No. 14808

Supreme Court of Illinois

Cabeen

vs.

Mulligan

71641 7

14808

Case 118

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 42

J. W. Middleton & Co., Stationers, 196 Lake St.

Calvert

vs

Williams

STATE OF ILLINOIS;—SUPREME COURT,

APRIL TERM, 1865.

R. CYRUS CABEEN
vs.
JOHN MULLIGAN.
} *Error to Mercer.*

ABSTRACT.

This was a Bill in Chancery filed in the Circuit Court of Mercer County, for the purpose of setting aside a Sale and Deed made by the Sheriff to Respondent, of a house and lot of land upon a sale under execution, on the ground that the property was exempt from sale under the Homestead Law.

1 The Bill sets forth that Complainant, on the 12th day of September, 1857, was the owner in fee and possessed of the property, *viz.*, S ½ Lot 9, in Block 4, in the Town of Keithsburg, Mercer County, Illinois—
2 that on the 12th day of September, 1857, Norton, Jewett & Busby obtained a judgment against Complainant in the Circuit Court for $676 51, on which execution issued That on the 10th day of November, 1857, execution was issued thereon and placed in the hands of the Sheriff of said County, who levied the same on the property described, and sold the same to the Plaintiffs in execution for the sum of $100.

2 That on the 11th of December, 1858, Defendent, John Mulligan, obtained a judgment before a Justice, against Complainant for the sum of $93 75 and costs of suit. On the 8th day of February, 1859, he filed a transcript thereof in the office of the Clerk of said County, and

on the 9th day of February, 1859, execution was issued thereon and placed in the hands of the Sheriff—that Mulligan then redeemed from the previous sale to Norton, Jewett & Busby, and the Sheriff levied the execution in favor of Mulligan upon the lot in controversy, and on the 29th day of March, 1859, sold the same to Mulligan for $114 14, and on the 6th day of April, 1858, executed a deed therefor to Mulligan.

The bill then alleges, (Record pages 2 and 3), that the debts upon which both of said judgments were rendered were contracted subsequent to the 4th day of July, 1851. It then alleges that at the time of the rendition of the judgment in favor of Norton, Jewett & Busby, and between that time and the sale of said land, he was the head of a family, residing with the same upon said lot of ground. That during all that time he had a wife and children—that there was a dwelling-house on said lot, erected by him and occupied as his homestead—that he did not relinquish his homestead to any one. That at the time the purchase was made by Mull gan he was not residing on the lot, but was still the head of a family, residing with the same—that he left said premises temporarily with the intention of moving back thereon with his family—that after the lapse of about two years he did return to said premises and reoccupied the same with his family, and has been occupying the same with his family ever since.

That when he left the premises he leased them to one George H. Hazleton for one year, with the privilege of three years—that Hazleton occupied the premises about one year and then delivered possession to Complainant. That the house and lot never were worth more than $1,000 00—that the debts were not contracted for the purchase money of the lot, nor for building the house, nor for any improvements upon the lot—that neither Norton, Jewett & Busby, nor any one else, ever had the premises appraised, or offered to set off or pay him $1,000 00. The bill then prays that the sale and deed to Mulligan may be set aside and declared void. On the 1st day of September, 1862, at the September Term of said Court, leave was granted the Complainant to amend his bill. On the 23d day of September, 1862, the Complainant filed his amended bill which set forth the foregoing facts, and also that he left the premises on the 1st day of June, 1857—that he returned after the lapse of about two years, when he returned and has occupied the premises with his family ever since.

13 On the 16th day of April, 1863, the Defendant filed his answer to the bill.

The Defendant admits the recovery of the judgment by Norton, Jewett & Busby—that execution was issued thereon and the property sold to satisfy the same, but he alleges that the suit of Norton, Jewett & Busby was commenced by attachment on the 25th day of June, 1857, and was levied on the property, and that the property was sold under and by virtue of a special execution issued in the attachment suit, being
14 the execution named in the bill—admits the judgment, execution, levy, redemption and sale to himself, as set forth in the bill.

Admits that at the time of the levy of the attachment and the first sale, Complainant was the head of a family, but denies that he was residing on the premises when the attachment was levied, or when the judgment was rendered, but alleges the truth to be that before the 25th of June, 1857, the Complainant had left the premises, and the State, and removed to Minnesota with his family, to reside permanently—that
15 Complainant did not occupy the premises as a homestead after the 1st of June, 1857, until after the sale to Defendant, as set forth in the bill. The answer then sets forth that Complainant is a brother-in-law of respondent—that Complainant was reduced to poverty and distress and on about the 1st of March, 1859, the respondent was induced to assist Complainant in business and furnished him with a stock of stoves and tin ware to carry on business in respondent's name, hoping Complain-
15 ant would be able to pay him the amount he had invested in said house and lot, together with a large sum of money due respondent upon a mortgage made to him before the suit of Norton, Jewett & Busby was
15 commenced—admits that he had no release of the homestead. Admits the lease of the premises to Hazleton, but insists it was dated the 1st of June, 1857, and believes that Complainant returned and took possession of the premises two years thereafter. Admits the premises were never worth more than $1,000 00, and that the debt of Norton, Jewett & Busby was not for the purchase money of said lot, nor for improvements thereon. States that Complainant was indebted to him in the sum of eleven hundred dollars for money loaned and for goods, wares and merchandise sold to Complainant before the 4th of July, 1851, and on the 1st of Decembeer 1856, the Complainant executed to respondent two promissory notes payable in one and two years from that date, and



executed a mortgage upon the premises described in the bill, to secure the payment thereof.

17 Replication to the answer was filed on the 23d of April, 1863.

The case was heard at the same Term of the Court, and a decree was
17 rendered dismissing the bill and awarding costs to the Defendant.

On the same day, by agreement of parties, the following Certificate was filed in said cause :

42 115
in Lebeau
vs
Mulligan
Exhibit



April 4. 1865.
L. Leland
Clk.

Mahoney Colman
John Mudigan
T B.

It was proved from the typed that Colman left about 1st of June 1853 that before he left that he rented a dwelling on the premises that he was the head of a family and resided on the premises to the time he left that he leased the said premises from Edward Hazelton

for one Year at the yearly rent of three Pounds that he assigned this lease to Thomas B Osgood when he left Colmans then Mr & Stockton was there with his family in Minnesota at the instance of one Lewis Stockton who told him wanted that he have rented them and that he wanted Colman to come up and keep the Store for him that he moved to said place stating that before he went that if he like and could do well he would stay but that if he could not he intended to return to the Province of Canada with his family in Minnesota about two years and Returned that during the whole time of his absence the premises were occupied by said Hazelton or his tenants and until the said Colman Returned that

about three months after
ory the return of said Coburn and
before the termination of said
lease the said Coburn took ~~the~~ ~~pos~~
possession of the said premises
with his family and resided in
the the same said premises
during the whole time up to the
present time, that Coburn dur-
ing the time Thomas
and applied them to the payment of complainants indebtedness
during the time the same was
so leased was that that was all
the Real Estate said Coburn had
in this State at the time, that
said Coburn did keep a
Hotel in said Stockton as he
intended & does, ~~that he stated~~
that after the return of said complainant
he said that when he left he expected to
remain in Minnesota - he had expected
to do well there, but that he afterwards found
it to his interest to return to Kettleburg.

This was all the evidence in
the case, and that the same
may be presented I have made
this certificate
April 27/63 C. B. Lawrence
Mas

42 ~~183~~

Ed Emmick

Coben

vs

~~Harris~~

Mulligan

et al

Filed 27th April 1863

J. M. Chamberlain

By W. P. Brown Clk

SUPREME COURT OF ILLINOIS:

THIRD GRAND DIVISION.

APRIL TERM A. D. 1865.

R. CYRUS CABEEN, Pl'ff in Error,
vs. } Error to Mercer.
JOHN MULLIGAN, Def't in Error,

The bill in this cause was filed for the purpose of setting aside a conveyance made by the Sheriff of Mercer County to defendant in error.

(1.) Norton, Jewett & Busby, on the 25th day of June, 1857, caused an attachment to be issued from the Mercer Circuit Court, against plaintiff in error, and levied on the S. ½ of Lot 9, in Block 4, in Keithsburg; which was subsequently sold, and from said sale, defendant in error, as judgment creditor, redeemed. By virtue of said redemption, defendant obtained the deed which plaintiff seeks to have annulled and set aside.

(2.) There can be no question as to the regularity of the attachment of Norton, Jewett & Busby, and the subsequent proceeding thereunder by defendant, who, as a judgment creditor, redeemed from the attachment sale.

(3.) The only question to be decided is "*was the premises, levied on by the attachment, the homestead of plaintiff, on the 25th day of June*, 1857.

The evidence shows that plaintiff in error, with his family, left the premises in controversy about the 1st day of June, 1857, and went to Minnesota, where he went into business.

He continued to reside with his family in Minnesota for some three years.

Failing in business, he concluded to return to Keithsburg.

When about leaving for Minnesota, plaintiff gave out, in conversation, that he expected to remain there, as Stockton had offered him a good chance, and he expected to do well. Plaintiff's return to Keithsburg was occasioned by his failure in business. Had he been successful in business, he, doubtless, would have been in Minnesota at this day.

(4.) It will be remembered, also, that plaintiff in error gave a lease of said premises to one Hazleton, for the period of three years, which he certainly would not have done, if he had intended to return within three years. True, the lease provided that the term might expire at the end of one year at the option of the parties. But this proviso in the lease does not militate against the argument, that the giving of the lease for three years is evidence that it was not in the mind of plaintiff to return to the premises within three years from the date of the lease.

5. The evidence, therefore, justified the Court in finding that plaintiff in error had permanently abandoned the premises in controversy; and consequently it had ceased to be his homestead.

(6.) This case is not like the case of Ketchell *vs.* Burgoin, *et al.*, 21 Ill., 40–45. In this case this Court decided that the head of the family might leave the homestead in search of another home, and, being disappointed, may return to the old home, and his absence, under these circumstances, would not cause a forfeiture of his homestead rights.

In the case at bar, the plaintiff did find a home in Minnesota, and with his family remained there near three years.

We submit, therefore, that the decree dismissing the bill of complainant should be sustained.

J. R. & I. N. BASSETT,
For Deft. in Error.

42 115

R. Cyrus Caldwell

vs

John Mulligan

Brief of Deft.

Filed April 10. 1865

L. Delano Clk

State of Illinois
Mercer County ss

Mercer Circuit Court

Pleas before the Honorable Charles B. Lawrence Judge of the Tenth Judicial District of the State of Illinois at a Circuit Court began and held at the Court House in the Town of Aledo in and for the said County of Mercer and State of Illinois on the third Monday in the month of April A.D. 1862 being the 21st day of said month in said year in Chancery sitting.

When Present Hon Charles B. Lawrence Judge
Sanderson M. Rodgers Sheriff
James M. Hamson Clerk

Be it known that heretofore to wit on the 4th day of April 1862 came Benjamin G. Caliaferro an attorney of this Court and filed in the Clerks office of said Court a Bill of Complaint and Precipe for Summons in said cause therein stated and which Bill and Precipe are in the words and figures following to wit:

"State of Illinois }
Mercer County } ss To the Honorable Charles B. Lawrence Judge of the Tenth Judicial Circuit of the State aforesaid sitting as a Court of Chancery in and for the County aforesaid at the April Term of said Court A.D. 1862 Your Orator B. G. Caliaferro complaining shews unto your Honor that on the twelfth day of September A.D. 1855 he was seized in fee and possessed of the following described lot to wit: the South half of Lot Number three (3) in Block Number Four (4) in the Town of Keithsburg situated in the County of Mercer and State of Illinois, that at the time hereinafter mentioned Stephen Morton, Albert Jewett, Benjamin G. Caliaferro and

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name and Style of Norton Jewett & Bugby obtained a judgment against your Orator in said Circuit Court for the sum of Six hundred & Seventy Six & 57/100 Dollars which Judgment bears date the 12 day of September A.D. 1857, that an Execution was issued out of the Clerk's office on said Judgment of said Court dated the 15th day of November A.D. 1857, and directed to the Sheriff of said County to Execute that said execution was placed in the hands of B. Sloyd for who was then the acting Sheriff of said County, that the said Sloyd after said Execution was placed in his hands as aforesaid levied the same on said real estate as the property of your Orator and sold the same by virtue of said Execution and for the satisfaction and extinguishment of so much of the debt due upon said Judgment as said real estate sold for over said sale, that said real estate sold for the sum four hundred dollars at said sale and was purchased by the said Norton Jewett & Bugby for said amount, that on the 11th day of December A.D. 1858 one John Mulligan obtained a Judgment against your Orator for the sum of Ninety three dollars and Seventy five cents Principal and Thirty seven and one half cents costs before John Norris who was then an acting Justice of the Peace in and for said County. That on the 31st day of January A.D. 1859 the said John Mulligan caused a transcript of said Judgment to be made out of said Judgment and all the proceedings that was had before said Justice in obtaining said Judgment as aforesaid and that on the 8th day of February A.D. 1859 said transcript was filed in the Clerk's office of said Circuit Court for the purpose of making said Judgment obtained before said Norris as aforesaid a transcript Judgment in said Circuit Court against your Orator and in favor of said Mulligan agreeable to the requirements of the Statute in such case made and provided, that the debt upon which said Judgment was rendered in favor of Norton Jewett & Bugby

the said John Mulligan as aforesaid was contracted by your
Orator with the said Norton Jewett and Bugby and the said Mulligan subse-
quent to the 1st day of July A.D. 1851. That the said Judgment so obtained
by the said Norton Jewett and Bugby was redeemed from by the said
Mulligan by said Transcript Judgment so obtained by him as afore-
said as a Judgment creditor of your Orator by causing an execution
to be issued on said last mentioned Judgment which ~~Judgment~~
Execution bears date the 9th day of February A.D. 1859, that said execution
was issued out of said Clerks office by the Clerk of said Circuit Court
and placed into the hands of James M. Marmon who was then
acting Sheriff of said County to execute, that by virtue of said execu-
tion so issued as aforesaid the said James M. Marmon as said
Sheriff levied upon said real estate as the property of your Orator
that on the 29th day of March A.D. 1859 the said Marmon exposed the
said real estate to sale at the door of the Court House in said County
and said real estate was there sold to the said John Mulligan for the sum
of One hundred and fourteen dollars and fourteen cents, that on
the 6th day of April A.D. 1859 by said Sheriff

Your Orator would further represent that at the time said ~~estate~~
execution obtained by said Norton Jewett and Bugby was made and
aforesaid and at the time the Judgment was obtained by them as
aforesaid and during the time between the rendition of said judgment
and the sale under said execution last aforesaid he was the head
of a family and residing with the same on said lot of ground
that at the time last aforesaid he had a wife and children, that there
was a dwelling house situated on said lot and other improvements
thereon and that the same was erected thereon by your Orator and
occupied by him as aforesaid as his home stead and that he did
not at that time nor has he at any ~~time~~ other time since relinquish

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the same that at the time of the redemption and purchase made by the said Mulligan your Orator was not residing on the said premises as aforesaid, but he was still the head of said family and residing with the same, he left said premises with the said family temporarily with the intention of moving back upon the same with his said family and occupying the same with his said family and that in accordance with said intention after the lapse of about two years he did return to said premises with his family and that he has been occupying the same with his said family ever since, that at the time he left said premises as aforesaid your orator leased the same to George Bagellow of the City of Chicago Illinois for one year with the privilege of three years and that he occupied the same under said lease and delivered possession of the same as or about the expiration of said year to him that said House and Lot was not at the time of said sales made as aforesaid worth more than One thousand Dollars nor has the same been ever worth more than that amount since the same was owned by your orator and that the said debts so contracted as aforesaid by your Orator was not the purchase money for said lots contracted for the improvements erected thereon that at no time did the said Dolton, Jewell & Bixby or the said Mulligan or the officer holding said Executions claim that said house and lot with the appurtenances as aforesaid was worth one thousand Dollars over and above the amount due thereon and that they at any time have said premises appraised or offered to set off pay to your Orator the one thousand dollars exemption allowed to him in accordance with the statute in such case made and provided but wholly neglected and refused so to do. your orator therefore claims said property with the improvements thereon as exempted from the sales herein mentioned in manner

and for the reasons herein stated. Your Orator therefore begs being remediless in a Court of Law begs the aid of your Honorable Court in the premises that the said John Mulligan be made party defendant to this Bill and that he be required to appear at the next term of this Court and full and perfect answer make to all and singly the allegations & charges set out in said Bill (his oath being hereby expressly waived) and that upon the final hearing of this Bill your honor will order and direct decree that the sale made to the said Mulligan of said lot by the said Sheriff in manner and form as herein mentioned be set aside and made void and that the deed so made by the said Sheriff as aforesaid be set aside and made void in law and in equity and that your Orator be fully and completely confirmed in his right of homestead to said premises and that the Court do whatever it may seem meet and equitable in the premises and for the purposes herein mentioned your Orator prays that a Summons in Chancery be issued out of said Court for the above named defendant returnable to the above term of Court. as in duty bound your Orator forever prays &c. B. C. Taliaferro Comp. Solr

State of Illinois }
Mercer County } ss B. C. Taliaferro. being first duly sworn say that the said John Mulligan is at this time a non resident of the State B. C. Taliaferro.
Subscribed and sworn to before me this 4 April 1862 J. M. Mannon Clerk
By A. R. Brown D/C

State of Illinois Mercer County
Circuit Court County aforesaid April Term A.D. 1862

R. Cyrus Cabeen }
vs } In Chancery
John Mulligan } The Clerk of said Court will issue

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6 Summons in Chancery for the above named defendant and also make out notice of non residency of the said John Mulligan and direct the same for Publication to the Editor being Absent

B. C. Caldwell Solr for Complt

Upon the filing of which Bill and Praeipe Summons is issued herein in form following to wit:

State of Illinois } The People of the State of Illinois
Mercer County } ss To the Sheriff of said County, Greeting;

We Command you to Summon John Mulligan if to be found in your County, personally to be and appear before the Circuit Court of said County on the first day of the next term thereof, to be held at the Court House in Aledo, on the third Monday in the month of April 1862 to answer to a bill of complaint filed in our said Circuit Court on the Chancery side thereof against him by R. Cyrus Cabeen, and have you then and there this writ and make return thereon in what manner you execute the same. Witness, James M. Mannon Clerk of our Circuit Court and the seal thereof at Aledo, this 4th day of April in the year of our Lord one thousand eight hundred and Sixty two

J. M. Mannon Clerk

By A. P. Brown Deputy

On the back of which Summons appears the following endorsements to wit:

I return this writ not served this 21st day of April 1862

S. H. Rodgers Sheriff

Filed 24th April 1862 J. M. Mannon Clerk

And upon the filing of the foregoing affidavit of

non residence. The Publication was made as follows to wit:

State of Illinois Mercer County. ss.

In the Mercer Circuit Court to the April Term A.D. 1862.

R. C. Cyrus Cabeen vs John Mulligan In Chancery

Affidavit of the non-residence of John Mulligan the defendant in the above entitled cause, having been made and filed in the office of the Clerk of the circuit court of said County.

Notice is therefore hereby given to you the said John Mulligan, that the above named complainant has filed in the Circuit Court of the said County on the Chancery side thereof, his bill of complaint in said cause; that a Summons has been issued thereon against you that said cause is now pending in said Court, and will come on to be heard at the above named term, to be commenced and held at the Court House in Aledo, on the third Monday in the month of April A.D. 1862; and that unless you shall be and appear thereat, and plead, answer, or demur to said bill of Complaint, the allegations thereof will be taken as confessed against you, and a decree rendered in accordance with the prayer of said bill J. M. Marmon Clerk

B. C. Tallaferro. Sol for Compl't Dated April 10, 1862

This is to certify, that the Chancery notice of which a copy is hereto annexed, was published in the Keithsburg Observer a Weekly Newspaper published by the undersigned at Keithsburg in the County of Mercer and State of Illinois, for four successive weeks and that the date of the first insertion was April 10th 1862 and the date of the last insertion was May 1st 1862.

J. N. J. Bird and Publisher

Dated at Keithsburg Ill. May 5th 1862.

and afterwards to wit: on the 22nd day of April 1862 being one of the days of the said April Term 1862 of said Court the following proceedings were had in said cause to wit:

150 R. Cyrus Cabeen } In Chancery
vs
John Mulligan }

On Defendants motion it is ordered and ruled by the Court that Complainant give security for costs herein within ninety days from this date.

and afterwards to wit: on the same day and year last aforesaid came the defendant and filed the following affidavit to wit:

State of Illinois } In the Circuit Court
Mercer County } ss of the April Term A.D. 1862

R. Cyrus Cabeen } In Chancery
vs
John Mulligan }

Isaac N. Bassett being first duly sworn, upon his oath says that the Plaintiff in the above entitled cause is wholly insolvent and unable to pay the costs of this suit and asks that the said Plaintiff be ruled to give security for the costs of this suit.

Subscribed & sworn to before me this 22nd. Isaac N. Bassett
day of April 1862. J. M. Marmon Clerk.

and afterwards to wit: on the 13th day of June 1862 the Complainant filed in the Clerks Office of said Court his bond for costs in said cause as follows to wit:

State of Illinois }
Mercer County } ss Circuit Court. County of Mercer

September Term A.D. 1862

R. Cyrus Cabeen
vs
John Mulligan

We hereby enter ourselves security for costs in this cause and acknowledge ourselves bound to pay or cause to be paid all cost that may accrue in this cause either to the opposite party or to any of the officers of this court in pursuance to the laws of this State. B. B. Paliser
Wm H. Ingle

Filed 13th June 1862 J. M. Mason Clk.

And afterwards to wit; on the 1st day of September 1862 being the first day of the September Term 1862 of said Court the following proceedings were had to wit;

R. Cyrus Cabeen
vs
John Mulligan
In Chancery

On Complainants motion leave is granted by the Court to Complainant to amend his bill filed herein within sixty days from this date.

And afterwards to wit: on the 23rd day of September 1862 the said Complainant filed his amended bill herein in the words and figures following to wit;

State of Illinois
Mercer County } To the Honorable Charles A. Lawrence Judge of the Tenth Judicial Circuit of the State aforesaid sitting as a Court of Chancery in and for the County aforesaid at the April Term of said Court A.D. 1862. Your Orator R. Cyrus Cabeen Complaining showeth to your Honor that on the twelfth day of September A.D. 1857 he was owner in fee and possessed of the following real estate to wit: the East

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10 half of Lot Number Nine (9) in Block Number Fourteen (14) in the town of Keithsburg situated in the County of Mercer and State of Illinois, that at the time last aforesaid Cephas B. Norton, Albert Jewett, Benjamin C. Bugby by the name and Style of Norton, Jewett & Bugby obtained a judgment against your orator in said Circuit Court for the sum of Six hundred & Seventy Eight 50/100 Dollars which judgment bears date the 12 day of September A.D. 1857, that an execution was issued out of the Clerks office on said judgment of said Court dated the 10th day of November A.D. 1857 and directed to the Sheriff of said County to execute that said execution was placed in the hands of D. Lloyd Jr. who was then the acting Sheriff of said County that the said Lloyd after said execution was placed in his hands as aforesaid levied the same on said real estate as the property of your Orator and sold the same by virtue of said Execution and for the satisfaction and extinguishment of so much of the debt due upon said Judgment as said real estate sold for at said sale, that said real estate sold for the sum of One hundred dollars at said sale and was purchased by the said Norton, Jewett & Bugby for said amount that on the 11th day of December A.D. 1858 one John Mulligan obtained a judgment against your orator for the sum of Ninety three dollars and seventy five cents principal and ~~interest~~ Sixty Seven and one half cents costs before John Stevens who was then an acting Justice of the Peace in and for said County; that on the 31st day of January A.D. 1859 the said John Mulligan caused a transcript of said Judgment to be made out of said Judgment and all the proceedings that was had before said Justice in obtaining said Judgment as aforesaid and that on the 8th day of February A.D. 1859 said transcript was filed in the Clerks office of said Circuit Court for the purpose of making said Judgment obtained before said

Service as aforesaid a transcript Judgment in said Circuit Court against your Orator and in favor of said Mulligan agreeable to the requirements of the Statute in such case made and provided, that the debts upon which said Judgment so was rendered in favor of Horton, Jewett & Bugby & the said John Mulligan as afore said was contracted by your Orator with the said Horton Jewett & Bugby and the said Mulligan subsequent to the 4th day of July A.D. 1857: that the said Judgment so obtained by the said Horton, Jewett and Bugby was assigned from by the said Mulligan by said Transcript Judgment so obtained by him as aforesaid as a Judgment creditor of your Orator by causing an Execution to be issued on said last mentioned Judgment which execution bears date the 9th day of February A.D. 1859 that said Execution was issued out of said Clerks office by the Clerk of said Circuit Court and placed into the hand of James M. Mannon who was then acting Sheriff of said county to execute, that by virtue of said Execution so issued as aforesaid the said James M. Mannon as said Sheriff levied upon said real estate as the property of your Orator that on the 2nd day of March A.D. 1859 the said Mannon exposed the said real estate to sale at the door of the Court House in said County and said real estate was there sold to the said John Mulligan for the sum of One hundred and fourteen Dollars and fifteen cents, that on the 6th day of April A.D. 1859 a deed was made to said Mulligan by said Sheriff for said property;

Your Orator would further represent that at the time said Execution obtained by said Horton Jewett and Bugby was made out as aforesaid and at the time the Judgment was obtained by them as afore said and during the time between the rendering of said Judgment and the levy under said Execution last aforesaid he was the head of a family and residing with the same, about the 1st day of June A.D. 1857 on said lot of ground, that at the time last aforesaid he had a wife and children, that there was a dwelling

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12 situated on said lot and other improvements thereon and that the same was erected thereon by your orator and occupied by him as aforesaid as his home stead and that he did not at that time nor has he at any other time since relinquished the same; that at the time of the sale made by the said Jewett, Patton & Bixby & whose exemption and purchase made by the said Mulligan your orator was residing on the said premises as aforesaid but he was still the head of said family and residing with the same up to the said 1st day of June 1857 at which time he left said premises with his said family temporarily with the intention of moving back upon the same with his said family and occupying the same with his said family and that in accordance with said intention after the lapse of about two years from the time he left said premises he did return to said premises with his family and that he has been occupying the same with his said family ever since that at the time he left said premises as aforesaid your orator leased the same to George H. Hazelton of the City of Chicago Illinois for one year with the privilege of three years and that he occupied the same under said lease and delivered possession of the same after about the expiration of said year to him that said house and lot was not at the time of said sales made as aforesaid worth more than one thousand dollars nor has the same been ever worth more than that amount since the same was owned by your orator and that the said debts so contracted as aforesaid by your orator was not the purchase money for said lot or contracted for the improvements erected thereon that at no time did the said Patton Jewett & Bixby or the said Mulligan or the officers of said corporations claim that said house and lot with the appurtenances was worth the sum of one thousand Dollars nor did they at any time have said premises appraised or set off or offer to set off or pay to your orator the one thousand dollars of exemption allowed

to him in accordance with the Statute in such case made and provided, but wholly neglected and refused so to do, your Orator therefor claims said property with the appurtenances improvements thereon as exempted from the sale herein mentioned in manner and for the reasons herein stated.

Your Orator therefor being remediless in a Court of law he goes the said of your honorable Court in the premises that the said John Mulligan be made party defendant to this bill and that he be required to appear at the next term of this Court and full and perfect answer make to all and singly the allegations & charges set out in said bill (his oath being hereby expressly waived) and that upon the final hearing of this Bill your Orator Honor will order and decree that the sale made to the said Mulligan of said lot by the said Sheriff in manner and form as herein mentioned be set aside and made void and that the deed so made by the said Sheriff as aforesaid be set aside and made void in law and in equity and that your Orator be fully and completely confirmed in his right of homestead to said premises and that the Court do whatever it may seem meet right and equitable in the premises and for the purposes herein mentioned.

Your Orator prays that a Summons in Chancery be issued out of said Court for the above named defendant returnable to the above term of Court, as in duty bound your Orator ever prays &c

B. C. Taliaferro Compl. Sol.

And afterwards, to wit on the 15th day of April 1865 came the defendant and filed his answer to complainants amended bill in form following to wit "State of Illinois } In the Circuit Court of the
Mercer County } September Term A.D. 1862

John Mulligan
vs
R. Cayne & Eileen } In Chancery

the answer of John Mulligan

the respondent herein to so much and such parts of the Bill of Complaint in this case filed as he is advised is necessary for him to answer unto. This Respondent answering says that it is true the said Gordon Jewett & Bugby recovered a judgment against the said Complainant as is stated in said bill of complaint, and that there was a same execution issued thereon and the real estate sold to satisfy the same as stated in said bill. But this defendant avers that said suit of Gordon Jewett & Bugby was commenced on or about the 25th day of June A.D. 1857 by attachment and the attachment was levied on the said real estate described in said bill of complaint on or about the said 25th day of June A.D. 1857, and that the said real estate was sold under and by virtue of a Special Execution awarded in said suit being the execution mentioned in the Bill of Complaint. Your Orator says that it is true that he recovered judgment as is stated in said bill, and that a transcript execution and redemption was taken and made as stated in said bill of complaint and that your respondent purchased said real estate as is set forth in said bill of complaint. Your respondent answering further says it is true that the said complainant was at the time said levy was made and at the time said levy was made under said attachment the head of a family, but this respondent denies that the said defendant was residing on said premises or in the house on said lot either at the time levy was made under and by virtue of the said attachment or at the time of the rendition of said judgment but states the truth to be that the said Complainant had before the said 25th day of June A.D. 1857 removed his family from said house and premises and had left the State of Illinois and removed to the Territory of Minnesota with his family to reside there permanently, and that the said defendant did not occupy said house as

any part of said real estate with his family as a home stead from and after the first day of June A.D. 1857 until after the said sale of said premises to this respondent or about that time under and by virtue of the execution and redemption set out in said complainants bill. Your respondent in truth says that the said complainant is a brother in law of the respondent and that said complainant was reduced to poverty and distress, and on or about the first of March 1859 your respondent was induced to assist the said complainant in business and furnished a stock of stoves & tin ware for the said complainant to carry on business in the name of this respondent, hoping said complainant would be able to pay & this respondent the amount he had invested in said house and lot together with a large sum of money due your respondent on a mortgage made by said complainant to your respondent before said Attachment suit of Boston, Jewett & Bixby was commenced but your respondent had no contract or agreement with the said complainant to release said real estate to said complainant.

Your respondent is informed and believes it is true that the said complainant leased said premises to the said Bazleton in as is stated in said bill except the said lease was made on or about the first day of June A.D. 1857; and your respondent is informed and believes that said complainant returned and took possession of the said premises after the expiration of two years as is herein above stated.

Your respondent admits that the said premises were not at any time after said levy and judgment worth more than one thousand Dollars, and that the said debt on which said judgment was rendered in favor of the said Boston, Jewett & Bixby was not for the purchase money for said lot nor for improvements rendered thereon. Your Orat. respondent shows unto your honor

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that the said complainant was indebted to your respondent in the sum of Eleven hundred dollars for money loaned, and for Goods wares and Merchandize by said respondent sold to the said complainant prior to the fourth day of July A.D. 1861 and being so indebted the said complainant on or about the first day of December A.D. 1862, executed and delivered to the respondent two promissory notes payable in one and two years from the date and year last aforesaid for the said amount and executed a Mortgage on the said real estate in said bill of complaint mentioned to your respondent to secure the payment of said promissory notes. and now this respondent having answered all the material allegations in said bill of complaint prays that the said bill may be dismissed and your respondent discharged with his reasonable costs &c

John Mulligan

By J. R. & A. Bassett his Solicitors.

and afterwards to wit on the 21st day of April 1863 came the Complainant and filed his exceptions to defendants answer as follows to wit:

State of Illinois } To the Circuit Court of the County of
Mercer County } said April Term A.D. 1863.

R. Bynus Cabeen }
vs } Come now the said
John Mulligan } defendant and for exceptions to the defendants answer herein says that the said answer and parts of the same is not responsive to the Complainants bill herein in this that the said plaintiff does not claim in his said bill herein that he the said complainant resided on said premises in the house on said lot when Notary was made by said Attachment or at the time of the rendition of said judgment

and the said answer is otherwise not responsive to said bill.

R. C. Taliaferro Dep. Sol.

And afterwards to wit: on the 23rd day of April 1863 being one of the days of the April Term 1863 of said court the following proceedings were had to wit:

110 R. Cyrus Cabeen
~v~ In Chancery
John Mulligan

This day came Complainant by his Solicitor and withdrew his exceptions to answer of Defendant to amended bill, thereupon on Complainants motion leave was granted to file Replication herein instanter

And afterwards to wit on the same day and year aforesaid Complainant filed the following Replication to defendants answer to wit:

State of Illinois } In the Circuit Court of the County afore
Mercer County } said April Term A.D. 1863.

R. Cyrus Cabeen
~v~ In Chancery
John Mulligan } And now comes the said Complainant and replying to the many informalities irregularities and uncertainties in the said defendant answer herein filed for replication thereto say the Statement and allegations therein made are untrue saving what has been confessed by said answer in answer to the charges contained in complainants Bill.

R. C. Taliaferro Dep. Sol

And afterwards to wit on the 27th day of April 1863
17 and being also one of the days of the said April Term 1863

18 the following proceedings were had in said cause to wit:

R. Cyrus Cabeen
v. In Chancery
John Mulligan

This day came the parties hereto by their Solicitors and this cause being called for a hearing and the Court having heard the evidence and arguments of Counsel and being fully advised herein renders the following decree of dismissal to wit:

State of Illinois, In the Circuit Court
Mercer County, of the April Term A.D. 1863

R. Cyrus Cabeen
v. In Chancery.
John Mulligan

And now this cause coming on to be heard upon the Bill answer Replication, Exhibits and Oral testimony of Thomas B. Cabeen Lewis M. Thompson and Benjamin C. Taliaferro and the arguments of Counsel, and it appearing to the Court that the Complainant had at the time the attachment was levied, in said defendants answer mentioned, upon the premises mentioned in said Complainants Bill permanently abandoned the said house and lot, and ceased to occupy and reside upon the same with his family. It is therefore ordered by the Court that the prayer of said Complainants Bill be denied. and that the said defendant be dismissed with his costs herein. and that the said complainant is hereby ordered to pay to the said defendant all his reasonable costs and disbursements of that the defendant have execution for the same. C. C. Lawrence

And afterwards to wit on the same

day and year last aforesaid by agreement of parties the following certificate was filed in said cause to wit:

It was proven on the trial that Cabeen left about 1st of June 1857. that he owned the premises in fee in controversy, that he erected a dwelling house on the premises, that he was the head of a family and residing on the premises to the time he left, that he leased the said premises to one Edward Hazelton for one year with the privilege of three years, that he assigned said lease to Thomas B. Cabeen when he left, that Cabeen then moved to Stockton in the State of Minnesota with his family at the instance of James Stockton who represented that he had a Hotel there and that he wanted Cabeen to come up and keep the same, further) that he moved to said place stating before he went that if he liked and could do well he would stay, but that if he could not he intended to return, he remained in Minnesota with his family about two years and returned, that during the whole time of his absence the premises were occupied by said Hazelton or his tenant and until about three months after the return of said Cabeen and before the termination of said lease the said Cabeen took possession of the said premises with his family and resided in the same on said premises during the whole time up to the present time, that Thomas B. Cabeen during the time received the rents and profits of said premises and applied them to the payment of complainants indebtedness during the time the same was so leased, that was all the real estate said Cabeen had in this State at the time, that said Cabeen did occupy said Hotel in said Stockton as he intended to do, that after the return of said complainant he said that when he left he expected to remain in Minnesota, he had expected to do well there, but that he ~~claimed~~

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afterwards found it to his interest to return to Keithsburg
This was all the evidence in this case and that the same
may be preserved I have made this certificate.
April 27/63. C. B. Lawrence Judg

State of Illinois
Mercer County ss I James M. Mannon Clerk of the
Circuit Court in and for said County
certify that the foregoing is a true full and complete copy of the entries made
of said Court at the April Term 1863 of the Bill affidavit Summons
and Precipe for Summons, ~~of the~~ filed in said cause of the Summons
issued thereon with the return ~~x~~ thereon of the Notice and Certificate
of Publication, of the affidavit for security for costs, of the bond for
cost filed; of the amended Bill filed in said cause of the answer
thereto; of the Exceptions to said answer; of the Replication
to said answer; of the final decree in said cause and the certifi-
cate of evidence by the Judge of said Court in a full and true
copy of all Orders of Court made in said cause and including
a full and true copy of all the record and files in said cause as
the same now appears to me from the Book and files of my
office.

In Witness of which I hereto set my name and affix
the seal of our said Circuit Court at my office in
Aledo this 31st day of July A.D. 1863

J. M. Mannon Clerk
By H. Brown Deputy

R. Lyons Defendant
in
John Mulligan } In the Supreme Court of Illinois
Plaintiff } April Term A.D. 1864, 3d Division

And now comes the said Plaintiff in Error by Wead his Attorney & says that in the record & proceedings aforesaid and in the judgment aforesaid manifest error hath intervened to his injury in this

1st Said decree ought to have been for the Complainant

2d Said Court erred in entering a decree for the Defendant

3. In rendering judgment for cost against Complainant

4. In not granting the prayer of the Bill.

for which reasons the said Plaintiff prays that said judgment may be reversed annulled and made for naught held and that he may have such further relief

By Attorney his Attorney

And now comes the said defendant by J.R. & J.N. Roberts his Attorneys & says that in the record & proceedings aforesaid and in the judgment aforesaid no such errors hath intervened as are above alledged and the said judgment may be affirmed by the Court

by J.R. & J.N. Roberts
Sol. for Def. Defn

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To Cyrus Cabeen
vs
John Mulligan

Record —

Filed April 19. 1864
L. Leland
Clerk

Mtd $10.