

No. 14577

Supreme Court of Illinois

Hatch, et al

vs.

Bigelow, et al

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION

No.

224

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

Watch

vs

Boyd

X

14

Supreme Court of Illinois
April Term A.D. 1864

Appeal from Cook

George Hatch } Defendant below and
 ~~Plaintiff~~ Appellant
vs
Amory Bigelow & } Plaintiffs below and
Josiah T. Miller } Appellees

Brief and Argument for Appellers.

The Appellant has made the following points.

First - That the plaintiffs below, claiming under a marshall's deed as assignees, must prove the assignment of the certificate of sale; and that the recital in the marshall's deed is not sufficient proof of such assignment.

As to this objection it seems sufficient to cite the case of Stephenson vs Thompson 13 Ill. 186 in which this court held that such a recital in a sheriff's deed was prima facie evidence of the assignment. See also Wiley v Bean, 1 Gilman 302.

Second. The appellant objects that the appellees, setting up title against an unrecorded deed, must be required to show the actual payment of the purchase money.

But, in the first place, this rule does not, and from the nature of things, cannot apply to judgment creditors, or to those who claim under them.

As a general rule, the creditor has to buy in the land himself, and no money is actually paid. He takes the land for his debt.

In the second place our statute expressly names creditors as well as purchasers, and declares that as to both creditors & purchasers the deed shall be void until recorded.

And in the third place the return on the executions made by the mortgagee shall show that the money was paid, if any such proof is required.

This evidence is always sufficient to make out a *prima facie* case.

Third. The appellant objects that though the contract from Cameron to Lushbaugh was unrecorded, yet there was sufficient evidence of possession under said contract to put the judgment creditors on inquiry, and thus amount to notice of the contract.

This is really the only question in the case. What then are the facts as to possession?

It appears from the evidence that Cameron, the execution debtor, was formerly the owner of the whole South Half of the Block 18. That the North Half was owned by one Wendall. That Kerfoot was agent for both Cameron and Wendall, and that as such agent, he, sometime before Lushbaugh bought, built a fence for Cameron & Wendall around the entire block. There might have been a fence between Cameron's half and Wendall's. But there was no fence between the lot here in question, (Lot 5), and the remaining lots in Cameron's half, and nothing to distinguish one lot from another. Cameron had previously sold some of the other lots, viz, the South three lots, to Dyer, before December 1856. But no division fences had been built, and the whole South half of

the Block was still surrounded by one common fence, on the 28th of September 1857, when the judgments under which appellees claim became a lien.

On the 29th of December 1856, Pomeroy made a contract to sell this lot to Lushbaugh, but the contract was not put upon record.

Lushbaugh did not build upon the land - nor did he fence it - or cultivate it - or in fact do any thing whatever to the land or upon it.

But acting under his direction Kerfoot caused a sidewalk to be laid down in front of this lot, and at the same time in front of the whole block. That is to say, that side of the block fronting on Wells Street, and in which there were some eight or ten lots, half belonging to Pomeroy's part, and half to Murphy's, ~~was~~ was all furnished with a sidewalk at one and the same time.

In the next place, Kerfoot, still acting as agent of Lushbaugh, (Pomeroy's vendee) caused a board to be put up on that part of the fence in front of this lot, on which were the words "For sale by L. H. Kerfoot & Co, 48 Black St."

This board is really all there is in the case. The fence being a common fence round the whole half block, and having been moreover

built by Baneroy, the judgment debtor, while he was yet the owner, had nothing in it to indicate a change of ownership, or to put the creditor on inquiry.

The side walk was indeed built by Luskbaugh, but a side walk was at the same time built in front of all the other lots.

Furthermore, sidewalks in Chicago, as in all our larger towns, are built almost always in obedience to the orders of the Common Council or Supervisors, and indicate nothing whatever as to the ownership of the land. They are a tax on the land, and if not built by the owner, the city may build them, and sell the land to pay the assessment. The sidewalk must be built, whoever owns the land.

There was nothing then, except this board, to distinguish this lot from the others on each side of it.

Was this board then sufficient notice of the contract from Baneroy to Luskbaugh?

Was it sufficient to put the creditor on inquiry?

to put him on inquiry,

If it was sufficient, then, according to the decision of this Court in the case of Rupert v Mack 15 Illinois 542, it was notice of the unrecorded deed.

It is on the authority of this case that

the appellant mainly relies. If that case is not conclusive in his favor, he will seek in vain for any other. For this case, it is believed, carries the law in favor of the unrecorded deed, quite as far as it has ever been carried.

On this point the appellants offer the following suggestions.

1st The case just cited must be considered in reference to the facts actually before the court. The evidence in that case showed actual, open, visible possession for three or four years; a fence all round the lot and a stable upon the lot.

The court say on page 542, "where the purchaser is in the open and visible possession, it is sufficient notice". And they cite numerous authorities. Again they say a few lines below "in the actual and exclusive possession".

Now we cannot suppose the court meant to go any further than the case then before them. But from the facts just stated it is obvious that the ~~fact~~ court would have to go much further than it went in that case, to hold this board sufficient notice. No one can say that putting up this board was actual possession, & still less that it was exclusive possession. It is in fact hard to say that it was any possession at

all.

2d This case must be taken in connection with other decisions of our Supreme Court Thus in Doyle vs. Jess 4 Term. 249, the Court say, "And where the Court is satisfied that the purchaser acted in bad faith, and that he either had actual notice, or might have had that notice, had he not wilfully or negligently shut his eyes against those lights which with proper observation would have led him to knowledge, he must suffer the consequences."

Can it be said that in this case, the purchaser acted in bad faith?

Again, in every case in Illinois, where possession has been held sufficient notice of an unrecorded deed, the party has been in actual possession, living on the land, or having a building upon it.

And thus in Metropolitan Bank vs. God-
frey 23 Ill. Co. this Court say "The only sensible rule is that actual residence upon the land is notice to all the world, &c."

Of course the Court did not mean to say, nor would the appellees so claim, that nothing less than actual residence would amount to notice; on the contrary it is freely admitted that much less than this would in some cases suffice; we only

say that the cases in our own State, where possession has been relied on, have been cases of actual possession.

See Monison v Kelly 22 Ill. 623, where there were an inclosure, a cabin and fruit trees.

But 3^d, as our Supreme Court in the case of *Rupert vs Mack*, above cited, say that the law is well established, and also cite many authorities from other states, it is safe to presume that they recognize those authorities as being in harmony with the law in our own State.

On a careful examination ~~the~~ the appelles have been unable to find any case in the American Reports where a possession, as slight as that shown in the present instance, was held sufficient.

On the contrary the cases showing that such a possession is not sufficient are numerous. We cite a few only of the most significant.

And first, as to the presumption -

"Every presumption is to be made in favor of a subsequent purchaser against a claimant by an unrecorded deed. To defeat his title notice must be clearly proved."

Boggs vs Varner 6 matts & long. 469

"As every presumption is in favor of the subsequent purchaser, his title cannot be post-

posed except by evidence which taints his conduct with fraud."

Ibid 474

And, second, as to the character of the notice.

We think the notice should be so express and satisfactory to the party, as that it would be a fraud in him to purchase, attach or levy on the land."

Eurtis vs Mundy 3 Met. 407

The illustrations given in the above case of what notice would be sufficient to raise presumption of fraud, are the publication, in a paper, of death and marriages, or of the loss of a vessel, after seeing which the owner could not honestly get her insured.

Again; "In cases of implied notice of an unrecorded deed the facts must be of such a nature as to leave no doubt of the truth of the transaction; suspicion, conjecture, and probability that there has been a change of property are not sufficient."

② Lawrence v Tucker 7 Wend. 201

In the case now before the Court there was certainly nothing more than conjecture, and it would seem not even that. So one can say there was any probability.

② And in these two States, as in Illinois, whatever is enough to put the party on inquiry is good notice.

probability, that is, that the land had been sold. The board rather indicated the contrary, viz, that it had not been sold.

In *S. Cardina*, under a statute substantially the same as our own, it was held that presumptive notice is not enough - it must be explicit.

See Cabines vs Mahon 2 the Lord 273

In that case there was an actual possession, but it did not appear that the purchaser had actual express notice of it, & his title prevailed.

Our courts are not expected to go as far as this; the case shows however the tendency to rule in every instance as strongly as possible in favor of the purchaser.

Again, "The possession must be actual, and such as would constitute a disseizin or adverse possession."

Lead. Cases in Equity, Vol. II, Pt. I, p. 118.

These cases lay down the general rule; there are few in which the particular facts are given.

The only one at all similar to the present is McClellan v. Griffin, 3 Pick. 156

It was then held that repairing an old

fence which enclosed certain lots as a general field, was neither a disseizin nor a trespass, and no notice.

There were other acts of possession, more positive by far than any in the case now before the Court, but they were held not sufficient notice.

This case is a leading one on this question of notice, and as it is too long to be quoted, it is here respectfully recommended to the consideration of the Court.

But besides the above, there is another class of cases decided on an entirely separate principle; viz, those holding that the possession must be exclusive. On this point there is no difference of opinion. The rule is the same in every state.

And the reason of the rule is obvious. If there is not an exclusive possession, if the vendor remains in possession of part of the premises, it is not sufficient notice.

Billington vs Melch 5 Binney 132; Leading Cases in Eq Vol. II, St. I, p. 119.

In that case the vendor was put in possession of part of the tract, and the vendor remained in possession of the residue. And it was held that as there was nothing to dis-

-distinguish the possession of the vendee from that of the vendor, it would not be notice.

So in this case Sameray owned the whole half of the block. He sold Lots 6, 7, & 8, and then this Lot 5, but remained in possession of the residue. There was no fence between Lot 5 and Lot 6 - and no fence between any of those lots sold and the remaining lots still held by Sameray -

There was nothing to distinguish the possession of any one of the vendees from the possession of the other vendees, or from the possession of the vendor.

These are all the authorities the appellants have been able to find bearing very closely on the precise question to be decided.

But we beg the Court to consider the question for a moment apart from any authority. We would ask the Court to take by way of illustration the following case.

A. owns a square mile of unenclosed land. He builds a ring fence around the whole, then sells an acre here to B. another to C. and so on through the alphabet.

* But should be read
evidence of Kerfoot & Co.

B. C. or D. then causes a board to be put up on the fence in front of his acre, with the words, "For Sale by L. & K. Kerfoot & Co." A judgment creditor of A. the original owner, comes to view the land, and he sees this board. Now is there any thing in the board to lead him to think that A. has sold part of this tract to another? The board says that the land is to be sold, not that it has been already sold. It would certainly never occur to him that A. had sold, and that now his vendee was trying to sell again. (and so, as long as the board remained, he would think & he would have a right to think that the land had not yet been sold.)

The fact is simply this. If the creditor has in any other way learned that A. had sold, or if he has in any other way been put upon inquiring, why then the board shows him where to go to. But the board must do more than this, it must first give him some reason to think that the land is sold, and this it fails to do altogether. The board does not put him on inquiry.

The appellant has made a very natural mistake. He has confounded what is only a means of information, with what would lead one to seek information.

But the appellant says again, "The board is notice, because it shows that some person

other than the judgment debtor (Pomeroy) claimed a right to meddle with the premises.

But does the board show, or in any way indicate this? We think not.

It shows that Kerfoot was authorized to sell the land, but it does not show that in selling he was acting as agent of Lushbaugh. The record showed Pomeroy as still the owner, and of course, in seeing the board, we should naturally conclude that Kerfoot was acting as agent for him. He might as well be agent of Pomeroy as Lushbaugh.

In point of fact, as the Court will see by looking at the evidence, at the time our judgment became a lien, namely, on the 28th of September 1857, Kerfoot had nothing more to do with selling the land. It had already been sold on the 13th of Sept. by ~~Pomeroy~~ Lushbaugh to Posey; the board, so far as we know, still remained on the fence, but it was a false announcement that it held out. The land was not for sale, though the board said so, & had Kerfoot any further agency in the matter.

By going to Kerfoot, to be sure, the creditor might have found out that

The land was sold, but that is not the question. The question is, 'what reason had he for going to Kerfoot?'

He might have found out the same thing by going to Pomeroy himself; but then the law does not require. The law does not require the purchaser to make inquiries of any one, unless there is first something to prompt those inquiries.

And as we have seen, this something must be more than suspicion, more than conjecture, more even than probability.

One more illustration and we have done. A. wishes to buy a tract of land of which B. claims to be, and by the records, really is the owner. A. goes with B. to view the premises, and finds on the fence a board such as above described. ~~He~~ This, however, fails to excite any suspicion, in his mind that B. has already sold, he buys the land, pays for it, puts his deed on record, and then, sometime afterwards, finds out that B. had previously sold the land to C. C. to be sure, had not recorded his deed, but he had put up this board, and now claims to hold the land by virtue of it.

Is this fair, or equitable? And if such a fact is to supply the want of a record,

what use of having any records, or any law requiring deeds to be recorded?

If there were anything inconsistent in the board being on the fence and the lands still belonging to the original owner, there would be more reason in the views advanced by the appellant; but as the board might just ~~be~~ as well have been there, though Sowerby had never sold, as there was nothing whatever to indicate whether he put it there or Lushbaugh, there was of course nothing to put a party on inquiry.

The appellant has taken it for granted that the notice by which the creditor is bound must be notice at the time his judgment becomes a lien; and that notice at the time of sale under the execution, is not sufficient.

This Court has so decided in *Oryden* and *Martin* 1 Gilman 188.

Finally - if the above authorities are correct, then the appellant's title must fail, and for several distinct reasons.

First. Because his possession was not exclusive.

Second. Because his possession did not amount to a divestiture, or an adverse possession.

Third. Because there was nothing in the board inconsistent with the continued ownership of Pomeroy; and consequently nothing to lead one to think that Pomeroy had sold.

Fourth. Because there is no case in the books holding so slight a matter as this board sufficient notice of an unrecorded deed.

Fifth. Because, if such possession is sufficient, our recording laws are made well nigh a nullity.

All which is respectfully submitted
George Gayson
Attorney for Appellees

Mo 224 131
Supreme Court
of Illinois

Hatch
vs
Bigelow et al

Written Argument
for
Appellees

Filed Apr. 22, 1864
J. Leland Mc

George Gayson
Atty for Appellees

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Plas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the first day of January in the year of our Lord One Thousand Eight Hundred and Sixty seven and of the Independence of the United States of America the Eighty Eight

Present, The Honorable John M. Thron Chief Justice of the Superior Court of Chicago. }

Wm. H. Higgins }
Joseph E. Gary } Judges.

Joseph O'May Prosecuting Attorney.

Sam'l D. Hammond Sheriff of Cook County.

Attest, Thomas O. Barton Clerk.

Be it remembered that heretofore writ, on the seventeenth day of August in the year of our Lord one Thousand Eight Hundred and Sixty Three. Amos Bigelow, and Jacob D. Miller by George Payson their attorney filed in the Clerk's office of the said Superior Court of Chicago certain Declaration, Notice, and affidavit which are in words and figures following to-wit:

State of Illinois }
Cook County. } ss

Superior Court of Chicago
August Term A.D. 1863

Amos Bigelow and Jacob D. Miller plaintiffs
by George Payson their attorney, Complain
of George Hatch, Defendant in a plea of
hespass and excludment. For that Whereas

2.

heretofore writ on the Twelfth day of
May in the year of our Lord Eighteen Hundred
and sixty three to wit within the County of
Cook and said State of Illinois the said
Plaintiffs were possessed of a certain tract or
parcel of land with the appurtenances situate
in the County of Cook in the said State of
Illinois and described as follows to wit, Lot 18
(3) in Block Eighteen (8) in Town of North
Haven, Addition to the City of Chicago and which
said tract or parcel of land the said Plaintiffs +
claim in fee simple

And the said Plaintiffs being possessed
hereof the said defendant after as true, on
the same day and year last aforesaid en-
tered into and upon the said premises and
excluded the said Plaintiffs therefrom and
from the time last aforesaid has unlawfully
withheld and does now unlawfully withhold
from the said Plaintiffs the possession thereof
to the damage of the said Plaintiffs of the sum
of Two Hundred Dollars and therefore they
bring suit &c.

George. Payson
Attys for Plaintiff

Internal Revenue
Stamp

It is hereby notified that the
Declaration into a copy of which you are

now hereto served and to which this notice
 is attached. will be filed in the Superior Court
 of Chicago on the Eleventh day of the August
 Term A.D. 1863, and that upon filing the same
 a rule will be entered requiring you to appear and
 plead to the said declaration within twenty days
 after the entry of said rule. and that if you re-
 quest so to appear and plead. a judgment by
 default will be entered against you. and the
 Plaintiff will recover possession of the premises
 specified in said Declaration.

Dated the Eleventh day of August A.D. 1863.
 George Payson. Atty for Plff.

State of Illinois }
 Cook County } ss George Payson being duly
 sworn. Says. that he served the within Declaration
 and notice upon the said defendant George Hatch
 by delivering a copy thereof to him personally.
 on the 13th day of August A.D. 1863, on said
 premises, and that said Defendant Hatch was
 then in possession of the said premises described
 in said Declaration
 sworn to and subscribed.
 before me. the 17th day of
 August A.D. 1863

George Payson

Thomas B. Caulis Clerk

And afterwards Court on the Day and year
last aforesaid. the same being one of the days
of the August Term of said Court. the following
among other proceedings were had, and
entered of Record in said Court.

Amory Bigelow &c
vs. Isaac J. Miller

1857.

11062 1/2

vs.

Exemption

George Stetson

This day come said plaintiff
by George Payson their attorney and file herein
their claim declaration, and notice in exemption
and it appearing to the Court that the said de-
fendant has been duly served with a copy of the
plaintiff's said declaration and notice hereby attach-
ed, in conformity with the statute in such cases
made, said, moved, on motion of said plain-
tiff's attorney, it is ordered, that said defendant
be, and he is hereby required to plead or demur
to plaintiff's declaration aforesaid within twenty
days from the entry of this rule to plead, or in de-
fault thereof, that judgment will be entered, &
against said Plaintiff will recover the
possession of the premises described in their declaration
as aforesaid.

And afterwards Court on the second day
of September, in the year aforesaid, the said

defendant. George Hatch by Henry Anthony and
Hatch his attorney filed in the Clerk's office
of said Court. His certain plea, which is
in words, and figures following to-wit:

State of Illinois }
County of Cook. } ss.

The Superior Court of Illinois
of the September Term 1863.

George Hatch Defr.

vs.
Henry Bigelow and
Isaac G. Miller Plffs

And now comes the said
Defendant and defends the force and rigour
whereof and says that he is not guilty of
the said trespass and excitement, above laid to
his charge. And of him the said defendant
puts himself upon the Country &c.

Henry Anthony Clerk.

Atty for Defr.

Plaintiffs do the like

George Payson Plffs atty.

And afterwards to-wit on the nineteenth day of
October in the year aforesaid, the same being
one of the days of the October Term of said
Court. The following among other proceedings
were had and entered of Record in said Court
to-wit.

Among Bigelow and

577
11062.

Isaac I Miller }
vs } settlement.
George Skatch

This cause having been this day called for trial, come said plaintiffs by + George Payson their attorney, and said defendant, by Henry Anthony & Co. their attorneys also come and upon agreement of the parties made now here in open Court. this cause is hereby submitted to the Court for trial, upon the issues joined therein without intervention of a jury. and the Court now here after hearing the evidence and arguments of counsel, and being fully advised in the premises finds the said defendant not guilty of withholding the deposit of the premises described in plaintiffs declaration from said plaintiffs,

and afterwards took on the twentieth day of the month and year aforesaid the said Plaintiffs by George Payson their attorney, filed in the said Clerk's office of said Court his return and reasons for new trial, which, in words and figures following took

Bigelow et al. vs Superior Court of Chicago
set term 1863.

Skatch vs settlement.
And now come the plaintiffs in the above

entitled cause by George Payson. then attorney
and move the Court to set aside the finding
of the Court in said cause and to grant new trial
of the same. and for said motion assign the
reasons following Court

1. That the finding of the Court under the evi-
dence offered at said trial, should have been
for the plaintiffs

2. That the finding of the Court was contrary
to the law.

George Payson
Plffs atty.

And afterwards went on the nineteenth day of
November in the year aforesaid the same being
one of the days of the November Term of said Court
the following among other proceedings were had
and entered of record in said Court book.

Amory Bidwell and
Josiah D. Miller

vs

George Hatch

for new trial no objection

And now again come said
parties by their attorneys as aforesaid and that
cause coming on now to be heard upon the
motion of said plaintiffs heretofore submitted
herein (went on the 19th day of October 1863 for
a new trial in said cause. being heard there
on. and the Court being fully advised in the

8. premises, it is considered by the Court that the motion of said plaintiffs is and the same is hereby overruled. and a new trial is refused to said plaintiffs in said cause. ^{therefore it is considered that said defendants do have and receive of said plaintiffs the cost and charges, amounting to the sum of \$100.00 and have execution therefor.} And afterwards writ on the day and year aforesaid, the said Plaintiffs by George Payson their attorney file their return motion herein. which is in words and figures following to wit;

Regdon

vs.

Superior Court of Chicago
Dec. Term 1863.

et al.

And now comes the said plaintiff in said suit and prays the Court to grant a new hearing in this cause. on the motion for a new trial. whereupon decided
George Payson. Plaintiff,

And afterwards writ on the 7th day of January in the year of our Lord one thousand Eight hundred and Sixty Three. the same being one of the days of the January Term of said Court. the following among other proceedings were had. and entered of record in said Court to wit:
Emory Regdon and
Josiah F. Miller.

577
11062

vs.

Exhibit.

George Hatch.

And now at this day again come said
plaintiffs by George Payson. then attorney
and move the Court for a new trial in said cause
on payment of all costs under the statute in such
case made, and provides, and it appearing &
satisfactorily to the Court that said plaintiffs
have paid the costs in this cause. it is con-
sidered by the Court that said plaintiffs be, and
they are hereby awarded a new trial in said cause,

And afterwards Court on the Twenty-ninth day
of the month and year aforesaid, the same
being yet of the said January. Term of said
Court, the following among other proceedings
were had, and entered of Record in said Court
book

Amos Bigelow vs.
Frank J. Miller

577
11062

vs.

George Hatch

Exhibit.

This cause being this day
called for trial come said plaintiffs by George
Payson. then attorney and said defendant
by Henry Anthony & act. in attorneys also
come. and by agreement of parties made
now here in open Court this cause is hereby sub-
mitted to the Court for trial upon the issues

formed therein, without intervention of a jury
 and the Court now here after hearing evidence
 and arguments of counsel. and being fully advised
 in the premises finds the said defendant guilty of
 withholding the possession of a certain tract or piece
 of land. with the appurtenances, situate in the
 County of Cook, in the State of Illinois, and
 described as follows. Lot five (5) in Block
 Eighteen (18) in Johnston Roberts & Son's Addition
 to the City of Chicago from the said plaintiffs
 and that the said plaintiffs ~~are~~ the owners in
 fee and possessed of an estate in fee simple therein
 and that the ^{said} defendant obstructs his motion
 herein for a new trial in said cause.

And afterwards cometh on the Thirtieth day of
 the month and year aforesaid the said defend-
 ant, by Henry Anthony & Co. att. filed in the
 Clerk's office of the said Superior Court his
 certain motion for a new trial, which is
 in words and figures following to-wit:

The Superior Court of Chicago
 Amey Bigelow et al vs of the January Term 1864

^{vs}
 George Hatch Dft. And now comes the said defend-
 ant and moves the Court for a new trial in the above
 Cause on the ground that the finding of the Court is
 just against the evidence in the case

scend. against the Law.
Henry Anthony Galt.
Allego for Dyth.

And afterwards took on the Twenty second day
of February, in the year aforesaid. the same being
one of the days of the February Term of said Court
the following among other proceedings were
had, and entered of record in said Court to
wit

Amory Belden and
Isabel G. Miller

On motion sustained no appeal

NS.

George Hatch

And now at this day come
the parties to this cause, by their attorneys respect-
ively as aforesaid and the cause coming on now
to be heard before the full Court on the motion
of said defendant heretofore submitted herein to
make on the twenty ninth day of January, AD (1864),
for a new trial in said cause and Counsel being
heard on said motion, and the Court being &
fully advised in the premises it is considered
by the Court, that the motion of said defendant
be, and the ^{same} ~~is~~ ^{is} hereby ~~overruled~~ ^{overruled} and that the said defendant do ~~not~~ ^{pay} the cost
cause to which ruling of the Court in overruling
his said motion, for a new trial, said defendant
and does excepted

Wherefore it is considered that said plaintiff

do have and receive of and from said defendant the possession in fee simple of the premises described in their declaration, to wit a certain tract or parcel of land with the appurtenances situated in the County of Cook in the State of Illinois and described as follows to wit, Lot 400 (5) in Block Eighteen (18) in in Johnstons Robt & Son's addition to ^{the City of} Chicago and that a writ of possession issue therefor, directed to the Sheriff of Cook County, commanding him to deliver to said Plaintiffs the possession of the aforementioned premises according to the force and effect of their said decree.

And it is further considered by the Court that said plaintiffs do have and receive of and from said defendant their costs and charges in this behalf expended and have execution therefor.

And thereupon the said defendant prays an appeal herein to the Supreme Court of the State of Illinois from the judgment of this Court, which is allowed to him on condition & that he file his appeal bond in the penalty of two hundred Dollars with security to be approved by one of the judges of this Court to be filed in thirty days from this day and that he be allowed twenty days in which to file his bill of Exceptions.

And afterwards went on the Eighteenth day of March in the year aforesaid. the same being one of the days of the March Term of said Court the following among other Pleasants were had and entered of Record in said Court Court,

Amory Bigelow vs.

Joseph D. Miller

vs.
George Hatch

} Motion in Exception,

And now comes the said defendant, by Henry Anthony & act. his attorneys, and on their motion it is ordered that time for said defendant to file his Bill of Exceptions herein on appeal to the Supreme Court, be & the same is hereby extended, ten days from this day,

And afterwards went on the Twenty-seventh day of March in the year aforesaid the said Geo. Hatch by Henry Anthony & act. his attorneys, filed in the Clerk's office of the said Supreme Court of Chicago his said Bill of Exceptions, which is in words and figures following to-wit,

Be it remembered that on the day of A.D. 1864, the case of Bigelow and al. vs.

Hatch was called for trial, and the plaintiff, to maintain the case on the part introduced

317
11062,

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I H Smith who testified as follows. Corvill²

I know the premises Mr Posey claims to be the owner. I own the transfer of a Lease of the Lot. (Lease from Frederick J. Posey to Simon & Cheley assigned by Cheley to me) I paid rent on the Lease to Redfoot.

I have paid rent since May first /63.
State has paid to me since June 1st 1863.
(Defendant admits to have been in possession
when suit was commenced)

When I first saw the premises April 1863
there was a house, and fences on it then. Since
I own the house & bought them of Wiley.

Plaintiffs next offer.

2 certified copies of fragments
+ Executions. J. J. Miller vs Samuel B. Elager
L. Pomeroy one July 20. 1857 for \$858. & \$26.³²
Cali. Execution July 31. 1857 returned unsatisfied
alias Execution Jan'y 17th 1862. premises sold
on this last execution

The other fragment Aug-
ust 4th 1857 for \$1083.⁰⁵ Cali \$37.⁹² Execution
August 14th 1857 returned unsatisfied, alias
January 17th 1862. premises sold on this.

These fragments in United States Circuit
Court are as follows.

In Circuit Court United States }
Northern District of Illinois }

Monday July 20. 1857

Present The Honorable Thomas Drummond Judge,

Josiah D. Miller

Samuel B. Pomeroy
Elager L. Pomeroy

Assumpt

Now comes the plain-
tiff by Mepi Shumway, Walter and Jm. W. W.
Attorneys, and it appearing to the Court that
the Defendants have been regularly served with
process and they being now ruled to plead in-

stander, and failing to plead or answer, to said rule and the said defendants being now each three times solemnly called, came not but make default. It is thereupon considered by the Court that their default be entered and that the plaintiff have and recover of the defendants his damages but as those damages are not certainly known and it appearing to the Court that this action is instituted upon one certain promissory note, for the payment of money only. It is ordered that it be referred to the Clerk to assess the damages thereon and the Clerk having assessed said damages to the sum of Eight Hundred and fifty Eight dollars and reported the same to the Court, which being approved.

It is thereupon considered and adjudged by the Court that the Plaintiff have and recover of the defendants the said sum of Eight Hundred and fifty Eight Dollars his damages so assessed and assessed together with his costs by him about his suit in this behalf expended amounting to the sum of thirty six dollars and thirty three cents and that he have execution therefor.

(Executions, with the endorsements)

United States of America }
Northern District of Illinois }

The United States
of America.

To the Marshall of the Northern
District of Illinois Greeting.

We Command you
that of the goods and Chattels, lands and tenements of Samuel B. Pomeroy & Eleazer L. Pomeroy in your District you cause to be made Eight Hundred & Eighty four dollars & thirty two cents, which Isaiah J. Miller lately in our Circuit Court of the United States for the Northern District of Illinois before the Judge thereof at Chicago in the District aforesaid recovered against them for damages which he had sustained as well by occasion of the non performance of certain promises and undertakings in that behalf as for his costs and charges by him about his suit in this behalf expended, whereof said defendants are convicted as appears to us of record. And have you that money at the Clerk's office of our said Court in ready days from the date hereof to render to the said Plaintiff for his damages aforesaid and this not

Witness the Hon Roger B. Taney Chief Justice of the Supreme Court of the United States of America at Chicago aforesaid this 31st day of July in the year of Lord one thousand Eight hundred and fifty seven and of our Independence the 82^d year
Wm. H. Bradley Clerk

L D I

(Endorsement)

No 920.

Circuit Court. United States Northern District of Illinois
Isaac D. Miller

vs
Samuel B. Pomroy
Eliaser L. Pomroy.

Debit

Damages	\$858. 00
Costs	26. 32
deft.	584. 32
Collect	70
	885. 02

Judgment rendered July 20th A.D. 1857

Wm H Bradley Clerk

Filed March 20th A.D. 1858.

Wm H Bradley. Clerk

Shumway Wato & Fenne Plaintiffs attorneys.

This Execution came to hand. at 10 o'clock. a.m.

July 31st 1857

Jas M Davidson W.D.M.

Nor Dist. Ill

This Execution is returned without service having been kept until its expiration by order of Defts. atty
March 12, 1858.

Ret. 8 ³⁰/₁₀₀

Jas M Davidson W.D.
Marshall
by A M Matthews Dyk

(Alias Execution and endorsement)

United States of America
Northern District of Illinois } 00

America.

(The United States of

In the Marshall of the Northern District of
Illinois greeting.

We Command you again that of
the goods and chattels lands and tenements of
Samuel B. Pomroy and Eleazer L. Pomroy in
your District you cause to be made Eighteen hun-
dred & Eighty four Dollars and thirty two cents which
Josiah C. Miller lately on your Circuit Court of
the United States for the Northern District of Illinois
before the Judge thereof at Chicago on the District
aforesaid recovered against them for damages which
he had sustained as well by occasion of the non per-
formance of certain promises and undertakings
in that behalf as for his costs and charges by
him about his suit in this behalf expended.
Whereof said defendants are convicted as appears
to us of record. And have you that money at
the Clerk's Office of our said Court on writing
made from the date hereof to render to the said
Plaintiffs for his damages aforesaid and that
that

Witness the Hon. Roger B. Taney
Chief Justice of the Supreme

L P P

Court of the United States of America
at Chicago aforesaid the seventeenth
day of January in the year of our Lord
one thousand Eight hundred and
sixty two and of our Independence the
86th year

Wm H Bradley Clerk

N. 29. 29.

Circuit Court United States, Northern District
of Illinois. Jacob B Miller

vs

Samuel B Pomroy & Eleazer L Pomroy.

Mar 20th 1861

Damages	\$58.00	
Costs	26.32	\$84.32
Mar alias		1.35
Defendant's Fee. Bill		70
Collect.		\$86.37

Judgment rendered July 20th A.D. 1857

Wm H Bradley Clerk

Filed March 10th A.D. 1861

Wm H Bradley Clerk

Thompson & Hapgood Plaintiff's atty.

Rec^d. Jan'y 20th 1862. at 10³⁰

By virtue of the Quotum Writ I have on the 20th
day of January. A.D. 1862. levied upon the following
real estate or premises (jointly levied unto execution
number 2928. in favor of same Plaintiff and a-
gainst same Defendants. and forced out of W
J. Circuit Court. No Dist of Illinois bearing
date January. 17. 1862) Writ. Lot number 5. C.
7 in Johnson. Cook. & also addition to Chicago
Cook County Illinois and after advertising the
sale thereof, according to Law. did on the 20th day
of February. 1862. sell the said Lot. to John.

Brooks he being the highest and best bidder there-
for for the following sum to wit. Lot number 5. above
paid for the sum of \$400. Lot number six above said for
the sum of \$300. Lot number seven. above said for the sum
of \$400. making on the two executions the sum of
Eleven Hundred dollars. and being unable to find
any other property of said defendants I therefore
return this that satisfied only as stated no foregoing
return the said sum of \$1100. being made jointly
on this that and execution n^o 2928. above named

J. B. Jones U. S. Marshall
Northern District of Illinois

Charles H. C. Circuit Court } By Geo. L. Webb. Deputy
Northern District of Illinois }

Received Chicago City
20th 1862. from J. B. Jones U. S. Marshall the
sum of Eleven Hundred dollars proceeds of sale.
on Executions n^o 2928. & n^o 2929 paid out of the

United States Circuit Court Northern District of Illinois
in favor of Abraham T. Miller and against Samuel B.
Pomeroy and Eleazer S. Pomeroy. personally and bea-
ring date January 7th A.D. 1862

Thompson & Napgood.

Plaintiffs attys.

Northern District of Illinois

I Theodor H. Bradley
Clerk of the Circuit Court of the United States for
the Northern District of Illinois do hereby certify
the foregoing to be a true copy of the Judgment &
order in the case wherein Abraham T. Miller was plain-
tiff and Samuel B. Pomeroy and Eleazer S.
Pomeroy were defendants. entered of record on the
fourteenth day of July. being of the July Term of
said Court for the year A.D. one thousand Eight-
hundred and fifty seven together with executions
issued on said Judgment, and the returns there
on made, and endorsed on the same. all of which
appear from the records. and the executions now
on file in my office. I also certify that the July
Term of said Court adjourned on the twenty Eighth
day of September A.D. one thousand eight hundred
and fifty seven. as appears from said records of said
Court.

In Testimony Whereof I have hereunto set my hand
and affixed the seal of said Court at Chicago this
9th day of September A.D. 1863, and of our

L P

Independence the 88th year.
Wm H. Bradley Clerk

Revenue
5 cents
stamp

Chas. fee \$2.50 00
W. H. B.

In Circuit Court United States }
Northern District of Illinois }

Tuesday August 4th 1857

Present The Hon. Thomas Drummond Judge

Isiah T. Miller

vs
Samuel B. Pomeroy
Elihu E. Pomeroy

Respondent

Now comes the plaintiff
by Wm Chapman Waiter Towne his attorneys
and moves the Court that a jury be empanelled
to try the issue joined upon the plea of the de-
fendant heretofore filed of the general issue.

It is thereupon considered by the Court that
a jury come to try said issue and thereupon
come a jury of good and lawful men to wit
E. Lilly Mark Kimball A. Prohm John Russell
Jm Mosier William H. Pratt Francis J.
Gould Luther Lowell Elias Buer Christian
Olson E. W. Lusk and Levi J. Woodbury who
were duly elected tried and sworn, and after

hearing the evidence the jury returned into Court
 the following verdict (verdict) We the jury find
 the law for the plaintiff, and assess his da-
 mages at the sum of one thousand and Eighty
 nine Dollars, and no cents. It is thereupon con-
 sidered, and adjudged by the Court, that the plain-
 tiff have, and recover of the defendant the said
 sum of one thousand and Eighty nine Dollars
 and no cents his damages, so as of said sum
 and assessed by the jury together with his costs by
 him about his suit in this behalf expended,
 amounting to the sum of thirty seven dollars and
 ninety two cents, and that he have Execution there-
 for.

(Execution and mandamus)

United States of America } ss.
 Northern District of Illinois

The United States of America }
 To the Marshall of the Northern District of Illinois Greeting.

We Command you that of the goods and Chattels
 lands, and Tenements of Samuel B. Pomeroy &
 Elazer L. Pomeroy in your District you
 cause to be made Eleven hundred, and ninety
 dollars and ninety seven cents which be due.

Will lately in our Circuit Court of the
United States for the Northern District of
Illinois before the Judge thereof at Chicago
in the District aforesaid recovered against
them for damages which he had sustained
as well by reason of the non performance
of certain promises and undertakings in that
behalf as for his costs and charges by him
about his suit in the behalf expended. Where-
of said Defendants are convicted as appears
from record. And have you that money
at the Clerk's office of our said Court in
twenty days from the date hereof to render to the
said Plaintiff for his damages aforesaid and
the cost.

Witness the Hand Roger B. Taney Chief
Justice of the Supreme Court of the
United States of America at Chicago
aforesaid this 14th day of August in the
year of our Lord one thousand eight
hundred and fifty seven and of
our Independence the 82^d year

[L. P.]

Wm H Bradley Clerk

(Endorsements)

No 947

Circuit Court United States
Northern District of Illinois

Isiah J Miller

vs.

Samuel B. Pomeroy

Esq. L. Pomeroy

Dea Dea

Debt.

Danaqu

\$ 1183. 05,

Cost

37. 92

Defts Per Rec

50,

Collect.

\$ 1184. 97

add. 2 fr.

50

Magmont aug 4. A.P. 1857

Jm & Bradley Clerk

Filed March 25. A.P. 1857

Jm & Bradley Clerk

Shumway Kate Anne Plaintiffs Attorney

This Execution came to hand on 14th day
of August. 1857. at this clock. P. M.

James W Davidson

U. S. Marshall No. Dist. Ill.

By H W Matthews Deputy

This Execution is returned without service having
been kept inoperative by order of Defts. atty

James W Davidson U. S. Marshall

Ret'd 30th

By H W Matthews Deputy

United States of America }
Northern District of Illinois } 00

The United States of America }
of the Northern District of Illinois, Greeting. }
Do hereby command you again that of the goods }
and chattels lands, and tenements of Samuel B. }
Comerow, Esq. Cleaver L. Comerow in your District }
you cause to be made. Eleven thousand and }
Twenty Dollars and Twenty seven cents which }
beak, & Miles, lately, in our Circuit Court }
of the United States for the Northern District of }
Illinois before the Judge thereof at Chicago in }
the District aforesaid recovered against them }
for damages which he had sustained as well }
by occasion of the non performance of certain pro- }
mises, and undertakings in that behalf as for }
his costs and charges by him about his suit in }
this behalf expended, whereof said defendants }
are convicted as appears to us of record. And have }
you that money at the Clerk's Office of our said }
Court in money days from the date hereof to }
render to the said Plaintiff for his damages aforesaid }
and his suit

Witness the Hon Roger B. Taney Chief }
Justice of the Supreme Court of the }
United States of America at Chicago

L O S

of and this seventeenth day of January
in the year of our Lord, one Thousand
eight Hundred and fifty two and of
our Independence, the 86th year.
Wm H Bradley Clerk

(endorsement)

No 2928.

Circuit Court United States
Northern District of Illinois

Isiah T. Miller

vs.

Samuel B. Pomeroy
Eleazer L. Pomeroy

To Pay

Damages

1083.75

Costs

37.92

1120.67

Wm Allen Post

1.25

Pepp. Fee Rice

.50

Collect.

\$1122.82

Judgment rendered Aug 4th A.D. 1857.

Wm H Bradley Clerk

Filed March 10th A.D. 1862

Wm H Bradley Clerk

Thompson & Hapgood

Plaintiffs Attorneys.

Rec'd Jan. 20th 1862 at 10.30 o'clock a.m.

By virtue of the writ return'd to me on the 20th day of January A.D. 1862. levied upon the following real estate or premises (to wit) levied under execution n^o 2929 in favor of James plaintiffs and against James defendants, and issued out of the same Court bearing date January 17. 1862) to wit: Lots 5, 6, & 7, in Johnston's Addition to Chicago Cook County Illinois and after advertising the sale according to Law did on the 20th day of February A.D. 1862 sell the said lots to John Brooks the highest and best bidder for the following sums to wit Lot number five of said for the sum of \$400. Lot number six of said for the sum of \$300. Lot number seven of said for the sum of four hundred dollars making on the two executions the sum of Eleven hundred dollars & being unable to find other property I return this writ satisfied only as above stated the said sum of \$1100 being made jointly on this writ and Execution n^o 2929 above named.

J. R. Jones W.D. Marshall of
Nor. Dist of Illinois
By Geo L Webb Deputy

My fee.
Livery 50.
3 men 75
Sale of H. 19 50
3 Cattle 75
According 1. 00
Return 20
Printing 6. 00, \$98.75.

Northern District of Illinois
 I William H. Bradley Clerk of the Circuit
 Court of the United States for the Northern District
 of Illinois do hereby Certify the foregoing to be a true
 copy of the Judgment, entry in the case wherein
 Francis J. Miller was plaintiff and Samuel B.
 Comeroy and Eleazer L. Comeroy were defendants
 entered of Record, on the fourth day of August term of
 the July Term of said Court for the year A.D. one
 Thousand Eight Hundred and fifty seven, together
 with the Executions issued on said Judgment and
 the Returns thereon made, and endorsed on the
 same, all of which appear from the records of
 Executions now on file in my office I also Certify
 that the July Term of said Court adjourned on the
 Twenty Eighth day of September A.D. one thousand
 eight hundred and fifty seven as appears from said
 records of said Court.

In testimony whereof I have hereunto set
 my hand and affixed the seal of said
 Court at office in Chicago this 9th day
 of September A.D. 1857 and of our Independ-
 ence the 58th year

{Revenue
 stamp
 stamp}

W. H. Bradley Clerk

Clk's fee \$2.50 pd.
 W. H. B.

The, United States Court adjourned the term at which judgments were rendered, on Sept. 28th, 1857.

The above copies were admitted without objection

The Plaintiff further introduced a deed from United States Marshall to Plaintiff for the premises

(Left object to Deed, because they show no assignment or certificate of sale and the recital in Deed is not evidenced by Court. Defendant drew & there except to ruling of the Court.)

I now all men by these Presents that whereas at the July Term of the Circuit Court of the United States of America for the Northern District of Illinois in the year of our Lord one & thousand eight hundred and fifty seven J. Miller by the Consideration and Judgment of said Court did recover a judgment against Samuel B. Pomroy, and Eleazer L. Pomroy for the sum of Ten hundred and Eighty three dollars and four cents and costs of suit and also at the same Term of said Court said J. Miller by the Consideration and Judgment of said Court did recover another judgment against the said Samuel B. Pomroy, and Eleazer L. Pomroy for the sum of Eight hun-

died. and fifty Eight Dollars and cost of suit
 upon which judgment two writs of Alias Quia
 Facias were issued dated on the seventeenth
 day of January. in the year of our Lord. one Thousand
 Eight Hundred. and fifty respectively directed to
 the Marshall of the United States. for the Northern
 District of Illinois to execute in due form of law.
 by virtue of which said executions J. F. R.
 Jones then Marshall of the United States for said
^{district} After the delivery of the same to me. and before
 the return day thereof levied upon the lands
 hereafter described and afterwards sold on
 the Twentieth day of February. in the year of
 our Lord one Thousand Eight Hundred. and
 fifty two at Chicago in the County of Cook
 and at the North door of the Court House in
 said County. and District aforesaid offered the
 said land for sale. at public sale. and public
 Vendue. and the same was struck off. and
 sold. to John Brooks for the sum of Eleven
 Hundred. dollars (\$1100.) he being the highest
 and best bidder thereof the time and place
 of such sale having been by me. just advertised
 according to law. and the said John Brooks
 having duly assigned his certificate of pur-
 chase to Amos Bigelow of Chicago Cook County
 Illinois and Frank D. Miller of Seneca Falls.
 New York,

Now Therefore, Now all men by these presents
 that J. R. Jones, United States Marshall for
 the Northern District of Illinois in consideration
 of the premises before recited and in consideration
 of one Dollar to me in hand paid by the said
 Amory Bigelow and Jacob D. Miller have grant-
 ed, bargained, and sold, and do hereby convey
 to the said Amory Bigelow and Jacob D. Miller
 and their heirs and assigns, the following des-
 cended real estate to-wit: Lot Number Four
 (57) & (6) and Part (7) in Block Number Eighteen
 (18) in Johnson, Adams and Davis addition to Chicago
 County of Cook, and State of Illinois

To Have and to hold the same, and all
 the interest right and title of said Samuel B.
 Pomroy and Eleazer L. Pomroy in and to the same, to
 the said Amory Bigelow and Jacob D. Miller their
 heirs and assigns for ever.

Witness my hand and seal at Chicago in the
 State and Northern District of Illinois this
 Twenty first day of May in the year of
 our Lord one thousand Eight Hundred and
 sixty three

J. R. Jones *Deed*

United States Marshall, of the
 Northern District of Illinois

Intentional Recourse
 of Dollars
 stamp

United States of America }
 Northern District of Illinois } J. Miller and St

Bradley, Clerk of the United States Circuit Court
in and for the District aforesaid do hereby certify
that on the 21st day of May A.D. 1863 J.R. Jones
United States Marshall in and for said District
appeared before me and acknowledged that he executed
and delivered the foregoing deed of conveyance as
such Marshall for the use and purpose therein
set forth, and for none other, he the said J.R. Jones
Marshall being well known to me to be the person
who signed sealed and delivered said deed aforesaid

In Witness Whereof I have hereunto
set my hand and affixed the seal
of the Circuit Court at this
21st day of May A.D. 1863

Seal of
U.S. Circuit
Court

Wm H Bradley Clerk

Dud.

67,234

State of Illinois
Cook County

Recorded May 30. 1863.
in Book 252 ^(copy) Dud. on page

227

Wm L Church Clerk

Plaintiffs next offer a certified copy of deed from Samuel B. Comeroy to Frederick J. Poy for the premises dated February 15th 1859

This Indenture made the fifteenth day of February in the year of our Lord one Thousand Eight Hundred and fifty nine Between Samuel B. Comeroy and Marian Comeroy his wife of Chicago Cook County and State of Illinois part of the first part and Frederick J. Poy of Hagerstown, Washington County and State of Maryland party of the second part. Witnesseth that the said party of the first part for and in consideration of one hundred and fifty two ³⁰/₁₀₀ (\$152.30) dollars in hand paid by the said party of the second part the receipt whereof is hereby acknowledged, and the said party of the second part for ever released and discharged therefrom have granted, bargained, sold, remised, released, conveyed, aliened and confirmed and by these presents do grant bargain sell remise release convey alien and confirm unto the said party of the second part, and to his heirs and assigns for ever all the following described lot piece or parcel of land situate in the County of Cook and State of Illinois and known and described as follows to wit Lot numbered five in Block Eighteen (18) of Johnson, Roberts, and Son Addition to Chicago Together with all and singular the hereditaments and appur-

tenancie, due unto belonging or on any wise apper-
 taining and do reversion, and reversions, remainder
 and remainders, rent, issues, and profits thereof and
 all the estate right title interest claim or demand,
 whatsoever of the said party of the first part, either
 in law or equity of or unto the above bargained
 premises unto the appurtenances ^{above bargained and dependent} to have and to
 hold the said premises, unto the appurtenances
 unto the said party of the second part his heirs
 and assigns forever. And the said Samuel B.
 Pomeroy for himself as party of the first part for
 his heirs Executors and administrators doth covenant
 grant bargain and agree to and unto the said party
 of the second part his heirs and assigns that
 at the time of the enrolling and delivery of these
 presents, he is well seized of the premises above
~~expressed~~ conveyed as of a good true perfect ab-
 solute and indefeasible estate of inheritance in law
 in fee simple, and has good right full power
 and lawful authority to grant bargain sell and
 convey the same, in manner and form aforesaid
 and that the same are free and clear from all pro-
 mises and other grants, bargains sales liens charges
 and incumbrances and in compliance of what is made or shall
 be made and the above bargained premises in the quiet
 and peaceable possession of the said party of
 the second part his heirs and assigns against
 all and every person or persons lawfully claiming

or to claim the whole or any part thereof the
said party of the first part shall and will warrant
and forever defend.

And Witness Whereof the said party of the
first part hereunto set their hands and seals
the day and year first above written.

Sam^l. B. Pomeroy *Seal*
Marion Pomeroy *Seal*

State of Illinois
Cook County
City of Chicago

} ss I Albert C. Oertel a Notary
Public in and for said City
in the County and State aforesaid

do hereby certify that Samuel B. Pomeroy &
Marion Pomeroy his wife personally I'm now
to me as do same persons whose names are subscribed
to the within instrument of writing appeared before me
the day in person and acknowledged that they
signed sealed and delivered the said instrument
of writing as their free and voluntary act for
the use and purposes therein set forth.

And do said Marion Pomeroy wife of the said Samuel
Pomeroy having been by me examined separately
and apart and out of the hearing of her husband
and the contents and meaning of said instrument
of writing having been by me made known to her
acknowledged that she had freely and voluntarily
executed the same and relinquished her dower to
the lands and tenements therein mentioned with-
out compulsion of her said husband and that she

does not wish to retract the same.

Given under my hand, and notarial seal,
this third day of September, in the year of our
Lord one Thousand Eight Hundred, and fifty.

Alburt C. Porter

Not. Pub.

Filed

No. 37411. Filed Sept. 12. 1860

207. 347

Fee. 1 $\frac{25}{100}$ paid

State of Illinois
County of Cook.

I Melian L. Church Clerk
of the Circuit Court and ex officio
Recorder, my and for said County, in the State of
said do hereby certify that the annexed is a true
copy of a certain monument filed in my office on the
12th day of September A.D. 1860. and Recorded in
Book 207 of Deeds on page 347. the parties to the
same being Samuel B. Comeroy, & wife of the first part
and Frederick J. Posey of the second part.

In Witness whereof I have hereunto
set my hand, and affixed the seal of our
said Court at Chicago this 12th day
of September A.D. 1860.

Seal

Internal Revenue
5 cents
Stamp

Melian L. Church Clerk of the
Circuit Court and ex officio Recorder
of Cook County.

This was all the testimony offered by the Plaintiff.

The Defendant to maintain the issue on his part, offered, proved, and read in evidence a contract from Samuel B. Pomeroy to Benjamin J. Luskbaugh, dated Dec. 29th 1856, for the premium in Conhorisy with assignment to Pomeroy September 12th 1857. It is as follows.

Bond for Pled. J. H. Keppel & Co.
Real Estate. Boston Chicago Ill.

Articles of agreement made this twenty ninth day of December in the year of our Lord one Thousand Eight Hundred and fifty six (1856) Between Samuel B. Pomeroy of the City of Chicago County of Cook and State of Illinois of the first part and Benjamin J. Luskbaugh of the County of Washington and State of Maryland of the second part.

Witnesseth The said party of the first part hereby covenants and agrees that if the party of the second part shall first make the payments and perform the covenants hereafter mentioned, on his part to be made and performed, (the prompt performance of which payments and covenants being a condition precedent and time being the essence of said condition) be the said party of the first part will sell and convey to the said party of the second part the premises hereafter described

free, and clear of all incumbrances whatsoever by a good and sufficient Warranty Deed all that Certain Lot and parcel of land situated in the County of Cook and State of Illinois Lot numbered Two (2) in Block Eighteen (18) in Johnston's Addition and shown addition to Chicago, with the privileges and appurtenances thereto belonging.

And the said party of the second part in consideration of the premises hereby agrees to pay to the said party of the first part his or their executor, administrator or assigns at the office of J. H. Keefe & Co in the City of Chicago the sum of Nine hundred and fifty five ³⁰/₁₀₀ (\$955 ³⁰/₁₀₀) dollars in the manner following Two hundred and thirty eight ⁸⁵/₁₀₀ (\$238 ⁸⁵/₁₀₀) Dollars cash in hand paid the receipt whereof is hereby acknowledged, and the Balance as follows. In three (3) equal annual payments from the date hereof with interest at the rate of six per cent per annum payable annually on the whole sum remaining from time to time unpaid and to pay all taxes, assessments or impositions that may be legally levied or imposed upon said land subsequently to the Twenty ninth day of December A.D. 1856. And in case of the failure of ~~the failure~~ of the said party of the second part to make either of the payments or perform any of the covenants on his part hereby made and entered into this contract shall at

the option of the party of the first part be forfeited and determined and the party of the second part shall forfeit all payments made by him on this contract. and such payments shall be retained by the said party of the first part in full satisfaction and in liquidation of all damages by him sustained and he shall have the right to re enter and take possession of the premises aforesaid

It is mutually agreed that all the covenants herein contained shall extend to and be obligatory upon the heirs executors administrators and assigns of the respective parties hereto.

Our Witnesses Whereof The parties to these presents have hereunto set their hands and seals the day and of year first above Written.

Signed sealed and
delivered in presence of

} Sam^l B. Pomroy *Decd*
Benjamin F. Luskbaugh *Decd*

For Value received I hereby sell and assign unto Frederick J. Pay of Washington County Maryland all my right and interest in and to the within described premises situate in the City of Chicago State of Illinois and authorize him upon his making the deferred payments on the same to receive the said due for.

Witness my hand this 12th day of September

1857

Benjamin F. Luskbaugh

The Defendant then introduced Samuel St. Clufoot, who testified as follows.

I had charge of the property. after it was purchased by Lushbaugh & Posey M. Lushbaugh left it for sale. into J. St. Clufoot & Co. and we put a board upon it. Notifying the Public that it was for sale. and to apply to our firm. Can't tell what has become of the Board. I have not got it. Can't produce it. We fenced the whole block for Comery & Wendell for whom we were agents. This was before the sale to Lushbaugh. We built side walk. After Lushbaugh purchased. Lushbaugh & Posey resided at Haguelown Maryland at time of sale to Lushbaugh. and assignment to Posey. I didn't know of assignment until 29th Decemr. 1857 when Posey sent the money to us to make the payment. The Board on the premises notifying the Public that this property was for sale. apply to our firm remained on this property. until after Decemr. 29th 1857. The board was put up very promptly after the sale to Lushbaugh. which sale was made through our firm. The Board was on this lot in question. We had no other lot in the block for sale. The side walk was put in front of the lot in the summer of 1857. The language of the Board was
"For sale by J. St. Clufoot & Co. 48 Calvert St."

Scrap. Examined by Plaintiffs Counsel.

I don't know who put the Brand there. I saw it there during that year frequently before September, 28th 1857. I often went by there. I am sure it was on the Lot. I had sold the south three lots of the Block, before to Geo. W. Dyer for Pomeroy.

Mr. Wendell of Albany owned the property north of the Lot. The fence was around the whole Block, in common. Not subdivided on the line of lots, nothing to distinguish one lot from the other. I am not sure. But there was a fence on the north line of the lot between Wendell & Pomeroy. Pomeroy had put his around his the south half of the Block.

No fence between lots 5, 6, 7 or 8. We put a fence round the whole Block. 18. Mr. Pomeroy owned the whole south half of the Block. I was agent of Pomeroy. I collected rent for him and do still. Pomeroy paid rent on the lease before made.

The side wall was in front of the whole Block. There was no house on the lot at the time of the sale to Lusk, Trench and Pomeroy in 1857.

Direct Examination Resumed.

Pomeroy made the payments on the contract between Pomeroy and Lusk, Trench.

It was admitted on the trial that the defendant holds under Pomeroy.

This was all the testimony in the case.

In as much as the matters and things aforesaid
do not appear of record the said defendant
prays the Court to sign & seal this his Bill
of Reception, which is done.

Joseph E. Gay Seal
Judge of the Superior Court -

State of Illinois }
Cook County } ss.

I Thomas B. Carter Clerk
of the Superior Court of Chicago within and for
the County and State of said. do hereby certify
that the above and foregoing is a true perfect
and complete transcript of all the papers on
file in my office together with all the orders and
judgments made, and entered of record in said
Court in a certain cause lately pending in said
Court on the Common Law side the of wherein
Amory Bigelow and Jacob J. Miller were plain-
tiffs and George Skatelo was defendant

In Witness Whereof I have
hereunto set my hand and af-
fixed the seal of said Court
at the City of Chicago. this
ninth day of April A.D. 1864.

Thomas B. Carter
Clerk



Assignment Error
State of Illinois.

The Supreme Court of Illinois
April Term 1864

George Hatch } Plff in Error
v

Amory Bigelow & } Defs in Error

Joseph J. Miller }

Afterwards to wit, at the said
term of the ^{said} Court, before the Justices thereof, comes the
said George Hatch, by Henry Anthony Galt, his attorney
and says that in the record and proceedings aforesaid, and
also in the rendition of the judgment aforesaid, there is man-
ifest error in this to wit: That the Court received incom-
petent evidence; That the said judgment is
contrary to evidence and contrary to law: That
by the record aforesaid it appears that the judgment aforesaid
in favor aforesaid given, was given for the said Defendants
in Error against the said Plaintiff in Error, whereas by the
laws of the Land, the said judgment ought to have been
given for the said Plaintiff in Error against the said
Defendants in Error. And the said Plaintiff in Error
prays that the judgment aforesaid, for the errors aforesaid, & for
other errors apparent in the record & proceedings aforesaid,
may be reversed, annulled & altogether held for nothing
& that he may be restored to all things which he hath
lost by occasion of the said judgment

Henry Anthony Galt
attop for Plff in Error —

Hatch
v
Bixton et al

Supreme Court of
Illinois
April Term 1864

And the said defendants in error by George Layman & Charles H. Hapgood their attorneys come and say that there is no error in the record and proceedings in the above case and pray that said verdict be affirmed and so be hence determined with their costs and charges in said suit sustained

George Layman
Charles H Hapgood
Attys for Defs in Error

224/Kenny/3/ Anthony & Gold

Hatch
25

Bigelow et al

Record Errors & funds

Kenny Anthony & Gold

Filed April 20. 1864
L. Leland
Clerk

Paid \$10.50
Paid J. B. Carter
Clerk

SUPREME COURT OF ILLINOIS.

APRIL TERM, A.D. 1864.

GEORGE HATCH,
Defendant below, and Appellant,

vs.

AMORY BIGELOW,
and

JOSIAH T. MILLER,
Plaintiffs below, and Appellees.

Appeal from Cook.

BRIEF OF APPELLEES.

I.

The recital in the marshall's deed is sufficient *prima facie* proof of the assignment of the certificate of sale.

Stephenson v. Thompson, 13 Ill. 186.

Wiley v. Bean, 1 Gilman, 302.

II.

The rule requiring proof of payment of the purchase-money by the party claiming against an unrecorded deed, does not apply to judgment creditors. For,

First. The creditor usually has to buy in the land himself, and no money is in fact paid.

Second. Our statute expressly names creditors as well as purchasers, and declares that as to both, the deed shall be void until recorded.

In this instance, however, the marshall's return shows that the money was paid, if any such proof is required.

III.

The possession in this case was not such as the law requires, to be notice of an unrecorded deed.

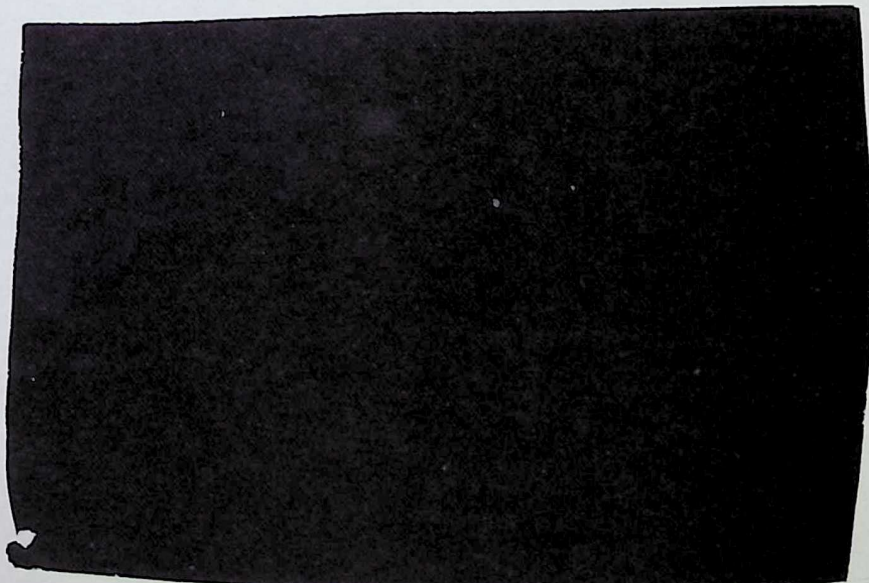
The evidence shows that both parties claim under Pomeroy, the execution debtor; that Pomeroy owned the south half of Block 18, and one Wendall the north half. That Kerfoot built a fence for Pomeroy and Wendall round the whole block. That there might have been a fence between Pomeroy and Wendall. That there was no fence between the lot in question in this suit and the other lots belonging to Pomeroy, and nothing to distinguish one lot from another. That Pomeroy sold the three lots south of Lot 5, to one Dyer. That in December, 1856, he sold this lot to Lushbaugh, and gave him a contract for a deed, and the contract was not recorded.

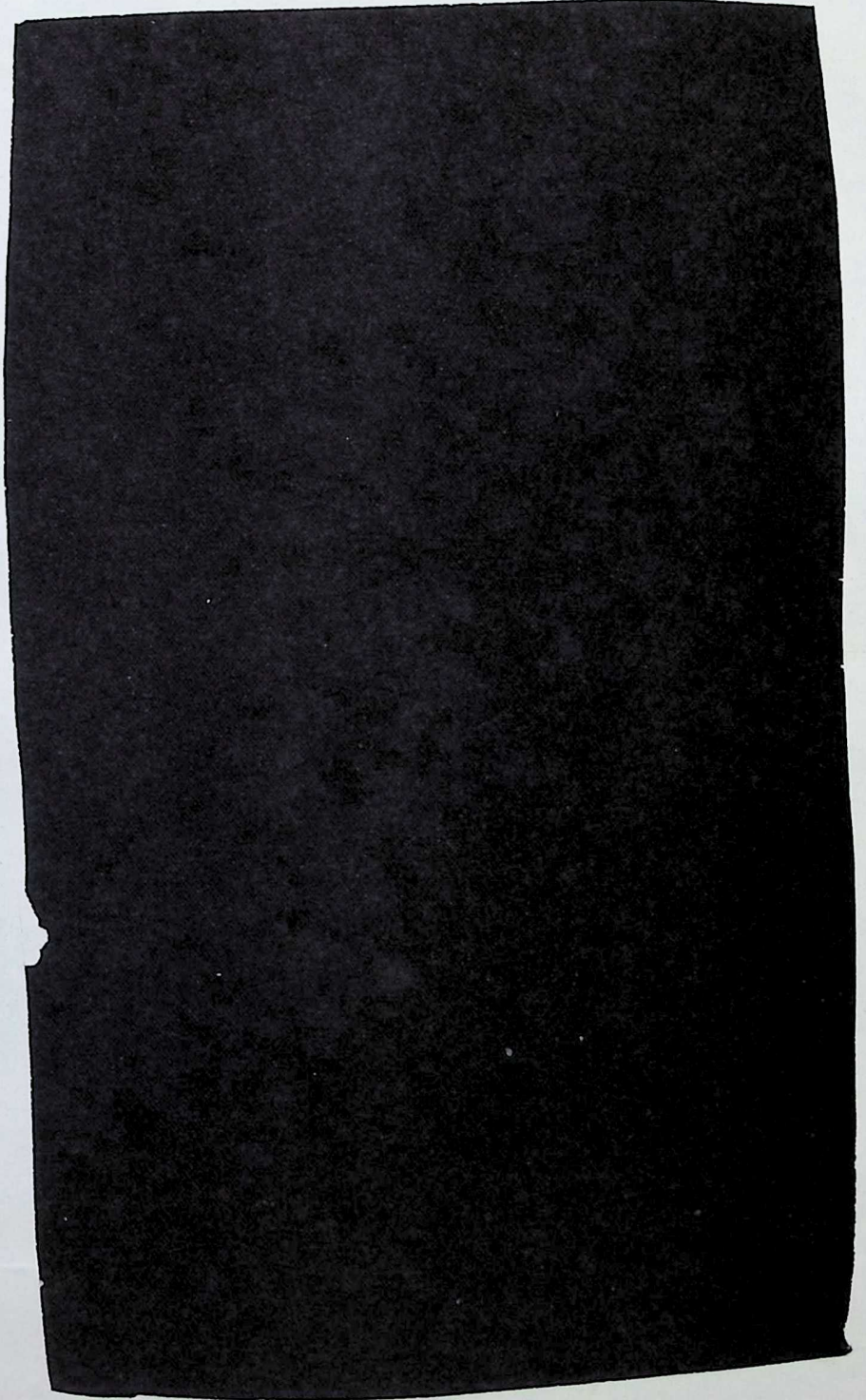
Lushbaugh did not build on the land, or do anything to it, but Kerfoot, acting for all the parties, or all the parties acting conjointly, had a sidewalk built along the whole front of the block, in front of all the lots formerly held by Pomeroy, and in front of all of Wendall's.

Kerfoot, also, as agent for Lushbaugh, put up a board on the fence in front of his lot, saying, "For sale by S. H. Kerfoot & Co., 48 Clark st."

The judgment became a lien on the land September 28, 1857; execution was issued within the year, and returned unsatisfied. An alias was issued in 1862, and the land sold.

There was no building on the land in 1857—the plaintiff's printed abstract which reads 1859, is a mistake. See Record.





Fourth. Because there is no case in the books holding so slight a possession sufficient notice of an unrecorded deed.

Fifth. Because, if this possession is sufficient, our recording laws are made well nigh a nullity.

For fuller citation of the above authorities, and additional illustrations of them, the Court is respectfully referred to the written argument filed by appellees in this case.

GEORGE PAYSON, AND

CHARLES H. HAPGOOD,

Attorneys for Appellees.

NOTE.—The abstract, (pp. 16—31), reads, Certified copies judgments, S. J. Miller, &c. It should read, J. T. Miller, &c.

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Supreme Court
April 1864

Hatch
vs
Bigelow

Defendants Brief

Filed April 21. 1864
J. Leonard CLK