

12664

No. _____

Supreme Court of Illinois

Stone, et al.

vs.

Gardner, et al.

88 - 146

Matthias Stone et al

vs
David R. Gardner et al

1858

Repaired

United States of America
State of Illinois
Pope County

Pleas before the Hon Allen C Fuller
Judge of the County Court of Pope County, and
State of Illinois At a term of the County Court
of said County begun and held at the Court Room
in Belvidere in said County on the First Monday
of September Anno Domini 1857 being the 7th day
of said Month.

Present Hon. Allen C Fuller Judge

L M Burt Clerk

Charles J Fiddell Sheriff

Court opened by Proclamation of Sheriff

Be it remembered that heretofore came on the
5th day of May 1857 Came David R Gardner
by his Solicitor Houlbert and filed his bill
of Complaint in words and figures following viz

In the County Court
of Pope County

} To June Term 1857

To the Hon Allen C Fuller Judge
County Judge of Pope County holding Terms and
sitting with Chancery Jurisdiction in and
for said County.

The Bill of Complaint of

And your Orator further shews to your Honor that afterwards at the December Term of said Court 1855, by the judgment and consideration of said Court therein before and without the Consent (appearance) or privity of said Orator, a Judgment was rendered against your Orator by default for the sum of One Hundred & seven ^{18/100} dollars & ^{18/100} damages and Eight ^{26/100} dollars Costs which judgment your Orator is advised and believes to be valid for the reasons before assigned and also because the same exceeds in amount the jurisdiction of said Court in Cases of Appeal.

And your Orator further shews unto your Honor that afterwards that is to say on the 19th day of December 1855 an Execution of fieri facias issued from said Court against your Orator upon said judgment directed to the Sheriff of Brown County to execute which said Execution came into the hands of H R Wilson the Sheriff on the 21st December 1855, commanding him to make the said sum of One hundred & seven ^{18/100} dollars - damages & Eight ^{26/100} dollars Costs, Out of the lands and tenements goods & chattels of your Orator, Which Execution was by the said Sheriff levied on the West Half of the Southeast

Quarter of Section twenty six Township forty four. Range three East in Boone County the property of your Orator, on the 3^d January 1856, and was afterwards sold on the 2^d February AD 1856. Returned into said Court satisfied by sale of the above described Real Estate to Mathias & Marvin Stone, All which matters more fully appear by the records of this Court and the said Execution & Return are file in said Cause

And your Orator further shews to your Honor, that it appears by the Certificate of sale recorded in the Records office of Boone County in Book N^o 2 of Sheriff's Certificates page 174. that the said Hanson R Wilson then Sheriff of said County upon said Judgment or order against your Orator & in favour of M & M Stone was then recited but which your Orator believes and avers to be the same above recited did on the 26th Jan'y 1856, sell the land above described to said M & M Stone for the sum of One hundred & twenty two Dollars, Which Certificate by the terms thereof recites that unless the said land, should be redeemed within fifteen months from said 26th January 1856, according to law that then the said Mathias & Marvin Stone would be entitled to a deed therefor

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as by said Certificates reference being had there-
unto had will lawfully appear

And your Orator
further sheweth to your Honor. that having learned
that such sale had been effected and
Certificates Recorded, he did on the 26th day of
January 1857. at 10 AM of said day deposit with
Daniel H Whitney Clerk of the Circuit Court the sum
of One hundred and thirty four ⁴⁰/₁₀₀ dollars being
the full amount of Redemption Money upon
such sale for the use and benefit of said Mathias
& Marvin Stone. And in Redemption of said
Land.

That said Mathias & Marvin Stone were
then and are now nonresidents of this State
and that said Money was so deposited in
good faith for their use and benefit

That Daniel J Olney at that
time & now was or claimed to be agent for said
Mathias & Marvin Stone, and was notified
by said Clerk Daniel H Whitney that said am-
ount of Money was so deposited for the use
of his principals. But the said Daniel J Olney
as such agent and acting for said M & M
Stone refused to accept the same. Alleging
and pretending that more than twelve months
had elapsed prior to such deposit, and
that the said term of twelve months expired

6
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that such sale had been effected and
Certificates Recorded, he did on the 26th day of
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& Marvin Stone. And in Redemption of said
Land.

That said Mathias & Marvin Stone were
then and are now nonresidents of this State
and that said Money was so deposited in
good faith for their use and benefit

That Daniel J Olney at that
time & now was or claimed to be agent for said
Mathias & Marvin Stone, and was notified
by said Clerk Daniel H Whitney that said am-
ount of Money was so deposited for the use
of his principals. But the said Daniel J Olney
as such agent and acting for said M & M
Stone refused to accept the same. Alleging
and pretending that more than twelve months
had elapsed prior to such deposit, and
that the said term of twelve months expired

On the 25th January 1857.

And your Orator further sheweth that finding that said R D Oley refused to accept such redemption money he applied to R D Stanton Esq. one of the Attorneys of this Court to pursue some Method by which he could pay up the amount due to said M & M Stone, and obtain a release of this said Land and by the advice of said Attorney he did on the twenty first day of February 1857. Cause a Judgment in this Court in favour of Martin Y. Gilbert, so that the said Gilbert as Judgment Creditor might redeem said Land, which Judgment was entered up on the day and year last aforesaid as by the Records of this Court will more fully appear

That his said Council R D Stanton was taken seriously ill and so continued for a length of time and your Orator ⁱⁿ ignorance of the precise mode & Manner of procuring a Redemption under said last mentioned Judgment and acting therein as the agent & under the authority of said Martin Y. Gilbert did on the 24th day of April 1857 deposit with Elias L. Fiskel Sheriff of the County of Boone the sum of One hundred and forty dollars being more than the amount due up to that time date for Redemption Money under said Certificate

of said which money was by said Sheriff so received and Daniel O Olney Matificed thereof

That the said Daniel O Olney went as aforesaid after being so Matificed refused to receive the same insisting and pretending that he was not bound so to do because the said Martin O Gilbert had not paid out his Execution upon said Judgment. Nor paid the same in the hands of said Sheriff prior to such deposit being made. And prior to the Expiration of said fifteen Months of Redemption - Although so far as the said Mathias & Marvin Stone were concerned it was sufficient that the money had been for them deposited by said Gilbert. Who then was a Judgment Creditor before the Expiration of said fifteen Months and the provisions of the Statute in relation to bringing out Execution Levy & sale apply solely to the benefit of subsequent Creditors and not of the prior lien. And your Orator further sheweth to your Honor that as soon as he learned that said Olney as such agent had refused said last mentioned tender and deposit he called upon him & offered to pay any reasonable amount over and above said redemption money. And offered him fifty dollars more to release said land. But that said

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Olney insisting that he had gained a technical and unjust advantage over your Orator refused said offers

And your Orator further sheweth unto your Honor that by Warranty And bearing date 9th June 1856. he had conveyed said Lands to Orville S Stevens who now holds title to the same and to whom your Orator is bound to remove said incumbrance

That said Lands are worth the sum of at least Sixteen hundred Dollars

That your Orator has repeatedly requested of said Mr & Mrs Stone by their said agent David J Olney to receive the amount actually due them in full of said Certificate of sale as herein before stated and to release the same upon the records Either to your Orator or to said Martin Y Gilbert, but that said Olney for the said Mr & Mrs Stone wholly refused to comply with these reasonable requests.

That your Orator is willing and ready to ^{overlook} ~~make~~ any advantage that he may have by reason of the informality and insufficiency of the Judgment & proceedings thereunder upon which said Certificate is based & founded and is now willing and ready and hereby offers to pay—

Whatever amount may be due thereon
When and where this Court shall order.

That said Certificate of sale remaining
so far as your Orator has any knowledge
still in the hands of the said Mathias Marvin
Stone not assigned in any manner, but
that your Orator fears that either the said
Mathias or Marvin Stone or the said Daniel
& Oley thus agent may and will transfer
the same before the hearing of this Bill to some
innocent purchaser and that the said Elias L. Finkel
Sheriff of Boone may make out and deliver a
Deed for said Land to said Stone or to said Oley
or some other person to the irreparable injury of
your Orator as they threaten to do, unless
enjoined by this Court.

All which actions and do-
ing pretences refusals and threatening on the
part of the said Mathias Stone, Marvin Stone,
Daniel & Oley and Elias L. Finkel are contrary
to equity and good Conscience and tend to the
manifest wrong and injury of your Orator
In tender Consideration whereof and for as much
as your Orator is remediless in the premises at
Common Law, and can only receive relief
in this Honorable Court when matters of this
sort are cognizable to the end therefore
that the said Mathias Stone & Marvin Stone

and David T Olney may by preliminary
 Injunction issuing out of this Court be
 enjoined from selling transferring or as-
 signing said Certificate of Sale and from de-
 manding or receiving of and from the said
 E L Tisdell Sheriff a Deed for said Land under
 said Certificate and the said E L Tisdell from
 making and delivering said Deed, until the
 further order of this Court in the premises
 And that upon payment of the said amount
 actually due to said M & M Stone either on the
 26th day of January 1857 or on the 24th day of April
 1857 said Mathias and Marvin Stone or their
 select assignee if any may be ordered and
 Compelled to satisfy said Certificate of Sale
 for the benefit of your Orator or his Grantor
 Orville S Stevens or the subsequent Indigent
 Creditor Martin V Gilbert and that in case
 the said Mathias & Marvin Stone shall re-
 fuse to receive the same under order of the Court
 the said Judgment by them obtained against
 your Orator and all subsequent proceedings
 thereunder may be set aside and declared
 null & void. And that the said Mathias Stone,
 Marvin Stone, David T Olney, Elias L Tisdell -
 Martin V Gilbert & Orville S Stevens, who your
 Orator prays may be made Defendants to this
 Bill, May without oath answer the same & that your

Orator may have such other & further relief
as his case may require and may seem agree-
able to equity and good Conscience

May it please your Honor to grant
unto your Orator a Writ of preliminary Injunction
as heretofore prayed and also a Writ of Sum-
mons directed to said Defendants Commanding
them to be and appear in person before this
Honorable Court on the first day of the
next Term thereof then and there full true
& perfect answer to make of in & to the
premises (without Oath) and further to pay
over & abide what to your Honor shall seem
meet in the premises

State of Illinois
Bronx County }

David R Gardner being
duely sworn says that he has heard the for-
going Bill read and knows the contents
thereof. And that the matters and things
therein set forth as facts of his own knowledge
are true and such as are stated ~~in~~ ^{on} in-
formation and belief he believes to be true

Sworn and Subscribed David R Gardner
this 5th day of May 1857

L M Burke Co Clerk

Edw Houlbert Solicitor

Upon which said Bill is indorsed the following

Let Injunction issue in accordance
with the prayer of the within Bill on Com-
plainants entering into Bond in the sum
of Five Hundred Dollars with George Waterman
or M. G. Gellert who is hereby approved as
Security. Said Bond Conditional as the law
directs

Allen C. Fuller

County Judge

Boone County

~~And that thereupon there issued~~
~~A Writ of Habeas Corpus~~ And that thereupon there issued
a Writ of Habeas Corpus a Summons and Writ of Injunction
which were afterwards returned & filed as follows

State of Illinois
Boone County } ss.

The People of the State of Illinois
To the Sheriff of said County Greeting
We Command you that you summon Mathias
Stone Marvin Stone David Talley Elias Seidel
Martin G. Gellert & Orville S. Stevens, if they
shall be found in your County, personally
to be and appear before the County Court of
said County on the first day of the next Term
thereof to be held at the Court House in
Belvidere in said County on the first
Monday in June next to answer unto the
Bill of Complaint of David R. Gardner now
on file in this office

And have you then and then this writ

with an endorsement thereon, in what
manner you shall have executed the same

L. S.

Witness L M Burke Clerk of
of our said Court and the seal
thereof at Belvidere Jeffersonia this
6th day of May A.D. 1857

L M Burke Clerk
of the County Court

State of Illinois }
County of Boone } p.

The People of the state of
Illinois to the Sheriff of said County Greeting
Whereas it has been represented
to us in our said County Court of Boone County
by the Rev of Complaint of David R Gardner
filed in said Court praying Injunction
and relief touching the matters therein
set forth, that Matthias & Marvin Stone and
David & Almy wrongfully threaten & intend
assign transfer & set over to some person unknown
a certain Certificate of sale given by
H R Wilson late Sheriff of said County upon a cer-
tain Judgment heretofore recovered in favour
of Matthias & Marvin Stone Copartners under
the firm of M & M Stone against said David
R Gardner. Recorded in Book N^o 21 of Sheriff's
Certificates of Boone County page 174

and further threaten and intend to demand and have of Elias L. Fiddel Sheriff of said County a deed for the premises therein mentioned and that said Elias L. Fiddel Sheriff as aforesaid threatens & intends to make and deliver said deed - and said Injunction having been allowed by the Hon. Allen C. Fuller our Judge in and for said Court

Now therefore you are hereby commanded to satisfy said Mathias Stone Marvin Stone & David T. Almy their agents Attorney and all persons claiming under them or either of them that they absolutely desist & refrain from assigning transferring or in any manner disposing of said Certificates of sale or any rights thereunder to any person or persons whatever and from demanding of & from said Sheriff a deed for said premises, and the said Sheriff from making and delivering any deed thereof until the further order of said Court in the premises

And further that you summon the said Mathias Stone Marvin Stone & David T. Almy to be and appear at the next Term of said County Court to be holden at Belvidere in said County on the first Monday of June next then & there give true & perfect answer to make to the premises Without Oath which

is hereby waived & further to do and perform
What to said Court. shall seem meet

Witness Leonard M Bule Clerk of our
afore said Court and the seal
thereof at Belvidere this 6 day
of May 1857

Leonard M Bule CLK

State of Illinois }
Peoria County } ss.

I hereby certify that I have served
the within writ by reading the same to the
within named David T. Almy, this 13th day
of May 1857 and also by leaving a copy
with him

Fees Service	50
Copy	50
Mileage	5
Return	<u>10</u>

\$1.15 Elias L. Jordan Sheriff

Filed May 14. 1857 } And that afterwards and author

L M Bule } 5th day of June 1857. the said Clerk

filed his bill answer to the said bill as follows

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In the County Court of Peoria County

In Chancery

The Separate answers of David T. Almy
one of the defendants to the Bill of Com
plaint of David R. Gardner Complainant

Against him and others in said Court

This defendant saving all just exception to said Bill. for answer thereto or to so much as he is advised is Material or Necessary for him to make answer to his say

That the said sale by said said Land under said Judgment was in the Mode and Manner and authorized by Law, and that the sums have not been redeemed from said sale in the manner pointed out by Law and that the title thereto has by virtue of such sale become divested out of said Gardens and his Grants the said Stevens and vested in the purchasers at such sale or their assigns - and they now were entitled to a deed therefor. And he denies all fraud and unlawful combination with which he stands charged in said bill without this that there is any Matter or thing Contain'd in said Bill Material or Necessary for this defendant to make answer unto, and not herein wholly well and sufficiently answered unto Confessed and avoided traversed or denied is true to the Knowledge or belief of this defendant and having fully answered he prays leave to be dismissed with his reasonable Costs and Charges

and his damages in this behalf most
wrongfully sustained.

N T Almy

Wm T Purgip Bali

No 6.

And that afterwards on the said
1st day of June AD 1857. said ^{Matthias & Marvin Stone} ~~Ex parte~~
filed ^{their answer} his ~~best~~ ~~repleading~~ as follows to wit:

In the County Court of Boone
County

State of Illinois }
County of Boone & sp.

In Chancery

The joint and several answer
of Matthias Stone & Marvin Stone
two of the Defendants to the Bill
of Complaint of David R Gordon
Complainant

These Defendants now and at
all times hereafter saving and reserving
all and all manner of advantage of exception
that can or may be had or taken to the said
Bill of Complaint for the many errors and un-
certainties and other imperfections therein con-
tained for answer yet nevertheless shunt or
unto so much and such parts thereof as they
are advised is or are material or necessary
for these Defendants to answer unto

they answering say that true it is that the said Complainant made the note to these Defendants for the amount & payable at the time specified in said Bill of Complaint and that the said Complainant in violation of his agreement, to pay said money although abundantly able so to do, refused when the note fell due to pay the same, and from time to time put these Defendants off with promises to pay the same at some future day until these Defendants were compelled to resort to their legal remedies and instituted suit against him and recovered judgment before Edward Hawley a Justice of the Peace as stated in said Bill. And from which judgment the said Complainant having no just Cause of Defence, nor even an inability to pay as an excuse, but for the mere purposes of delay & to put these Defendants to as much inconvenience as possible in collecting their demands against him took an appeal to the Circuit Court of Boone County aforesaid & upon which appeal at the December Term of said Court a judgment was rendered that these Defendants recover against the said Complainant the sum of one hundred & seven dollars and eighty Cents being the amount due on said note of principal & interest and also twoper

Out damages as the Judgment of the Justice for delay. The said Court being satisfied that said appeal was taken for delay only and the Costs of suit amounting to Eight $\frac{24}{100}$ dollars upon which Judgment & execution was duly issued to the Sheriff of Boone County, the said Land, and ~~Exonors~~ Primers levied upon and sold as charged in said Bill.

And these Defendants further answering, expressly charge that the said Complainant was in person called upon by the ^{said} Nelson Sheriff of said County for payment of said execution, and though the said Complainant had then a sufficient means and was abundantly able to satisfy said Execution yet he saw fit to take advantage of all the laws delay and turned out to said Sheriff the said Land for him to levy upon and sell under said Execution, that the time and place of the sale thereof was well known to him. And these Defendants further answering say that the said Complainant saw fit to allow his land to be sold, & took to himself the privilege of reducing the same according to law & that if he hath failed to do it is by his own act, and his want of fidelity in performing his agreements.

where abundantly able so to do. that the title to said Lands hath become divested out of his grantee under said Sale

And these Defendants further Answering say that the order of the 27 August 1855 if of no validity is charged by said Complainant yet did not prejudice the rights of Deftors in Court, but that the failure of the Judge to appear & preside in and upon the September term of said Court did not work a discontinuance of any Cause in said Court as by operation of law all Causes then pending in Court were continued to the next term of said Court according to the Course of practice & proceeding in the Circuit Court of this State

And these Defendants further Answering say that these said Defendants at the time of said Sale and since resided and now reside at Milwaukee in the State of Wisconsin - within eight hours ride by Rail Road from Belvidere in said County of Peoria - and such their residence has always during all the time aforesaid been well known to the said Complainant - and no reason exists or Cause ~~shall~~ be shown why said Complainant did not come & to these Defendants and pay them the

Meaning he claims to have paid the said David
J Whitney if any such he ever did pay -
That David J O'Leary at all times from said
sale to this time resided in Belvidere and
was as easy of access to said Complainant as
said David H Whitney. And these Defendants
expressly deny any and all authority by them
conferred upon said O'Leary to receive any
of the rents in the premises.

And these Defendants further answering
deny that the said Lands were ever redeemed
from said sale at the time and in the manner
pointed out by Law that the rights of the said
Complainant in the premises are defined
and given by law, and must be exercised
by him in the mode pointed out by law
and in no other way, and that these Defendants
have not done suffered or committed any act
intended to or which in fact ~~did~~ did deprive
said Complainant of any right or privilege
in the premises conferred upon him by law
but that if the title to said lands hath
become absolute under said sale it is
entirely owing to the gross ^x laches of the
said Complainant in asserting his rights
and his disposition to interpose all the
delay of the law before paying his just
debts. And these Defendants further answering

say that there was no good or valuable consideration for the Indemnity supposed by said Complainant to be recovered against him by Martin G. Gilbert & but wholly without such consideration and designed and intended to defraud these Defendants in the premises

And these Defendants further answering say as to all that part of said Bill as sets up the payment of Money by said Gilbert as and for the redemption of said Lands. They deny that he ever in fact paid any Money whatever to any one & that if any such Money was ever paid it was the Money of said Gardner. And further that the rights if any of said Gilbert acquired by said payment are adverse to the said Complainant and might be insisted upon by said Gilbert but do not in any way aid the said Complainant. For if the redemption claimed by Complainant was sufficient said Gilbert could not redeem. If not sufficient then Gilbert must file a bill or institute ~~the~~ other proper proceedings ~~institute~~ to insist upon his rights if any in the premises. And these Defendants to all that part of said Bill pray to have the same benefit of this exception as though they had ~~demanded~~ ^{demurred} to that part of said Bill for that Cause and

upon this point they pray the judgment of the Court.

And these Defendants further Answering say that the said Complainant after paying said money into the hands of said Whiting if any such was ever paid which these Defendants deny, then would draw the same and elected to treat such payment of said sum of money as a nullity and to rescind said Sale from said Sale under Cover of & judgment Creditor the said Martin Y. Hillier, and that having so elected to treat and consider such payment of said money to said Whiting as a nullity and voluntarily to withdraw and use the same he is now estopped and barred from setting up any rights that he might otherwise have held and insisted upon under such payment of said money if any such was ever made and they insist upon this as a bar to any Relief prayed for by said Complainant in his bill and upon this point pray the judgment of the Court.

And these Defendants further Answering say that the said Orville B. Stevens is a necessary and material party to this suit and should have been made a party Complainant therein if the charges in said bill are true.

And afterwards took on the 8th day of
September AD 1857. So much of said
Answers of said Defendants as file as is
in the nature of a Demurrer was heard
and considered by said Court and
the Demurrer therein to said Bill over-
ruled and so much of said Answers as
is in the nature of an Exception by
way of Plea that Os Stevens should
be part Complainant was sustained.
Thereupon said Complainant asked
and obtained leave from the said
Court, to make said Orrell & Stevens
a part Complainant

And no cause being shewn why he is not such party Complainant, upon this point they pray the judgment of the Court and that they may have the benefit of this exception the same as though they had pleaded the want of proper parties Complainant to said bill

And these Defendants further Answering say, that the said Complainant hath not in and by his said bill made or stated such a case as doth or ought to entitle him to any relief in a Court of equity in the premises, and they pray to have the benefit of this exception the same as though they had demurred to said bill and upon this point they pray the Judgment of the Court and their Costs and Damages

And these Defendants deny all fraud and unlawful combinations with which they stand charged in said bill, without this that there is any matter or thing in said bill contained or alleged and not herein or hereby well and sufficiently answered unto Confessed and avoided traversed or denied is true to the knowledge or belief of these Defendants, And having fully answered they pray hence to be dismissed with their reasonable costs and charges in this behalf most earnestly sustained,

Mathias Stone

W J Burges

M Stone

Sally & of Counsel

And that afterwards the said 1st day of
 Nov AD 1857 said Complainant, ^{filed} his Rep-
 lication as follows to wit

David R Gardner

vs

W & M Stone et al

} Replication in Chancery

And the said Complainant by
 Hubert his Solicitor Came and for Replication
 to the Answer of Mathias & Marvin Stone and
 David T Clay herewith filed say that the
 Matters & things in said Bill Contained
 & set forth are true in fact. And the Matters
 & things in said Answer set forth are untrue
 which the said Complainant is ready to
 verify when and where this Court may
 order and appoint

S A Hubert

Solr for Complt

And that afterwards on the 9th day
 of September AD 1857. the said Complainant
 filed their Amendment to Bill of Complaint
 as follows.

D R Gardner et al

vs

W & M Stone et al

} County Court of Boone
 County
 In Chancery

Amendments to bill

And the said Complainants by leave of
 Court first had and obtained leave to
 amend their said Bill as follows that is to
 say " And your Orators further shew
 unto your Honor. that the said sale of
 said Lands so made by the said Mr Wilson
 Sheriff under said Execution was invalid
 in these particulars because the said
 Lands so sold by him was at the time of
 sale of the value of Sixteen Hundred dollars
 largely exceeding the amount of the ^{said} Execution
 and was susceptible of division to advantage
 but was not in fact ~~not~~ offered by said
 Sheriff at said sale in smaller parcels nor
 was any bid asked for or permitted for a
 less amount than the entire eighty acres,
 but the whole undivided eighty acres
 was set up and offered at said sale
 at first & bid in by Plaintiff, on Execu-
 tion.

S A Humbert
 Solicitor

And that the said Defendants Matthias
 and Marvin Stone & D J Almy on said 9th
 September 1857. Filed their answer as follows

Mr & Mrs Stone
ad.
O R Gardner

In County Court of
Brown County

And the said defendants for
Answer to the Amended Bill of said
Complainant say that the sale of said
premises made by said sheriff upon
the execution is not ^{on} valid for the Causes
set forth in the unindorsed bill that said parcel
of Land is described in the deed of said
Complainant as an entire Lot of Eighty
Acres. & is used as a farm and they deny
that the same was susceptible of division
to advantage and that they can neither
admit or deny that allegation in said
Amended bill that the said premises are
of the value of Sixteen Hundred dollars or
any sum greatly exceeding the same for
which the same were sold or whether
the whole Eighty acres were in the first
instance ^{set} up and offered for sale

L M Pray

Deft. Salr.

And that on same day the
Plaintiffs filed their Replication to said
Bills Answer as follows

O R Gardner et al

vs

Mr & Mrs Stone et al

Replication

And the said Complainants by
S A Hunt their Solicitor Amine and
Says for Replication to answers to Bill And
Amended Bill. that the Matters set up
in said Bill are true and that the Matters
set up in said Answers so far as they Cont-
radict said Bill are untrue

Sept 9. 1856.

S A Hunt

And afterwards on the said 9th September 1857 the follow-
ing decree was rendered in said Cause

3rd. Bonds D R Gardner et al

County Court Boone County

vs

In Chancery

M & M Stone et al

And now on the 9th day
of September being one of the days of the Sep-
tember Term of said Court A.D. 1857 this Cause
Came on to be heard before the Hon. Allen C. Talbot
Judge of said Court upon bill and Amended
there filed, Answers of Defendants, Replications &
proofs. And exhibits heard & made in Court, And
it appearing to the Court that David R Gardner
one of the Complainants in this Cause was on
the 2nd day of January A.D. 1857, Seized in fee of
the land described in the Bill of Complaint that
is to say, The West Half of the South East Quarter of
Section twenty six Township forty five Range three
East in Boone County Missouri

And it further appearing to the Court that

on 3^d day of January AD 1856. Hanson R Wilson
then Sheriff of said County by virtue of an Execution
issued out of this Court in a cause wherein Mathias
+ Marvin Stone were Plaintiffs + David R
Gardner Defendant did levy upon said tract of
Land which said Execution was for the sum
of One Hundred + seven Thousand Dollars Damages + Eight
Thousand Costs.

And it further appearing that aft-
erwards ~~that~~ on the 26th day January 1856. The
said Hanson R Wilson Sheriff as aforesaid in
pursuance and by virtue of said Execution
did expose + offer said Land at public sale
and did sell the same to the said Mathias +
Marvin Stone for the sum of One Hundred +
twenty two Thousand Dollars.

And it further appearing from the
proofs and exhibits that the said Hanson R Wilson
Sheriff offered the entire 80 acres in one body for
sale as said Guy and that no smaller parcel
nor division of said Eighty acres was offered
and no bid asked for a less amount than said un-
divided Eighty acres and that said eighty acres
of Land was at the time of said sale worth
the sum of Sixteen Thousand Dollars, that is to
say at the rate of twenty Dollars per acre, and
was cultivated and improved land, and was
bid off in one body by said Mathias + Marvin Stone

And it further appearing that the said
 Eighty Acres was susceptible of division to Adv-
 antage And that either half of the same would
 at the time of said sale have been abundant to
 satisfy said Execution

And it further appearing after said
 sale that is to say on the 9th day of June A.D.
 1856. the said David R Gardner by due Con-
 veyed said Land to his Complainant Orville
 S Stevens in whose said title now is

And it further appearing that on the
 26th day of January A.D. 1857 the Complainant David
 R Gardner did deposit with David H Whitney
 Clerk of the Circuit Court and Recorder of the
 County of Boone the sum of One hundred
 thirty four dollars & forty Cents as Redemption Money
 upon said sale, which was the full Amount then
 due which money was received by the said David
 H Whitney as Clerk and Recorder, in the absence of
 Elias L Fiddell then Sheriff of Boone County and in
 the absence of the said Matthias and Marvin Stone
 who were then and are now nonresidents of the
 State of Illinois

And it further appearing that the said
 Matthias & Marvin Stone by their agent David Tilling
 refused to accept said sum of Money as deposited
 and have before the filing of this Bill refused
 to receive of and from the Complainants, the Amount

of their said bid with ten percent interest thereon

And it further appearing by said Bill of Complaint that said Complainants are ready and willing and their said truly tender to the said Mathias and Marvin Stone such sum of money as may be due upon said Sale and the Certificate thereof are file in the Records Office of said County when and where the Court may order or direct.

It is therefore Considered adjudged and decreed that the said Complainants do on or before the 15th day of October next ensuing tender to the said Mathias & Marvin Stone or their agent Daniel O'Leary or Solicitor Lewis H. Pray the full sum of One Hundred & twenty two Dollars with interest thereon at ten percent per annum from the 26th day of January A.D. 1857 until the day of the date of such tender

And in case the said Mathias and Marvin Stone shall accept said sum so tendered then that they the said Mathias & Marvin Stone shall release and discharge & acknowledge payment of the sum expressed in said Sheriff Certificate now on file and recorded in Book No 2 of Sheriff Certificate page 174 in the Records office of Boone County and the said Sheriff Certificate and all rights

thereunder shall be deemed and held null & void. And in case the said Matthias & Marvin Stone shall refuse to accept said sum of money so tendered within said time that then and in that case the sale so as aforesaid made by said Nunson & Milson on said 26 day of January A.D. 1856. And all claims & rights thereunder be set aside and held for naught and that Gayle & Humlin Master of this Court be and he is hereby directed to endorse upon said Record of the Certificate of said Sale in said Book N^o 2 page 174.

" This sale & Certificate set aside and annulled by decree of the County Court of Boone County ^{be} And that the same order as to said Sale ^{be} entered by the Clerk of this Court upon his Judgment Docket ~~And that the entry of satisfaction upon said Judgment by said Sale be vacated and the said Matthias and Marvin Stone be permitted to their judgment as aforesaid with power to issue Execution and enforce the same by a new Sale of said Lands.~~

And it is further ordered that the ~~Complainants~~ pay the Costs of this Cause And that said Complainants before such entry by said Master & Clerk be made & before the first day of March next pay in to the Clerk of this Court for the use of said Matthias & Marvin Stone or their

Stickney, ex. & Co. (Consens.)
parties. - S. A. G. & Co. doer -

assigns the said sum of money so tendered as
aforesaid to be paid out to them when the same
shall be demanded. And it is further ordered
that the complainants pay the costs of this ~~pro~~
suit.

And the said Defendants Stone & Stone & they
severally & jointly ^{except to said decree &} ~~except to the~~ pray an Appeal
therefrom to the Supreme Court which is allowed
according to the stipulation of the parties in
that behalf.

Allen C. Miller Judge
County Court Monroe.

And that on the 25th day of September
December a bill of exceptions was filed as
of the 9th day of September 1857 and which
is a stipulation signed by the Counsel of
the parties as follows to wit

In the Probate Court

David R Gardner & ~~Orville S. Stevens~~vs
In Chancery

vs

Mathias Stone Maime Stone

David T. Almy Eliza L. Fiddle

+ Martin Y. Gellert + ~~Orville S. Stevens~~

Be it remembered that on

the 2^d day of June AD 1857 Came the parties in
open Court and filed their stipulation in the
words & figures following to wit

Probate Court

David R Gardner

vs

Of June Term 1857

Stevens & Almy

It is hereby stipulated and agreed
by the parties that this Cause be heard before
the Judge on the 9th instant and a decree be
entered therein as of this time

Having adjourned by

Agreement to July 2nd 1857

L W Pray

S A Heurbat

S A Heurbat

Circuit Clerk

L W Pray

for Depts

And that on the said County Court
day of June 1857, again Came the parties and
this Cause on to be heard upon bill answer
replication & proofs before the Court taken

in Open Court as follows viz

The Complainant introduces & reads in evidence, The Record of the Cause of Mathias Stone & Marwin Stone vs. David R Gardner of this Court as follows

Mathias Stone &	}	Appel
Marwin Stone		
Co-partners doing		
Business under the		
name & Style of M & M Stone	}	Appellant
vs		
David R Gardner		

Records 105 And now at this day Comes the said Pl-
 Antiffs by L W Pray their Attorney and the Defendant
 being there time solemnly called answer not nor any
 one for him but fails and makes default therein
 which is ordered to be entered of record and
 it is therefore ordered that the Plaintiff recover
 of the Defendant David R Gardner their damages
 but because there are not known to this Court
 and this suit being brought upon an instrument
 in writing for the payment of money only
 therefore ordered that the Clerk assess and
 report the damages to the Court and he ha-
 ving accordingly assessed & reported
 the same at the sum of \$97.44 and the Court
 being satisfied that the said appeal was

taken for delay it is further ordered that there be ten percent damages added thereto to the sum of \$9.74 making in all the sum of \$107.18. One hundred seven dollars & Eighteen Cents, which verdict is ordered to stand Unimpaired. It is therefore Considered and adjudged by this Court that the Plaintiffs recover from the Defendants David R Gardner the said sum of one hundred & seven dollars & Eighteen Cents besides his Costs in and about this suit expended (End Records) And that they have Execution therefor

Mathias Stone &
Marvin Stone

vs

David R. Gardner

State of Illinois
Pond County } &

I Hanson R. Wilson Sheriff
Sheriff said of the County and State aforesaid do hereby certify
that by virtue of an Execution and pursuant to
an directed dated the nineteenth day of December
AD 1855, and returned in favor of Mathias &
Marvin Stone and against David R. Gardner
I did in pursuance of the statute in such cases
made & provided on the 26th day of January
AD 1856, between the hours of 10 O'clock AM and
5 PM offer at public sale the following described
Property to-wit

As Turned out by defendant David R Gardner
 the West half of the South East Quarter of Section
 twenty six (26) in Township forty five (45) -
 Range three (3). East of the third principal
 Meridian, And Mathias & Marvin Stone
 having bid the sum of One hundred and
 twenty two dollars & nineteen Cents he being
 the highest and 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
 Mathias & Marvin Stone will be entitled
 to a deed for the same.

Witness my hand & seal at
 Peoria this twenty sixth day of January AD 1856.
 \$122.19

Harlow R Wilson (Seal)
 Sheriff of Boone County
 Illinois

Filed for Record February 2^d 1856. at 3 O'Clock PM
 Recorded same day J B Hamilton Recorder

Received in full the aforesaid bid and Costs
 One Hundred & thirty four dollars & forty Cents
 January 26th 10 O'Clock AM 1857 of D R Gardner

AD H Whitney Clerk
 Returned back the aforesaid sum of one hundred & thirty
 four dollars & forty Cents this 24th February 1857
 D R Gardner

Received as the above the said sum of one hundred
and twenty two dollars & thirteen cents debt and interest
at two percent in full to this date from Martin Y
Gilbert Judgment Creditor April 24th 1857

Elias L Fisdal Sheriff

(This on Morsen)

May 5th 1857. Received of Elias L Fisdal one hundred
of forty dollars being the amount accepted to
me by him at the bottom of this paper April 24th
1857.

M Y Gilbert, by

D R Gardner

Agent

Daniel McIndy produce and sworn testifies
as follows Daniel R Gardner the Complainant
deposited with me on the 26th day of January 1857
at 10 Am^o ^{\$134.40} in currency. This was deposited
with me by Complainant to redeem Lands
from sale & I notified Mr L M Pray the Attorney
of Record the next day or a day or two afterwards
of the fact of the deposit being made. I
told Mr Pray that money had been paid in
and showed him the Certificate Book. I
at first thought Pray was going to take the
money and then something was said
to Pray about Gardner not having paid the
Spice and I then informed him Mr Pray
that he could not catch Gardner that way
that the Spice was ready for him & said

I could pay him the share if called for or demanded. Pray the share of Defendant Olney being the agent of Stone and said he would see him before receiving the money. The entry shows deposit made 10 Am Jan'y 26th 1857 entry was made at the time.

E. L. Fisdell & H. P. Smith were present when this conversation ^{with Pray} took place with Pray. Don't remember that Olney talked with me about it.

Questioned by Complainant. Alleges know of any money being paid to Defendant Fisdell on the matter afterwards. Objected by Defs. Counsel. Objection Overruled exceptions taken and witness answers. I was present afterwards on the 24th day of April 1857. And saw Gardner pay Fisdell \$140 in Cash. Fisdell was Sheriff of Boone County at the time Receipt of Fisdell for the money appeared in evidence. Objected to. Objection Overruled exceptions taken & Receipt read in evidence as follows

"Rec^d on the above the said sum of One hundred & twenty two & nineteen cents debt & interest at ten per cent in full to this date from Martin G. Gilbert Indigent Creditor April 24 1857. Elias L. Fisdell Sheriff."

Ex^{ts} examined by Defs. Counsel. I handed

Back Gardner the money first deposited with me the 24 February 1857. The Receipt signed by Gardner at the time entered on the Records. Back is according to the fact

Re. examined. I am and was prior to the 26th January 1857 the Clerk of the Circuit Court of said Boone County

Pray afterwards told me that Almy had directed him not to receive the Money as it was deposited one day to late. And I informed Defendant Gardner of this fact before he withdrew the Money

E. L. Tindel Produced by Complainant & sworn, I am Sheriff of Boone County. was present one day when Whitney told Pray he had the redemption money of Gardner. And Whitney wanted Pray to Receipt it And Pray said he would receipt it but if Almy would not receive it he would pay it back. Whitney told him if he receipted it at all he must receipt it for good. Whitney remarked Gardner was a particular friend of his and if they demanded the price they could have it for Gardner should not be wronged that way. Pray then remarked he would not receipt it until he saw Almy Pray first said he would receipt it provided Almy would take it in currency & if Almy

would not he would bring it back. Whitney said they shall ~~not~~ gauge Gardner that way that if they wanted the specie they could have it.

This Conversation was in cold weather not present but at an Conversation. Receipt testified by Whitney shown McIntosh & he says this correct. I received \$140. of Mr. G. Gilbert in said as a judgment creditor of Gardner, to be applied in redemption of Land described in in the Certificate of Sheriff sale already produced in evidence. After this I told Almy I had the money. About ten or four days afterwards told him at what time I received it. He said if he concluded to take it he would let me know. He Almy has never called for it. He demanded a deed to be made to him at the time I informed him of having the money Almy has since that time demanded a deed to be made, said there was no redemption that they had not taken the correct course to redeem. Asked if I had an Execution in my hands on the Gilbert judgment. Said Gilbert should have sued out an execution

Cross examination

Do not remember whether but think I was present when Conversation between Pray & Whitney commenced. Pray was kind to me as my receipt shows \$140. The money was

withdrawn the 5 May 1857 Gardner came to me and asked for the money. I told him the money was deposited by Gilbert & I wanted Gilbert's receipt for it. He said he had authority to receipt for the money and did so as agent he produced an order to me for the money. The withdrawal was after Almy had answered a deed. Gardner did not say who the money belonged to. He Gardner afterwards told me the money belonged to him. This was after the money was withdrawn same day. I think it was same day but after Gardner came down town from the Court House that he told me the money was his.

Re examined.

At same time Gardner told me he had since this money was being in called on Almy and offered to pay him all the redemption of \$25, besides perhaps \$50.

L. M. Bray Produced by Complainant & sworn

Almy employed me as attorney for stones in these cases. Supposed Almy was acting as agent for Storn in collecting in this matter and other things. Spoke to Almy about the deposit of money by Gardner.

Cross examined

W. H. McIntire informed me that Gardner

dner came into the office. Think I did
 make the note am not certain. There was
 talk about Gilbert, ~~leaving~~ ^{leaving} the money to
 redeem this land to Gardner, and also
 about \$60. other indebtedness. Aue from
 Gardner to said Gilbert which indebtedness
 with the amount necessary to redeem
 the land from the sale. Constituted the amount
 of said note upon which I drew up the
 Cognovit. It was here ~~conceded~~ ^{conceded} by
 the parties that Wilson the Sheriff who
 made the sale died the 20th July 1856, &
 letters of Administration were granted on
 his Estate the 8th day of August to Oliver W
 Wilson & R A Blanchard

S A Schubert

Stephen A Schubert produced & sworn say
 I saw Marvin Stone a few days since at the
 time I think this cause was to have been
 tried before, and asked him if he was not
 going to stay here to the trial. He said the
 whole matter was in Mr Almy's hands &
 he should not stay. This is about all
 on that point, there was other talk

The Records of this Court in the Case
 of Gilbert vs Gardner was introduced and read
 as follows. viz.

dner came into the office. Think I did
 make the note am not certain. There was
 talk about Gilbert, ~~leaving~~ ^{leaving} the money to
 redeem this land to Gardner, and also
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 Gardner to said Gilbert which indebtedness
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 on that point, there was other talk

The Records of this Cause in the Case
 of Gilbert vs Gardner was introduced and read
 as follows. viz.

Feby 21. 1857

Martin Y Gilbert

vs

David R Gardner

Cognovit

And now on this the twenty first day of February A.D. 1857 Martin Y Gilbert Plaintiff in this suit by R W Stanton his Attorney Came and filed his Declaration Made and power of Attorney upon which this suit is brought. And David R Gardner Defendant herein by A J Randall his Attorney & defends the wrong & injury &c & appears by his Attorney Affidavit & waives the issuing and service of Process and says that he cannot deny but that the said Plaintiff has suffered damage to the amount of four hundred & four \$400.00 dollars by reason of the non performance of the undertaking & promises as recited in the declaration of the said Plaintiff in this behalf & admits the same to be true and he and he fully Confesses and authorizes the entry of judgment the said Defendant and in favor of the said Plaintiff for the sum of Four Hundred & four \$400.00 dollars damages Principal & interest and Costs of this action with ten dollars Attorney fee. And the said Defendant also fully waives, waives and releases all errors that may occur in the entry of said Judgment or in the issuing of Execution thereon

A J Randall Atty

And the Complainant stated his case. And this was all evidence in the cause.

And thereupon the Council for the respective parties proceeded in the argument of the cause and the same being closed on the part of the Complainant & Defendant the cause was submitted to the Court and taken by it under advisement until the next term of this Court in cause.

And that afterwards and on the 7 day of September 1857 during the September term of this Court again came the parties by their Council & the Complainant's Council having verbally notified the Defendant's Council since this cause was submitted as above stated ^{that} he intended to file amendments to the Bill in this cause now produced as amendments. & offered to file the same under leave of the Court to which filing the Defendant objected. And the Court after arguments heard overruled said objections and allowed the said amendment to be filed, which was done at that time.

W R Gardner
as
M o M Stone

}

County Court of Brown
County

In Chancery

Amendment to Bill

And the said Complainant by leave of Court first had & obtained leave and amended their said Bill as follows. that is to say " And your Orator further shew unto your Honor that the said sale of said Land so made by the said H. R. Wilson Sheriff under said Execution was invalid in these particulars, because the said Land so sold by him was at the time of sale of the value of Sixteen Hundred dollars largely exceeding the amount of the said Execution and was susceptible of division to advantage but in fact was not offered by said Sheriff at said sale in smaller parcels. nor was any bid asked for or permitted for a less amount than the entire Eighty Acres but the whole undivided Eighty acres was set up and offered at said sale at first & bid in by the Plaintiffs on Execution

S. A. Vincent
Solicitor

(Mrs M Stone

add.

W. R. Gardner

In County Court of Brown County

And the said Defendants for answer to the Amended Bill of said Complainant say that the sale of said premises made by said Sheriff upon the Execution is

not ⁱⁿ valid for the Causes set forth in the Amended Bill. that said parcel of Land is described in the Deed of said Complainant as an entire Lot of Eighty Acres and is used as a farm. And they deny that the same was susceptible of division to advantage in that they can neither admit or deny, that Allegation in said Amended Bill that the said premises are of the value of Eight Hundred dollars or any sum greatly exceeding the sum for which the same were sold or value other the whole Eighty acres were in the first instance set up and offered for sale

L W Bray Esq. Solr

D R Gardner
vs
Mr & Mrs Stone } Replication

And the said Complainant by S A Hurlbut their Counselor Causy and say for Replication, to Answers to bill & Amended Bill, that the Matters set up in said Bill are true & that the Matters set up in said Answers so far as they contradict said Bill are untrue

Dep 7. 1856.

S A Hurlbut

to which the Defendants then & there excepted

And answer being filed to the said Bill as amended, the Complainant proposed to introduce further testimony to which the Defendants object & Court overrules the objection to which Defendants except

And thereupon Daniel H. Whitney was produced by the Complainant, sworn, says

On the 26th day of January 1856, the Land in Controversy was worth Sixteen Hundred dollars, was as susceptible of division as any other 80 acre tract; Could have been sold in parcels the same as any other tract without any more injury than any other tract; I received redemption Money as Clerk of the Court. It was also here ~~conceded~~ ^{ceded} by the parties that the Stone resides in Milwaukee 180 Miles by rail Road from Belvidere from the date of sale to present time.

Cross Examined

I am not positive of the description of the Land suppose it to be the Knight 80 & some improvements on it. It lies 80 Rods ^{on} East & West road running back 160. ^{Rods.} ~~160.~~ If divided by a line 80 rods from the road I do not know that there would be any road to the south 40. acres, have not seen

the Land in two years, have not passed over it in that time. I do not think either 40. acres north or South could have been sold without rendering the remaining 40 acres less in value. The two portions would sell for less separated than the 80. would if sold together.

I stated at first to Gardner that I had no right to receive the money took advice of ~~Ant~~ Attorney who informed me that I had a right to receive it as Clerk and informed Gardner and he then said he had no doubt of my right to receive it and left it with me in that belief Gardner knows Alsey. Either 40 North or South was worth \$6 January 1856. twenty dollars per acre or thereabouts. Think North 40. forty worth the most. The South 40. cheap at \$500. but I do not think either 40 would sell as well separate as the two would if sold together. It was ~~conceded~~ ^{conceded} that the land ~~belonging~~ ^{belonging} belonged about was the same as that described in the Certificate of Sale. The Court understood the Defendants Counsel after the amendment was filed to admit in the course of the trial of the Cause that this land ~~had~~ ^{had} when sold was offered in a body.

and not in parcels; this Defendant's Cause
insists was not made, which was another
testimony of the Cause

And the Jury being closed
to reduce the sum to writing & present
the sum of Record And also the several
& various exceptions Taken in this Cause
by the Defendants, this Court now here
says this bill of exceptions at the request
of the Defendants

Done in Open Court this ninth
day of September AD 1857

Allen C. Tilden Judge

Which is endorsed —

It is considered that this bill
of exceptions be filed as of its date

Stephen A. Halliburton

Comptroller

Salter

And on same 25th Dec 1857

an other stipulation as follows

In the same Cause

David R. Gordon

vs

Mathias Stone et al

It is stipulated that
the Defendants M & M Stone & D J Almy
or any other of them have leave to appear

in the Cause until the first
 day of January next and to
 file an appeal bond in the pen-
 alty of Five Hundred Dollars
 conditioned according to Law
 with Lewis, M. Pray _____
 as security

S. A. Hunt
 Compt. Salar

State of Illinois }
 Peoria County } ss.

I Abraham A. Phadley Clerk
 of the County Court for and in said County
 of Peoria & State of Illinois do Certify that
 the foregoing is a true and correct copy
 from the Records in my office of all
 the proceedings had in the above entitled
 Cause as the same appear on Record to the Bill of
 Exceptions therein.

In witness whereof I have hereunto
 set my hand and affixed the
 seal of our said County Court at
 Peoria this day of January
 A.D. 1858.

Attest A. A. Phadley Clerk

In the Supreme Court of the }
State of Illinois for the 3^d Grand }
Division

Of April Term A.D. 1858

Matthias Stone, Marvin Stone }
& Daniel V. Olney Impleaded vs }
Plaintiffs in Error & Defts below }

vs }
David R. Gardner & }
Stevens Defendants in Error and }
Complainants below }

Error to Boone
County Court

And now come the said Plaintiffs
in Error by L. W. Gray their Attorney
and say that the Record Judgment
Decree and proceedings of the said
Boone County Court aforesaid
there is manifest & material
error appearing of record therein
in this

1st That the Bill upon its face
shows an entire want of equity upon
which to base the relief prayed for
or decreed by the Court below

2nd That the Court erred in
allowing the amendments to the bill

3^d That the decree of the Court
is not warranted by the allegations
and proofs in the cause

4th That improper evidence
was admitted by the Court

5th The Court directs a
tender to be made to an Agent or

to the Solicitor and in case of his refusal concludes the party it should have directed its payment into Court.

6th The recitals contained in the Decree are not warranted by the proofs in the Cause.

7th The Court erred in overruling the Demurrers to the Bill contained in the answer.

9th That the bill as amended shows no Equity entitling the party to the relief prayed.

That the Decree of the Court below was for the Complainants below whereas it should have been for the Defendants, dismissing the bill of said Complainants.

Therefore and for the Errors assigned above the said Plaintiffs in Error pray that the judgment & decree of the Court below may be reversed annulled and altogether held for nought & they restored to all things &c.

L. W. D.
L. W. D. for Plffs in Error

And the said Defendants in Error
by their Attorney J. A. Hurlbut
Come and say that there is no
Error in the said Judgment decree
record or proceedings wherefore
They pray &c

~~By H. P. Gray~~ ~~Attorney for~~
~~J. A. Hurlbut~~ ~~Defendants in Error~~
J. A. Hurlbut
for Defendants in Error

88

Stone et al
vs
Gardner et al

1854
pc CLK
Filed March 8, 1858
L Leland
Clerk

STATE OF ILLINOIS,
SUPREME COURT,

TO THE SHERIFF OF THE COUNTY OF

ss. The People of the State of Illinois,

GREETING:

BECAUSE, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Boone county, before the Judge thereof, between David R. Gardner & Orville S. Stevens plaintiffs & Matthias Stone, Marvin Stone & Daniel J. Olney impleaded with Elias S. Fiddell & Martin Y. Gilbert

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

Defendant

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

Gardner and Orville S. Stevens

that they be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the ^{first Tuesday after the} Monday in April next, to hear the records and proceedings aforesaid, and the errors assigned, if they shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said David R. Gardner & Orville S. Stevens notice, together with this writ.

WITNESS, The Hon. ~~WALTER B. SCATES~~ Chief Justice of our said Court, and the Seal thereof at Ottawa, this 8th day of March in the Year of Our Lord One Thousand Eight Hundred and Fifty-eight

L. Leland
Clerk of the Supreme Court.

by J. B. Rice Deputy

Matthias Stone et al
vs 858

David R. Gardner et al

Sci Jac.

88.

I Enter appearance
for David R. Gardner
Orville S. Stevens &
Mentus V. Gilbert this
24th March 1858

Edw. Hurlbut

Filed April 20, 1858
L. Leland

STATE OF ILLINOIS,
SUPREME COURT,

Boone County
TO THE CLERK OF THE CIRCUIT COURT FOR THE COUNTY OF *Boone* GREETING:

BECAUSE, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the ~~Circuit~~ *Boone County* Court of *Boone* County, before the Judge thereof, between *David R. Gardner & Orville*

S. Stevens

plaintiffs and *Matthias Stone, Marvin Stone and*
Daniel T. Olney impleaded with *Olias S. Tidell*
vs *Martin Y. Gilbert*

defendants it is said manifest error hath intervened, to the injury of the aforesaid

Defendants

as we are informed

by *their* complaint, and we being willing that error should be corrected if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the *first Tuesday after the third Monday in April* next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

John D. Bates
WITNESS, The Hon. ~~WALTER B. SCATES~~, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *8th* day of *March* in the Year of Our Lord One Thousand Eight Hundred and Fifty-

S. Leland
Clerk of the Supreme Court.

by J. B. Rice Deputy

STATE OF ILLINOIS,
SUPREME COURT,

TO THE SHERIFF OF THE COUNTY OF

BECAUSE, In the record and proceedings, and also in the rendition of judgment of a plea which was in the Circuit Court of before the Judge thereof, between

Matthews Stone et al
David Gardner et al

GREETING.

Writ of Error

Filed March 8, 1858
L. L. Leland
Clerk

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

as we are informed by complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; THEREFORE, WE COMMAND You, that by good and lawful men of your county, you give notice to the said

that be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the Monday errors assigned, if shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said

notice, together with this writ.

WALTER B. SCATES, The Hon. WALTER B. SCATES, Chief Justice of our said Court, and the Seal thereof at Ottawa, this day of in the Year of Our Lord One Thousand Eight Hundred and Fifty-

Clerk of the Supreme Court.