

No. 13208

Supreme Court of Illinois

Myers, Imp.

vs.

Kinzie

71641  7

STATE OF ILLINOIS,

SUPREME COURT.

Third Grand Division.

No. 240.

Kenzie
B
Myers

APPEAL
FROM THE
CIRCUIT COURT
—OF—
COOK COUNTY.

JOHN H. KINZIE,

vs.

JEROME MYERS, IMPLEADED, &C.

Defendant's Brief of Bill and Answer.

For JOHN H. KINZIE.

1st. THE BILL (filed April 5, '59) states that May 1, '58, Kinzie leased to H. F. L. Rodmeyer certain premises in the city of Chicago for a term of $2\frac{1}{2}$ years from the date thereof, for which Rodmeyer covenanted to pay monthly as rents \$50 a month for each month in the term.

2. That Nov. 3, '58, Kinzie recovered a judgment for \$50 and costs, before Wm. H. Stickney, a Justice of the Peace, in and for said Chicago, against Rodmeyer for said rents for the month of September, 1858, and that Nov. 23, '58, an execution was issued on said judgment and placed in the hands of H. J. Baxter, constable, for collection, who returned the same Feb. 1, '59, wholly unsatisfied.

3. That Dec. 8, '58, Kinzie recovered another judgment for \$50 and costs, before the same Justice of the Peace, against Rodmeyer for rents on said lease for the month of Oct., 1858, upon which execution was issued and placed in the hands of the same constable, who duly returned the same Feb. 1, '59, wholly unsatisfied.

4. That Rodmeyer is still further indebted to Kinzie for rent on said lease in \$250, arrears of rents thereon from Nov. 1st, 1858, to and including the month of March, 1859, which said rent arrears said Rodmeyer refuses to pay and pretends to be wholly insolvent, and combining and confederating with Jerome Myers to cover and conceal his property, puts said Kinzie at defiance to collect said judgment and rent arrearages.

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4. That after the first aforesaid judgment, Rodmeyer pretended to make an assignment of all his property and effects to Myers, who now claims thereby said property and effects, (which far exceed in value Kinzie's said claims against R.) to the entire exclusion of K. therefrom.

6. That said assignment has never been recorded or filed for record, and therefore K. cannot specify its provisions, but he believes and charges that the same is colorable and was made to hinder and prevent K. from collecting said judgments and rent arrearages, and that, as against K., it is fraudulent and void.

7. That Myers was cognizant of R.'s fraudulent designs and object in making said assignment, and consulted with and assisted him in consummating the same, and has since confederated with him in carrying out said fraudulent object and design against K., by disposing of a large portion of said property and effects and appropriating the avails thereof, by the advice and for the use of R., and in fraud of K.

8. That Myers, in pursuance of said fraudulent object, has advertised for sale, &c., a large amount of said assigned property, which, if permitted, will damage and embarrass K. in the premises.

9. Prays process, injunction, and discovery against R. and Myers, and that they severally set forth fully on oath what they have severally done with R's property and effects, and that Myers give a full and detailed account of his doings as said assignee and of the condition of the matters pertaining to said assignment up to the present time, with a full account, copies, &c.

10. That R. be decreed to pay the amount of said judgments and rent arrearages to K., and in default thereof that whatever property and effects of R. there be in the possession or control of Myers, be sold by order of the Court, and the avails thereof applied (so far as necessary) upon said decree, and

11. That, if the same be insufficient to satisfy said decree, Myers be decreed to make up the deficiency to the extent of the value of what he may be proved to have received from R., and disposed of for his own use, and in fraud of K.; and for general relief.

12. At the May Term, 1859, R. and Myers being in default of answers, a decree "pro confesso" was ordered to be entered against them and the cause referred to L. C. P. Freer, M. C., to take proof and report the same. After the latter had taken the proof and made up (but before filing) his report, to wit: June 4, '59, Myers got the default set aside as to himself with leave to file a separate answer on payment of all costs up to that time.

MYERS' ANSWER.

1st. Denies all knowledge, information, &c., of the lease and of the judgments and executions mentioned.

2. Denies all combination with R. to cover or conceal R.'s property, &c., or in any manner whatever to prevent K. from collecting said judgments and rent arrearages.

3. Admits assignment made by R. to him Nov. 23, 1858, which was duly executed, acknowledged and delivered on the day of its date. (It is dated Nov. 22, '58.) A copy of which, with the schedules, is annexed and made a part of his answer.

4. "Charges" that the assignment was "bona fide" and that he immediately took possession of the property, &c., so far as he could find the same, and proceeded as fast as he could to execute the provisions of the trust.

5. Says that the assignment was not recorded because the real estate therein was *not worth it*. But has always been willing to show it to any one who might call on him for that purpose.

6. Denies that the assignment was made to hinder K., or is colorable, fraudulent or void as charged.

7. Denies that he was cognizant of the fraudulent designs or objects of R., or that he confederated with him in making said assignment or in accepting and carrying it out.

8. Alleges that he has endeavored to make the most of the property, &c. That soon after he took possession of the Lake Brewery property it was taken from him by the Sheriff of Cook County, and sold by him on judgments of prior lien to the assignment. That the Sheriff, after satisfying said judgments, paid to him (Myers) \$182, the surplus of said sales, which he now holds.

9. Admits that he was about to sell the Blue Island Brewery property when he was enjoined, etc.

10. In answer to the interrogations filed, he says: 1st. The assignment was executed Nov. 23, '58, at 11 to 12 o'clock A. M., (as per copy filed.) 2. Has not sold or disposed of any of the assigned property. The only sale that has been made thereof was by the Sheriff as aforesaid, and the amount of said surplus received from said Sheriff, (\$182), together with \$4.50 received on a debt due to R., is all that he has received, and that the Blue Island property aforesaid is all the property that is left, excepting the notes and accounts which he has mentioned, and he believes that few of them are collectable, &c., all of which he is ready to prove, &c., upon which issue is joined by replication, &c.

He has proved a Repudiation of the Matter. (to which the case was for that purpose referred) fully establish & exclude all allegations in the Bill.

POINTS MADE BY DEF'T.

1. The assignment bears upon its face badges of "mala fides" and fraud sufficient to render it as against the creditors of the assignor, void.

1. The indefinite description of the property in the *witnessed and acknowledged part of the assignment*. The schedules attached are not witnessed or acknowledged or recorded. They may therefore be convivously changed.

2. The reservation of all his property that may be exempt from execution under the laws of the State *without selecting and designating the same*. The assignee himself can touch no part thereof until such selection and designation by the assignor.

3. The reservation to the assignor of the right to change or new assign the list of recipients of the alleged trust provisions as specified in the parentheses under the 2d class.

4. The provision for paying in the *first place* to the *assignee* of all indebtedness from assignor to him "*then due or to grow due*," none of which is specified in the assignment or schedules (nor does the assignee in his sworn answer claim that there is, or ever was any such *provided for indebtedness*.)

2. The assignor confesses (by refusing to answer as well as by his admissions to the witness Baxter) that the object of the assignment was covinous and fraudulent as against Kinzie; and the assignee, notwithstanding his denial, is proved to have been cognizant of and aided the assignor in the furtherance of said objects.

1. By the notice "Exhibit No. 2d." as proved by the witness C. B. Marsh, the date of which, (Nov. 22, '58,) corresponds with the date of the assignment and with the date of the expiration of the stay of execution on the first mentioned judgment. Kinzie's name is not mentioned, nor is that judgment or lease referred to in the assignment nor in the schedule (?). How came the assignee thus promptly to notify him of the assignment on the day that it was drawn and the day before there was any witness of its execution. Why did he

keep the assignment locked up in his safe and exhibit it to constables only as a "scare crow," and not put it on record as it was his duty in all honesty and fair dealing to do? The reason that he assigns therefor in his answer, *if not a positive falsehood, is positively absurd.* 2d. His refusal to let the witness J. H. Kinzie, Jr., see and copy the assignment and his denunciation at the same time of that judgment and claim by virtue of said Lease which the witnesses father held against the assignor, discredits his answer on this point, and shows his *knowledge and feelings and conduct* to be in perfect concert with the assignor in the "game."

3d. His answer is still further contradicted touching the bona fides of the assignment by the witness Baxter, (in regard to his taking immediate possession of the property,) and by his own witness Marshall (in regard to the disposition and sale of the same.)

3. There is not a particle of proof to show that any one of the persons or firms designated in schedule B. attached to the assignment, is a "bona fide" creditor of the assignor, or that any other person or firm except Kinzie is a creditor of the assignor. The assignment is therefore void, being for the use of the assignor alone.

4. Any granted property that is subject to the control of the grantor may be controlled by any of his creditors through a Court of Chancery.

This assignment being a voluntary one is subject to revocation by the assignor at any time before the schedule creditors have accepted the terms of the same in such a manner as to hold the trustee liable for the due execution of the trust. (2 Story eq. com sec. 1036. b.)

"There is no such relation as trustee, and "cestui que trust" arises on a mere voluntary conveyance to a trustee for the payment of preferred creditors who are not parties or privies to the deed.

A scheduled creditor is not such a party or privy, unless by signing the deed or by some other circumstance beneficial to the grantor and prejudicial to himself. (2 Story Com. 236, n. 4; also 3 Simons, 1 and 14.

The assignee admits that he has received (and still has in his possession) \$186.50 from sales and collections of the assigned property, and that he also holds the whole of the property mentioned in schedule A of the assignment, except what was sold (as proved by his own witness, Marshall,) and a collection of \$4.50 of the assigned accounts. There is there-

fore a large amount of property yet in his hands, besides the aforesaid \$186.50 in money,

The service of process upon which the first judgment was rendered was made by virtue of and in accordance with the 85th section of an "Act" in the Revised Statutes concerning "Justices and Constables," which is not in conflict with the act of Feb. 18, 1857, which does not apply to those who "*evade service*." The Justice therefore having jurisdiction over the subject matter of the suit and of the sufficiency of the service and of the constables return thereof; his judgment is *not void* and cannot be *collaterally impeached* or drawn in question.

The Defendant in that judgment does not deny its validity, but, on the contrary, confesses it in this case as well as the other judgment and the rent arrearages as charged in the Bill.

The decree below was for the amount of the two judgments and costs as sworn to by the witness Stickney, who as Justice of the Peace rendered the same, with interest thereon from their dates respectively.

8. The rent arrearages to the amount of \$250 as claimed in the bill, confessed by Rodmeyer and proved by the lease (exhibit No. 1st) should also be allowed by the Court. For if the allegations in bill be true as admitted and proved, it would have been a "vain and useless thing" and expense to Rodmeyer for Kinzie to have continued to sue and obtain judgments against him, as each instalment for rents upon said lease became due, and to have issued executions upon such judgments respectively and had them returned "no good, &c." "Courts of equity never require vain or useless acts to be done, nor do they approve of any unnecessary or useless expense "in furtherance of justice between parties."

A. E. WOLCOTT,
Solicitor for Def't.

240-95

Supreme Court

Ruiz

189,

Myers - Supreme

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Filed Apr. 29 - 1861

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A P P E A L
FROM THE
C I R C U I T C O U R T
OF
C O O K C O U N T Y.

JEROME MYERS, IMPL'D, }
vs. }
JOHN H. KINZIE. }

John H. Kinzie files his bill against Jerome Myers and T. L. Rhodemyer, alleging that he leased Rhodemyer certain premises for two and a half years, from May 1, 1858, for \$28 50 a month. Nov. 3, 1858, he recovered judgment against Rhodemyer, before W. H. Stickney, J. P., for \$50 and costs, for rent; Nov. 23, execution issued, which was returned unsatisfied. December 8, he obtained before same Justice of Peace, judgment for \$50. December 31, 1858, execution issued and was returned unsatisfied. That Rhodemyer is still further indebted to him in \$250 rent. That after the recover of said judgments, Rhodemyer made an Assignment for the benefit of creditors to Jerome Myers; charges the same to be colorable, and intended to hinder and delay creditors, and Myers was knowing thereto, and that Myers is about to sell the assigned property; prays an injunction against his selling; which is allowed; *requires an answer under oath.* That Rhodemyer may be decreed to pay his debt, and the property sold by order of the Court, and proceeds

applied to the payment of his debt. Injunction allowed. Jerome
24 Myers alone answers ; answer under oath ; denies all knowledge of
25 complainant's claim, or the rendering of judgment on any part of the
26 same ; denies that Rhodemyer has been combining with him to cover
27 his property ; admits that November 23, 1858, Rhodemyer made
37 an Assignment for the benefit of his creditors ; makes a copy ; part
28 of his answer ; says that the same was *bona fide* ; made in good faith,
29 and was not made to hinder and delay creditors, and denies all frauds ;
says that it was not recorded, because it only covered personal prop-
erty ; that he took possession, under it, November 23, of the assigned
30 property ; denies that he knew of any fraudulent intent on the part
33 of Rhodemyer, or any combining with him to defraud ; says that he
has ever since, been trying faithfully to execute it for the benefit of
32 creditors ; has realized \$182 under said Assignment ; that he had
advertised the property for sale at public vendue, and would have
closed up the assignment, had he not been enjoined in this case.

TESTIMONY.

58 Henry J. Baxter, sworn, for complainant ; was a Constable ; levied
on a horse under an execution, issued by Justice Stickney, in favor
51 of Kinzie. Myers and Rhodemyer both told him Rhodemyer had
previously made an Assignment, and Myers demanded the horse ;
went to see the Assignment and released the horse ; Rhodemyer after-
56 wards told him "he was in a tight place ; he made an Assignment
to keep them off ; if they would let him alone he would pay them
all." Demanded property on execution ; Rhodemyer said, I must
to see Myers and Kinzie, and see what I can turn out. Rhodemyer
told him of some cows which had been sold.

All statements of Rhodemyer objected to.

59 W. H. Stickney testifies to rendition of judgments and issuing
of executions as charged in the bill.

75 On Cross-Examination says, the Summons on which the first judg-
ment was rendered, was issued October 23, 1858 ; judgment was
rendered November 23, 1858 ; that Rhodemyer did not appear ; and
76 the only service was, by leaving a copy at defendant's place of resi-
dents.

61 J. H. Kinzie, Jr., testifies—Called on Myers in March, and asked
to see the Assignment ; he refused at first, but afterwards handed it
62 to me. He said Kinzie's claim was unjust ; had no shadow of right in

it ; that Rhodemyer had no notice of the judgment. He declined to let me copy the assignment.

63 Christopher B. March, Clerk of complainant, testifies, he received, through the Post Office, Nov. 26, the notice from Myers, dated Nov. 22, that Rhodemyer had assigned to him for Kinzie.

87 James A. Marshall says, is an Auctioneer ; went at the request of
77 Myers to sell property of Rhodemyer ; found Sheriff in possession of
79 the property ; sold same, and after paying the Sheriff had a small surplus ; sale conducted fairly.

39 Assignment offered in evidence. Copy of which attached to an-
89 swer. Decree finds the assignment fraudulent and void ; that Myers has converted, of the assets, \$186 50 into cash ; that Rhodemyer has
90 no other goods than in Myers, hands ; orders that Rhodemyer forth- with pay the said sum of \$118 30, with costs ; and in default of
91 his doing so, that Myers pay the same into Court in twenty days ; and in default, execution issued against Myers and Rhodemyer.

Assignment of errors and points.

The Court rendered a decree against Myers, when they should have rendered one in his favor, by the law and the proof.

The decree rendered in this case is contrary to evidence, law and equity.

1. There is not sufficient evidence to sustain the decree. Myers' answer is called for under oath. He denies all fraud, there is no claim that the assignment is invalid on its face. No sufficient testimony that Rhodemyer had a fraudulent intent, and no testimony that Myers had such intent. Even if Rhodemyer made it to hinder and delay creditors, which we deny, unless the Assignee concurred in that intent, it is valid! 20 dcll N 85 - 2 dcll N 309 -
17 Pla N 566 - 7 dcll N 42 - 19 dcll N 11

2. The fact that he had received under the Assignment sufficient to pay Kinzie's claim is no ground to charge him with, or to render a personal decree against him. He may, as he did in fact, pay it out under the Assignment.

2. The Court should not have left him to execute the Assignment, after having declared it void. If he is to be now charged with the

money received in this case, any other creditor at any time can charge him with all other moneys received, whatever he may have done with the same.

4. In one of the Judgments there was no personal service or appearance The Judgment was a nullity. Scales' Statutes 699. 27 Mis. R. 101. 20 Ill. R. 173.

WAITE & TOWNE,
Plaintiff's Attorneys.

240

Myers

Kings

Abstract of Points

Filed Apr. 23rd 1861

L. Leland
Clerk

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

1
Pleas, before the Honorable George Manierre Judge of the Seventh
Judicial Circuit of the State of Illinois, and Sole Presiding Judge of the Circuit
Court of Cook County, in the State aforesaid, and at a term thereof begun and
held at the Court House in the City of Chicago, in said County, on the Third
Monday, (being the thirtieth day) of November
in the year of our Lord one thousand eight hundred and Sixty,
and of the Independence of the said United States the Eighty-fifth

Present, Honorable George Manierre Judge of the 7th Judicial }
Circuit of the State of Illinois. }

Charles Haven States Attorney.

A. C. Kising Sheriff of Cook County.

Attest, Wm. L. Church Clerk.

2
Be it Remembered, that, heretofore, to wit:
on the Fifth day of April A.D. 1859 John H. Kinzie,
Complainant, A. E. Holcott Esq, his Solicitor filed in
the Court aforesaid, on the Chancery side thereof,
his certain Bill of Complaint against Henry
J. L. Rodemeyer et al. Defendants, in the words and
figures following to wit:

To the Hon. George Manierre Judge of the
Circuit Court within and for the County
of Cook in the State of Illinois
In Chancery Sitting-

Respectfully represents unto your Honor
your Orator John H. Kinzie of said County-
That on the first day of May A.D. 1858 Henry

3 J. L. Rodemeyer of said County made & executed his certain agreement in writing & sealed & delivered the same to your Orator & thereby covenanted & agreed with your Orator to pay him as rent for certain tenements in said agreement specified (situate & lying in said County) which your Orator had in said agreement leased to him for a term of two & 1/2 years beginning on the first day of May A.D. 1858 & ending on the first day of Sept^r A.D. 1860, the sum of fourteen hundred dollars payable in twenty eight payments of fifty dollars each - to wit: on the first day of each & every month of said term in advance, together with other covenants and conditions to be performed by the said Rodemeyer in said agreement specified, as by said agreement reference being thereto had, when produced will more fully & at large appear.

4 Your Orator further represents that on the 3^d day of November A.D. 1858 he obtained a judgment before William H. Stickney a Justice of the Peace within and for said County against the said Rodemeyer for the sum of fifty dollars & costs, on a near of rent due for the month of September A.D. 1858 upon & by virtue of said agreement, which said Judgment yet remains in full force unpaid &

unsatisfied,

5 Your Orator further represents that on the 23rd day of November AD 1858, at 5 O'clock P.M. he caused an execution to be issued upon said Judgment & placed in the hands of Henry J. Baxter, a constable within & for said County & that the same has been duly returned by said constable wholly unsatisfied & endorsed by him "no property found whereon to levy" & the Defendant refused to turn out money & property to satisfy this execution,

Your Orator further represents that on the eighth day of December AD 1858 he obtained before said Justice of the peace William H. Stickney another Judgment against the said Rodemeyer for the sum of Fifty Dollars and costs on arrear of rent due for the month of October AD 1858 upon & by virtue of said agreements which said Judgment yet remains in full force unpaid & unsatisfied,

6 Your Orator further represents that on the 31st day of December AD 1858 he caused an execution to be issued upon said Judgment & placed in the hands of said constable Henry J. Baxter & that said execution has been duly returned by said constable wholly unsatisfied & endorsed no property found (whereon to levy) & the defendant refused

to turn out money or property to satisfy this execution"

7 Your Orator further represents that said Rodemeyer is still further indebted to him in the further sum of Two Hundred and fifty Dollars for arrear of rent for the months of November & December A.D. 1858, the months of January, February & March A.D. 1859 upon & by virtue of said agreement, ^{which} arrearage the said Rodemeyer refuses to pay and pretends to be wholly & entirely worthless & combining & confederating as your Orator is informed & believes with one Jerome Meyers of said County to cozen & conceal his property, rights, credits & effects, puts your Orator at defiance to make & collect the amount of said judgments & Rent arrearage,

8 Your Orator represents that after the recovery of the first aforesaid judgment the said Rodemeyer made or pretended to make an assignment in writing of all his property, rights, credits & effects excepting such & so much thereof as is by law exempt from execution to said Jerome Meyers, & that said Meyers now pretends to & does claim by virtue of said pretended assignment the right to control and appropriate the avails of the whole of said property, rights, credits, & effects (which far exceeds in value the amount of said judgments

& rent arrearage) to the entire exclusion of the
 rights & interests of your Orator therein &
 from all benefits thereof - that said
 assignment, although acknowledged, has
~~has~~ never been filed for record nor re-
 9 corded in any of the public records
 in said County & that therefore your Orator
 cannot specify the terms or conditions of the
 same, but he verily believes & therefore char-
 ges that the same is colorable & was made
 solely to hinder & delay him in the collection
 of said Judgments & rent arrearages, & that
 as against your Orator the same is fraudulent
 and void. that the said Jerome Mays
 was cognizant of said fraudulent designs
 & object of the said Rodemeyer in making said
 assignment & counselled with & assisted him
 in consummating the same & has since said
 10 pretended assignment conspired & combined
 with said Rodemeyer in carrying out said
 wrongful & fraudulent object & designs against
 your Orator by disposing of a large amount
 of said Rodemeyer's property, rights, credits &
 effects & holding & appropriating the avails
 thereof under the advice & direction of said
 Rodemeyer & for his special use & benefit
 & in fraud of your Orator in the premises
 & that said Mays in still further prosecution

- of said fraudulent designs & object against
your Orator as aforesaid has advertised as said
pretended assignee of said Rodemeyer that he
will offer for sale & sell for cash, on the 6th
day of April A.D. 1859 at 3 o'clock P.M., a
11 large amount of said Rodemeyer's property
rights & effects at Blue Island in said County,
to wit: all the right, title & interest of said
Rodemeyer in & to a certain Beer Brewery & Barn
in said Blue Island, known as Bauer's Brewery,
together with the beer brewery building, barrels
tubs & ^{utensils} ~~materials~~ belonging to said brewery &
the land attached & belonging to said brewery &
barn leased by Henry Bauer to said Rodemeyer
& Lewis Schonewald for five years from
September 1st 1858 & the leasehold interest of
said Rodemeyer in & to said Brewery Barn
& premises, also all the right, title & interest
12 of said Rodemeyer in & to a certain malt
cellar, malt kiln & stone & brick building
built by him upon the land adjoining said
beer brewery & leased to him & said Francis
Schonewald as aforesaid by said Henry
Bauer,

Your Orator further represents that he
has great cause to & does verily believe
that if said sale is permitted to be made
by said Myers at the time & place in said

advertisement mentioned or at any other time of said property, right, title & interest of said Rodemeyer therein specified the same will be wholly lost & sacrificed & the rights of your Orator in the premises greatly embarrassed & endangered & that said actings & doings are contrary to equity and good Conscience.

13 Your Orator therefore prays process of a summons in Chancery against the said Henry G. L. Rodemeyer & Jerome Myers & that your Honor will grant an Injunction restraining the said Myers from selling or in any manner disposing of or parting with any portion article or item of the property, rights, title, interest, credits or effects of, or belonging to, or which come into his 14 possession or control from said Rodemeyer by virtue of said pretended assignment or in anywise therewith connected & also restraining said Rodemeyer from disposing of or in any manner interfering with or changing his property, rights, credits effects or any part thereof until hearing or further order: that said defendants severally swear on their Corporal oaths to the best & utmost of their knowledge, remembering,

information & belief. full, true, direct
& perfect answers make to all & singular the
matters aforesaid & that as fully & partic-
ularly as if the same were here repeated
& they distinctly & severally interrogated there-
to, and especially that said Myers may in
15 manner aforesaid answer & set forth.

1st at what precise time said written assign-
ment was executed & delivered to him
& when the schedule was thereto attached,
giving an exact copy of said assignment
& Schedule.

2^d What specific property, rights, credits
& effects have you disposed of under &
by virtue of said assignment & what
have you done with the avails thereof,

3^d To whom have you sold or disposed
of said property, rights, credits & effects,
16 what was the value thereof & for how
much did you sell the same. How
much & what yet remains in your
hands or control, giving a full & de-
tailed account of the value thereof & of
your doings & the conditions of the matters
pertaining to said pretended assignment
up to the present time

And that the said Rodemeyer may in

1st manner aforesaid especially answer & set forth what property, rights, credits & effects did you reserve to your own use & control from said pretended assignment giving a full & detailed schedule of the same with the value thereof.

17 2^d State fully & give a schedule of all & singular the property rights, credits & effects of every description now in your possession or control or in which you have any interest legal or equitable.

3^d When & by whom was said assignment written and acknowledged.

18 And your Orator further prays that said Myers may be compelled to produce & file said pretended assignment for inspection at the hearing of this cause, and also that said Rodemeyer be compelled by the decree of your Honor to pay to your Orator the amount of said judgments & of said arrears & that whatever property, rights, credits & effects of said Rodemeyer that may be found to be in the possession or control of said Myers or otherwise belonging to the said Rodemeyer may be sold by the order of your Honor & the avails of such sale, or so much thereof as may be necessary, applied in satisfaction

the same shall be sufficient, of said Judgment
& of said rent in arrears, and further if
the same be insufficient to satisfy said
Judgments & rent arrears that said
Myer may be compelled by the decree of
19 your Honor to pay said deficiency to the ex-
tent of whatever amount it may be found
on the final hearing of the cause that he
has received from said Rodemeyer & dis-
posed of for his use or by his order or direc-
tion under said pretended assignment & in
fraud of your Orator in the premises,
And that your Orator may have such
other & further relief in the premises as to
your Honor shall seem meet. He shall
ever pray &c

A. E. Mottrell

Solicitor for Compt

20 State of Illinois
Cook County

I John H. Kingie com-
plainant in the foregoing bill being duly
sworn do depose and say that all the
all the several matters & things which are
set forth in the foregoing bill as from
the information of others I believe to be
true, and that all the several other

the same shall be sufficient, of said Judgment
& of said rent in arrears, and further if
the same be insufficient to satisfy said
Judgments & rent arrears that said
Myer may be compelled by the decree of
19 your Honor to pay said deficiency to the ex-
tent of whatever amount it may be found
on the final hearing of the cause that he
has received from said Rodemeyer & dis-
posed of for his use or by his order or direc-
tion under said pretended assignment & in
fraud of your Orator in the premises,
And that your Orator may have such
other & further relief in the premises as to
your Honor shall seem meet. He shall
ever pray &c

A. E. Motcull

Solicitor for Compl't

20 State of Illinois
Cook County

I John H. Kinzie com-
plainant in the foregoing bill being duly
sworn do depose and say that all the
all the several matters & things which are
set forth in the foregoing bill as from
the information of others I believe to be
true, and that all the several other

matters & things therein set forth are true
in substance in fact,
Subscribed & sworn to Jno. H. Knizee
before me this 5 day, of
April 1859.

Wm. L. Church, Clerk

21

And afterwards, to wit: on the same day and year
last aforesaid this Judge of said Court endorsed on the
bill aforesaid an order for Injunction in the words and
figures following, to wit:

"Let the writ of Injunction issue in conformity with
the prayer of the foregoing Bill of Complaint, filing a Bond
in the penalty of five hundred dollars with a sufficient
surety.

To the Clerk of the Circuit
Court of Cook Co.,

George Maniero
Judge of the Judicial
Circuit, Ills.

22 And afterwards, to wit: on the 14th day of June
in the year last aforesaid, the said Defendant Magers
filed in the Court aforesaid his answer to the said
Bill of Complaint in said cause in the
words and figures following, to wit:

matters & things therein set forth are true
in substance in fact,
Subscribed & sworn to Jno. H. Knizee
before me this 5 day, of
April 1859.

Wm. L. Church, Clerk

21

And afterwards, to wit: on the same day and year
last aforesaid this Judge of said Court endorsed on the
bill aforesaid an order for Injunction in the words and
figures following, to wit:

"Let the writ of Injunction issue in conformity with
the prayer of the foregoing Bill of Complaint, filing a Bond
in the penalty of five hundred dollars with a sufficient
surety.

To the Clerk of the Circuit
Court of Cook Co.,

George Manierro
Judge of the Judicial
Circuit, Ills.

22 And afterwards, to wit: on the 4th day of June
in the year last aforesaid, the said Defendant Meigs
filed in the Court aforesaid his answer to the said
Bill of Complaint in said cause in the
words and figures following, to wit:

State of Illinois } Cook County Circuit Court
County of Cook }^{vs}

The several Answers of Jerome Meyers one of the defendants to the Bill of Complaint of John McKinzie against this defendant and Henry F L Rodemeyer.

23 This defendant now and all times waiving and reserving to himself all advantage and benefit of exceptions to the many errors and imperfections contained in the said Bill of Complaint of the said Complaint for answer thereto, or to so much thereof as he is advised is material for him to make answer unto he answering says.

24 That he does not know and cannot state whether on the first day of May 1858 the said Rodemeyer made and executed the agreement as set forth in the said Bill with the said Complainant or the terms and conditions thereof nor what has been done under the same except as stated in the said Bill, and therefore neither admits or denies the same but leaves the said Complainant to prove the same according to the rules and practice of this Honorable Court.

And the defendant further answering says that he knows not nor has he been informed save by the said Complainant's bill, and cannot set forth whether the said Complainant on the third day of November 1858, or at any other time

recovered a judgment as stated in the said Bill
or whether Execution was issued as stated
in the said Bill or the return made thereon
or whether if there has been any rendered as
stated in the said bill, whether there has been
25 any payments made thereon, and therefore neither
admits or denies the allegations in the said bill
in reference thereto, but requires strict proof thereof

And this defendant further answering
says that he knows not nor has he been informed
same by the said bill of Complaint, whether any
other Judgment or Judgments have been rendered
as stated in the said bill, or whether Execution
has been issued thereon, the return of the Officer
thereon, or any proceedings had on the motion
as alleged in the said Bill, or whether the said
26 Rodemeyer is indebted to the Complainant in any
sum as alleged in the said bill of Complaint
and therefore neither admits or denies the same
but leaves the said Complainant to prove the
Same.

And this defendant further answering ~~says~~
denies that the said Rodemeyer has been combining
with this defendant, or this defendant with the
said Rodemeyer to cover up and conceal the property
or rights or Credits of the said Rodemeyer or in any
manner whatever to prevent the said Complainants
from collecting the said debt so alleged in the said

3
Bill, That the only transfer which has been made by the said Rodemeyer to this defendant is as herein after stated.

27 And this defendant further answering says that he admits that the said Henry P. L. Rodemeyer made an assignment of Certain property and Effects to this defendant on the twenty third day of November A.D. 1858. and which was duly Executed acknowledged and delivered on the same day it bears date complete in all respects with the schedule thereto attached, that the said Assignment was made by the said Rodemeyer to this defendant for the benefit of the Creditors of the said Rodemeyer and a Copy of which Assignment the Schedule and the Acknowledgments thereto attached is heretofore annexed and made part of this defendant's answer and to which he refers for greater certainty.

28 And this defendant Charges the fact to be that the said Assignment was bona fide, made in good faith, and that on the said twenty third day of November he took possession of the said property and Effects so far as he could find the same, and proceeded to Execute the trusts created by the said Assignment. That this defendant admits that the said Assignment has not been recorded in the County aforesaid, that the property mentioned in the said Assignment Consisted of personal property

and notes and accounts except a small interest in real Estate as stated in the said Assignment, and which interest was not considered worth the Costs of recording the said Assignment, that he has always had the said Assignment in his possession and been willing at any and all times to show the same to any one who might call on him for that purpose.

And this defendant further answering says that he denies that the said assignment was made to hinder and delay the said Complainant in the Collection of the Judgments mentioned in the said bill or any Claim or demand which he might have against the said Rodemeyer, and this defendant Expressly denies that the said Assignment is Colorable and fraudulent and Void as alleged in the said Bill of Complaint.

And this defendant further answering says that he denies that he was Cognizant of any fraudulent design and object in the said Rodemeyer in making the said assignment or that ~~the~~^{he} said Rodemeyer or this defendant had any fraudulent design or object at the time said Assignment was made, or since or that he Conspired and Combined with the said Rodemeyer in accepting or carrying out the said assignment.

And this defendant further answering says that on the day he took possession

5
of the said property and Ever since he has to the best of his judgment managed the same so as to make the most of said the property for the Creditors that soon after he took possession of the property at the Lake Brewery the same was taken from his possession by the Sheriff of Cook County and a Constable of said County, on judgments rendered against the said Rodemeyer before the Execution of the said Assignment and which were liens ahead of the said Assignment that before the said Sheriff and Constable had taken possession, he had advertized the same for sale, that the Officers aforesaid took the same into their Custody and the same was sold by the said Officers, and after paying off the judgments and Costs which were ahead of said Assignment there was a surplus which was paid to this defendant of One hundred and Eighty two dollars, which he now holds in his hands and is ready to pay out as provided in the said Assignment

32
And defendant further Answering says that he admits that he had advertized for sale a portion of the said assigned property and the day of sale was fixed for the time mentioned in the said Bill That Defendant advertized the same at a time when he thought it would bring as much as at any other time, that it was in the due course of closing up the property so assigned to him, but he denies all intention on his part to sacrifice the said property

but on the contrary he thought that the best interest of the Creditors. required that the said property should be sold and converted into money, that the Expenses of Keeping the same is large and increasing

33 And the defendant further answering denies all Combination and Confednacy charged in the said Bill without that that any other matter or thing in the said Bill of Complaint contained and has herein and hereby and hereby well and truly answered unto Confessed and avoided or denied is true to his knowledge or belief, and in Answer to the Interrogatory he would say that the said Assignment was Executed on the twenty third day of November A D 1858. between the hours of Eleven O'clock A M and twelve O'clock Noon of said day at the Office of Shumway Waite & Towne in the City of Chicago Illinois, and the schedules were attached thereto at the time, a correct Copy of the said Assignment is hereto attached and made a part of this Answer.

34 And this defendant further answering the second interrogatory, saith that he has not sold any of the property so assigned, that the only sale that has been made was as aforesaid made by the said Sheriff and Constable, that the amount so received from the Officers sale as heretofore stated and Four ⁵⁰/₁₀₀ dollars received on a debt due to the said Rodemeyer, that after the sale so made

by the said Sheriff there only remains the said property so advertised for sale on the sixth day of April 1859 as aforesaid and described and known in the said Assignment as Barns, Brewery and the appurtenances, and the Book Accounts and notes which were due to the said Rodemeyer and the that Defendant has investigated the said accounts and notes and believes that there are few of said Claims that are collectable, that he was in hopes to close out the said property and came to a final settlement with the said Creditors of the said Rodemeyer before this time but for the Injunction of this Honorable Court.

All which matters and things this defendant is ready to answer and prove and maintain as this Honorable Court shall direct, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

Jerome Myers.

36 State of Illinois }
County of Cook }
do

Jerome Myers being duly sworn says that he has heard the foregoing Answer read and knows the contents thereof, and that the same is true of his own knowledge except as to those matters which are therein stated to be on information and belief and as to those matters he believes them to be true.

Subscribed and sworn to before me this 26 day of April 1859
Edward P. Towne
Notary Public

Jerome Myers

This Indenture made the 22 day of November 1858. between Henry) Frederick Louis Rodemeyer of the first part and Jerome Myers of the second part

37 Whereas the said first party is greatly indebted in sundry Considerable Sums of Money and has become unable to pay & discharge the same with punctuality or in full, and the said first party is now desirous of making a fair & Equitable distribution of his property & Effects among his Creditors; Now therefore this Indenture Witnesseth that the said party of the first part in Consideration of the premises and of the sum of One dollar to him in hand paid by the party of the second part the receipt whereof is hereby acknowledged, has granted bargained & sold released assigned transferred & set over & by these presents does grant, bargain & sell release assign transfer & set over unto the said party of the second part and to his heirs and assigns from all and singular the lands tenements & hereditaments situate lying and being within the State of Illinois and all the goods Chattels Merchandise, Bills, Bonds, Notes, book accounts, Claims, demands Chases in Action, Judgments Evidences of debt. and property of Every Name and Nature whatsoever of the said party of the first part Excepting however all such goods & Chattels property and Effects as may be belonging to me which are by the laws of the State of Illinois Exempt from levy and sale

38

May 10 1895

It is hereby stipulated that the
original deed of assignment offered
in evidence at the hearing of the
Court, ^{in support of the} is the copy of said
assignment attached to ~~the~~ ^{the} same
with this addition thereto to wit:
"A list of the said property and estate chattels
and effects hereby assigned is attached in
a schedule marked A" To be ^{immediately} inserted before
the words To have and to hold.

W. J. Warts per M. J. Warts
Attorney at Law

under or by virtue of any Exemption laws of said state. To have and to hold the same and every part and parcel thereof with the appurtenances to the said party of the second part his heirs Executors administrators and assigns. In trust nevertheless and to and for the following uses interests and purposes that is to say: that the said party of the second part shall take possession of all and singular the lands, tenements, and hereditaments property and effects hereby assigned and sell and dispose of the same upon such terms and Conditions as in his judgment may appear best, but not upon Credit and Convert the same into money and shall also collect all and singular the said debts, dues, bills bonds, notes, accounts, claims, demands, & Chase in Action or so much thereof as may prove collectable and thereupon Execute acknowledge and deliver all necessary Conveyances and instruments for the purpose aforesaid, and by and with the proceeds of such sales and Collections the said party of the second part shall first pay and disburse all the just and reasonable Expenses, Costs, Charges and Commissions of Executing and carrying into Effect this Assignment and all rents, taxes, and assessments and liens & incumbrances due or to become due on the lands, tenements, and hereditaments and property aforesaid until the same shall be sold and disposed of and by and with the residue or net proceeds and

avails of such sales and Collections the said party
of the second ^{part} shall,

First

41
pay and discharge in full the several and
respective debts, bonds, notes, and sums of money
due or to grow due from the said party of the
first part or for which he is liable to the said party
of the second part and the several other persons and
firms designated in the Schedule hereto Annexed
marked "B" together with all interest moneys
due or to grow due thereon. And if said net
proceeds and avails shall not be sufficient to
pay and discharge the same in full then such
net proceeds and avails shall be distributed pro
rata share & share alike among the said several
persons & firms named in said Schedule "B" according
to the amount of their respective Claims.

Second

42
By and with the residue and remainder if any
pay and discharge all the other debts & liabilities
of said party of the first part not herein before
provided for, due or to grow due together with
the interest thereon (a list of which may at some
future time be filed for record or delivered to
said second party hereto in case it shall be deemed
necessary) and if such residue and remainder
are insufficient to pay said other debts and liabilities
in full then the same shall be applied pro rata
share and share alike to the payment of said other
debts and liabilities according to their respective amounts.

Lastly

The said party of the second part shall return the surplus of the said net proceeds and avails if any there shall be to the said party of the first part his Executors administrators or assigns

And for the better Execution of these presents and of the several trusts hereby reposed the said party of the first part doth hereby make
 43 Nominate and appoint the said party of the second part and his Executors administrators and assigns
 44 his true and lawful Attorney irrevocable with full power and authority to do transact and perform all acts deeds matters and things which can or may be necessary in the premises as fully and completely as the said party of the first part might or could do were these presents not Executed and Attorneys one or more under him to appoint make and nominate with full power of substitution and revocation, hereby ratifying and Confirming all and Every thing whatsoever that my said Attorney and his Attorneys shall do or cause to be done in the premises.

In Witness whereof the said party of the first part has hereunto set his hand and seal the day and year above written; and the said party of the second part has also at same time set his hand and seal to signify his acceptance of the trusts reposed in him

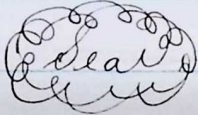
In presence of
 H & Shumway }

H. J. L. Roedemeyer (Seal)
 Jerome Myer (Seal)

State of Illinois }
Cook County } ss.

45- I George A Meech a Notary Public
in and for the City of Chicago in the County of Cook and
State aforesaid do hereby Certify that Henry F L Rodemeyer
& Jerome Meyers both personally known to me to be
the same persons whose names are subscribed to
the Annexed instrument of Writing appeared before
me this day in person and acknowledged that they
signed sealed and delivered the said instrument
of Writing of their free and Voluntary act for the
uses and purposes therein set forth.

Given under my hand and Notarial
seal this 23 day of November AD 1858



George A Meech
Notary Public.

Exhibit "A" referred to in the foregoing Assignment
of H F L Rodemeyer.

46- An interest in Lot No 2 Block 77 purchased of
Law. fronting 50 feet on Division Street in the City of
Chicago & also having a front of 54 feet on North Branch
Water Street on which two payments have been made &
two remain unpaid subject to payment of about \$25.
to J B Adams to whom the Contract for the Lot is
pledged for a debt due him.

An interest by virtue of a lease from Louis Sheppard
dated August 12 1856 of Building & C on Lots 1 & 3 Block
21 Kinzie's Addition known as "Lake Brewery"

An interest by Virtue of a lease from Henry Bauer
to H. F. L. Rodemeyer & Francis Schonewald, dated
April 17 1858. of premises and property known
as "Baums Brewery"

Personal Assets.

47 A Note for \$200. Made by Gustave Petrow dated
on or about 20th February 1857 being the last
note secured by mortgage of that date on Lots
13 & 16 Block 24 in Town of Bourbonais Kane County
recorded in said County in Book 13 of Deeds
page 265. which note has been lost or mislaid.

A Claim against Francis Schonewald for about
on notes and accounts ————— \$450.

Book Accounts amounting to about 1600

Goods & Chattels —

3 Horses. 2 Cows. 3 Sows & Pigs. 2 Wagons.
1 Buggy 2 Sleighs 1 Steam Engine & Fixtures
4 Washing Tubs. 2 Lager Beer Casks 50 Beer Barrels
150 Quarter Barrels. India Rubber Hose 1 Pair Scales
75 Barrels of Beer 7 Pails of Hops.

48 The above are at the "Lake Brewery"

The following at the Bauer Brewery
1 Malt House, 1 Malt Kiln 1 Mash Tub 4 Working Tubs
1 Soaking Tub.

H. F. L. Rodemeyer

Schedule "B" referred to in the foregoing
instrument

To David Maurer for labor

100. 00

To Consent Schnidw for labor	60.00
" G Schominy do	75.—
" Schoder do	36.—
Note to Peter Green about	360.—
" " Eisendrath & Co " "	225.—
" " S B Adams " "	325.—

49

the last above being the one for which Contract is pledged.

To Jacob Bleas about \$58.	} these Claims have been died and are in Judgment before Justices and Executions
" Jager & Co " 49	
" Louis du " 24	

are out for the same —

And in addition to the above all other debts which ^{are} lying upon the premises or property of the assignor

H. H. L. Rodemeyer

50

And afterwards to wit: on the 7th day of June A D 1859 the said Complainant by his solicitor filed in the Court aforesaid in said cause his Certain Replication to the answer of the said Defendant Myers in the words and figures following to wit:

The Replication of John H. Kinzie Complainant to the Answer of Jerome Myers one of the Defendants herein

This Repliant saving and reserving to himself all and all manner of advantage

57

of Exception to the manifold insufficiencies of said Answer. for Replication therunto saith, that he will avow and prove his said Bill to be true certain and sufficient in the law to be answered unto. And that the said Answer of the said Defendant Jerome Meyers is uncertain, untrue, and insufficient to be replied unto by this Repliant, without this that any other matters or things whatsoever in the said Answer contained material or effected in law to be replied unto confessed and avowed, traversed or denied is true, all of which matters and things this Repliant is and will be ready to avow and prove as this Honorable Court shall direct, and prays as in and by his said Bill he hath already prayed

By A. E. Wolcott; his Solr.

52

And afterwards to wit: on the 8th day of October 1864. the Master in Chancery of Cook County, filed in the Court aforesaid his report of testimony taken before him in said Cause in the Words and figures following to wit:

State of Illinois	}	no	}	Masters Report
Cook County				
John H. Kinzie	}	no	}	In Chancery.
W. F. L. Rodemeyer				Chicago June 2 1859.
				Hon George Manierre presiding

Judge & Co.

53 In pursuance of a decretal order mentioned in the above entitled cause by which it was referred to me to take proofs of the material facts and allegations set forth in the Bill of Complaint on file in this cause and Report of J. L. Paine Master in Chancery of Cook County, do hereby Report that at my office in the City of Chicago on the 2^d day of June A D 1859 appeared said Complainant by his Solicitor at which time and place I proceeded to a hearing and Examination of the matters embraced in said reference

52 Henry J. Buxter a Witness produced and sworn on the part of said Complainant says. I am 27 years of Age am a County Constable of Cook County and reside in Chicago. I am acquainted with the Complainant and the defendant Rodemeyer and have seen the defendant Myers. On the 23^d ~~and~~ 24th days of November A D 1858. I think it was I received an Execution from the hands of Wm H. Stickney Justice of the Peace in this City in favour of Complainant and against Defendant Rodemeyer, the Execution was for fifty dollars and Costs. On the morning of the 24th November 1858 at 4 or 5 ACPM I went to Rodemeyers House and levied upon a Black Horse, harness & Open buggy Wagon, which I placed in Wright & Currys Stable for safe keeping. On the next day

17
The defendant Myers by his solicitor objects to the answer of the
Witness, so far as it gives the declarations of Rodemeyer.

55- on day following Rodemeyer came with another
man who I think was Mr Myers defendant, one
of them claimed the property I think it was Myers
they represented that Rodemeyer had made an
assignment to Myers before the levy, I then told
him if such was the case he could take the
Horse Wagon and harness by paying for the keeping
though I should still consider it under levy
until I became satisfied of the validity of the
assignment. He proposed that I should go to
see the assignment, I could not go then, went
a few days after and saw the assignment, and
then told him I would release the property and
did do so. He paid for the keeping and took
the property when he first demanded the property.

On my release from seeing the assignment he
remarked to me "I am in a tight" place, I made this
Assignment to keep my Creditors off a spell if they
will let me alone I will pay them all"

56- On the 11th December 1858 I demanded property
of Rodemeyer on ^{another} ~~this~~ Execution in favour of Compt
against Rodemeyer issued by Justice Stickney
on the 11th December 1858. on a second Judgment for
\$50.⁰⁰ Rodemeyer on my demand said "I have
no property to turn out, I must see Myers and
Kinzie and see what I can get to turn out"
Rodemeyer told me I should think some
time in December 58 that there was three horses

57

one low two Cutters (possibly one) one open Buggy
two Beer Wagons I think, harnesses belonging to
the same and all the Brewery apparatus
both here and in Blue Island. He said the
Cow sold for \$5. and was worth \$25. that
was at the sale by the assignee. The property
I levied on was worth from \$150 to \$175.

The Other property sold at the assignees sale was
worth in the aggregate \$400. This is Exclusive of
the Beer apparatus.

Sworn to and subscribed
before me this 2^d day of June
A.D. 1859

L. C. P. Thew
Master in Chancery

Henry J. Baxter.

58

Henry J. Baxter recalled says I wish to correct
the date as to ^{the} time when I received the 1st Execution
against defendant Rodemeyer referred to in my
Deposition foregoing. I received it on the
Evening of the 23^d November 1858 at 5.00 PM
I found also upon further Examination that the
Demand I made of property of defendant
Rodemeyer on the 11th December 1858 was on the
Original and 1st Execution Henry J. Baxter.

Sworn to and subscribed }
before me this 3 day of June }
1859 L. C. P. Thew Master in Chancery }

5-9

William H Stickney a witness produced and sworn on the part of Compt. Says I was a Justice of the Peace for the Town of North Chicago Cook County during the summer and fall of last year and am so up to this time. I knew the Complainant and Defendant Rodemeyer on the 3rd Nov^r 1858. Compt. recovered a Judgment before me against defendant Rodemeyer for \$50. damages on which Costs have accumulated to the Amount of \$2.75

Execution issued Nov 23 1858 directed to H J Baxter Constable who returned said Execution February 3. 1859 "No property found"

On the 8th December 1858 Compt. recovered another Judgment for same Amount against same defendant. Costs have accumulated amounting now to \$2.95.

On the 31 December 58. Execution issued to said Baxter which was returned by him February 3. 59 "No property found".

Go.

The Lease now here shown me marked "Exhibit 1" is the Lease upon which said Judgment was rendered I endorsed the Judgments on the Lease

sworn to and Subscribed
before me this 3 day of
June 1859

L C P Thur
Master in Chancery
Cook Co

W H Stickney

John H. Kinzie Jr a Witness produced and sworn
on the part of Compt. says I am 20 years of age
and reside with my Father the Compt. I know
the Defendant Rodemeyer and I know Mr Myers by
sight. I called on the Defendant Myers in the
61 latter part of March last and requested of him
permission of him to see the assignment of Mr
Rodemeyer to him. He refused at first to let
me see it, but afterwards took it from the
Safe and showed it to me. I informed him that
I was the son of Compt. while I was reading
it he asked me who I was and I told him. and
he then said that Mr Kinzie very well knew
that the Claim he was trying to enforce against
Rodemeyer was an unjust one and had no
shadow of right in it, that Mr Kinzie had
obtained a Judgment against Rodemeyer for
62 a small amount and had seized one of
Rodemeyers horses without giving him any Notice
of the Judgment and that Mr Kinzie had had
to give up the Horse again in Consequence of
seizing him without Notice, that he Myers
and Rodemeyer and Mr Kinzie all knew the
Claim was not just. I asked him to let me
Copy the assignment, and he refused positively
I told him that it was not on record, and therefore
I wished to Copy it, he said that makes no difference
there was another person with me named

Joseph M Dixon

Sworn to and subscribed
before me this 3 day of
June 1859.

L. C. P. Struer

Master in Chancery

Jno H Kinzie Esq.

103

Christopher B. Marsh a Witness produced and
sworn out the part of the Complainant says. I know
the Compt and defendant Rudemeyer and
the Defendant Myers by sight. I was a clerk
for the Compt. during the entire fall of 1858
and before and after and always went to the
Post Office for his Mail matter twice a day
always, sometimes oftener. On the 26th day of
November last at 11 1/2 o'clock in the forenoon
I called at the Post Office and received from
Complainant's Box the Notice signed by defendant
Myers now here by me presented. I know the notice
had not been in the Box before. I had been to the
Post office before on the same morning

Sworn to and subscribed before
me this 6th day of June 1859

L. C. P. Struer

Master in Chancery

Christopher B Marsh

Complainant produced and offered the Notice
referred to in the testimony of the Witness Marsh foregoing
dated Chicago Nov 22 1858. directed to Compt and
purporting to be signed by the Defendant Myers, the

same made "Exhibit 2" and returned herewith.

Facts appearing from the Evidence;
That the Compt executed the Lease to the
defendant Rodemeyer for the premises at the time
for the rental and upon the terms charged in the
65 Bill

That Complainant recovered the judgments
against said defendant for the amounts and
before the Magistrate charged in the Bill, and that
Executions were issued at the time and returned
as in the Bill charged.

That defendant Rodemeyer is still further indebted
to Complainant upon said Lease in the amount charged
in the Bill

That defendants after the recovery of the first of
said Judg^{ts} and before the Execution, pretends to
have made an assignment of his property to
66 Defendant Myers as charged in the Bill.

That said Assignment has not been recorded
That all or a portion of the property so assigned
remained in possession of said Defendant Rodemeyer
until after the issue of Execution in said first
Judgment of Compt^s against defendant Rodemeyer.

That said Assignment was made for the
purpose of hindering and delaying the Creditors
of said defendant Rodemeyer.

67 From the Evidence therefore I am of opinion that the prayer of the Complainant should be granted, and that a Decree should be Entered making the Injunction perpetual. Therefore issued in this cause, and that the said pretended Deed of Assignment so far as the same shall hinder or delay the said Complainant in the Collection of his said Judgmentz and demands should by such Decree be vacated set aside and held for naught, and the said assigned property be charged with the Amount of this Decree to be Entered herein and that a Decree should be entered in favour of Compl^t and against said defendant Rodemeyer for the sum of Three Hundred & fifty eight dollars and ninety six Cents, the Amount at the date of this Report principal and interest due Compl^t from said defendant Rodemeyer upon said Judgment and the subsequently accruing rent on ~~on~~ said lease up to the first day of April A D 1859 as specified and charged in the Bill of Complainant

68

Masters fees \$8.00 }
Paid by Compl^t & Def^t

All which is respectfully submitted
L C Paine Treasr
(Master in Chancery)
Cook County

Henry J. Baxter

Cross Examination

69 I saw Mr Myers the first time to know him by name in his store this must have been sometime in the 26th Nov^r 1858. or a week later, at that time I released the property from the levy that is to say when I first saw Mr Myers at his store to know him I ~~received~~ ^{received} the 1st Execution on the 23^d day of Nov^r at 5 O'clock P.M. I served the Summons I think in the first of these Cases on Rodemeyer (Compt^y by his Sol^r objects to so much of the Answer as refers to the service of the Summons)

I served the Summons by Copy after going some six or seven times to defendant's place of residence I know I went there a number of times, could not say just how many, (Answer objected to so far as relates to service of Summons as irrelevant)

70 I levied the 1st Execution I think on the Evening of the 24th November about dusk

I placed the property in Wright & Curries Stable for safe keeping, On the next Evening or the next but one about dusk or late in the afternoon I saw Mr Rodemeyer and a person who I now think to be Mr Myers. I think on this occasion Mr Rodemeyer asked me if I had not got his horse. I told him I had levied on it on Execution, the Gentlemen with

Rodemeyer or Mr Rodemeyer himself said this was an assignment and that I could see it by going to some store, the firm name was given and the name of Myers was given as one of the concern, and they asked me to go and see the assignment I told them I could not go then. The property was at this time delivered
 71 to Rodemeyer he by ~~the~~ agreement paying Wright & Curriers Charges. it being agreed that the levy was to remain until such time as I went to see the assignment. This agreement was made with Rodemeyer, I could not swear that I had any conversation with Myers or that he was there. I can only say that I think he was one of the men who was there. I next saw Mr Rodemeyer a few days afterwards. I met him in the Strub I think cant say where he or I were going, he Rodemeyer asked me to go
 72 and see the assignment and I went to a store on South Water Strub staid there it may be five fifteen or twenty minutes I did not read the whole assignment. Mr Rodemeyer and myself went into the store, he introduced me to a person he called Myers. From this store we went over Rush Strub bridge. (Rodemeyer & myself) to a Saloon near the North Market, we went in and took a glass of Beer, Cant swear whether I had drank a Glass of Beer before or that

day I cant now state when the Assignees sale^{was}
made spoken of in my direct I was not present
at the sale. Rodemeyer told me of the sale

- 73 I had no other information of it I am positive
Rodemeyer told me the Assignees sold the
property, dont know anything of the Sheriff
having levied on and sold this property
I dont know what property was sold, Except
what Rodemeyer told me I know about what
property this was at Rodemeyers and Blue Island
at that time and in my direct Examination
I gave my Judgment as to its value, as to the
property at Blue Island I know of it only from
Rodemeyers statement After I released the property
on the 1st Execution ~~the~~ I kept it till it run
out, then returned it No property found, and
74 that the Defendant refused to turn out Money
or property to satisfy the Execution,
W J Baxter

John Harris Kinzie Jr
Crop Ex waived —

William H Stickney
Crop Ex —

- 1X State what service if any was made of the
Summons in the first suit referred to in your

direct Ex. by the Constable, (Enty objected to as immaterial and that a judgment cannot be questioned Collaterally)

Ans. I find a return endorsed by the Constable Henry J. Baxter on said Summons as follows
 75- "Served by leaving a Copy at the within named defendants place of residence ^{and reading} the same to defendants Wife, and I do believe that the defendant Evades service, having been there no less than five or six times never at home" (Complt. objects to the Answer as incompetent)

2 X When was that return made?

Ans. On the 30th October A D 1858.

(Complt objects to the interrogatory and Answer)

3 X When was the Summons issued

Ans. On the 27th October 1858. (Complt. objects to the Interrogatory and Answer)
 76

4 X When was Judgment rendered

Ans. on the 3^d day of November 1858.

5 X Did the defendant appear by himself or Attorney at the trial of the suit
 (Int objected to by Complt)

Ans. He did not.

W. H. Stickney

James A Marshall

James A Marshall a Witness produced and sworn on the part of said Defendant doth depose and say I am years of Age, am in the Auction and Commission business and reside in Chicago. I know the Complainant John H Kinzie and both the defendants. Sometime prior to the 6th of April last I was directed by the defendant Myers to make sale of certain personal property, which property was in the North Division at a Brewery Corner of Pine and Ohio Streets I think. Among the property was a lot of Beer, two horses, one low, Beer Wagons and a light Wagon. The sale of this property had been advertized and I went only to sell it as Auctioneer. The defendants Rodemeyer & Myers were both there and other persons a considerable number of other persons. When I got to the place of sale I saw advertized that the sale could not proceed. a Deputy Sheriff of Cook County informed me he had Execution^s against the property. I think there was more than one Execution. He warned me not to proceed with the sale. I then inquired the amount of the Execution and was informed it was several hundred dollars and in looking around at the property, I remarked to the Sheriff I thought the property would bring

the Amount due on the Executions, he said that he had no objections to my going on with the sale if I would agree to pay him the Sheriff the proceeds to the Amount of the Executions held by him. I then went on with ^{and after the sale} the sale, I paid from the proceeds the amounts due upon the Executions there upon the ground and had a trifling balance left.

79

The Ordinary way of An Auction sale, and I made Every reasonable Effort to get as much as I could for the property, the property brought a fair price, Considering the description of the property, and the situation it was in. I find upon Examination this sale was on the 8th (January) 1859.

Sworn to and subscribed
before me this 6th day of Sept
A D 1859.

James A Marshall

L C P Freer.

Master in Chancery

I L C Paine Freer Master in Chancery of Cook County State of Illinois, do hereby Certify and report that after making my Report foregoing the parties again appeared before me and by Consent the said Witnesses were recalled for Cross Examination and the Witness James A Marshall a Witness on the part and behalf of the said defendant was also Examined as appears foregoing by Consent of the Complainants Solicitors, all of which I herewith return.

Master's Fees \$8.
paid by Comptroller

L C Paine Freer
Master in Chancery
Cook Co.

80

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Master in Chancery
Cook Co.

80

"Exhibit No. 1."

81 This Agreement made this first day of May
A D Eighteen Hundred and fifty Eight Between John
W Kinzie of the City of Chicago Cook County and state
of Illinois party of the first part and H F L Rodeneyer
of the same place party of the second part.

Witnesseth that the party of the first does hereby lease
to the party of the second part the following described
premises viz: Cellar or Basement under the main
Brick Building situated on Lot Twelve (12) in
Block Five (5) in "Kinzie's Addition to Chicago"
Corner of Rush & North Water Streets and at present
occupied by said party of the second part as a
Lager Beer Saloon together with the west department
or Vault under the side Walk. for the term of
Two $\frac{1}{2}$ years beginning the First day of May A D 1858
and ending the First day of September A D 1860

And the party of the second part agrees to pay as
rent for said premises, the sum of Fourteen hundred
82 dollars payable in Twenty Eight payments of Fifty
dollars each to wit: on the First days of each month
in advance. And the party of the second part covenants
with the party of the first part, that at the expiration of
the term of this lease he will yield up the premises
to the party of the first part without further notice
in as good condition as when the same were entered
upon by the party of the second part less by fire
or inevitable accident and ordinary wear excepted

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It is further agreed by the party of the second part, that neither he nor his legal representatives will underlet said premises or any part thereof or assign this lease, or make any alterations, amendments or additions to the buildings on said premises ~~or any part thereof~~ or assign this lease without the written assent of the party of the first part first had thereof, and that neither he nor his legal representatives will use said premises for any purpose calculated to injure or deface the same or to injure the reputation or credit of the premises or of the neighborhood. And it is expressly agreed that in case of accident by fire or otherwise whereby the buildings in said premises may be destroyed or rendered useless then it shall be at the option of the party of the first part to declare this lease void. It is further agreed by the party of the second part (And it is further expressly agreed between the parties that if the rent above reserved or any part thereof shall be unpaid for the space of five days after it shall be due, or if default shall be made in any of the covenants or agreements herein contained to be kept by the party of the second part his heirs Executors Administrators or assigns it shall be lawful for the party of the first part or his legal representatives into the said premises or any part thereof either with or without process of law to reenter and repossess the same and to distrain for any rent

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that may be due thereon at the Election of
said party of the first part, and in order to enforce
a forfeiture for non payment of rent it shall
not be necessary to make a demand on the same
day the rent shall become due, but a demand
and refusal at any time or the same day or at
85 any time on any subsequent day shall be
sufficient, and after such default shall
be made the party of the second part and all
persons in possession under him shall be deemed
guilty of a forcible detainer of said premises
under the statute.

In Witness Whereof The parties have hereunto
set their hands and seals the day and year above written
A C Butts } H F L Rodemeyer (Seal)
Jno H Kinzer (Seal)

Endorsements on Lease.

Nov 3 1858. Judgment given in favour of Plaintiff
on the within Lease for the Month of September to 1st
86 Oct 1858 on my Docket Page 232.

Dec 8 1858. Judgment given on my Docket Page
241 20251. for Month October 1858
W H Stickney (J P)

Exhibit 2.

Chicago Nov 22. /88

John H Kenzie Esq

Dear Sir

You are hereby
Notified that H F L Rodemeyer has this day
assigned to me his property for the benefit
of his Creditors

Yours Rl

Jerome Myers

37 South Water St.

Rec'd by PO 26th }
at 11 1/2 A M }

And afterwards to wit at the November Term
of said Court to wit: on the 29th day of December
AD 1860. the following proceedings among others were
had and Entered of Record therein in said Cause
to wit:

John H Kenzie

vs

Henry F L Rodemeyer

and Jerome Myers

Bill for Injunction

This day Comes the said Plaintiff
and the said defendant Jerome Myers by their solicitors
(the Bill as to the other Defendant Henry F L Rodemeyer
having by a former order herein been taken and still standing
pro Confesso) and thereupon this Cause Come on to be
heard upon the Bill, answer of said Myers and

the replication thereto, together with the Exhibits and testimony, as reported by the Master in Chancery, to whom this Cause was for that purpose referred, and also upon the Bill taken as Confessed by the said Defendant Rodemeyer, and was argued by Counsel

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On Consideration whereof the Court does find that the Equities of the Case are with the Plaintiff, that there is Justly due from the said Defendant Rodemeyer to the Plaintiff upon the two judgments mentioned in said Bill the sum of One Hundred and Eighteen Dollars and thirty Cents (\$118.30) for the damages, interest and Costs thereon. That the Assignment by said Rodemeyer to said Myers of his property and Effects as charged in the Bill was, and is against the Plaintiff fraudulent and Void.

That said Myers has Converted a large portion of said property and Effects into money and now holds the same to a much greater Amount than the aforesaid sum of One Hundred and Eighteen dollars

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and thirty Cents, with Costs herein To-wit: to the amount of one Hundred and Eighty six dollars and fifty Cents (\$186.50) Subject to the Order of this Court in this Cause. And that said Rodemeyer has no other goods and Chattels lands or tenements Except what are in the hands of said Myers by Virtue of said Assignment wherewith to satisfy the said Judgment.

It is therefore ordered adjudged and decreed that the said Rodemeyer do forthwith pay into this Court the said sum of One Hundred and Eighteen dollars and thirty Cents and the Costs in this Cause, and in default thereof that the said Defendant Myers pay

State of Illinois, }
COUNTY OF COOK. } s. s.

I, WILLIAM L. CHURCH, Clerk of the Circuit
Court of Cook County, in the State aforesaid, do hereby
certify the above and foregoing, to be a true, perfect and complete
copy of Verdict, answer Deposition Exhibits &
final decree
in a certain cause lately pending in said Court on the
Chancery side thereof, wherein John H
Kiuzie was Complainant and
James Myers & al were defendant.

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our
said Court at Chicago, this Seventeenth day of April A. D. 1861

W. L. Church
Clerk.

into this Court within twenty days from the 27th
 day of December A.D. 1860 the amount of said One
 Hundred and Eighteen dollars and thirty Cents
 together with the Costs in this Cause and in
 default thereof that Execution issue for said
 Amount and Costs against the said Defendantz
 as upon Judgment at law. Whereupon the said
 Defendant Jerome Myers by his Counsel Excepts
 and prays an Appeal to the Supreme Court of the
 State of Illinois which is granted by the Court
 upon Condition that the Defendant Myers shall
 within fifteen days from this date Execute and
 file with the Clerk of this Court his Appeal Bond
 herein in the penal sum of Three Hundred Dollars
 Conditioned according to law, with John B. Myers
 as surety thereto. And on motion no
 objection being made thereto, it is further ordered
 that the Defendant Myers have fifteen days to
 prepare and file his Bill of Exceptions in said
 Cause.

Supreme Court of the State of Illinois
Desome M. Gros-
Duphacade or
" "
John K. Kingio

92. And now comes the said Desome
M. Gros appellant and says there
is error in said record & proceedings
and he assigns the following reasons -
I. The decree was rendered by the
Court in favor of John K. Kingio whereas
it should have been rendered in
favor of said Desome M. Gros -

2d. The decree rendered in this
case is contrary to law.

3d. The decree rendered is

4. 1. 1. 1. The decree rendered in this case is contrary to the evidence.

5. The Court renders a personal decree against Myers -

6. The Court admits improper evidence against Myers -

7. For these and other causes the said Myers ~~seeks~~ to ask reversal of the decree.

Walter Rouse
for ~~Myers~~ Myers

And the said defendant Kinzie comes by his attorney and says there is no such error in said record and proceedings as is above alleged, wherefore he prays that said decree be affirmed with costs, &c.

A. E. Wolcott, & T. Dent,
Deft's attys.

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Jerome Myers

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John H. King

Recd.

Filed April 17, 1861
L. Leland
Clerk