

No. 14542

Supreme Court of Illinois

Bliss

vs.

Clark

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No.

201

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

Bliss
Clark

1454

+

United States of America
State of Illinois

McHenry County *vs.* Pleas before the Hon.
J. D. Murphy Judge of
the thirteenth Judicial Circuit of the State of
Illinois and Presiding Judge of the McHenry
County Circuit Court at a Circuit Court
begun and held at the Court House in Woodstock
in said County on Monday the 28th day of
March in the year of our Lord one thousand
eight hundred and sixty four

Present Hon J. D. Murphy Judge
Amos P. Low States attorney
J. H. Church Sheriff
clerk
C. A. Russell clerk

and heretofore to wit on the 19th day of
December was filed in the office of the
Clerk of the Circuit Court of said County
a Declaration in Ejectment which is
in words and figures as follows to wit:

State of Illinois } McHenry County Circuit Court
McHenry County *vs.* of the December Term
A.D. 1863

George Bliss Plaintiff in this
Suit by Smith Hart & Clyde his attorneys
complains of Samuel Clark Defendant
in this suit in a plea of Ejectment. He
that whereas the said Plaintiff on the first
day of January in the year one thousand
eight hundred and sixty three was possessed

George Bligh Esq
Samuel Clark Esq
Circuit Court of McHenry Co

I do hereby enter myself security for costs and acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action, either to the opposite party or to any of the officers of this Court in pursuance of the laws of this State. Dated this 29th day of November 1865.
(Endorsed) filed Dec 19. 1865 CH Rydell Clerk.

2) of the following Real Estate and premises

Situate in the County of McHenry in the State of Illinois and being known and described as follows to wit: Parts of Lots five and six in Block number two (2) commencing at the Northwest corner of Lot five thence South east One hundred & thirty two feet to the South corner of Lot six (6) thence Northely to the North West line of Lot five Seventeen feet north of beginning thence South West Seventeen feet to the place of beginning being a triangular piece on the back end of said lots five and six. Also Lots nine (9) ten (10) eleven (11) and twelve (12) in said Block two all in Prussys addition to the village of Lawrence which said premises are of the value of twenty five hundred Dollars which said premises the said Plaintiff claims in fee: and he the said Plaintiff being so possessed thereof, the said Defendants after & comes to wit on the Second day of January in said last mentioned year, entered into said premises and ejected the said plaintiff therefrom and unlawfully withheld from said Plaintiff the possession thereof to the damage of said Plaintiff of three thousand Dollars and therefore he bring suit &c

Smith Hart & Clyde attorneys at law.
(Endorsed as follows)
To Samuel Clark *

Take notice that a Declaration of which this is a Copy will be filed with the

3 with the Clerk of the Circuit Court of McHenry County Illinois at his Office at Woodstock on the 21st day of December eighteen hundred and fifty three and that upon filing the same a rule will be entered requiring you to appear and plead to such declaration within twenty days after the entry of such rule and if you neglect so to appear and plead a judgment by default will be entered against you, and the plaintiff in said declaration will recover possession of the premises

Dated at Woodstock this 28th day of November 1863.

Smith Hart & Clyde
Plaintiff's Attorney

State of Illinois } ss.
McHenry County } Benj. F. Church Sheriff
of said County being duly sworn on oath says that on the 2^d day of December, 1863 he served the within Declaration and notice on Samuel E. Clark by leaving a copy thereof with him and that at the time of the service thereof the premises described in the Declaration were in the possession and occupancy of said Clark.

Benjamin F. Church
Sworn and Subscribed to
before me this 19th day of
December 1863..

Justices C. H. Russell clerk
(Endorsed) Attest Dec. 19. 1863. C. H. Russell clerk

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And thereafter to wit on the 2^d day of April
A.D. 1864 was filed a Plea in said cause
which is in words and figures as follows
to wit;

State of Illinois } Circuit Court for
McHenry County } McHenry County

George Bliss }
vs } Exponents

Samuel Clark } and the said
Defendant by Church &

Kerr his attorneys comes and defends the
wrong and injury whereof. and says that
he is not guilty of unlawfully withholding
the said premises claimed by said Plaintiff
in manner and form as alleged in said
Declaration and of this he puts himself
upon the country &c.

(Church & Kerr
And the said Plaintiffs atty. for Deft.
Oath the like by

E. S. Smith his atty.

(Indorsed) Filed Apr. 7. 1864 C. H. Russell clerk

And on same day the following further
proceedings were had in said cause in said
Court and entered of Record to wit;

George Bliss }
vs } Exponents

Samuel Clark } and now
comes the Plaintiff

5 by Smith his attorney and the Defendant by New, and issue being joined, by agreement submit this cause to the Court for trial without the intervention of a jury. And the Court being fully advised, having heard the evidence and arguments of Counsel, finds the Defendant not guilty. It is therefore ordered and considered that the Defendant have and recover of the Plaintiff his costs and charges about his suit in this behalf expended and that he have execution therefor.

State of Illinois } Circuit Court McKnary
McKnoy County } County
George Dicks } of the March Term 1884

vs
Samuel Clark }

Bill of Exceptions

Be it remembered that on the trial of this cause at the March Term A.D. 1884 of the said Circuit Court to wit on the second day of April 1884 the said Plaintiff to maintain the issue on his part gave in evidence to the Court (a jury having been waived by the parties) a certain Stipulation signed by the Attorneys for the parties which Stipulation had been made and signed setting out the facts in the case to be used as evidence on the part of the Plaintiff and also on the part of the Defendant which is as follows to wit:

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State of Illinois
McHenry County Cir Ct.

George Bliss
v
Samuel Clark } Ejectment

March Term 1874

It is hereby agreed and stipulated by and between the parties in this Suit that the following statement of facts and copies of papers shall be given in Evidence in this Suit for the purposes of this trial the facts being as stated

It is stipulated by the parties that the proofs on the part of the Plaintiff is as follows.

1. The common Source of title is Edward P. Conklin who was on the 2^d day of December 1857 seized in fee of the property described in the Plaintiffs declaration filed in this suit.
2. That on the 2^d day of December 1857 the Plaintiff George Bliss and others recovered a Judgement against said Edward P. Conklin in the McHenry County Circuit Court for the Sum of \$46.11 that soon thereafter and within one year an Execution was issued on said Judgement to the Sheriff of McHenry County in which County the land described in the declaration is situated and afterwards said writ of Execution was returned to the Clerk of said Court wholly unsatisfied for the

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the want of property

3^d. That on the Six day of July 1867 an alias Execution was issued upon said judgment and the lots and property described in the Declaration were by the Sheriff levied upon and on the thirty first day of July 1867 the Sheriff made Sale of said land and the same were purchased by the Plaintiff and a deed given by the Sheriff a copy of said deed is hereto attached and made a part of testimony in the case Vol. 38 of deeds P. 118.

4th. That before the levy and sale of said property on the execution in favor against of said George Whipple and others said Edward D. Conklin had left the property and left the State with his family and taken up his residence in the State of Iowa where he has ever since resided

By the Defendant

1. That on the 2^d. day of December 1857 said Edward D. Conklin was a married man having a wife and family and then resided on the property in the house then as the homestead of himself and family and occupied the house as his Homestead and had done so for sometime prior to that date and that said Homestead was worth less than \$1000.-

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2. That on the 20th. day of October 1860 Ira D. Whipple recovered judgement against said Edward P. Conklin in the McHenry County Circuit Court for \$810. and on the 10th. day of December 1860 and execution was issued on said judgement and delivered to the Sheriff of McHenry County and on the same day the Sheriff levied upon the property described in the declaration and on the same day said Conklin and Ann E. his wife executed and delivered a release and waiver of their homestead right in the property and the same was sold by the Sheriff and a deed given to the plaintiff in Execution, a copy of which Deed is hereto annexed and made a part of this Stipulation and that at the time date of said release & sale Conklin & family were occupying in said Homestead

3. That afterwards said Whipple gave a deed to the Defendant in this suit for the same property a copy of which Deed is hereto attached and made a part of this Stipulation and evidence in this suit and that said Defendant Clark was in possession of the property at the time this suit was commenced

It is agreed that neither debt in question was contracted for the purchase price of said property nor any part thereof nor for improvements or repairs upon the property described in the declaration in this suit and that both debts were contracted after July 4. 1851

This Stipulation is made to present the facts in the case on which the suit is to be

Submitted to the Court without a Jury
Woodstock April 1. 1884

The object and intention of this Supplication is to present the facts of the case as to whether the Judgement of Oliver Lathrop becomes a lien upon the property in question described in the declaration so that the Debtor as owner of the Homestead could not release the same to be sold upon a subsequent Judgement and thereby defeat the first Judgement.

C. S. Smith

Atty. for Plff.

Church & Reed

Atty. for Deft.

The Said Plaintiff to further maintain the issue on his part gave in evidence a deed from P. H. Church as Sheriff of McKenry County to the Plaintiff which Deed acknowledgement and recording is as follows:

To all to whom these presents shall come, We the undersigned George Ship, Charles J. Langdon, Elisha McLean and Levi D. Warner did on the Second day of December in Vacation of the Circuit Court for the County of McKenry in the State of Illinois in the year of our Lord one thousand eight hundred and fifty seven record a Judgement against Rutgers Digby and Edward P. Conklin for the Sum of Seven hundred fifty seven and ⁸⁸/₁₀₀ Dollars and costs of Suit upon which Judgement an Execution was issued dated the Sixth day of July in the year of our Lord One thousand eight hundred and fifty one

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directed to the Sheriff of McHenry County
aforesaid to execute by virtue of said execution
Lewis Ellsworth then Sheriff on the Ninth
day of July in the year of our Lord one thousand
eight hundred and fifty one levied upon the
lands hereinafter described and the same were
struck off and sold to George Phelps on the
thirty first day of July in the year of our Lord
one thousand eight hundred and fifty one for the
sum of five hundred two and ⁷⁰/₁₀₀ Dollars he
being the highest and best bidder therefor
and the time and place of the sale thereof
having been duly advertised according to
Law

Now therefore Know all men by these
presents that I Benjamin A. Church
Sheriff of said ^{the} County of McHenry and State of
Illinois and Successor in Office to the Said
Lewis Ellsworth late Sheriff as aforesaid
in consideration of the premises have granted
conveyed and sold and do hereby convey to
the Said George Phelps his heirs and assigns
the following described tract piece or parcel
of land Situate lying and being in the County
of McHenry and State of Illinois to wit:
Parts of Lots five (5) and six (6) in Block two
2^d commencing at the North west corner
of Lot (5) five Thence South east one hundred
and thirty two (132) feet to the South corner
of Lot (6) six. Thence North to the North
West line of lot five (5) Seventeen (17) feet with
north of beginning Thence South West
Seventeen (17) feet to the place of beginning

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being a triangular piece on the back end of
lot 5 & 61 five and six. Also lots nine (9) ten
(10) eleven (11) twelve (12) in said Block two (2)
all of the above in Preps addition to the
village of Lawrence

To have and to hold the said described
premises with all the appurtenances thereto
belonging to the said George Bliss his heirs
and assigns forever

Witness my hand and Seal this
fifteenth day of December in the year of our
Lord one thousand eight hundred and fifty
two

Benjamin F. Finckh ^{Seal}
Shriff of McHenry County in the
State of Illinois

State of Illinois

McHenry County

Jp. J. H. Russell Clerk of the
Circuit Court in and for
the County of McHenry in the State of Illinois
that B. F. Finckh Sheriff of McHenry County, Illinois
who is personally known to me to be the real
person whose name is subscribed to the annexed
Deed appeared before me this day in person
and acknowledged that he executed and delivered
the said Deed as such Sheriff of said County
freely and voluntarily for the uses and
purposes therein set forth. Given under my
hand and the Seal of said Court at my
office in Woodstock in said County this
15th day of December in the year of our
Lord One thousand eight hundred and fifty two

J. H. Russell clerk

(Es. dorsed.) State of Illinois McHenry County

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ss. Filed Dec 15, 1882 at 12 m. & Recorded in Vol
28 of Deeds on Page 118
C. A. Russell Recorder &c

The Defendant to maintain the issue on his part gave in evidence to the Court the same stipulations so much thereof as related to be by the Defendant and herein before copied into this bill of Exception and defendant also gave in evidence to the Court a Deed from the Sheriff of McHenry County to Ira D. Whipple which Deed is as follows and also a release and waiver signed by Edward P. Conklin and wife which release and waiver is as follows and also a Deed from Ira D. Whipple to the Defendant which deed is as follows.

Whereas Ira D. Whipple did at the October Term of the McHenry County Circuit Court in the State of Illinois recover a judgement against Edward P. Conklin for the sum of eight hundred and two dolls and costs of suit Now therefore this Indenture Witnesseth that the said Edward P. Conklin and Anna E. Conklin his wife in consideration of the said judgement and the sum of one Dollar to them ^{voluntarily} paid by the said Ira D. Whipple do hereby convey and release to the said Ira D. Whipple their right of Homestead exemption under and by virtue of an act of the Legislature of the State of Illinois

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approved February 11 A.D. 1857 And also an Act to amend said act approved February 17th A.D. 1857 in and to following described premises, to wit Lots (9) nine, ten (10) eleven (11) and twelve (12) in Block two (2) in Benjamin Passig's addition to the village of Lawrence in the County of McHenry and State of Illinois excepting a triangular piece on the back side of Lots nine and ten as follows: Commencing at the east corner of Lot nine on Pearl Street running South west Seventeen feet thence on a straight line to the North corner of Lot ten thence to the east corner of Lot two together with a part of lot five and six commencing at a point sixteen feet from the north corner of Lot twelve thence on a straight line to the North corner of Lot ten thence to the North corner of Lot twelve thence to the place of beginning and authorize him to cause the same to be sold by the Sheriff of McHenry County upon an Execution to be issued upon said judgment

Edward P. Conklin Seal

Ann E. Conklin Seal

State of Illinois
McHenry County J. Asa H. Smith Notary
Public in and for the County
and State aforesaid hereby certify that Edward
P. Conklin and Ann E. Conklin his wife
known to me to be the same persons whose
names are signed to the foregoing instrument
appeared before me this day and acknowledged
the execution thereof to be their free act and deed

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for the uses and purposes therein set forth. and
the said Anne E. Conklin wife of the said Edward
D. Conklin having been by me Examined separately
and apart and out of hearing of her said
husband and the contents and meaning of the
said writing having been by me made known
and fully explained to her acknowledged that
she executed the Same voluntarily and freely
and of her own accord and relinquished her
dower and waived and relinquished her right
of Homestead in the Lands therein described
without the compulsion of her husband and
that she does not wish to retract the Same

Given under my hand and seal
this 10th day of December A.D.
1860. Wm. H. Smith J.P.

(Indented) filed for Record Jan'y 12 1861 at 9 am.
Recorded Book 26 Sec'd 9.39
C. A. Russell clerk

W.D. }
Jas D. Whipple }
D. }
Samuel Clark }

This Indenture made
this twentieth day of
October in the year of
Our Lord Our Lord one thousand eight hundred
and sixty two Between Jas D. Whipple and
Debbie Whipple his wife his wife of Port Edward
Washington Co. State of New York party of the
first part and Samuel Clark of Lawrence M.
Kerry Co. State of Illinois of the Second part
Witnesseth That the said party of the first
part for and in consideration of Two Hundred

15 Dollars in hand paid by the said party of the Second part forever released and discharged therefrom have granted bargained sold remised released aliened and confirmed and by these presents do grant bargain sell remise release alien and confirm unto the said party of the Second part his heirs and assigns forever all the following described lots of pieces or parcels of land Situate ~~and~~ in the County of McKHenry and State of Illinois to wit In Pursue addition of the village of Lawrence Lots No. (9) nine (10) ten (11) eleven and (12) twelve ~~thence~~ ~~to~~ according to the Survey of Charles Tyler of the village of Lawrence

Together with all and singular the husbandments and appurtenances thereto belonging or in any wise appertaining and the reversion and reversions remainder and remainders unto issue and profits thereof and all the estate right title interest claim and demand whatsoever of the said party of the first part either in law or Equity of in and to the above bargained premises with the husbandments and appurtenances. To Have and to Hold the said premises above bargained and described with the appurtenances unto the said party of the Second part his heirs and assigns forever And the said Jas D. Whipple party of the first part for his heirs executors and administrators do covenant grant bargain and agree to and with the said party of the Second part his heirs and assigns that at the time of the sealing and delivering of these presents he is well seized

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of the premises above conveyed as of a good
 and perfect absolute and indefeasible estate of
 inheritance in the 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
 former and other grants, bargains sales
 liens taxes assessments and incumbrances of
 what kind and nature soever 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 with warrant
 and force defend

In Witness whereof the said party
 of the first part hereunto set their hands and
 seals the day and year first above written
 Signed Sealed and delivered
 in presence of

Isa D. Whipple Seal
 Isabel Whipple Seal

James C. Thompson }
 J. D. Watt as to Isabel }
 State of Illinois }
 McHenry County } ss.

I James C. Thompson Notary
 Public in and for said

County in the State aforesaid
 do hereby certify that Isa D. Whipple
 who is personally known to me as the real person
 whose name is subscribed to the above Deed
 appeared before me this day in person and
 acknowledged that he executed and delivered

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the Said Deed as his free and voluntary act
for the uses and purposes therein set forth
Given under my hand and official seal
this twentieth day of October in the
year of Our Lord one thousand eight hundred
and Eighty two

James A. Thompson Notary Public
State of New York

County of Washington } On this 4th day of
December 1882 before me
personally came the within named Isabel Whipple
wife of Jas D Whipple within named, to me
personally known to be the person Isabel Whipple
described and who executed the within Deed. And the
said Isabel having been by me examined separately
and apart from the said Jas D Whipple her husband
and she acknowledged that she executed the said
Deed freely and voluntarily and without any
compulsion of her said husband and relinquished
her dower to said land and does not wish to
retract the same. In Witness whereof I
have hereunto set my hand and seal this 4th
day of December A.D. 1882

A Dallas Hart

(Seal) Notary Public
Endorsed filed March 18. 1883. at 11 am Recd. P. T. L. S. P. Co.

Here also was introduced a deed of the
same from Sheriff of McHenry County
to Jas D Whipple executed in proper form.

The foregoing being all the evidence offered
by either of the parties on the trial of the
Cause the Counsel for the Plaintiff did then

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then on behalf of said Plaintiff insist before
 said Court that the Said matters and things
 so produced and given in evidence on the part
 of the Said Plaintiff as aforesaid were sufficient
 and ought to be allowed as decisive evidence to
 entitle the Said Plaintiff to a finding in his
 favor on the said issue between him and the said
 Defendant so joined as aforesaid. And the Said
 Counsel for the Said Plaintiff did then & there
 pray the Said Court to admit and allow said
 matters so produced and given in evidence
 for the Said Plaintiff to be conclusive in
 favor of said Plaintiff. Said Counsel claiming
 as matter of law the judgement in favor of
 said plaintiff and others was a lien upon
 the property described in said Declaration
 and the Sale made by the Sheriff on execution
 upon said judgement and conveyance to said
 Plaintiff did give to the Plaintiff a prior
 and absolute title in fee and that the same
 was paramount to the title of said Defendant
 and upon the law and the evidence in the case
 the Plaintiff was entitled to a finding and
 judgement in his favor. But to this the
 Counsel for the Defendant did then and there
 object and insist before said Court that the
 same matters so given in evidence on the
 part of the Said Plaintiff were not suffi-
 -cient and ought not to be admitted or
 allowed to entitle the Said Plaintiff to a
 judgement. But that the Said matters so
 produced and given in evidence on the
 part of said Defendant were sufficient and

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19 and ought to be admitted and allowed to bar said Plaintiff of his action aforesaid.

And the Said Court did then and there declare and deliver the opinion that the several matters so produced and given in Evidence on the part of said Plaintiff were not sufficient to entitle him to a Judgement in this cause but that the several matters so produced and given in Evidence on the part of the Said Defendant were sufficient to bar the said Plaintiff of his action aforesaid. Whereupon the Said Counsel for the Said Plaintiff did then and there on the behalf of the Said Plaintiff except to the aforesaid opinion and decision of the Said Court, and insisted on the Said several matters as sufficient to sustain the Said action on the part of the Said Plaintiff and to entitle him to a Judgement. Whereupon the Court rendered Judgement in favor of the Defendant that he was not guilty of withholding from the Plaintiff the possession of the lands described in the Declaration and gave Judgement against the Plaintiff for the costs of the Suit, to which the Counsel for the Plaintiff and in his behalf did then and there except and still does except.

And inasmuch as the matters aforesaid do not appear of Record the counsel for the Plaintiff presents this Bill of Exceptions and prays that the same may be signed and sealed by the Court and made part of the Record in Said Cause, and it is

done accordingly. Theo. D. Murphy
(Endorsed) A Judge 13. Judicial Circuit
Filed Apr. 5. 1864 Ills.
C. H. Russell clerk

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State of Illinois
McHenry County J. Charles H. Russell
Clerk of the Circuit Court
in and for said County in the State aforesaid
do hereby certify that the above is a
true and complete copy of the record of the
proceedings of this Court in the above
entitled cause as entered of Record
In Witness whereof I have
hereunto set my hand and the
Seal of said Court at my office
Woodstock in said County this
11th day of April A.D. 1864
C. H. Russell clerk



for the defendant and rendering judg-
-ment in favor of the defendant and
against the the Plaintiff

4. The Court erred in not finding the
issue for the plaintiff and rendering
judgement in his favor as claimed
in the declaration

5. The judgement is against the law
and the evidence

E. S. Smith

Attorney for Plff. in error

Large Bluffs
vs
rural Alaska

ment of Errors

State of Illinois } In Supreme Court
Third grand division } of Illinois To April
Term A.D. 1864

George Bliss
Plaintiff in Error
vs
Samuel Clark
Defendant in Error

Assignment of Errors

And now the said George Bliss
Plaintiff in Error, Comes and says, that
in the record and proceedings aforesaid
there is manifest Error in this, To wit:

1. The Court Erred in not holding that the
Judgement in favor of the Plaintiff
George Bliss and others was a lien upon
the property in question and that when
Conklin and wife abandoned the home-
stead and went to Iowa to reside and
took up their residence in that state, then
the judgement lien became operative and
the title passed by the sheriffs sale on
the Bliss judgement.
2. The Court Erred in giving any validity
to the release and waiver of the home-
stead right by Conklin and wife after
they had abandoned the property and
taken up their residence in the state
of Iowa
3. The Court Erred in finding the issue

for the defendant and rendering judg-
-ment in favor of the defendant and against
the Plaintiff.

4. The Court erred in not finding the
issue for the Plaintiff and rendering
judgement in his favor as claimed in
the declaration.

5. The judgement is against the law and
the evidence in the case.

E. S. Smith
Attorney for Plff in
error.

Supreme Court of the State of Illinois

Samuel Clark

vs

Green Bliss

April Term 1864

And the said Defendant
by Clark & Burr his Attorneys comes
and defends the writ and urges
them &c And says that in the
deeds and proceedings &c then

is not any error as is in and
by the said plaintiffs agreement
of errors supposed when in
Church & Her
Atty for Dye in error

201 119

George Bliss

as

Samuel Clark

Record & Errors

Filed April 20, 1884
L. Leland
Clark