driggs
appellee

Abstract

~~Abstract~~

Filed April 22, 1858

Edmund
Clubb

agreed May 12 —

✓