

No. 14558 $\frac{1}{2}$

Supreme Court of Illinois

Smith

vs.

Miller

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division

No. 115

Smith

Miller

1558

63

115



IN THE
SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

April Term, A. D. 1863.

EZEKIEL S. SMITH,
Plaintiff in Error,
vs.

YOUNGS W. MILLER AND POLLY ANN MILLER,
Defendants in Error.

Error to Cook County Circuit Court.

ABSTRACT OF RECORD.

Filed April 21st 1863

Lo. Garland

Clerk

CHICAGO:

PRINTED BY BEACH & BARNARD, NO. 14 SOUTH CLARK STREET.

1863.



IN THE
SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

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PRINTED BY BEACH & BARNARD, NO. 14 SOUTH CLARK STREET.

1863.

ABSTRACT OF RECORD.

R. p. 1. **Placita.**

1 **Declaration** in Ejectment. Filed February 16, 1863,
in usual form, for following described premises: Lot num-
ber one, and the North half of lot number two, in block
twenty-nine, according to the plat of the village of Dunton,
recorded in the Recorder's Office, Cook county. Plaintiff
claims in fee.

2 **Notice.**

2 **Proof of Service,** declaration and notice.

2 **Rule to Plead.**

2 **Plea.** Filed Feb. 24.

3 **Agreed** state of facts and judgment for defendant.

3 **Bill of Exceptions.**

Proof by Plaintiff.

It is stipulated and admitted as testimony to be used on
the trial of cause as follows:

1st. That the annexed copy of note and mortgage may
be used by the plaintiff on the trial of this cause, in place of
the original note and mortgage, and that the debt is no part
paid except the amount of one hundred and sixty dollars
endorsed on said note.

2d. That the defendants were in possession of said property described in the declaration, at the time of the service of the declaration upon them, and that the property was worth, at the time the mortgage was given, sixteen hundred to two thousand dollars, and that the property at this time is worth twelve hundred dollars.

E. S. SMITH,
Plaintiff.

J. W. CLYDE,
Attorney for Defendants.

February 24, 1863.

THIS INDENTURE, made this twenty-first day of July, in the year of our Lord one thousand eight hundred and fifty-nine, between Youngs W. Miller and Polly Ann, his wife, parties of the first part, and Ezekiel S. Smith, of Chicago, party of the second part.

Whereas, the said Youngs W. Miller, one of the parties of the first part, is justly indebted to the said party of the second part, in the sum of one thousand six hundred dollars, secured to be paid by one certain promissory note bearing even date hereof, payable two years after date, with interest at the rate of ten per cent, payable annually, until the same shall be fully paid.

Now, therefore, this indenture witnesseth: That the said party of the first part, for the better securing the payment of the money aforesaid, with interest thereon, according to the tenor and effect of said promissory note above mentioned, and also, in consideration of the further sum of one dollar, to them in hand paid by the said party of the second part, at the delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey unto the said party of the second part, his heirs and

assigns forever, all that piece or parcel of land situate in the village of Dunton, in the county of Cook, and State of Illinois, known and described as follows: Lot number one (1), and the North half of lot number two (2), both in block number twenty-nine (29), in the plat of the town of Dunton, in said county of Cook, with the dwelling house and out buildings thereon.

To have and to hold the same, together with all singular the tenements, hereditaments, privileges and appurtenances thereto belonging or in any wise appertaining; and also, all the estate, interest and claim whatsoever in law as well as in equity, which the party of the first part have in and to the premises hereby conveyed unto the said party of the second part, his heirs and assigns, and to their only proper use, benefit and behoof.

Provided, always, and these presents are upon this express condition, that if the said party of the first part, their heirs, executors or administrators, shall well and truly pay, or cause to be paid to the said party of the second part, his heirs, executors, or administrators or assigns, the aforesaid sum of money, with such interest thereon at the time and in the manner specified in the above mentioned promissory note, according to the true intent and meaning thereof, that then, and in that case, these presents, and every thing herein expressed, shall be absolutely null and void.

In witness whereof the said party of the first part hereunto set their hands and seals the day and year first above written.

YOUNGS W. MILLER, [SEAL.]

POLLY ANN MILLER, [SEAL.]

Signed, sealed and delivered in presence of— }
WM. SCOVILLE.

STATE OF ILLINOIS, }
COOK COUNTY. } ss.

I, Wm. Scoville, a Justice of the Peace in and for said county, in the State aforesaid, do hereby certify that Youngs W. Miller, and Polly Ann, his wife, personally known to me as the persons whose names are subscribed to the annexed mortgage, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth; and the said Polly Ann Miller, wife of the said Youngs W. Miller, having been by me examined separate and apart, and out of the hearing of her husband, and the contents and meaning of the said instrument of writing having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and seal this 25th day of July, in the year of our Lord one thousand eight hundred and fifty-nine..

WM. SCOVILLE, [SEAL.]
Justice of the Peace.

STATE OF ILLINOIS, }
COOK COUNTY. } ss.

This indenture was filed for record the 26th day of July, at the hour of o'clock, 1859, and duly recorded in Book 46 of Mortgages, page 625.

WM. L. CHURCH, *Recorder.*

\$1600.]

DUNTON, Ill., July 21st, 1859.

Two years after date, for value received, I promise to pay E. S. Smith or order, the sum of sixteen hundred dollars, with interest at ten per cent., payable annually, till the full sum and interest shall be fully paid.

YOUNGS W. MILLER.

[*Endorsed.*] July 25, 1860, paid on this note, one year's interest, according to its terms—\$160.00.

And thereupon the counsel for the defendants, to maintain and prove the said issue on his part, gave in evidence a stipulation in the words and figures following, to wit:

STATE OF ILLINOIS,
CIRCUIT COURT OF COOK COUNTY. } ss.

YOUNGS W. MILLER,	} <i>Ejectment.</i>
POLLY ANN MILLER,	
ads.	
EZEKIEL S. SMITH.	}

Defendant's Proof.

It is stipulated, and admitted as testimony to be used on the trial of this cause, as follows:

1st. That the mortgage debt was not contracted prior to the fifth day of July, A.D. 1851.

2d. That the mortgaged premises at and before the date of the mortgage, consisted of contiguous pieces of ground, about half an acre, on which there was a house and out buildings; that at the date of the mortgage the defendants were residing in the house upon the lots; that said Youngs W. Miller then had a family, said Polly Ann Miller, his wife, and three children, and was then a householder, and then owned the property in question in his own right, in fee simple.

3d. That the debt secured by the mortgage was not contracted for the purchase price of said property, nor any part thereof; nor was the debt, or any part thereof, contracted for any improvements upon the property.

4th. That the defendants did, before, and have ever

since they gave the mortgage in question, reside in the house upon the property, with their family, and still reside thereon, occupying the same all the time as their homestead, and that the defendants now claim the property in question as their homestead.

E. S. SMITH,
Plaintiff.

J. W. CLYDE,
Attorney for Defendants.

There being no other or further testimony introduced by either party, the cause was then submitted to the court. The counsel for the plaintiff did then and there present to the court the following points of law, which were deemed material by him in the determination of this cause, to wit:

1st. That the said Youngs W. Miller, being the owner of the premises described in plaintiff's declaration, in fee simple, and the said defendants, Youngs W. Miller, and Polly Ann Miller, his wife, having, in mortgage (a copy of which is in evidence), bargained, sold and conveyed the said premises, and also all their "estate, interest and claim whatsoever therein, in law as well as in equity," to the said plaintiff, said defendants cannot, in this action, have or maintain their claim to hold said premises as their homestead under the "Homestead act" of the State of Illinois.

2d. That this action, being in ejectment and for the purpose of obtaining possession of said premises, and the "Homestead act" of Illinois providing that premises claimed as a homestead, shall be "*exempt from levy and forced sale*" only, the said defendants cannot deprive the said plaintiff of his right to the possession of said premises under the said mortgage.

And did then and there request the said court to pass spe-

cially on each of the said points of law so presented in its finding in this cause.

R. p. 7. **Issue** for defendant and exception.

7 **Certificate** of Clerk.

ASSIGNMENT OF ERRORS.

1. The court erred in directing a judgment for the defendant.

2. The court erred in not holding the law governing the case as stated in the points of law presented by the plaintiff, and in not directing judgment to be entered for the plaintiff, in accordance with the law, as stated in the points thus presented.

3. The judgment is against the law and evidence, and should be reversed.

STATE OF ILLINOIS,
SUPREME COURT. } ss. The People of the State of Illinois,

To the Sheriff of Cook County, GREETING:

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

Ezekiel S. Smith

plaintiff, and Youngs W. Miller & Polly Ann Miller

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

Smith

as we are informed by his complaint the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said

Youngs W. Miller & Polly Ann Miller

that they be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if they shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Youngs W. Miller & Polly Ann Miller

notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 21st day of March in the year of our Lord One Thousand Eight Hundred and Sixty-three.

L. Leland
Clerk of the Supreme Court.



I hereby accept service of this writ
for myself and for Polly Ann Miller
my wife
March 23^d 1863. Youngs. W. Miller

48 115
Eo. J. Smith

vs.

G. W. Miller et al

SCIRE FACIAS.

Filed... Mar. 23^d 1863

L. Deland Clerk.

White

245

~~Opinion of the Court, delivered by~~
~~delivered the opinion of the Court.~~

Mr. Justice Waller, ~~¶~~ This was an action of ejectment for the recovery of the premises in controversy, under a mortgage. It was executed on the 21st of July 1859, by defendants in error, and matured two years after date. Mr. Miller joined in the mortgage and acknowledgment but only relinquished his right of dower, by the acknowledgment. It appears by the agreed case, that the ~~pre~~ mortgage premises, at the time the mortgage was executed, was the homestead of the defendants in error, and that they resided on the same from that time until and after this suit was instituted. That George W. Miller was the head of the family residing with the same. That the mortgage was not given to secure, the purchase money or any part thereof for the premises, or for improvements made thereon. The homestead exemption was claimed, and relied upon as a defense, to the action, which was allowed by the court, and a judgment rendered for in favor of the defendants.

In the case of Boyd vs. Landeck, decided at the present term, ~~it was~~
~~held~~, ~~on the case~~ decision in the
 case of Vandant vs. Vandant, 23
 Ill. 532, was ~~adapted~~, ^{where} ~~in which~~ it
 was, held, that it must appear, from
 the certificate of acknowledgment,
 that the wife has specifically released
 her right, to claim the benefits of the
 homestead act. That without it ^{so} appear-
 -ing, the deed or mortgage was inoper-
 -ative ^{as a release of their right} ~~to pass the homestead~~. That, as
 the act has ~~made~~ ^{of the wife to} the signature and
 acknowledgment ^{of the wife to} of the release, a
 condition to ~~the~~ ^{the} alienation, of the
 homestead in all cases, that ~~the~~ ^{her} release
 alone, of ~~the premises~~ ^{the premises} in the premises, does
 not suffice. The acknowledgment
 in that case was the same as in this
 and it was held not to be in compli-
 ance with the statute.

But it was urged, that it could
 not be interpreted in an action of
 ejectment. This ~~same~~ question was
 presented and determined in the case
 of Patterson vs. King, 29 Ill. 574. It was
 there held, that under the amendato-
 -ry act of 1859, the wife being requir-
 -ed to subscribe and acknowledge the

instrument in connection with her husband,
 as conditions to the alienation of
 the homestead, if the deed did not
 comply with the statute, it might
 be insisted upon, to be a recovery
 of the premises. That the amend-
 -ment enlarged the operation of the
 statute, to such an extent as to
 apply to deeds and other convey-
 ances. That case is decisive of
 this.

In this case it appears, that
 the premises were of a greater value
 -e than one thousand dollars. So
 the extent of that extent, the mortga-
 -ge is binding, and as a fence-
 -line, that extent could be reached by
 a division, as if the premises were
 indivisible, by a sale in the
 mode prescribed in the statute. As
 if a judgment were recovered on the
 indebtedness, a sale could perhaps
 be had under the statute, in the
 manner it has provided. But in
 as much as the mortgage as ex-
 -tended was insufficient, to release the
 premises, from the right to the
 benefit of the homestead ^{act}, it was
 properly allowed as a bar to a new

in ejectment -
 = ergo, and the judgment must be
 affirmed. ~~judgment affirmed~~

~~on this point the whole court concurred,~~
judgment affirmed.

E S Smith

115 vs 48

W Miller

Opinion by
Walker J.

Recorded ¹² P. 170
C. H. P. and

\$2.00

In the Supreme Court of 3 of the April Term
the State of Illinois 3 A D 1863.

Youngs W Miller &
Polly Ann Miller
Defendants in error
vs
Ezekiel S Smith
Plaintiff in Error

And hereupon afterwards, to wit; on the 21st
day of April A D 1863. before the Judges of the
Supreme Court of the State of Illinois for the
third Grand Division at the City of Ottawa came
the said Youngs W Miller and Polly Ann Miller
by John W Clyde their attorney and say, that
there is no error, either in the record and proceed-
ings aforesaid, or in giving the judgment
aforesaid; and they pray that the Court now
here may proceed to examine as well the record
and proceedings aforesaid, as the matters afore-
said above assigned for error, and that the judg-
ment aforesaid given may be in all things af-
firmed &c.

John W. Clyde
Atty. for defts. in error

48

285

E. S. Smith

Y. M. ¹³ Miller

Found in Era

Filed Mar. 25, 1863

S. S. and Mr.

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Plas, before the Honorable George H. Bannure 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 16th day of February, (being the
day) of February in the year
of our Lord One Thousand Eight Hundred and fifty three and of the
Independence of the said United States the eighty seventh

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

Joseph Ann States Attorney.

David S. Wimmer Sheriff of Cook County.

Attest, William L. Church Clerk.

Be it remembered, that heretofore to-wit
on the sixteenth day of February, in the year aforesaid, Ezekiel
S. Smith plaintiff by B. D. Magruder his attorney, filed in said
Court, his Certain Declaration + Notice in Ejectment; which is
in the words and figures following, to-wit:

"State of Illinois
Cook County Circuit Court. For the February Term AD 1863.
Cook County, ss.

Ezekiel S. Smith of Chicago, Plaintiff in
this suit, by B. D. Magruder his attorney, complains of Young
W. Miller and Polly Ann Miller, defendants in this suit, in
a plea of Ejectment; For that whereas the said plaintiff on
the first day of August, in the year One thousand Eight
hundred and fifty one was possessed of the following
real Estate and premises, situate in the County of Cook

in the State of Illinois, and being known and described
as follows, to-wit: Lot number one (1) and the North
half of lot number two (2) in Block Twenty nine -
according to the plat of the Village of Deunlar, recorded
in the Records Office in and for the County of Cook
which said premises the said plaintiff claims in fee
and he the said plaintiff being so possessed thereof,
the said defendant afterwards, to-wit: on the first
day of September in the said last mentioned year, entered
into said premises, and ejected the said plaintiff there-
from, and unlawfully withholds from said plaintiff
the possession thereof, to the damage of said plaintiff
Two Thousand dollars, & therefore bring suit &c
Benjamin D. Magruder
Plffs Atty

To Youngs W. and Polly Ann Keller -

Take notice that a declaration of which this is a copy
will be filed with the Clerk of the Circuit Court of Cook
County, at his Office in the City of Chicago on the 16th day
of February Eighteen hundred and sixty three and that
upon filing the same a rule will be entered requiring
you to appear and plead to such declaration within
Twenty days after the Entry of such rule and if you
neglect so to appear and plead, a judgment by default
will be entered against you, and the plaintiff in said
declaration, will recover possession of the premises
Dated at Chicago

This 12th day of February A.D. 1863

B.D. Magruder. Plffs Atty

I hereby Certify that I have served the within Declaration and notice of rule to plead upon the within named defendants Youngs W. Miller and Polly Ann Miller by delivering to each of them a copy of this declaration and rule to plead this 11th day of February 1863. David S. Hammond, Sheriff

United States
D. O. T.
Internal Revenue

By Ira Snow deputy

And afterwards to-wit: at the February Term of said Court to-wit: on the 16th day of February in the year aforesaid, the following proceedings, among others, were had and Entered of record To-wit:-

"Ezekiel B. Smith"

Exemption

Youngs W. Miller and
Polly Ann Miller

This day comes the said plaintiff by B. D. Wagner his attorney, and it appearing to the Court, that a Copy of said plaintiffs declaration herein and a rule to plead in twenty-days has been duly served on the said defendants in accordance with the Statute in such case made and provided. — It is therefore in Motion of said plaintiffs Counsel, ordered that said defendants plead to said plaintiffs declaration herein within twenty-days from the date hereof. And in default thereof their default will be taken and entered of record in said Cause

And afterwards to-wit: On the 24th day of February
in the year aforesaid, said defendants by J. W. Clyde
their attorney filed in said Court their certain plea
in words and figures following To-wit:

"State of Illinois

Book Court-Circuit Court, February Term AD 1863.

Ezekiel S. Smith

vs
Youngs W. Miller & Co

Polly Ann Miller

} Ejectment

And now comes the said Youngs
W. Miller and Polly Ann Miller defendants in the
above entitled cause by J. W. Clyde their attorney
and say that they are not guilty of unlawfully with-
holding the premises claimed by the said Ezekiel
S. Smith as alleged in the said declaration of said
plaintiff, and of this the said Youngs W. Miller
and Polly Ann Miller put themselves upon the Country

John W. Clyde

Atty for defts

And afterwards, to-wit: at the February Term of
said Court, to-wit: on the 24th day of February
in the year aforesaid, the following proceedings among
altes, were had and entered of record To-wit:

Ezekiel S. Smith

vs
Youngs W. Miller & Polly Ann Miller

} Ejectment

And afterwards, to-wit: at the same Term of said Court last aforesaid, to-wit: On the 24th day of February in the year aforesaid, the following proceedings, among others, were had and entered of record to-wit:

"Ezekiel S. Smith

Ejectment

Youngs, W. Miller and
Polly Ann Miller

This day again came the said parties by the Plaintiff by B. D. Magruder his attorney and the said defendants by J. N. Leide their attorney also came, and the said parties now here submit said cause to the Court for trial upon an agreed statement of facts, and the Court not being sufficiently advised of and concerning the premises takes said Cause under advisement.

And afterwards, to-wit: at the same term of said Court last aforesaid, to-wit: On the 27th day of February in the year aforesaid, the following proceedings among others, were had and entered of record to-wit:

"Ezekiel S. Smith

Ejectment

Youngs, W. Miller and
Polly Ann Miller

This day again came the said parties by their attorneys, and the Court having had said Cause under advisement, and being now fully advised of and concerning the premises

doth find the said defendant not guilty in manner and form as charged in the said plaintiffs declaration, to which decision of the Court the plaintiff by Counsel nowhere excepts

Therefore it is considered that said defendants do have and recover of the said plaintiff their costs and charges by them about their suit in this behalf expended and have Execution therefor —

And thereupon to-wit: On the same day and year last-
aforesaid, said Plaintiffs by his said Attorney, filed
in said Court his Bill of Exceptions herein, which is
in words and figures following To-wit:

"State of Illinois

Circuit Court of Cook County, February Term A.D. 1863

"Ezekiel D. Smith

vs
Youngs W. Miller

Polly Ann Miller

} In Equity

Be it remembered that at a
session of the said Court, held at the Court House in
the City of Chicago in said County of Cook on the 24th
day of February A.D. 1863, before the Honorable George
Manierre Circuit Judge of the Seventh Judicial
Circuit, the issue joined between the parties in this
cause came on to be tried by the Court, without a

July; On which day came there as well the said plaintiff as the said defendants by their respective attorneys, and upon the trial of the issue aforesaid, the Counsel for the said plaintiff to maintain and prove the issue on his part gave in Evidence a Certain stipulation with a copy of a Certain Mortgage executed by the defendants to the plaintiff, duly acknowledged and recorded, and a Copy of the Note Executed by the defendant Youngs W. Miller to said plaintiff, with the endorsement thereon, secured by said Mortgage, which said stipulation, Copy of Mortgage, Note and endorsements are in the words and figures following, to-wit:

State of Illinois	
Circuit Court of Cook County,	
Ezekiel S. Smith	} Ejectment, on Mortgage after date
Youngs W. Miller and	
Polly Ann Miller	
Proof by Plaintiff	

It is stipulated and admitted as testimony to be used on the trial of Cause as follows,
 1st. That the annexed copy of Note and Mortgage may be used by the Plaintiff on the trial of this Cause in place of the original Note and Mortgage and that the debt is not paid except the

amount of One hundred and fifty-dollars en-
dorsed on said note

2^d That the defendants were in possession of
said property described in the declaration upon
them and that the property was worth at the
time the Mortgage was given sixteen hundred
to two thousand dollars; and that the property
at this time is worth twelve hundred dollars
Feb'y 24. 1863

E. B. Smith

Plaintiff

J. W. Clyde

Atty for defts

This Indenture made this twenty-first day of
July in the year of Our Lord One thousand
Eight hundred and fifty-nine, Between Youngs
W. Miller and Polly Ann his wife parties of the
first part, and Ezekiel B. Smith of Chicago
party of the second part -

Whereas the said Youngs W. Miller one of the
parties of the first part is justly indebted to
the said party of the second part, in the sum
of One thousand five hundred dollars, secured
to be paid by one certain promissory note bearing
Even date hereof payable two years after
date with interest at the rate of ten per cent
payable annually until the same shall be
fully paid; Now therefore this Indenture

witneseth, That the said party of the first part for the better securing the payment of the money aforesaid with interest thereon according to the tenor and effect of said promissory note above mentioned, and also in consideration of the further sum of one dollar to them in hand paid by the said party of the second part, at the delivery of these presents, the receipt whereof is hereby acknowledged, have granted bargained sold and conveyed, and by these presents do grant bargain sell and convey unto the said party of the second part his heirs and assigns forever, all that piece or parcel of land situate in the Village of Denton in the County of Cook and State of Illinois known and described as follows, Lot number One (1) and the North half of lot number Two (2) both in block number Twenty-nine (29) in the plat of the Town of Denton in said County of Cook, with the dwelling house and out buildings thereon.

To have and to hold the same together with all and singular the appurtenances hereditaments privileges and appurtenances thereunto belonging or in any wise appertaining, and also all the estate interest and claim what-soever in law as well as in Equity, which the party of the first part have in and to the premises hereby conveyed unto the said party of the second part his heirs and assigns and to their only proper use benefit & behoof provided always, and

these presents are upon this Express Condition
That if the paid party of the first part, then his
Executors or administrators, shall well & truly
pay or cause to be paid to the paid party of the
second part, his heirs Executors or administrators
or assigns, the aforesaid sum of money, with such
interest thereon at the time and in the manner
specified in the above mentioned promissory note
according to the true intent and meaning thereof
that then and in that Case, these presents and
Everything herein Expressed, shall be absolutely
null and void.

In witness whereof the paid
party of the first part, hereunto set their hands
and seals the day and year first above written
Signed Sealed & Delivered } Youngs W. Miller Seal
in presence of Wm Scoville } Polly Ann Miller Seal

State of Illinois }
Cook County }

I, William Scoville Justice of
the peace in and for said County in the State aforesaid,
do hereby Certify that Youngs W. Miller and
Polly Ann his wife, personally known to me as the
persons whose names are subscribed to the annexed
Mortgage appeared before me this day in person
and acknowledged that they signed sealed and
delivered the said instrument of writing as their

free and voluntary act. for the uses and purposes therein set forth, and the said Polly Ann Miller wife of the said Youngs W. Miller having been by me examined separate and apart and out of the hearing of her husband, and the contents and meaning of the said instrument of writing having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and seal this 23rd day of July in the year of Our Lord One thousand Eight-hundred and fifty-nine.

Jm Scoville

Justice of the Peace &c

State of Illinois } ss
Cook County }

This instrument was filed for Record the 26th day of July at the hour of One o'clock 1859. And duly recorded in Book 46 of Mortgages page 625

Jms Church
Recorder

\$1600.

Quincy Ill. July 31st 1859

Two years after date for value received, I promise to pay E. S. Smith or order the sum of

Sixteen hundred dollars with interest at ten per
Cent payable Annually till the full sum and
interest shall be fully paid

Youngs. N. Miller

Endorsed

July 25/60 paid on this Note One years
interest according to its terms \$ 160⁰⁰

And thereupon the Counsel for the defendants to
maintain and prove the said issue on his part
gave in Evidence a stipulation in the words &
figures following To-wit—

State of Illinois
Circuit Court of Cook County—

Youngs. N. Miller	}	Ejectment
and Polly Ann. Miller		
advs Ezekiel S. Smith		

Defendants Proof

It is stipulated and admitted as testimony to be
used on the trial of this Cause as follows.

1st That the Mortgage debt was not contracted
prior to the fifth day of July A.D. 1851.

2. — That the Mortgaged premises at and before
the date of the Mortgage consisted of Contiguous
pieces of ground about half an acre, on which

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there was a house and out-buildings, that at the date of the Mortgage the defendants were residing in the house upon the lots, that said George W. Meiler then had a family said Polly Ann Meiler his wife and three Children, and was then a house holder, and then owned the property in question in his own right in fee simple

3^d That the debt secured by the Mortgage was not Contracted for the purchase price of said property nor any part thereof, nor was the debt or any part thereof Contracted for any improvements upon the property

4th That the defendants did before and have ever since they gave the Mortgage in question reside in the house upon the property with their family and still reside thereon, occupying the same all the time as their homestead, and that the defendants now claim the property in question as their homestead

E. D. Smith. Plaintiff
J. W. Clyde. Att. for defts

There being no other or further testimony introduced by either party, the Cause was then submitted to the Court. The Counsel for the plaintiff did then first present to the Court the following points of law which were deemed material by him in the determination of this Cause

Ex - rict

That the said Youngs W. Meiller being the owner of the premises described in plaintiffs declaration in fee simple, and the said defendants Youngs W. Meiller and Polly Ann Meiller his wife, having in the Mortgage (a copy of which is in evidence, bargained sold and conveyed the said premises, and also all their "Estate interest and Claim whatsoever therein in law as well as in Equity" to the said plaintiff said defendants cannot in this action have or maintain their Claim to hold said premises as their homestead under the "Homestead Act" of the State of Illinois

2d - That this action being in Ejectment and for the purpose of obtaining possession of said premises under the "Homestead Act" of Illinois providing that premises claimed as a homestead shall be "exempt from levy & forced sale" only, the said defendants cannot deprive the said plaintiff of his right to the possession of said premises under the said Mortgage

And did then and there request the said Court to pass specially one each of the said points of law presented in its finding in this Cause

And the said Court afterwards to-wit: on the 27 day of February did find the issues for the said defendants, and that the

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said defendants were not guilty, and thereupon
the Court directed a judgment to be entered
on said finding for the defendants as will more
fully appear by the Record of the judgment
in this Cause. — To which finding and
judgment of the Court upon the issue, and the
several points of law presented to the Court to be
passed upon by the Court as aforesaid,
the Counsel for the said plaintiff did then
and there Except and still does Except
thereto and prays the Court to begin this
bill of Exceptions, which is done accordingly
George Manure. Seal
Judge of 7th Judicial Circuit Illinois

8
said defendants were not guilty, and thereupon
the Court directed a judgment to be entered
on said finding for the defendants as will more
fully appear by the Record of the judgment
in this Cause. — To which finding and
judgment of the Court upon the issue, and the
several points of law presented to the Court to be
passed upon by the Court as aforesaid,
the Counsel for the said plaintiff did then
and there Except and still does Except
thereto and prays the Court to begin this
bill of Exceptions, which is done accordingly
George Manure. Seal
Judge of 7th Judicial Circuit Illinois

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 all papers on file and all proceedings entered of record in a certain cause lately pending in said Court, on the Condemnation side thereof, wherein Edwin S. Smith was plaintiff and Youngs & Miller & Co were Defendants.

In Witness Whereof, I have hereunto set my hand, and affixed the Seal of said Court, at Chicago, this Thirtieth day of March A. D. 1863.

Wm L Church Clerk.



Supreme Court of Illinois
Third Grand Division

Ezekiel S. Smith
Pliffin Error

vs.

Youngs. W. Miller
Polly Ann Miller
Defts in Error.

Of the Appellate Term
A.D. 1863.

Afterwards, to wit on the first Tuesday
after the third Monday of April, A.D. 1863. in
the same term before the justices of the Supreme
Court of ~~Illinois~~ the State of Illinois at the Court
house in the City of Ottawa. Came the said Ezekiel
S. Smith by B.D. Magruder his attorney & says
that in the record and proceeding aforesaid and also
in quering the judgment aforesaid there is manifest
Error in this to wit

1. The Court Erred in directing judgment to be entered
for the defendant

2. The Court Erred in not holding the law, as stated
in the points aforesaid presented by the plaintiff, and in
not directing judgment to be entered for the plaintiff
in accordance with the law as stated in the points then
presented

3. The judgment is against law and evidence

And the said Ezekiel S. Smith prays that
the judgment aforesaid for the errors aforesaid, and other errors
in the record and proceeding aforesaid may be reversed
annulled and set aside for nothing, and that he may be
restored to all things which he hath lost by occasion of the said
judgment.

B.D. Magruder
Atty for Pliffin Error

Supreme Court of Ills
Thos. Handerson
48 Apr. Term. 1863

Ozziel. S. Smith
Plff in Error
vs.

Young. W. Miller
Patty Ann Miller
Def in Error

Record.

Assignment of Errors
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Filed March  
21. 1863

L. Seland  
clrk