

No. 13323

# Supreme Court of Illinois

Johnson

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vs.

Wright et al

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# ILLINOIS SUPREME COURT.

## THIRD DIVISION.

APRIL TERM, A. D. 1859.

WILLIAM S. JOHNSTON,

vs.

JOHN S. WRIGHT and  
TIMOTHY WRIGHT.

*Error to Cook Circuit Court.*

RECORD.

### ABSTRACT OF RECORD.

1 Johnston, on May 12, 1853, filed his bill against the defendants, for a specific  
2 performance of a contract of purchase of lot 1, N. E  $\frac{1}{4}$  of 12, 39, 13, at \$1,975,  
3 with John, made at *auction* by R., auctioneer, October 19, 1852, with printed condi-  
4 tions of sale signed by John S. Wright, the terms of which Johnston offered to comply  
5 with, upon Wright's making a good, clear title, in terms of the sale, (see printed bill  
6 at page 15.) After sale, discovered a trust deed of \$1,500, on that and on other  
7 lots, unpaid, and judgments unpaid, which John said he would remove in a few days.  
8 Johnston waited several days—not done—and he left the city, but leaving his money  
9 and notes to be handed to Wright on the title being made clear. Wright was noti-  
10 fied by the agent of this. He renewed his promise to clear the title. He went to  
11 Europe without doing it.

12 In November, 1842, agent offered to pay over to Timothy, agent of John S., if he  
13 would clear the title; he agreed to do it, but did not. Johnston offered to pay the  
14 whole, and get a deed, on freeing the title. On return of John, the agent, May 11,  
15 1853, tendered John the whole amount of the purchase money and interest, \$2,000;  
16 he fraudulently refused to receive it. That before John's return, Tim. made a deed  
17 to himself of the lot, as John's attorney, without value paid; deed fraudulent and  
18 void. Plaintiff still ready, &c., to pay, and offers to pay on getting deed, &c. Prays  
19 for relief, &c.

20 Defendants jointly answer—admit lot was put up at auction by B., and that a  
21 *parol* sale was made by B. to plaintiff, but it was not legal and binding; rely on  
22 statute of frauds.

23 Admit title was not clear. That H. agreed to receive his money, if plaintiff  
24 would complete the purchase and pay the whole amount of purchase. Agent preferred  
25 the credit, and would abide his election; but changed and shuffled so defendants could  
26 not decide which terms he would take; could not get papers made, &c. Admits he  
27 represented title indisputable, but not clear; that judgment of F. was *paid before*  
28 *sale*; G.'s was a *lien*. Has risen in value; he had other estates; plaintiff would not  
29 complete sale, or offer, till it had risen in value; then wanted to enforce it. Denies  
30 seeing notes. Admits John went to Europe, and returned as stated. Plaintiff would  
31 not complete purchase, and acted in *bad faith*; for agent said W. could not Peter  
32 Funk him, and put property on to him; that John S. Wright would have completed  
33 sale, though not legally bound. Left it to Tim., with full power to act; Tim. made  
34 efforts to close trade, but could not, even by demanding it, *unless title was first made*  
35 *clear*; refused to apply the money to clear the title; Tim. would not pay up trust  
36 deed unless plaintiff would take the lot. Never offered to pay unless title *clear*.



RECORD. Tim. filled up deed to himself; denies there was no consideration. Tim. admits notice  
44-47 of plaintiff's claim, but denies he knew he was ready to fulfil. John made Tim. deed  
for the land. Admits plaintiff wanted to pay.

58-59 Proof by agent—W. S. J. proves John's promise to clear the title; did not do  
it; he made W. the *tender*; plaintiff left money and notes for W., with power to  
60-62 close trade on removing *liens*. Tim. said he would close it, but did not nor would  
65 not do so; witness told him money was ready; would pay it when title made  
66-69 straight. Tim. offered bond and demanded the money, but would not clear the title.  
79-82 Tim. said he would sell it. The bid was a fair price. Tim. tendered bond in Dec.,  
1852; lot advanced 50 per cent.; refused bond because title not clear.

83-84 Proof by *Quimby*—Proves the sale, and book of sales gives copy; proves exhibit  
A; printed conditions of sales; all as stated in bill; note of sale *signed by Russell*,  
*agent* for Wright; see copy in record at the end.

106 *Defendant's Evidence*—Hoffman proves W. had arranged with him; made like  
110 with Tim. Trust deed was paid in December, 1852. D.'s judgment paid.

118 Ed. W. saw Tim. tender bond to plaintiff's agent; price raised 25 per cent.;  
121 Hoffman not paid to May '53 or fall '52. Tim. advanced money for John and took  
26 deed; trust deed related to lot one only. *Bill dismissed.*

Error assigned is:

That the decree dismissing the bill is erroneous, and in every member, branch  
and part thereof, and should have been for specific performance, as prayed in bill.

#### I. POINT.

Sale at auction of land is good, when note thereof is signed by auctioneer, giving  
terms of sale. See *Doty's case*, 15 *Ills.* 410 in point.

#### II. POINT.

Neglect to fix the time of payment does not avoid the contract for uncertainty.  
*Doyle vs. Leas*, 4 *Scam.* 257. The mode of payment may be *proved by parol*. *Id.*

#### III. POINT.

*Laches*, as to, &c. 2 Story Equity, secs. 779, 780.

B. S. MORRIS,  
*For Defendants.*



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Johnston vs. Wright

Abstract

Filed May 3, 1859  
L. Leland  
Clerk.

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