

12080

No.

Supreme Court of Illinois

Phillips.

vs.

Drury, et al.

71641 7

62
John Phillips
vs.
S. R. Drury et al.

62

Superior

12080

1853

Copy of Record

Pleas before the Hon. H. M. Read Judge of the tenth
Judicial Circuit of the State of Illinois sitting in
exchange with Hon. Ira O. Wilkinson Judge of the
seventh Judicial Circuit of the State aforesaid at a
Term of the Circuit Court begun and held
at the Court House in the City and County of
Rock Island and State aforesaid on the second
Monday the ninth day of May A D 1853

Present

Hon H. M. Read Judge &c
A. J. Saunders Sheriff,
Frazier Wilson Clerk.

John Phelps

State of Illinois } Circuit Court on the Chancery
Rock Island County side thereof. of the May
Term AD 1853.

To the Honorable Ira O. McKimmon Judge of
the Sixth Judicial Circuit of the State of Illinois.

Kenneth complaining your orator John
Philips would respectfully represent that
at the October Term of the Circuit Court of the
County of Rock Island, State of Illinois
for the year AD 1850. James Woods, Melman
E. Christy, James C. Christy and Robert R.
Woods, partners under the name and style
of Woods Christy & Co. obtained a judgement
against Stuart D. Smry and Israh Smry
for the sum of three hundred and fifty
eight dollars and ninety cents. besides
their costs. which said judgement is still
of Record in the Clerk's Office of the Circuit
Court of said County, and to which for
greater certainty he prays leave to refer.

Your Orator further represents. That on
the 28th day of November AD 1850. The said
Plaintiffs in said judgement caused an
execution to issue on said judgement from
the Clerk's Office of the said Circuit Court.
directed to the Sheriff of the County of
Rock Island to execute, which said
writ of execution came to the hands of the
Sheriff of said County on said 28th day of
November AD 1850.

Your Orator further represents that by
virtue of said execution the said Sheriff on

2 the 28th day of November AD 1850 levied on the following described property to wit. The undivided five eighths of the north east quarter of Section five. Also the north half of the East half of the north west quarter of Section five. Also the undivided one eighth part of the north west quarter of Section five. Also the south east quarter of Section number six. Also the south east and south west quarters of Section nineteen (19) Also the east half of the north west quarter of Section twenty, and the north ^{East} ~~West~~ quarter of Section thirty. All in Township sixteen North Range five West of the fourth Principal Meridian.

John Arator further represents that on the thirty first day of December AD 1850 by virtue of said writ and in pursuance of said levy. The said Sheriff sold at public Auction in pursuance of Law. and struck off the said above described property. to William E. Chusky one of the Plaintiffs in said judgment. to which execution. levy and return of said Sheriff John Arator for greater certainty proposes to refer.

John Arator further represents that on the said thirty first day of December AD 1850 the said Sheriff made out and delivered to said William E. Chusky or his attorney a certificate of purchase of said sale of said above described real estate. and filed a duplicate of said certificate in the office of the Recorder of the County of Rock Island for Record. which said certificate of

3 purchase is herewith filed and made a part of this bill.

Yours Attorney further represents that on the third day of February AD 1852 the said William S. Christy sold assigned and transferred to your Attorney the said certificate of purchase so made and delivered to him by the Sheriff as aforesaid with all rights under the same: & then & there delivered said certificate of purchase to your Attorney, which said assignment is herewith filed and made a part of this bill.

Yours Attorney further represents that after the expiration of fifteen months, from the time of the said sale by S. S. Enger the Sheriff of said County and after the time of redemption had expired under the laws of this State, your Attorney presented said certificate of purchase, together with the assignment thereof, to Sumner B. Gorton, then Sheriff of said County and predecessor to said Enger & demanded a deed for the property described in said certificate of purchase, and then and there tendered the said Gorton his fees for making and executing said deed and said Gorton Sheriff as aforesaid wholly refused to make and deliver to your Attorney a deed of the above described property, all which matters and things your Attorney well mentions and joins as this Honorable Court may direct.

Yours Attorney further represents that the said above described tracts of Land are held and owned by the said Stuart B. Gury & Sarah Gury in severalty and as follows—

The ^{undivided} 5/8 of the north East quarter of Section five of S. R. Dwyer. The undivided 1/8 of the north East quarter of Section five of Isaac Dwyer. The north half of the East half of north west quarter of Section five of S. R. Dwyer. The south East quarter of Section six of S. R. Dwyer. The South west quarter of Section nineteen (19) of Isaac Dwyer. The South East quarter of Section nineteen of Isaac Dwyer.

The East half of north west quarter of Section twenty of Isaac Dwyer.

The north East quarter of Section thirty of Isaac Dwyer. as well more fully appear by reference to the Records in the Office of the Recorder of said County and the certificates of entry thereof.

Samuel again further represents unto you Honor that on the 19th day of February AD 1852 one Peter ^{Demoff} ~~Danah~~ obtained a judgment before a Justice of the peace of said County against Stuart R and Isaac Dwyer for the sum of seventy dollars and thirty five cents. that said judgment was obtained by confession of said defendants on a promissory note made by said S. R. and Isaac Dwyer to said ^{Demoff} ~~Danah~~ for the sum of seventy dollars. and dated February 10th 1852 as by reference to the transcript and papers accompanying the same will more fully appear.

Samuel again further represents that on the 12th day of March AD 1852 an execution

5- was duly issued by said Justice of the Peace on said judgment and placed in the hands of a constable of said County to execute, and on said 12th day of March 1852 the said execution was returned by said constable unsatisfied as by reference to said execution will more fully appear.

Sam Arator further represents that on said 12th day of March 1852 the said ~~Sam~~^{Samuel} obtained a transcript of said judgment from said Justice and caused the same to be filed in the office of the clerk of the Circuit Court of the County of Rock Island which said transcript was so filed by J. Wilson Clerk of said Court on the 17th day of March 1852 as by reference to said transcript will more fully appear.

Sam Arator further represents that on said 17th day of March A.D. 1852 an execution was duly issued on said judgment by the clerk of the Circuit Court of the County of Rock Island directed to the Sheriff of said County to execute, and on said 17th day of March the said sheriff made a levy by virtue of said execution on the property herein before described.

Sam Arator further represents that the said ~~Sam~~^{Samuel} claiming to be a judgment creditor of the said J. R. and Isaiah Smiley by virtue of the judgment before mentioned and claiming the right to redeem the said property from the sale on the Woods. Chas. H. Co. execution paid or pretends to have paid into the hands of the Sheriff of said County the sum

6 of from hundred and twenty seven dollars and fifty cents. as the redemption money from said sale, - and the Sheriff of said County executed and delivered a certificate of redemption in the same.

Ym Arator further represents that in pursuance of said writ of execution the said Sheriff did expose to sale, and did sell the said above described property, to Peter ~~Danahy~~^{Danahy} for the amount of redemption money, and interest and nothing made to apply on the writ, as by reference to said writ will more fully appear.

Ym Arator further represents that the time for the redemption of said lands by the said S.B. and Sarah Dury, from the sale on the Woods County Co execution expired on the 30th day of December AD 1857 and the said S.B. Dury or the said Sarah Dury, did not redeem the same or make application so to do.

Ym Arator further represents and charges the truth to be that the said judgment so confessed by the said S.B. and Sarah Dury, to Peter ~~Danahy~~^{Danahy} before the said justice was fraudulent and made and obtained by collusion between the said Danahys and ~~Danahy~~^{Danahy}, for the sole purpose of creating a judgment creditor by whom they could effect a redemption of their lands, and thereby defraud Ym Arator of his just rights in the premises.

Ym Arator further represents and charges the truth to be that at the expiration of the

7 Year after, the sale under the Proved Chief of
execution the said ~~Sam~~^{Samuel} was not a judgment
creditor of the said Smys - and that as between
your orator and the said ~~Sam~~^{Samuel} the title
to said lands had become absolute in
your orator, and respectfully insists that said
title could only be defeated by a judgment
creditor existing at the time of the expiration
of the year allowed the judgment debtor to
redeem.

Your orator further represents that said
Peter ~~Sam~~^{Samuel} is a brother-in-law of said
S. W. Smys. ~~Isaac Smys~~ and son-in-law to
said Isaac Smys, and that they combined
and confederated together to defraud your
orator in the premises, and to defeat his
title to said lands so purchased as aforesaid.

Your orator further represents that at
the time and long before and after the
issuing of the execution by the justice of the
Peace on the judgment of the said ~~Sam~~^{Samuel}
against the said Smys, the said Smys ~~each~~
had sufficient personal property not exempt
from execution out of which the said amount
pretended to be due on said execution might
have been made, that the ownership and
possession of said personal property of
said Smys was notorious, and was well known
both to the said ~~Sam~~^{Samuel} and the constable who
had said execution. That the return of "no
property" in said execution was obtained
by collusion between the said Smys, the
said ~~Sam~~^{Samuel} and the said constable, for the
purpose of defrauding your orator.

8
Your Agent further shews unto your Honor
that at the November Term of the Rock-
Island Circuit Court. 1851 one S. B.
Ingraham for the use of Clarissa Philips obtained
a judgment against S. B. Ingh, Elias Ingh,
Eli Ingh and Henry Reese for the sum
of ninety five dollars and five cents.
as by reference to the Records of said
Court will more fully appear.

Your Agent further represents that the
said Peter ~~Semich~~^{Semich} pretends to be the
assignee of said judgment and as such
assignee caused an execution to issue
on said judgment from the Clerk's office
of the Circuit Court of the County of Rock
Island directed to the Sheriff of said
County to execute. That by virtue of said
execution the said Sheriff levied on the
property herein before described, and charged
to be the property in severalty of S. B. Ingh &
Isaiah Ingh.

Your Agent further represents that by
virtue of said execution and the levy thereon
the said Sheriff on the 24th day of April 1852
proposed to sale and did sell the said above
described property and struck off the same
to the said Peter ~~Semich~~^{Semich} as a judgment
creditor for the sum of four hundred
and thirty one dollars and seventy eight
cents, being the amount of redemption
money and interest as by reference to said
execution and the return thereon will
more fully appear.

9
Your Orator further represents that by virtue of said judgment and the assignment thereof, the said Peter ~~Demp~~^{Demp} claimed to be a judgment creditor, of S. R. Sny. Isaac Sny, Silas Sny, Eli Sny and Henry Reese, and claimed the right to redeem the said real estate, sold on the execution of Woods Christy and Co. and against C. R. and Isaac Sny from said sale, and your orator respectfully insists that the said Peter ~~Demp~~^{Demp} by virtue of said judgment and assignment thereof was not a judgment creditor of Isaac Sny, and had no right under the laws of the land to redeem the lands of Isaac Sny from under the said sale of Woods Christy & Co. and thereby defraud your orator in the premises.

Your orator further represents that by the records in the Recorder's office of the County of Rock Island it appears that redemptions have been made as above set forth. that the Sheriff's certificate of redemption is there recorded to which certificate he prays to refer for greater certainty, that the certificate there recorded is the only evidence to him of the said property having been redeemed, that the redemption money on said lands, has never been paid or tendered to your orator or to any person for him.

Your orator further represents that on the first day of October 1852 the said Peter ~~Demp~~^{Demp} conveyed all of said above described property to Eli Sny. and your orator charges

10 That said conveyance was made without any good and valuable consideration that the same is fraudulent and made with intent to defraud your orator in the premises: and your orator charges that the said Eli Dury, at and before accepting said conveyance had notice of the rights and equities of your orator in & to said lands.

Your orator further represents that on the eighth day of November 1852 the said Eli Dury conveyed all of said above described property to Samuel Andrews: and your orator charges that said conveyance was made without any good and valuable consideration that the same is fraudulent and made with intent to defraud your orator in the premises. And your orator charges that the said Samuel Andrews, at the time, and before accepting said conveyance had notice of the rights and equities of your orator in & to said lands.

In consideration of the premises, and in as much as your orator can only here adequate relief in a Court of Chancery where matters of this kind are properly returnable and cognizable, your orator prays that the said Peter ^{Semmes} ~~Semmes~~ Stuart B Dury, Isaac Dury, Elias Dury, Eli Dury, Henry Reese and Samuel Andrews, may be made defendants in this suit, and that they may be required, full true, direct and perfect answers to make to all and singular the allegations, charges & representations in said bill contained (the answer of all defendants except Samuel Andrews and Peter ^{Semmes} ~~Semmes~~ under oath being hereby expressly waived)

and particularly that the said Peter ^{Samuel} ~~Samuel~~ answered
what the consideration was for which the note
was given on which he obtained the judgment
against S.R. and Isaac Sny. why and for
what purpose said judgment was obtained
at the particular time that it was. whether the
same was not obtained by collusion with
said S.R. and Isaac Sny or one of them
and whether the said judgment was not
obtained at the particular time for the purpose
and object of creating a judgment creditor &
for the purpose of redeeming the lands of S.R.
and Isaac Sny from a sheriff's sale made
on an execution against them in favor of
Hoods Christy &c. Whether the said Isaac
Sny or S.R. Sny or both had not sufficient
personal property liable to execution out of
which the amount due by said judgment
could have been made. Whether the said
execution issued by the justice on said judgment
was not returned by the constable unsatisfied
by your direction. or by collusion between you
& said constable and the said Snys. &
what the consideration was for the conveyance
of said lands to Eli Sny and whether
said consideration was not fictitious. and
whether the lands when ~~sold~~ by him. were
held in his own right and for his own
use and benefit. or whether they were in
trust for some other person or persons. &
if so. who. and who furnished the money
with which to make the redemption. and
whether the same was furnished on your

credit. or on some other persons credit
And if so. whose?

And that said Eli Sny may particularly
answer what consideration was paid by
him to Peter ~~Sny~~^{Sennep} for said lands. whether
the consideration was real or fictitious. and
whether he held the same in his own
right. and for his own use and benefit
or whether in trust for some other person. or
persons. and if for other persons. whom? and
what consideration was paid to him by
Samuel Andrews for said lands and whether
said consideration was real or fictitious

And that said Samuel Andrews may
particularly answer. what consideration he
paid to Eli Sny. for said lands. and
whether. the consideration was paid to Eli
Sny. or to some other person or persons. and
if to other persons whom? whether the consideration
paid was considered the full value of the lands
and whether he holds said lands absolute in
his own right or in trust either expressed
or understood. for some other person or
persons. and if for other persons whom. whether
the consideration was real or fictitious. and
whether at the time. and before the accepting
the deed of said lands from Eli Sny he
did not know that complainant in this bill
had a claim on said lands of a legal ~~and~~
equitable character. and whether he was nor
frequently consulted by the parties or some
of them in effecting a redemption of said lands.

And that upon the hearing of this cause
your Honor will order and decree that the

13 Sheriff's sales made on the two judgments of said Peter ~~Sam~~^{demops} be set aside and declared null and void. That the certificate of redemption made by the Sheriff on the redemption of said property from the sale on the execution of Woods Chusey & Co. be set aside and for nothing held.

That the deed made by the Sheriff to said ~~Sam~~^{demops} be declared null and void. That the deed from Peter ~~Sam~~^{demops} to Eli Iny be set aside, and for nothing held; and that the deed from the said Eli Iny to Samuel Andrews be set aside and declared null and void - and that your Honor will grant such other & further relief in the premises as is consistent with equity and good conscience, and as to your Honor may seem meet, and as in duty bound your Obedt will ever pray &c

Will your Honor grant the writ of Summons directed &c. Commending &c.

Knox & Iny

Sollicitors for Compt.

John Phelps

On the back of said bill are the following endorsements "20." "John Phelps vs S R Iny Isaac Iny Eli Iny and others." "Bill in Chancery."

"Filed March 7th 1853."

"Frazar Wilson Recd."

Copy of Power of Attorney

Know all men by these Presents That I, William I. Schuyt of the City and County of Saint Louis State of Missouri, have made constituted and appointed and by these presents do make constitute and appoint Robert Wilkinson my true and lawful Attorney for me and in my name under seal or otherwise to assign transfer, and set over to John Philips of Rock Island County Illinois a certain Sheriffs Certificate of purchase executed by St. Louis Sheriff of Rock Island County to me dated the 31st day of December AD 1830 so as to fully and absolutely transfer all my right and interest in said certificate and the lands therein mentioned to said John Philips and Sheriff ratify and confirm any transfer and assignment of said certificate heretofore made to said John Philips by my said attorney and particularly ratify and confirm a transfer of said certificate made by my said Attorney to said John Philips and dated the third day of February AD 1832.

Provided that I, William I. Schuyt am in no case to be held or considered in any wise responsible for, or on account of the, said certificate, or for the redemption or payment thereof: nor to be held or bound for any cost thereon or in any wise connected therewith, but the costs, as also the risks and losses, if any to be borne by the said Philips his Executors, Administrators or assigns.

^{said} Sheriff ratifying and confirming what my Attorney may do, or may have done in the premises Within my hand and seal this first day of November eighteen hundred and fifty two.

William I. Schuyt {Seal}

State of Missouri
 County of St Louis Sp. Be. It Reminded that on the
 first day of May 1852 before the
 undersigned clerk of the St Louis County Court
 came William Schust who is personally known
 to me to be the same person whose name
 is subscribed to the foregoing instrument of
 writing as a party thereto, and he acknowledged the
 same to be his act and deed for the purposes therein men-
 tioned And I further certify that the foregoing deed is
 executed and acknowledged in due form of law
 according to the Statutes of the State of Missouri
 Given under my hand and seal of said
 Court at office in St Louis the date last of aforesaid
 Louis J. Gay Clerk.

Upon the back of which Power of Attorney is the
 following endorsement
 "William Schust. Power of Attorney to Robert
 Wilkinson"

Copy of Demurrer

John Philips
as
Peter Sumner
Stuart R Sumner
Isaac Sumner
Silas Sumner
Eli Sumner
Henry Russell
and Andrews

(Of the May Term of the
Rock Island Circuit Court
AD 1853

In Chancery

These defendants by protestation
not confessing all or any, or any of the
matters and things in the said Complainant's
Bill contained to be true, in such manner
and form as the same are therein set forth,
and alleged do demur to the said bill herein
filed, and for cause of demurrer show that
the said Complainant has not by his said bill
made such a case as entitles him in a Court
of equity to any discovery from these defendants
respecting or any of them, or any relief against them
or any of them, as to the matters and things con-
tained in their said bill, of Complaint, and
that any discovery which can be made by these
defendants or any of them touching the matters
complained of in said bill, or any of them
cannot be of any aid to the said Complainant
for any of the purposes for which discovery is
sought against them by said bill, nor
entitle the said Complainant to any relief in
this Court touching any of the matters therein
complained of - wherefore and for divers other
good causes of demurrer appearing on the said bill.

18 These Defts. do demur thereto: and they pray
the Judgement of this Hon Court whether
they shall be compelled any further and other
answer to the said bill, and they humbly pray to
be dismissed from hence with their
reasonable costs. in this behalf sustained

By
Beardsley & Andrews
their Solicitors

Forinded
Knox & Sampson
for Compt.

Upon the back of said Demurer there are the
following endorsements.

"Demurer." "John Philips vs Peter Sampson
and others." "In Chancery."
"Filed May 6th 1853." "Frazee Wilson Clerk."

(copy of Appeal Bond)

We know all men by these presents that we
John Phelps and Charles H. Case of the County
of Rock Island State of Illinois are held and
firmly bound unto Stuart B. Ingham. Siles
Ingham Isaac Ingham. Eli Ingham Peter Demos Henry
Reese, Samuel Andrews in the penal sum of
one hundred dollars to the payment of which
wee and truly to be made. we bind our-
selves jointly and severally ~~for~~ these presents
our and each of our heirs. executors. admin-
istrators and assigns. by these presents.

Witness our hands and seals this 34th day of
May A.D. 1853

May 1853
Whereas at the May Term of the Circuit Court A.D. 1853 on the Chancery side thereof a judgment or decree was entered against the said John Philips for costs and also for a dismissal of his bill in a cause pending on the Chancery side of said Court in which the said John Philips was complainant and the said Stuart R. Inmy, Silas Inmy, Asaiah Inmy, Eli Inmy, Peter Schorr, Henry Reese and Samuel Andrews were respondents and whereas the said John Philips prayed and obtained an appeal from the order and decree in said case made

Now the condition of this Obligation is such that
if the said John Philips shall well and faithfully
pursue his said appeal. & in case the said judgment
and decree is affirmed shall pay whatever judg-
ment, costs, interests & damages may be decreed against him then
this obligation to be void. And were in freed
Filed and approved of this 25th day of } John Philips
May A.D. 1858 } J. W. M. Clerk } Charles H. Case



On the back of said bond are the following
endorsements.

Filed May 35th 1853

J. Wilson Clerk

Copy of Decree

John Phillips

S.B. Inny Isaac Inny
Eli Inny & Peter Somoff

Bill to set aside sale certificate
and conveyances

This day came the parties by their Solicitors and defendants by their Solicitors file their demurrer to complainant's Bill and this cause coming on to be heard on said demurrer and the Court having heard the arguments of Solicitors and being fully satisfied in the premises sustain the said demurrer.

It is therefore ordered by the Court that complainant's bill be, and the same is hereby dismissed and that defendants have and recover of and from the the plaintiff their costs in this suit expended, and that they have execution therefor.

Whereupon complainant by his Solicitor pays an appeal to the Supreme Court which is granted by the Court upon condition that plaintiff enter into bond in the sum of one hundred dollars with such security as the clerk of this Court may approve within ten days from this date.

State of Illinois }
Rock Island County }
John Phillips

S.B. Inny Isaac Inny
Eli Inny & Peter Somoff

Bill to set aside sale &c
In Chancery.

I hereby certify that the foregoing is a true and correct copy of all the orders and papers in the above entitled cause except the certificate of purchase made and delivered to Wm. J. Chubb

on the 31st day of December 1850 and the
assignment of the same to John Phillips which
~~where~~ said certificate and assignment have been
misplaced and cannot be found among the
files

Given under my hand and seal of said
Circuit Court at office this 1st day of June
A.D. 1853
Frazar Wilson
Clerk,

John Phillips }
vs } Appeal from Rock Island
Peter Demopp }
Hiram R. Drury }
Hiram Drury }
Silas Drury }
Eli Drury }
Henry Reese }
Samuel Andrews }

And Now Comes the said
Plaintiff in Error and says that in
the Record & proceedings aforesaid and
in the Rendition of the decree aforesaid
there is manifest error in this to wit

The Circuit Court Erred in sustaining
the Demurrer to, and in dismissing
the Complainant's bill in said court

For this & other errors in
said Record he prays that said decree
may be reversed
June 17th 1853
Prayer for R/W

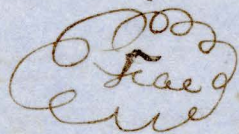
John Phillips
S. R. Drury stat.
Records

Filled June 14. 1853.
J. Ireland Clk.

State of Illinois }
Rock Island County } }
The People of the State of }
Illinois, To the Sheriff of said }
County - Greeting.

We command you, that of the goods and chattels
lands and tenements of Stuart R. Lamy and
Isaiah Lamy, ^{in your county} you make a cause to be made
the sum of three hundred and fifty eight dollars
and ninety cents, which on the 30th day of October
1850, James Woods, William T. Christy, James
L. Christy and Robert K. Woods, partners under
the name of Woods, Christy and Co recovered
in the circuit Court of said County, against
the said Stuart R. Lamy and Isaiah Lamy
with legal interest thereon from ^{said} date until
paid; and also the further sum of nine dollars
and eighty cents, which were adjudged to the
said James Woods, Wm T. Christy, James L.
Christy and Robert K Woods, Partners ~~and~~
by said Court for their costs, ^{charges} in that behalf
expended; whereof the said Stuart R. Lamy and
Isaiah Lamy are convicted, as appearing of
Record; and that you have the said sum of
money and interest and costs at the clerks
office of our said Court, at Rock Island
within ninety days from the date hereof, and
have you then and there, this writ.

Witness Frazer Wilson Clerk of
our said Court at Rock Island, this 28th
day of November 1850. the seal of the said
Court being hereto affixed.


Frazer Wilson

Frazer Wilson Clerk

~~Filed~~ this 28th day of Dec 1850.

~~Judge~~ ~~John~~ ~~Clark~~

on the back of said writ, was the following sheriff
levy & Return -

'By virtue of this writ, I have this 28th day of
November A D 1850, levied upon the following
described property To Wit: The undivided $\frac{5}{8}$ of
the North East quarter Sec (5) also the North
half of the East half of the North East quarter
Section (5) also the undivided $\frac{1}{8}$ pt of the
North East quarter Section (5), also the South
East quarter Section No Six (6) also the
South East and South West quarters of Section
No (18) also the East half of the North
West quarter Section No (20) And the
North East quarter Section No (30), all of the
foregoing described lands lying and being in
Township No 16 North Range No (3) West of the
1st principal Meridian, in Rock Island County
Illinois.

S. S. Guyer Sheriff of
Rock Island Co Ills -

Return hereto attached this 31 day Dec 1850.

X X X

By virtue of this writ and in pursuance of
the above levy I have advertised the property
described in said levy for sale at public
vendue by posting up notices at three of the
most public places in Rock Island County
State of Illinois, for more than twenty days
previous to the day of sale, and afterwards
To Wit, on the 30th day of December A D 1850
in pursuance of said notices at the door of

the Court house in said County, between the
hour of Nine O'clock A. M. and the setting
of the sun of said day, I proceeded to offer
said property at public sale, offering each
tract of land separately and no person offered
any bid for either of said tracts of land.
I therefore, put up the whole of said tracts
of land together at public auction and the
same was then and there sold and struck
off to William J. Christy, by J. A. Wilkinson
attorney, one of the plaintiffs as and for the sum
of three hundred and eighty dollars and forty
seven cents (\$380.47) debt and costs, he
being the highest and best bidder therefor.

I therefor return this writ and the accompanying
fee bill satisfied by sale of s^d property to
plff this 31st day of December A D 1850

S. S. Guyer

Sheriff of Rock Island Co Ills

Rec^d of S. S. Guyer, certificate of purchase
for land purchased by Wm J. Christy on the
foregoing execution Dec^r 30 - 1850.

J. A. Wilkinson atty in plff

on the foregoing execution were the following
endorsements.

This execution came into my hands about
4 o'clock on the 28th day of November A D
1850

S. S. Guyer

Sheriff R. I. Co Ills -

Filed this 31st day of Dec^r A D 1850.

J. Wilson Clerk

No. 1 James Woods, William Y Christy
 James B. ~~Christy~~ and Robert K. Woods, partners
 under the name of Woods, Christie & Co. vs
 Stewart R. Lamy and Isaiah Lamy
 Li La - Damages \$ 358.90 Plff Costs
 7.81. Defts - 20. Laming, 3.0 Advertising, 25
 2 Certificates, 50 Return, 10 Commission, 8.51 -
 \$ 376.76 - Interest 3.71 - \$ 380.47 -

See Bill
 James Woods Wm Y Christy } Rock Island
 James B. Christy, and Robert } County Circuit Court
 K. Woods partners and co vs } 4th Oct^r Term 1850
 Stewart R. Lamy, Isaiah } Judgment against
 Lamy and Wm A Lamy } Stewart R. Lamy
 and Isaiah Lamy two

of the defendants - for Damages & Costs

Bill of Costs -
 Plaintiffs Costs -
 Clerks Fees - Docketing, suit, 10. Out Plff appearance, 10 each, 50
 Issuing summons 35 filing 4 papers 20 — , 55
 order that plff recover damages 20 order that } , 60
 Clerk assess damages 20, assessing same }
 Order for execution 20 Issuing execution 40 , 60
 Out to Sheriff Return 10 filing same 5 , 15
 Out to Judgment 25 Out to satisfaction of same 15 40
 Making & ent^y bill of costs 30 30
 Certificate & Seal 35 35
 \$ 3.45 -

Sheriffs Fees (Gwyer) Serving & Returning summons 4.35
 \$ 7.80

Defendants Costs -

Clerks Fees - Out to default. 20 — , 20 -

State of Illinois }
Rock Island County }^{ss} I Frazer Wilson Clerk
of the Circuit Court in & for said County,
do hereby certify that the foregoing are true &
faithful copies of the writ of Habeas Corpus, & Sheriff's
Return together with the endorsements on the
same, on file in my office, and also of the fee
bill accompanying the same, on file in my office -
^{Int. of the Sheriff's Return, & the Constitution}
& also that the same, ~~as a part~~ of the Record in
a certain Chancery suit now pending in the
Supreme Court of said State at Ottawa, in
said State - wherein John Phillips is complainant,
and J. R. Lundy, Isaac Lundy, ^{John Lundy} Eli Lundy, ~~Peter~~ Peter
Lundy, Henry Reed, & Samuel Andrews
are defendants -

Given under my hand and seal of said Court
at office in the city of Rock Island this 4th day
of July A.D. 1858 -

Frazer Wilson Clerk

State of Illinois.
Rock Island County $\frac{1}{2}$ ss

The People of the State of Illinois
To the Sheriff of said County, Greeting.

I Frazer Wilson Clerk of the Circuit
Court of said County, do hereby certify, that
the foregoing is a correct transcript from my
fee book of the costs and charges taxed
against the Plaintiffs in the foregoing case
and included in Li. Pa. of this date against
the defendants, ^{and also of the costs taxed against the defendants} which the Sheriff of Rock
Island County is directed to collect of the
said defendants. In Testimony whereof
I have hereunto set my hand and affixed
the seal of said Court at office in the city
of Rock Island this twenty eighth day of
November A D 1850.



Frazer Wilson Clerk

on the above fee bill were the following
endorsements, To Wit:

This fee bill came into my hands about 4
o'clock on the 28th day of November 1850 -

S. S. Snyder Sheriff R. I. Co Mo

I - Return this fee bill satisfied by sale of
property to one of the plaintiffs and as per
Receipt herewith annexed this 31. day of
December 1850 -

S. S. Snyder S. R. I. Co Mo

M^r - James Woods, William J. Christy, James
C. Christy and Robert K. Woods partners under
the name of Woods, Christie and Co, vs,
Stuart R. Lamy and Sarah Lamy - fee bill -
Filed this 31st day of Dec^r 1850 -

F. Wilson Clerk

Vice Court of Rock Island County Illinois

I, J. S. Geyer Sheriff of said Rock Island County
^{in its state of Illinois}
do hereby certify that by virtue of an Execution &
Fieri Bill issued from said court, to me directed,
and returned dated the 28th day of November
A.D. 1850 by which I was commanded to make
of the goods ~~and~~ chattels lands and tenements
of Stuart R. Dury and Isaiah Dury the sum
of three hundred and fifty eight dollars and
ninety cents damages and eight dollars costs
of suit which sum James Wood, William
D. Christy, James C. Christy and Robert H.
Woods partners under the name and firm
of Woods, Christy & Co. lately recovered against
the said Stuart R. Dury and Isaiah Dury
in said court and by which I was directed
to collect interest on the above amount
from the 30th day of October A.D. 1850. all
of which will more fully appear by reference
to said writ, I have after having duly ad-
vertised the time and place of the sale
according to law, sold and struck off at
public vendue according to the Statute in
such cases made and provided to Milhaire
D. Christy (by J. C. Wilkinson attorney) the following
described real estate, to wit - the undivided $\frac{1}{8}$ of the
North East quarter of Section No five, also the North
half of the East Half of the North West quarter
Section No five, also the undivided $\frac{1}{8}$ part of
the North East quarter Section No five also the
South East quarter Section No Six, Also the
South West quarter Section No nineteen, also
the South East quarter Section No nineteen
also the east half of the North West quarter

Section No Twenty and the North East quarter
Section No thirty all of said above described
lands lying and being in Township No Sixteen
North range five West of the 4th principal
meridian in Rock Island County Illinois
and said sale will become absolute at the
expiration of fifteen months from this date
at which time the said William T. Christy or
his assigns will be entitled to a deed
unless said lands shall be redeemed ^{from him} according
to law, Given under my hand and seal
this 31st day of December A. D. 1850

J. S. Guyer ~~Shiff~~
Shiff of Rock Island County Ill.

Know all men by these presents that I William T. Christy (the purch-
aser named in the foregoing certificate of purchase,) for and in con-
sideration of the full amount of the purchase money by me bid for
the lands in said certificate described, ^{to me paid by John Phillips} do hereby sell assign transfer
and set over unto the said John Phillips his heirs and assigns
all my right title and interest at law and in equity of in & to
the said certificate of purchase, and all singular the lands
and real estate in said certificate described, with full
power & authority to the said John Phillips either in my name
or his own, and ^{at} his own proper costs and charges, to take &
use all lawful & proper measures, for obtaining & securing all
singular the rights to which ~~he is entitled~~ ^{he is entitled} as a owner under the
virtue of the said purchase certificate in any manner whatever,
but without any accrue in any manner on me.

Witness my hand & seal this ~~third~~ day of February
AD 1852.

William T. Christy ~~Real~~
By P. McMillon, His Attorney

State of Illinois
Rock Island County } S. Frazer Wilson Clerk of
the Circuit Court of said county do certify
that the foregoing is a true copy of the
certificate of purchase made by the Sheriff
of Rock Island County at a Sale of the land
therein mentioned, made by virtue of an execution
in favor of Woods, Christy & Co against Deakin
& S. R. Drury which appears on file in my
office.

Witness my hand and the seal of
Said Court at Rock Island this
24th day of June A.D. 1853

Frazer Wilson Clerk
By Quincy McNeil dpy

State of Illinois
Rock Island County } S. Frazer Wilson Clerk of the Circuit
Court do certify that I have made diligent search in
and about my office, for the certificate and assign-
ment mentioned and described in S. W. Drury's
affidavit and ~~have not~~ cannot find the
same; that it was on file amongst the papers
but that it is lost and I know not where
it is. Witness my hand ~~and~~ and seal of
Said Court this 24th day of June
1853.

Frazer Wilson Clerk
By Quincy McNeil dpy

State of Illinois
Rock Island County ss: I W Denny
Judge of said County do hereby certify that
the defendant of John Phillips
vs. pro and A. cannot to be
filed the Bill in Chancery
in his favor against I W
Denny Isaac Denny and
others. That with the said
Bill he filed the original
decrees certificate of sale
to William J. Christy, with
an assignment, on the back
of said certificate from
said William J. Christy to
John Phillips - That to
the best of his recollection the
aforesaid certificate & assignment
is a true copy of the same.
That he does not know
where said original certificate
& assignment filed with the
Bill now is.

I W Denny

Subscribed and sworn
to before me this 24th day of June A.D. 1883

In Witness whereof I hereunto set
my hand and affix my seal
of said court this 24th day June 1883

Frederic Wilson clerk
By Quincy Westfall dpy

⁶²
Phillips
Jury et al.
App. & part
of Remo.

Filed July 5. 1859.
Holland & Co.

John Phillips
vs

Peter Demoss
Stewart R. Drury
Isaiah Drury
Silas Drury
Eli Drury
Henry Reese
Samuel Andrews

Supreme Court
May Term 1853

Appeal from Rock Island

Points

1. Peter Demoss was not a Judgment Creditor
Within the Statute Entitled to Redeem —

Because

The title to the land as to the Defendants
in the original Judgment was divested; before
Demoss acquired his Judgment.

No Right of Redemption was left in the
said Defendants, Isaiah Stewart, R. Drury at the
time said Judgment was Rendered

Revised Statutes - P. 302. Sec. 14

Q. no. A Judgment Creditor can not redeem
unless he has a lien upon the lands of the
Judgment debtor —

After his the Judgment debtors Right of
Redemption is gone — no lien upon the land
can attach in consequence of a Judgment
against him.

3. Said Judgment was fraudulent & void &
of course no Redemption can be made under it.
This is positively asserted in the bill; and ad-
mitted by the Defendant.

See *Supra* in *Ward v. Corwen*. 518

Van Rensselaer v. Sheriff Albany Co. 1. *Corwen* 507.

4th

Stewart could not under the Judgment in favor
of Clarissa Phillips ~~was~~ of Stewart, R. Drury
Chas. Drury Eli Drury Henry Reese; Redeem
the lands of Isaiah Drury

He was not a Judgment Creditor of
Isaiah Drury. Had no Judgment against him.
nor any lien whatever on his lands —

John Phillips

M

John Almon's letters

Prints

John Phillips } In Supreme Court
 vs
 Peter Hemmop } June Term A.D. 1853
 & others }

It is stipulated in this
 cause that the Return on the Execution
 in favor of Christy & Co vs Stewart &
 Army & others mentioned in Complaints,
 will shew that the lands sold on
 said Execution were sold en masse
 July 5th 1853

M. P. P. P. atty
 Julius Manning, depts atty.

John Phillips } In Supreme Court
 vs
 Peter Hemmop } June term 1853.
 & others }

If the Decree of the Circuit
 Court in this case is affirmed
 upon the ground only that the lands
 sold on Execution in favor of Christy & Co vs
 Stewart & Army & others, were sold en masse
 and it turns out that they were not so sold
 on Examination of the Executions then the Decree
 shall be reversed & Cause remanded by consent
 July 5th 1853

Julius Manning atty for deft.
 M. P. P. P. Corp. Solicitor

62.

Phillips vs. Drury & Co.
St. Phelps.

Filed July 5th 1853,
L. Deland Clk.
By J. H. Deland & Co.

62.

Phillips vs. Drury & Co.

Filed July 5th 1853,
L. Deland Clk.
By J. H. Deland & Co.

John Phillips } Appraiser from Rock
Island -

Peter Demoss }
Stuart R Drury }
Isaiah Drury }
Vilas Drury }
Eli Drury } Abstract of Bill
Henry Reese } Filed May Term
Lemuel Andrews } 1853.

Complainant States.
That - at Oct. Term 1850, R. J. C. Woods
of Christy Co. obtained judgment against
Stewart R Drury and Isaiah Drury
for \$350.90 & costs.

Execution issued on same to Sheriff
R. J. C. Nov. 28, 1850 - Same day Sheriff
levied on the following property -

Und. $\frac{5}{8}$ NE $\frac{1}{4}$ Sec. 5
also the NE $\frac{1}{2}$ E $\frac{1}{2}$ NW $\frac{1}{4}$ Sec. 5. }
" " Und. $\frac{1}{8}$ NE $\frac{1}{4}$ " " }
also SE $\frac{1}{4}$ " 6. } 16. N. 5. W. 4th P. 11.
" SE $\frac{1}{4}$ & SW $\frac{1}{4}$ " 19. }
" E $\frac{1}{2}$ NW $\frac{1}{4}$ " 20. }
NE $\frac{1}{4}$ " 30. }

On 31. Dec. 1850 Sheriff sold property to
William T. Christy - Refers to Execution &
Sheriff's return -

31. Dec. 1850 Sheriff made to Christy - Certificate
of purchase - & filed Duplicate in Recorder's
Office - Certificate filed & made part of

Compt's Bill -

3. February 1852. Christy assigned Certificate of purchase to Complainant.

After expiration 15 months Compt. presented to Sheriff Certificate Purchase & demanded a deed which said Sheriff refused to execute.

Lands held in severally by Stuart R and Isaac Drury as follows -

Isaiah owned Stuart R. owned

Wm. 1/8 NE 1/4 Sec. 5.	{ 16. N. 5 W. }	Wm. 1/8 NE 1/4 Sec. 5.	{ 16. N. 5 W. }
SW 1/4 " 19.		N 1/2 E 1/2 NW 1/4 " 5.	
SE 1/4 " 19.		SE 1/4 " 6.	
E 1/2 NW 1/4 " 20.			
NE 1/4 " 30.			

On the 19th February A.D. 1852 Peter Demop obtained a judgment before a Justice vs. Stuart R and Isaac Drury for \$90.35 - Judgt. by confession on note for \$90.00 dated February 10, 1852.

Execution issued by Justice 12th March 1852. Delivered to constable - Returned nulla - Demop filed transcript - 17th March 1852 - 17th March 1852 execution issued on said judgment to Shff. R. J. C. Shff. lived on property before described - Demop pretending to be judgt. creditor & claiming right to redeem from Wood Christy H's sale - Paid or pretended to pay into Sheriff's hands \$427.50 as redemption money from said sale.

Shff. executed & delivered certificate of
redemption on same.

No redemption by Sarah or Stewart
R. Drury from Sale of Woods
Christy & Co. That the judgt. confessed
by Drury to Demoss was fraudulent
& made & obtained by collusion between
the said Drury & Demoss for the
sole purpose of creating a judgt. creditor
by whom they could effect a redemption
of their lands & thereby defraud Complainant
of his just rights -

Demoss was not a judgt. creditor
at the expiration of the year - and as
between him & Compt. the title had
become absolute in Compt.

Peter Demoss brother in law
of S. R. Drury & son in law to Sarah
Drury - & combined ~~at~~ confederated
to defraud complainant & defeat
his title to said lands.

Drury had abundance of personal
property out of which preferred judgment
might have been made - ownership
notorious - well known to Demoss & the
constable who had the execution - Return
of "no property" made by collusion
between Drury, Demoss & constable to
defraud complainant -

That at Nov. Term R.I.C.C. 1857. Sd.
Guyer vs (Clarissa Phillips) obtained
judgt. ss. Stuart R Drury Elias Drury
Eli Drury & Henry Reese for \$95.05.

Peter Demoss pretends to be assignee
of said judgment - Caused execution to
issue on the same & levied on
property before described - Shff. on
24th Apr. 1852 sold said property to
Peter Demoss as a judgment creditor
for \$431,78 being amount
redemption money & interest.

Refers to execution & return -

Compt. in lists that under this judgt.
Demoss was not a judgt. creditor
of Isaiah Drury & had no
right to redeem his lands under
said judgment from the sale under
Woods Christy &c.

Certificate of redemption recorded in
Recorder's Office - Refers to -
redemption money never paid or
tendered to him or any person for him.

On 1st Oct. 1852 Peter Demoss conveyed
all the lands to Eli Drury - made
without consideration & with
design to defraud complainant.

8th Nov. 1852, Eli Drury conveyed to
Lemuel Andrews - no consideration -
fraudulent re - & Andrews had
notice of Compt's rights & equities.

Prayer -

That Sheriff's sales may be set aside -
made under the Demoss & Gungre
judgts. - Certificates of redemption &
sold to Demoss may be set aside
also deed from Demoss to Drury
& Drury to Andrews be set aside
& Genl. Relief -

Bill filed March 7th 1853,
Exhibits -

Assignment Christy to Phillips - 1st Nov, 1852.

Certificate of purchase to Christy -
31 Dec. 1850.

Demurrer to bill filed May 6, 1853.
Sustained & bill dismissed.

Errors assigned -

That Circuit Court erred in
sustaining the demurrer to
Complete Bill -

Purple

1 Cam 501

2 .. 578

Manning

1 Comen 443

210000-257

Purple

62. Phillips
John W. Stacy
& Stuart - R. D. May

Abstract

Filed June 20, 1853.

John Phillips
Drum et al

Several tracts of land were struck off
on maps as appears by the bill - the execution
being referred to but not copied

Lands listed on
Und. $\frac{1}{8}$ N.E. 5
N $\frac{1}{2}$ of E $\frac{1}{2}$ of N.W. 5

Und. $\frac{1}{8}$ N.E. 5

S.E. 6

S.E. 19

S.W. 19

E $\frac{1}{2}$ N.W. 20

N.E. 30

all 16 N. 5 W 4th P.M.

Alleges these lands were owned by J.R. & Isaiah Drum thus:

Stuart R. Drum

Und. $\frac{1}{8}$ N.E. 5

N $\frac{1}{2}$ of E $\frac{1}{2}$ N.W. 5

S.E. 6

Isaiah Drum

Und. $\frac{1}{8}$ N.E. 5

S.W. 19

S.E. 19

E $\frac{1}{2}$ N.W. 20

N.E. 30 - Sale 31st Dec. 1850

That on 19 Feb. 1852 Peter Demers obtained
Judgt. against J.R. & Isaiah Drum for \$70.35
on a note date Feb. 10. 1852 by Confession
March 12. 52 exⁿ ipso returned no property
found - Transcript filed March 17. 52

On same day exⁿ paid to the sheriff and
levy made on the same lands - Demop as
judgt. creditor paid to sheriff \$427.50. and
sheriff gave certificate of redemption (the amt
of just sale not being stated this must be
taken to be the proper amt. of redemption
money) That the land was then sold
to Demop.

Charges that the judgment by con-
fession was fraudulent and made and obtained
for the sole purpose of creating a judgment
creditor to redeem the lands

That Demop was not a judgment
creditor at the expiration of the year.

That at the time of the Constable's
return the deft in that exⁿ had sufficient per-
sonal property not exempt from execution
out of which the amt. could be made, that
this was known to Demop & Constable & that
the return of "no property" was obtained
by collusion between Drums, Demop and
the Constable to defraud the Compt.

That Clarissa Phillips obtained a judgt.
against J. R. Drum, Silas Drum, Oli Drum
& Henry Reese, of which Demop pretends
to be the assignee (~~It~~ it is not denied that he is)
That Demop took out execution on it -

The date of exⁿ is not given nor time of
levy, but that on 24th Apl. 52 sheriff sold to
Peter Demop as judgment creditor for \$431.78 the
amt. of redemption money - Comptl. insists
that under this judgt. Demop had no right
to redeem the lands of Isaiah Drum

That the certif. of redemption is the only evidence that the land have been redeemed, and that the redemption money has never been tendered to him -

That Demoff conveyed to Eli Drury with Notice - That Eli Drury conveyed to Lemuel Andrews with notice. Yets to set aside the redemption, and compel a deed from Shff.

Brief.

1. It is admitted that the sale was made in mass -

Then the court can see that the complt. does not come in with clean hands

The court cannot sustain the bill - because the decree could not avail the complainant his own sale is not good

2. The judgt before the justice is good for the redemption -

1. It is not necessary the judgment should be a lien, *Chandler v. Swartz*

11 Ills. 445. All that is necessary is a valid execution

2. The redemption is good altho the judgment was confessed for the express purpose of enabling the creditor to redeem 1 Cow. 443. 501

- 2 Cow. 520.

There is no fraud in the consideration alleged

7 cont? - and asks to defeat this object of the law, because the creditor might have sacrificed other property.

Vid Stat. 323. § 57. as to transcripts

3. But the redemption is good under the assigned judgment - an assignee may redeem - *Chandler v. Sawyer*. 11 Ill. 448.

2. It is objected that only S.B. Drury's land could be redeemed - but we answer

1 The sale was en masse - the Comptt. or his assignors, had voluntarily put themselves in a condition where their whole sale had to be redeemed from in order to reach our rights.

We were compelled to redeem from the whole sale - they now say altho' we had done this, you ought to lose your right of redemption on account of our wrong.

2. If we got nothing by our purchase of Isaiah Drury's land that doesn't affect them - it is our business.

It is their fault that we were compelled to redeem from their sale, and if they have nothing left, that is their business.

3 Confusion of goods - same here -

4. Altho as a matter of fact
the lands might have been owned in severalty
the bill does not show but what they
were sold as the property of J. R. Drury

5. But the lands were sold jointly
as if they were the joint property of
the two - if so the creditors of one
must recover all

Phillips

14

Drury et al

Drury

Manning

62-1853

12080