

12958

No. _____

Supreme Court of Illinois

Speer

vs.

Cobb

Thomas Spence

Sept 5 1859

Silas B. Cobb

282

12958

1859

Spence
Cobb
282
12958

Abstract Journal & List
Horace T. Warte

Chicago

May 24th 1873

State of Illinois
Cook County . . . ss.

Pleas before the Honorable John M. Wilcox
Judge of the Cook County Court of
Common Pleas within and for the County
and State aforesaid, had at the regular July
Vacation Term of the Cook County Court of
Common Pleas begun and holden at the Court
House in the City of Chicago on the first
Monday being the fifth day of July in the
year of our Lord one thousand eight hundred
and fifty eight and of the Independence of
the United States of America the Eighty third

Present Honorable John M. Wilcox . . . Judge
Carlos Haven Prosecuting Attorney
John S. Wilcox Sheriff

Attest
Walter Kimball, Clerk

Be it remembered that heretofore to wit on the
Twenty second day of May in the year of our Lord
one thousand eight hundred and fifty eight came
Thomas Speer, Complainant, by R. S. Blackwell his
Solicitor, and filed in the office of the Clerk of the said

of Thirteen thousand three hundred and eighty dollars
(\$13380.00) which said indebtedness was evidenced by
five promissory Notes of that date one for \$3880.00
payable in one year after the date thereof, another for
\$2640.00, payable two years after the date thereof; another
for \$2480.00, payable in three years after the date thereof
another for \$2320 payable in four years after the date
thereof, and the last for \$2160.00, payable five years after
the date thereof; each of said Notes drawing interest from
the date thereof respectively until paid at and after the rate
of per centum per annum; that the Condition of said
Mortgage was in substance that if the said Harwin
P. Hickox made default in the payment of said Notes
or either of them, or of the interest due thereon according
to the tenor and effect thereof, and for sixty days thereafter
then the whole of said Notes and the interest thereon
should become due and payable and the said Silas B.
Cobb was by the terms of the said Mortgage duly invested
with power to sell the whole or any portion of said
premises in order to satisfy said principal and interest
on giving fifteen days Notice of the time and place of
said Sale in some Newspaper printed and published in
the said City of Chicago; Which said Mortgage Deed
was duly recorded in the Records office of said County
on October 13, 1855 in Book 22 of Mortgages page 161
All of which will more fully and at large appear reference
being had to a Copy of said Mortgage Deed which is
herewith filed as an Exhibit marked "A", and made

a part of this Bill.

And your Orator further alleges that after the making of said Mortgage Isaac Speer became seised of said premises in fee simple absolute under and by virtue of Conveyances from the said Harrison P. Hickox to John Wesley Hickox and from the said John Wesley Hickox to the said Isaac Speer, subject to the Mortgage aforesaid.

And your Orator further sheweth unto your Honor that the first Note above recited was duly paid by the said Isaac Speer to the said Elias B. Cobb together with all arrears of interest thereon (which said principal and interest was received by the said Elias B. Cobb in satisfaction of said Note.

And your Orator further alleges that on the 13th day of October 1857 and after the second Note above mentioned became due and payable the said Isaac Speer made executed and delivered to your Orator a deed assigning, transferring and setting over unto your Orator his heirs and assigns, all of his lands goods chattels Effects and rights and Credits embracing the Mortgaged Premises aforesaid for the benefit of the Creditors of the said Isaac Speer upon the conditions therein mentioned all of which will more fully and at large appear reference being had to said deed of assignment the original of which is herewith filed as an Exhibit marked "B," and made a part hereof.

And your Orator further alleges that after said second Note became due and payable and before any steps had been taken by the said Silas B. Cobb to exercise the power of Sale conferred upon him under and by virtue of the Mortgage Deed aforesaid, to wit on or about the first day of January 1858 your Orator assigned of the said Isaac Speer as aforesaid and for the purpose of paying the forfeiture provided for in said Mortgage Deed paid to the said Silas B. Cobb upon said second Note above recited the sum of One thousand five hundred dollars, which said sum of money was then and there accepted and received by the said Silas B. Cobb in part satisfaction of the said last mentioned promissory, and the said Silas B. Cobb then and there in consideration of said payment, and of the promise of the said Thomas Speer to pay the residue of said last mentioned Note, the said Silas B. Cobb extended indefinitely the time of payment of said residue of said principal and interest And your Orator charges that the legal and Equitable Effect of the said payment and acceptance was to waive the forfeiture which had previously been incurred under and by virtue of said Mortgage Deed.

And your Orator further alleges that the said Silas B. Cobb afterwards to wit on the 17th day of April 1858 caused to be published in the Chicago Democrat a daily Newspaper published in the City of Chicago Illinois, a Notice of Sale in pursuance of the power

recited in said Mortgage Deed in these words and figures following, that is to say,

"Mortgage Sale of Real Estate - Whereas Harrison J. Hickox did on the ninth day of October 1855 execute and deliver to me the undersigned a certain deed in Mortgage containing a power of Sale conveyed to me whereby the premises hereinafter described to secure the payment to me of the sum of Thirteen thousand four hundred and eighty dollars as specified in five certain promissory Notes of even date therewith signed by the said Harrison J. Hickox payable to the order of the undersigned and due respectively as follows, to wit; One Note for \$3880. due in one year after the date thereof - One Note for \$2640 due in two years after the date thereof - one Note for \$2480 due in three years after the date thereof - one Note for \$2320 due in four years after the date thereof - and one Note for \$2160 due in five years after the date thereof, with a further provision and agreement contained in said Mortgage deed that if default be made in the payment of said Notes, either in principal or interest, in manner as therein provided, the whole of said principal and interest secured by said Notes shall thereupon become immediately due and payable, which said Mortgage deed is duly recorded in the office of the Recorder of Deeds in and for the County of Cook and State of Illinois in Book No 23 of Mortgages and page 161, and whereas default has been made in the payment of said promissory Note, secondly above mentioned whereby, by the terms and conditions of the said Mortgage

Deed, the remaining Notes above mentioned, being the whole
of the money thereby secured, have become due and payable.

"Now therefore public Notice is hereby given that on
Thursday the sixth day of May A. D. 1858 at the hour of
ten o'clock in the forenoon of said day at the North Entrance
of the Court House in Chicago in said County of Cook, by
virtue of the power and authority in said Mortgage Deed
to me given and granted, I shall sell at public Auction
to the highest bidder for cash, the premises in said Deed of
Mortgage described, to wit."

"The East half ($\frac{1}{2}$) of the North west quarter ($\frac{1}{4}$)
of lot No one (1) in Block No Forty one (41) in the original
Town of Chicago in the County of Cook aforesaid, together
with all and singular the privileges and appurtenances thereto
belonging, and all the right and Equity of redemption of the
said Harrison, P. Hickox his heirs and assigns therein."

Martha & Perry, Sols.

Silas B. Cobb

Chicago, April 17th 1858,

Mortgagee "

"The above sale is postponed and stands adjourned
to Saturday the 22nd day of May A. D. 1858 at 10 o'clock
A.M. at same place."

Chicago

Silas B. Cobb

6th May 1858."

Mortgagee "

And your Orator further sheweth unto your
honor that on the said sixth day of May 1858 the day
designated in said Notice for the sale aforesaid the said
Silas B. Cobb, adjourned & postponed said Sale until Saturday
Morning May 22: 1858 as appears from the addition to

said advertisements above set forth and now threatens to sell said premises in pursuance with the terms of said Notice.

And your Orator further alleges that the said Silas B. Cobb is about to sell said premises in pursuance of said Notice (Which said proceedings and actings and doings of the said Silas B. Cobb are contrary to Equity and good Conscience, and tend to the manifest wrong and injury of your Orator in the premises.

And your Orator avers that he requested the said Silas B. Cobb to desist from selling said mortgaged premises under the advertisement aforesaid, and hoped that he the said Cobb would comply with such request, but the said Cobb persists in making said sale.

And your Orator alleges that said premises in said Mortgage deed described are of the value at least Fifteen thousand dollars - that the said Isaac Spear has since the Execution of said Mortgage made lasting improvements upon said premises of the value of about six thousand dollars, and that a sale of said premises under the pretended forfeiture aforesaid would greatly prejudice the rights of your Orator in the premises and either sacrifice said Estate or embarrass the title and possession thereof.

And your Orator is willing in a reasonable time to be designated by this Honorable Court to pay the said Cobb the sum of money aforesaid and hereby offers to use every diligence to convert the assets of the said Isaac Spear

in the hands of your Orator as Assignee of the said Isaac
Sper into money and protect the said Estate by paying to
the said Cobb the said sum of ^{the} Fifteen hundred dollars
with all arrears of interest thereon

Your Orator therefore prays that the said Silas B.
Cobb may be made a party Defendant to this your
Orators Bill of Complaint - that process of Subpoena may
issue upon this Bill against the said Silas B. Cobb out of
and under the seal of this Honorable Court directed to
the Sheriff of said County of Cook returnable in due form
of law Commanding the said Silas B. Cobb personally
to be and appear before this honorable Court on a day
therein to be named and answer the said Bill; that he
may be compelled to appear said bill, and upon such
appearance full true direct and perfect answer make to
all and singular the matters things and allegations in
said bill contained under his corporal Oath, as fully and
particularly as though he the said Silas B. Cobb had been
specially interrogated touching said matters.

And your Orator further prays that on the final
hearing of this cause the said Silas B. Cobb may be
perpetually enjoined and restrained by decree of this honorable
Court from enforcing the forfeiture aforesaid, and that
your Orator may have such other and further relief in
the premises as to Equity and good conscience may seem
meet and in the meantime your Orator prays that a
preliminary injunction may be awarded by this honorable
Court enjoining and restraining the said Silas B. Cobb from

selling said Estate in pursuance of the pretended forfeiture
aforesaid, until the further Order of this honorable Court
And your Orator as in duty bound will ever pray &c
R. S. Blackwell Thos. Speer "

Solicitor and of Counsel for
the said Thomas Speer.

'State of Illinois
Cook County ... &c.

Thomas Speer being duly sworn upon
his oath deposes and says that the statements & allegations
and other contents in the foregoing bill contained as far
as they are stated upon the personal knowledge of this
affiant are true in substance and in fact and insofar
as they are stated upon information derived from others he
believes the same to be true.

Subscribed and sworn } Thos. Speer.
to before me this 22nd }
day of May 1858. . . }

Walter Kimball. Clerk."

And thereupon on the said twenty second day of May A. D. Eighteen hundred and fifty eight, there was issued out of and under the Seal of the Clerk of said Court Summons in Chancery against the said Silas B. Cobb; which said summons with the Sheriffs return thereon endorsed, is in the words and figures following to wit.

*State of Illinois
Cook County . . . }

The People of the State of Illinois
to the Sheriff of said County Greeting
We command you that you summon Silas B. Cobb if he shall be found in your County personally to be and appear before the Cook County Court of Common Pleas of said County of Cook 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 June next to answer unto Thomas Spear in his certain Bill of Complaint filed in the said Court on the Chancery side thereof.

And have you then and there this writ with an 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
afforded this 22nd day of May A. D. 1858.

(Seal)

Walter Kimball - Clerk.

Endorsed

"Served this Writ on the within named Defendant and by delivering a Copy thereof to him, the 26th day of May 1858.

John L. Wilson - Sheriff

By George Anderson - Deputy."

And thereafter to wit on the twenty eighth day of May A.D. Eighteen hundred and fifty eight, there was filed in the Office of the Clerk of said Court, in said suit, Affidavit of said Isaac Speer; Which said Affidavit is in the words and figures following, to wit.

Silas B. Cobb } In the Cook County Court of Common
 (uz) } Pleas, Illinois. In Vacation
Thomas Speer } Bill for Injunction.

Isaac Speer of the City of Chicago and State of Illinois being duly sworn upon his oath deposes and says that after the said 9th day of October 1857 the time in said Bill mentioned when the instalment upon the Mortgage aforesaid mentioned in said Bill became due and payable, to wit, about one week prior to the time of the payment of the said sum of Fifteen hundred dollars mentioned in said Bill by the said Thomas Speer to the said Silas B. Cobb, ^{this affidavit except upon the said Silas B. Cobb} and proposed to pay to the said Cobb Five hundred dollars on condition that the said Cobb should

give to said Thomas Speer a reasonable time to pay the
said instalment of Two thousand six hundred and forty
dollars - that the said Cobb replied in substance that the
acceptance of the said proposed payment might have the
legal effect of waiving the forfeiture incurred by the
said Thomas Speer occasioned by the nonpayment of
the said sum of \$2640.00. dollars, that he, said Cobb,
was not willing to waive that risk for a less payment
than Fifteen hundred dollars, and that if the said
Thomas Speer would pay him the said sum of Fifteen
hundred dollars, he could have one week to raise the
money in, and so the said Cobb would give to the
said Thomas Speer time for the payment of the residue
of the said instalment, this affiant further deposed and
says that he informed the said Thomas Speer of the
conversation between this affiant & the said Silas B. Cobb
And affiant further deposes and says that to his knowledge
the said Thomas Speer assented to the suggestion of the
said Cobb and within the said week procured the said
Fifteen hundred dollars and affiant was afterward
informed by the said Cobb that the said Thomas Speer
had paid the said sum to him the said Cobb and that
it was all satisfactory And further this affiant saith
not.

Sworn to before me this (signed) Isaac Speer,
28th day of May A.D. 1838 }
W. Kuntale - Clerk

And thereafter to wit on the Thirty first day of May A. D. Eighteen hundred and fifty eight came the said Defendant by Sanford B. Perry his Solicitor, and filed in the Office of the Clerk of said Court his Motion to dismiss said Bill; Which said Motion is in the words and figures following, to wit,

"State of Illinois	Cook Co. Court of C. Pleas.
Cook County . . . }	June 7. A. D. 1858.
Silas B. Cobb	In Chancery
and	Bill for Injunction &c
Thomas Speer . . }	

And now the said Defendant comes and moves the Court to dismiss the said Complainant's Bill of Complaint for the reason, that the same does not show that the said Complainant is entitled to any relief or discovery therein.

Silas B. Cobb-

By Sanford B. Perry

his Atty & Solr."

And thereafter to wit on the fourteenth day of June A. D. Eighteen hundred and fifty eight there was filed in the Office of the Clerk of said Court, a certain Affidavit of said Complainant; Which said affidavit is in the words and figures following, to wit-

"State of Illinois
Cook County ...

Thomas Speer

(vs)

Silas B. Cobb

In the Cook County Court of
Common Pleas, of the term
of June 1858.

On the Chancery side.

Thomas Speer Complainant in the
above entitled cause being duly sworn upon his oath
deposes and says, that on Saturday Evening last June
12. 1858, and after the last Notice given by this affiant
to the said defendant of Affiant's intention to renew his
application for an Injunction in this cause, affiant
learned from a credible witness Frederick Tuttle of the
City of Chicago and State of Illinois, that the said
Defendant had before that time informed the said Tuttle,
that he, Defendant, had no interest in the subject matter
of said Bill, that he had got his pay long ago, and that
he was prosecuting the said cause for the use and
benefit of Benjamin F. Haddock.

Subscribed and sworn (signed) Thos Speer.

to before me this 14th

June 1858

W. Kimball Clerk.

And afterwards to wit on the Ninth day of July
(being one of the days of the regular July Vacation term
of said Court) A. D. Eighteen hundred and fifty eight
the following proceedings were had in said cause and
Entered of record in said Court, to wit:

^{vs} Thomas Spier

(vs)

Bide,

Silas B. Cobb

This day comes said Complainant by Robert S. Blackwell his Solicitor and the said Defendant by Martin & Perry his Solicitors also come and submits said Defendants Motion to dismiss the Bill upon the ground of want of Equity in said Bill, and the Court after hearing arguments of Counsel upon said Motion and having fully considered the premises, and being well advised sustains the said Motion -

Wherefore it is considered the Bill in this cause be dismissed at the Costs of said Complainant; and thereupon said Complainant by his Solicitor enters his exceptions to the decision of the Court in sustaining said Defendants Motion and dismissing the Bill in this cause, and prays an Appeal to the ^{the} Supreme Court of the State of Illinois, which is allowed upon the condition that he file his Appeal Bond in the sum of Two hundred dollars in ten days from this day with as his Security thereon.

And thereupon accordingly on the seventeenth day of July A. D. Eighteen hundred and fifty eight, the said Complainant filed in the Office of the Clerk of said Court his Appeal Bond: Which said Bond is in the words and figures following, to wit.

"Know all Men by these Presents That we Thomas
Speer, Cyrus P. Bradley and A. P. Werts of the County
of Cook and State of Illinois are held and firmly bound
unto Silas B. Cobb, also of the same County and State,
in the penal sum of Two hundred dollars lawful money
of the United States for the payment of which well and
truly to be made we bind ourselves our heirs Executors
and administrators jointly severally and firmly by these
presents.

Witness our hands and seals this seventeenth day,
July A. D. 1858.

The Condition of the above Obligation is such
That whereas the said Silas B. Cobb did on the Ninth
day of July A. D. 1858 in the Cook County Court of
Common Pleas in and for the County and State afore-
said and on the Chancery side thereof, and of the July
Term thereof A. D. 1858 obtain a Decree against the said
Thomas Speer for the dismissal of the Bill of Complaint
of the said Thomas Speer, which said Bill of Complaint
was filed in the Clerk's office of the said Court on the
twenty second day of May A. D. 1858 against the said
Silas B. Cobb, besides the Costs of suit; from which said
Decree of the said Cook County Court of Common Pleas the
said Thomas Speer has prayed for and obtained an appeal
to the Supreme Court of the said State.

Now therefore if the said Thomas Speer shall
duly prosecute his said Appeal with effect, and moreover
pay the amount of the judgment, costs, interest and

damages rendered, and to be rendered against him in case
the said Judgment and decree shall be affirmed in the
said Supreme Court, then the above obligation to be
void, otherwise to remain in full force and virtue.

Approved by me this 17th (signed) Thos. Spear (Seal)
day of July 1838 C. P. Bradley (Seal)

John W. Wilson

H. P. Wurts (Seal)

Judge of the Cook Co. Ct. of C. Pleas.

State of Illinois }
County of Cook } Jp.

J. Walter Kimball
Clerk of the Cook County Court of Common
Pleas in & for said County & State, do hereby
certify that the foregoing is a full true
& correct Transcript of the Record & files
of said Court now in my office, (except
Exhibit "A" in the bill aforesaid), in the
case of Thomas Spear Complainant against
Silas B. Cobb Defendant

In Testimony whereof I here-
unto set my hand & affix the Seal
of said Court at Chicago this
12th day of April A D 1859
Walter Kimball
Clerk

Thomas Green
vs.
Julius B Cobb

In the Supreme Court of the
Third Grand Division of
the term of Spring
1854.

Appeal from ^{of Common Pleas} Cook County, Cook

And now comes the said appellant
by R. B. Blackwell his attorney
and says that in the record of the
proceedings aforesaid and in the
rendering of the judgment aforesaid
manifest error hath intervened to
his prejudice in this Court!

1. That the said Court erred in
dismissing the bill aforesaid.

2. That the said Court erred in rendering
a decree for the said appellee when
by the laws of the land the
said decree ought to have been
rendered in behalf of the said
~~Complainant~~ appellant.

For which errors and others in
the record aforesaid appellant prays
a judgment of reversal &c.

R. B. Blackwell v. g.

And the said Defendant in error by Sanford
B Perry his Attorney comes and says that there
is no error in the said ~~proceedings~~ proceedings
or in giving the judgment aforesaid
wherefore he prays that the said judgment
may be in all things affirmed &c

S B Perry

Atty for Deft

State of Illinois
Cook County Court
of Common Pleas

282.

Thomas Spear

— vs —

Silas B. Cobb

Record

Filed April 21 1859
L. Leland
Clerk

12958

Ass Trans Hout. \$5.30
paid by R. E. Blackwell.
W. Kimball. C. K.