

5th Supreme Court

3^d Grand Division Mt

Vernon Tappan Co Mo

Samuel Hawkins plaintiff

vs
Philip Vinzard &

David M. Hoge

defendants

} left in error

and the plaintiff's motion
for rehearing comes to for consideration
Judgment and decree of the Circuit
Court of Perry County sitting as a Court
of Chancery and in the matter
thereof the day says that the Judgment
and decree of the Circuit Court is affirmed
in this

1st In sustaining the Answer
filed by the Defendant to the answer
to the bill filed by the Complainant
in this Cause ~~against~~ the plaintiff
error, against the defendants ⁱⁿ error
in the Circuit below.

2nd The 5th Circuit Court agreed in
dismissing the bill filed by the
Complainant in the Circuit below.

3rd The 5th Circuit Court sustained
the Answer absolutely and dismissing
the bill without giving the plaintiff
leave to amend if necessary for him
to do.

and finally and lastly the said
Chaffin was assigned as a general
ground of error that the Court
therein rendered is erroneous
in this that the Court & decree
of the 5th Circuit so rendered as appears
in the above styled Cause was rendered
in favor of the debtors in error, whereas
it ought to have been for the plaintiff
in error, and that the 5th plaintiff in
error ought to have been allowed
to redeem the premises in ^{the said} ~~the~~ Bill
described as therein proposed for
& the 5th Debtors or one of them ought
to have ordered to pay the costs

and for other matters
of error in the 5th record appearing
the plaintiff in error by his attorney
appears and says that the 5th Court
decree of the 5th Circuit Court in
above styled Cause so rendered in
favor of the debtors in error ought to be
reversed and set aside & in nothing
steered to

W. H. Brown Solicitor
for plaintiff in error

Pleas held in the Perry
Circuit Court before the Hon
Wm H Underwood Judge of the
Second Judicial Circuit of the
State of Illinois of which County
of Perry forms a part

Be it Remembered that hereofore
Dated on the 25th day of September
in the year of our Lord one thousand
and eight hundred and eighty one
by J. M. Samuel Hawkins made
& filed in the clerk's office of the Perry
Circuit Court the following Bill in
Chancery

State of Illinois

In the Circuit Court in & for the
County of Perry October Term 1851

To the Honorable
William H. Underwood Judge of the Circuit
Court of Perry County State of Illinois

Humbly Complaining sheweth unto your honor
your orator Samuel Hawkins of the County of
Perry and State of Illinois that on the 26th day of
January A.D. 1849 he was served in full in
his own right of and in the following described
tract or parcel of Land situate in said County and
^{bounded} known as follows to wit. beginning at the north ^{west} corner
of Section Eighteen in Township five south of Range
one west thence south eighty poles thence
East ninety six Poles thence north forty eight
degrees East forty four Poles thence north forty six
degrees East Eighty one Poles at the section line
running East from East to West thence west one
hundred & ninety poles to the beginning containing
in all seventy one acres and eighty rods of Land
a part of which to wit sixty five acres thereof is
contained & included within the said north west
quarter of Section Eighteen in Township five south
Range one West and that before that time to wit
on the day of A.D. 1848 Philip Viney-
-ara of Pope County State of Illinois had secured
a fragment against your orator in the
Circuit Court in and for the County of Frank-
lin in said State for the sum of \$ besides
the cost of said suit as by a copy of said fragment
^{herewith} Exhibited will more fully appear and that
affidavits on the 19th day of October A.D. 1848
the said Philip Vineyara shew out & cause to be
issued from the Clerk's office of the said Circuit

Court of Franklin County a writ or execution
commonly called a Special writ of fieri facias on
the said judgment which was placed in the hands
of David McHoge then being Sheriff of said County
of Perry to execute And that afterwards writ on the day
and year first aforesaid the said David McHoge
being Sheriff as aforesaid by virtue of the said writ
& do satisfy the same sold the whole of the said north
west quarter of Section Eighteen in Township five South
Range one west in Mapes including the sixty five acres
thereof contained within the said Metes & Boundaries
and belonging to your Orator as aforesaid at public
auction to the highest bidder at which said public
sale the said north west quarter of Section Eighteen
in Township five South of Range one west including
the said sixty five acres of Land herein above
mentioned was struck off & sold to the said Philip
Vineyard plaintiff in said Execution for the price
and of sixty five dollars all of which will more fully
& at large appear by references to said writ of fieri
facias a copy of which is herewith annexed & prayed
to be taken as part of this bill

And your Orator further saith ^{that} he being the
judgment debtor in the said Execution mentioned
afterwards that is to say on the 24th day of January
1830 at the County of Perry aforesaid and before
the expiration of twelve months from the day of said
sale in order to redeem the said sixty five acres
of Land herein above mentioned tendered &
offered to the said David McHoge Sheriff as
aforesaid who sold the same for the use and
benefit of the said Vineyard the purchaser thereof
at said sale the sum of \$ twenty one dollars
& fifty Cents for the redemption of the same

being the amount given or bid by the said
Vineyard he being the Plaintiff in said execution
together with interest thereon at the ^{rate} of ten per centum
from the time of such sale and then and there requested
him to accept the same and the said Hawkins
saith that the said sum of \$ twenty one dollars & fifty
cents so by him tendered to the said Hoge Sheriff
as a full said was the full amount given or bid by
the said Vineyard for the said sixty five acres of
Land together with interest thereon at the rate of
ten per centum per annum from the time of such sale
to the day on which the said tender was made
to wit the day and year last aforesaid and yet the
said Defendants wholly deny the right of redemption
of the said sixty five acres of Land to him the said
Samuel Hawkins and continue to hold him out
of possession ~~xxx~~ of the same pretending that he has
no right to redeem the said sixty five acres of Land
unless he will also at the same time redeem the
whole of the said sixth quarter of section eight
in ^{the} Township five South range one West and your
Orator expressly states that he never ~~had~~ any
time owned or had any title whatever to
the said quarter section of Land or any part thereof
except such part & portion thereof as is contained
& included within the metes & bounds aforesaid
and that the residue of ^{the} said quarter section of Land
at the time of said sale belonged to and still does belong
to one Samuel Benson of said County in fee simple
whereupon after orator brings this suit & prays
your honor to consider his case in Equity & that upon
his ^{producing} ~~presenting~~ & lodging in court (which he hereby offers
to do) all such kinds of money as your honor shall find
to be due to the said Vineyard from your Orator on

+ account of said sale of the said entry and cause of
Lana^{he} may be returned to the title & possession
of the same and may also have General relief
may it please your Honor

H. B. Jones Solicitor for
Samuel Hawkins

which said Bill was filed in the Perry Circuit
Court on the 25th day of September A.D. 1831

Davis Hammack

Samuel Hawkins

Philip Maynard &
David McHenry

{ Bill in Chancery in
the Perry Circuit
Court October term A.D. 1831

Issued a subpoena in Chancery in the cause
directed to the Sheriff of Perry County & also a
like subpoena to the Sheriff of Pope County

returnable to said term August 21 1831

To the Clerk of the Perry
Circuit Court Winchester

H. B. Jones Solicitor
for Hawkins

Filed August 21st 1831

Davis Hammack C.M.

Samuel Hawkins

Philip Maynard &
David McHenry

{ Perry County Circuit Court

I do hereby enter myself
security for cost in this cause and acknowledge
that I am bound to pay or cause to be paid
all cost which may accrue in this action
either to the opposite party or to any of the officers
of this Court in pursuance of the Law
of this State Acted this 15th day of August
A.D. 1831

John R. Caldwell

Filed September 16th A.D. 1831

Davis Hammack C.M.

Know all men in these presents that I, James McHoge, of the
State of Illinois, do hereby certify to the People of the State of Illinois
Perry County, that the Sheriff of Perry County, Indiana
McCormack you that you summons Philip
Vineyard & David McHoge if they shall be
found in your County to be and appear before
the Judge of our Circuit Court in and for the
County of Perry on the first day of the
next Term thereof to be commenced and holden
at the Court house in the town of Puckney
ville in said County on the first Monday of
October next to answer unto the matters
& things contained in a certain bill in chan-
cery Exhibited against by Samuel Hawkins
and further do & receive whatever the said
Court may shall consider in that behalf
and have you then and there this writ

Witness Lewis McCormack Clerk of our
said ~~Circuit~~ Court at his office in
Puckneyville this 10th day of October
in the year of our Lord one thousand
Eight hundred and fifty one and
the seal of said Court affixed

Lewis McCormack Clerk

Executed by Copy to D McHoge et al
1837 P Vineyard not found

Serving 50
12 miles 60

Return 10

Filed Oct 24th 1837 J. W. Frye & Sheriff
Lewis McCormack Clerk

Such afterwards to wit at a Circuit Court
began and held at the Court House in the
town of Prichardville in and for said
County of Perry on ^{the first} Monday of October
in the year of our Lord one thousand
eight hundred and fifty one Upon the
Petition of Underwood ~~Plaintiff of the same~~ ~~Plaintiff~~
~~Complainant~~ Prising the Counsel for the Defendants
filed the same which is in words and
figures following to wit

Samuel Hawkins { In Chancery
Philip Vineyard { In the First Circuit
David McGeary { Court October term
1837

The Demurrer of Philip Vineyard and
Samuel Hawkins David McGeary to Bill
of Complaint of Samuel Hawkins
Complainant

These Defendants by protestation not con-
fessing or acknowledging all or any of the
matters and things in said Complaints bill
contained to be true in such manner and
form as the same are therein and thereby
set forth and alleged do demur to the said
bill and for cause of demurrer show that the said
Complainant has not by his said bill made
such a case as entitles him in a Court
of Equity to relief from these Defendants
respectively or either of them as to the matters
contained in ^{the} said bill or any of such
matters And for cause of demurrer shew
that it appears by the said Complaints own
showing by his said Bill of Complainant

That the said Complainant is not Entitled
 to the relief prayed by his said Bill against
 these Defendants Wherefore and for as much
 other good causes & Reasons appearing
 in the said bill of Complaint these Defendants
 do demur to the said bill and to all the
 matters and things therein contained and
 pray that Judgment of this Honorable
 Court whether they shall be compelled
 to make any further or other answer
 to the said bill and they humbly pray to be
 here dismissed with their reasonable costs
 in this behalf sustained

Filed October 7th AD 1867
 Lewis Hammack

Allen & Edwards
 for Defendants

CM

And afterwards did sit on the 7th day of October
 AD 1867 at said Circuit Court the Court finally
 giving the following Order was entered of Record
 to wit

Samuel Hawkins

vs
 Philip Vinjana &
 David McGeoghegan } Bill in Chancery
 Comes Philip Vinjana & David
 McGeoghegan by their attorneys
 Allen & Edwards

as well as the said Complainant by Jones his
 Solicitor thereupon the said bill by the attorneys
 demurs to the said complainants bill which demur
 is sustained & It is therefore Ordered by the Court
 that said complainants bill be dismissed thereupon
 the said complainant prays an appeal to the superi-
 or Court of this State which appeal which said appeal
 is allowed by the said Complainant giving bond in 5 days
 with John R. Hawkins as his security &c

Know all men by these presents that we
Samuel Hawkins & John R. Hawkins of the
County of Perry & State of Illinois are held and
firmly bound unto Philip Vineyard ~~and~~
of the County of Pope & David M. Hogg of the
County of Perry State of Illinois in the Penal
sum of fifty dollars Lawful money of the United
States which payment well and truly to be made
we bind ourselves our heirs Executors and administr-
ators jointly severally and firmly by these presents
With our hands & seals this 1st day of November
A.D. 1837. The Covenants of the above oblig-
ation is such that whereas the above bounden
Samuel Hawkins filed his certain bill in
Chancery against Philip Vineyard & David M.
Hogg at the October term A.D. 1837 of the Perry
Circuit Court which said Bill was Sum-
med & Demurr sustained & bill dismissed whereupon
the said Samuel Hawkins has taken an
appeal to the Supreme Court of this State
Now if the said Samuel Hawkins shall well
and truly prosecute his said appeal & pay
all cost that shall be adjudged against him then
& this obligation shall be null & void otherwise
it remain in full force and virtue in Law
taken and approved by Samuel Hawkins Seal
me this 1st day of November John R. Hawkins Seal
A.D. 1837

Levi Hammack

OK

Filed November 1st A.D. 1837

Levi Hammack

OK

Clerk Jus

Shuffes of Perry Co

\$ 6.30

120
6.30

State of Illinois, ss. J. O. Lewis Hammock
County Clerk of the Circuit Court within and
for the County of Perry and State of Illinois do hereby certify
that the above & foregoing is a true and correct copy of the
Proceedings in the above entitled cause & also copy of
all of the papers belonging to said cause on file in
my office

In testimony whereof I have hereunto
set my hand & affixed the seal of
said Circuit Court at my office
in Pinckneyville this 15th
day of June AD 1832

Lewis Hammock
Clerk

23rd July 1832

Haslam

Wiggin

+ Hope

Will to ask

He also with pleasure

has it to clearing of hope to

and to clearing of hope to

with the above cause

William J. W.

in 1832

Filed 24th

1832