

No. 12817

Supreme Court of Illinois

Richards, et al.

vs.

Hyde, et al.

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John ...

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Henry Hyde Stair



355

12817

Be it remembered that heretofore to wit, on the 11th day of June, in the year aforesaid, Jonathan Richards and others, by Smith, and Dewey, their Solicitors, filed in the office of the clerk of the Court aforesaid, on the Chancery side of said Court, their certain Bill of complaint, which is in the words and figures following, to wit—

State of Illinois } Cook County Circuit Court
Cook County } Of the June Special Term A.D.
1858

To the Hon. George Maniere, Judge of said Court, in Chancery sitting—

Jonathan Richards, Frederick Grumbaugh, and Theodore A. Shaw, of the City of Chicago, being this, their bill, against Ebenezer Hyde, Henry C. Hyde, and Hyde, the wife of said Ebenezer Hyde, of Lima, County, of Fayette, and State of Iowa, and William Lathrop, of Rockford, County of Winnebago, and State of Illinois and therefore your orators complain and say that heretofore, to wit— in the term of April, in the year of our Lord, one thousand, eight hundred and fifty Eight, in the Circuit Court of the said County, of Cook, by the consideration and judgment of said Court, your Orators recovered against said Ebenezer Hyde, Defendant

in this suit, the sum of Ten hundred and thirty eight dollars, and twenty cents, for the damage which they had sustained as well by reason of the nonperformance of certain promises and undertakings, as for the costs and charges of your Orators, by them about their suit in that behalf expended, which were adjudged to your Orators in and by the said Court whereof the said Ebenezer Hyde was convicted as by the record of the said judgment in the office of the Clerk of said Court, reference being thereto had, and to which, for greater certainty, your Orators may leave to refer, will more fully, and at large appear -

And your Orators further shew unto your Honor, that the said judgment so recovered in manner aforesaid, remaining in full force and effect, and the costs and damages aforesaid, unpaid and unsatisfied, your Orators, on or about the twelfth day of May, in the year of our Lord, one thousand, eight hundred and fifty eight, for the purpose of obtaining satisfaction of the said judgment, sued and prosecuted out of the said Court, a writ of the people, called a *Pieri Facias*, directed to the Sheriff of the county of Winnebago, that being the county in which said Defendant Lathrop resided at the time of

the issuing of said writ. By which said writ, the said Sheriff was commanded, that, of the lands and tenements hereinafter mentioned, the property of said Ebenezer Hyde, Defendant, in your county, you cause to be made the sum of Ten Hundred and Thirty Eight Dollars, and twenty cents, which you orators in the said Circuit Court, recovered against the said Defendant, Ebenezer Hyde as aforesaid. and that he should have the money at the Clerk's office of said Court, at Chicago, in said County, in ninety days from the date thereof, to satisfy the judgment so recovered by your Orators as aforesaid. and that he should have then and there, that writ.

And your Orators further show unto your Honor, that the said writ of *Quia Facias*, before the delivery thereof to the said Sheriff of the said County aforesaid, was duly indorsed, and was afterwards, and on, or about the nineteenth day of May, in the year of our Lord, one thousand, eight hundred and fifty eight, delivered to the said Sheriff, to be executed in due form of law.

And your Orators further show unto your Honor, that the said Sheriff of said county aforesaid, on, or about the twentieth day of May, in the year of our Lord, ^{one thousand} eight hundred

128175

and fifty eight, indlosed on the said writ
to him, in that behalf, directed and delivered,
as aforesaid, that on that day, he levied said
writ upon the lands and tenements describ-
ed in said writ, to wit, the right, title and
interest of said Ebenezer Hyde, in the Real
Estate commencing at the centre of the
State Road leading from Chicago to Galena
at a point seven (7) chains, and seventy five
(75) links west from the quarter section line
of Section No twenty-two (22) Town forty four, ⁽⁴⁴⁾
Range one, East of the third Principal Merid-
ian, and running West along said road, four
chains, thence North, five degrees East, twenty
nine chains and thirteen links to the North
line of said Section, thence East, four chains
and one link, along said line to a post,
thence south five degrees West, twenty nine
chains and forty nine links, to the place of
beginning containing eleven and $7/100$ th
acres, excepting four and $80/100$ th acres, off from
the north End of said land conveyed by said
Ebenezer Hyde, to E. & W. Ellis, as recorded in
the recorder's office of said Winnebago County,
in Book thirty six, of Deeds, page 362. also ex-
cepting lot eight (8) in Block two, (2) in Eben-
ezer Hyde's addition to the city of Rockford, the
above land being a part of Section No twenty

two, (22) Town forty four (44) Range one, East of the third principal Meridian, and being in the County of Winnebago, and State of Illinois.

And your Orator further show unto your Honor, that said writ of Fieri Facias, is now in the hands of said Sheriff, but that he cannot, for the reasons hereinafter mentioned, safely proceed to sell the property so levied upon, and satisfy said writ, without the aid of this Honorable Court.

And your Orator further show unto your Honor, that the said judgment still remains in full force and effect, not reversed or satisfied, or otherwise vacated - and that the said Ebenezer Hyde, or anyone else, has not paid the same to your Orator, but hath hitherto wholly neglected, and refused so to do -

And your Orator further show unto your Honor, that there is now actually and equitably due to your Orator, upon the aforesaid judgment, the sum of Ten hundred and thirty eight Dollars, and twenty cents, together with the interest thereon, from the twenty-first day of April, one thousand eight hundred and fifty eight, over and above all claims of said Defendant, by the way of set-off, or otherwise. And your Orator further shows unto your Honor, that they are informed, and believe, and

so charge the fact to be, that before, and up to
the thirtieth day of October, A.D. 1857. the
title to the Real Estate above described, was in
the defendant, Ebenezer^{Hyde,} that on said thir-
teenth day of October, A.D. 1857. the defendants,
Ebenezer Hyde, and ^{Hyde,} his wife,
made a pretended conveyance of the same, by
deed of trust, to the defendant William La-
throp, who now holds the legal title to said
Real Estate, said trust deed purporting to be
made as appears of record to secure the pay-
ment of a certain promissory note, bearing even
date therewith, for the sum of fifteen hun-
dred dollars, and payable to the Defendant,
Henry C. Hyde, on the first day of November, A.D.
1858. and your orators further show unto your
Honor, that they are informed, and believe,
and so charge the fact to be, that said prom-
issory note, and said trust deed executed
to secure the same, were made without any
or with no adequate valuable consideration
from said Henry, to said Ebenezer Hyde, and
did not transfer the interest of said Ebenezer
Hyde, in the said Real Estate. That said
Henry C. Hyde ~~that~~ is the son of said Ebenezer,
and is a young man of little or no means
of his own, and that at the time when
said note and trust deed were executed, the

Said Ebenezer Hyde was not, nor has he since been, nor is he now, justly indebted to his son, Henry C. Hyde, for any, or any considerable part, of the consideration money expressed in said deed, but your orators charge upon information and belief, that said Ebenezer Hyde, was, at the time, greatly in debt, and unable to pay his debts, or in failing circumstances. That said trust deed was executed in manner aforesaid, by collusion between the said Hydes, to place the said Real Estate so conveyed, beyond the reach of said executions at law, and with the intent to hinder, delay and defraud the creditors of said Ebenezer Hyde, and is fraudulent and void as to your Orators. And your Orators further show unto your Honor, that they are informed and believe, and so charge the fact to be, that said defendant, Ebenezer Hyde, has no property in his own name, subject to levy and sale upon execution in the State of Illinois, or any other property in said State, subject to levy and sale upon execution, except the property hereinbefore mentioned.

And your Orators well hoped that the said Defendant, Ebenezer Hyde would have paid to your Orators, the amount due them on said judgment, or would have applied for

that purpose any property belonging to him,
or in which he is in any ^{way,} interested, as in equity
and good conscience, he ought to have done—

But now, so it is, may it please your Honor,
that the said Defendants, combining and
confederating together, and with divers other
persons, to your Orator unknown, but whose
names when discovered, they pray may be
inserted herein, with proper and apt words
to charge them—and contriving how to injure
and defraud your Orator in the premises,
neglect or refuse to pay the amount so due to
your Orator, on their said judgment, or to
apply for that purpose the property belonging
to the said Defendant, Ebenezer Hyde, and for
reason whereof, the said Defendants set up
a variety of unfounded pretences—All which
actings, doings, neglects and pretences, are con-
trary to equity and good conscience, and tend
to the manifest wrong and injury of your
Orator in the premises—In tender considera-
tion thereof, and for as much as your Orator
are remediless in the premises, at, and by the
direct and strict rules of the Common Law,
and cannot have adequate relief, save in a
Court of Equity, where matters of this, and a
similar nature, are properly cognizable and
relievable—To the end therefore In the end

that the said Defendants may, if they can, show why your Orator should not have the relief hereby prayed, and may upon ^{several, and} their respective ~~and~~ corporal oaths, and according to the best and utmost of their several and ~~and~~ respective knowledge, remembrance, information and belief, full, true, direct and perfect answer make, to all and singular, the matters and things hereinbefore stated and charged, and particularly to the several interrogatories herein ^{after} numbered, and set forth that is to say, the said Defendants may fully set forth and discover, according to the best of their knowledge, remembrance, information and belief, — First, what is the nature and situation, amount and value of all the property of the said Defendant, so levied upon as aforesaid, who holds the legal title to the same, when was said trust deed executed to defendant William Lathrop, for what purpose, and upon what consideration. — If to secure the payment of a note payable to Henry C. Hyde. How large was such note. When payable and for what given, if given for any indebtedness of said Ebenezer Hyde, to said Henry C. Hyde, how did such indebtedness arise, and when. And that said Defendants may state and set forth all the other facts and circumstances

touching the matters and things hereinbefore stated and charged as fully and particularly as though they, and each of them, were here specially interrogated thereto—

And your Orators pray this Honorable Court, that said trust deed may be adjudged and decreed fraudulent and void, as to your orators, and may be set aside and cancelled, and that the real estate levied upon as aforesaid, may be decreed subject to sale, upon said execution, and the proceeds thereof, applied in satisfaction of your orators said judgment—

And that the said Defendants, or some, or one of them, may be decreed to pay your Orators, the amount so as aforesaid due to them, for principal and interest on their said judgment, together with your Orators costs and charges in this behalf, sustained—and may be decreed to apply for that purpose, any interest of the said Defendant Ebenezer Hyde, in and to the property so levied upon as aforesaid, whether legal or equitable—and that the said Defendants may be enjoined and restrained from selling, assigning, transferring, encumbering, or in any manner disposing of, or intermeddling with any of the property so as aforesaid levied upon, until

the further order of this Court—

And that your Orators may have such further, or such other relief, in the premises, as the nature of their case shall require, and as shall be agreeable to equity and good conscience—

May it please your Honor, to grant unto your Orators, the People's Writ of Injunction, issuing out of, and under the seal of this Honorable Court, to be directed to the said Defendants, and to their Counselors, Attorneys, Solicitors, Trustees and Agents, therein and thereby commanding and strictly enjoining the said Defendants, and the persons before mentioned, in manner aforesaid—

And may it please your Honor, to grant unto your Orators, the People's Writ of Subpoena, issuing out of, and under the seal of this Honorable Court, to be directed to the said Defendants Ebenezer Hyde, Hyde, Henry C. Hyde, and William Lathrop, ^{therein} ~~again~~, and thereby commanding them, and each of them, on a certain day, and under a certain penalty, to be therein inserted, that they personally be, and appear, before the Judge of the Circuit Court, of said County, at the Court Room in the City of Chicago, then and there to answer all and singular, the premises, and to stand to, and abide by, and perform such order and

decree therein, as to your Honor, shall seem agreeable to equity, and good conscience - And your Orator will ever pray, etc.

Smith and Dewey. }
Solicitors for Complainants } Frederick Crumbaugh
E. M. Dewey. Of Counsel } Theodore A. Shaw.
Jonathan Richards
"

State of Illinois }
Cook County } ss.

On this 11th day of June, one thousand, eight hundred and fifty eight, personally came before me, Frederick Crumbaugh, who being duly sworn, saith that he is one of the Plaintiffs named in the foregoing bill of complaint, that he has read the foregoing bill of complaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters and things therein stated upon information and belief, and as to these matters, he believes it to be true.

Frederick Crumbaugh

Subscribed and sworn to }
this 11th day of June, A.D. 1858. }
Before me. }

Wm L. Church,

Clerk Cir. Ct.

Cook Co. Illinois

And afterwards, to wit, on the 11th day
of October, in the year aforesaid, the said de-
fendants, by Geo. Scoville, their Solicitor, filed in
the office of the clerk of the Court aforesaid,
their certain motion in writing, which is in
the words and figures following, to wit

Circuit Court of Cook County-

Chancery-

Jonathan Richards
et al

314

vs

Ebenezer Hyde
et al

The said defendants, by
Geo. Scoville, their Solicitor, come for the pur-
poses of this motion only, not entering their
appearance therein, and move the Court to
dismiss the bill of complaint in this case,
for want of jurisdiction of this court-

Geo. Scoville

Defts Sol.

And afterwards, to wit, at the October term
of said Court, to wit, on the day and year last
aforesaid, the following proceedings among
others, were had and entered of record therein,
to wit-

Jonathan Richards, Frederick
Crumbaugh, & Theodore A Shaw

vs
Henry C. Hyde, Ebenezer Hyde
— Hyde, & William Lathrop

} Bill in aid
of Execution —

This day come the said defendants, by
George Scoville, their Solicitor, for the purposes of
this motion only, and move the Court for an
Order dismissing the said Complainants Bill
filed therein against them for want of juris-
diction in this Court, over the matters therein
complained of —

And afterwards, to wit, at the same term
of said Court last aforesaid, to wit, on the
26th day of October aforesaid, the following
proceedings, among others, were had and enter-
ed of Record therein, to wit —

Jonathan Richards, Frederick
Crumbaugh & Theodore A. Shaw

314

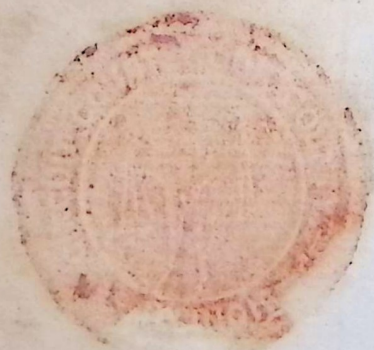
vs

Henry C. Hyde, Ebenezer Hyde
— Hyde & William Lathrop

} Bill in aid of
Execution —

On this day came
on to be heard the said motion of the said
defendants, and Counsel having been heard,
as well on the part of the said defendants, as

the said complainants, and the Court being
now fully advised in the premises, doth sus-
tain the said motion of the said defendants-
It is therefore Ordered and decreed that the
said Complainants Bill, be, and the same
hereby is dismissed out of this Court, with costs
to be taxed, whereupon the Complainants, by
their Counsel, now here, except to the ruling
of the Court—



I hereby enter the appearance of the
appet defendants in error in the
Supreme Court & waive service of
process.

Geo. Seville
Att for Defts



Journal of Benjamin
(no.)

Henry Co. Hyde & Elat

Record of
Appear of Depts.
Filed April 21. 1859
L. Leland
Clerk

Spd. 11

1385

State of Illinois, }
COUNTY OF COOK. } S. S.

I, WILLIAM L. CHURCH, Clerk of the Circuit
Court of Cook County, in the State aforesaid, do hereby
certify the above and foregoing, to be a true, perfect and complete
copy of the Bill & Motion filed & subsequent
order thereon had entered of Record
in a certain cause lately pending in said Court on the
Chancery side thereof, wherein Jonathan
Richards Etal were Complainants and
Henry C. Hyde Etal were defendants

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our
said Court at Chicago, this 24th day of January A. D. 1859

for Record \$ 3.55

Wm L Church

Clerk.

Plaintiffs
James Cook
Matthew Richard
et al

vs
Theresea 1/2 Dr
Aul

Error from Cook Court Circuit

And now comes the said Plaintiffs and say that
in the proceedings of said Court and the record
thereof, there is manifest error in this, to wit:
1st That the Court erred in holding decreeing that it
had no jurisdiction

2^d That the Court erred in dismissing the bill.

3^d That the Court erred in rendering judgment for
costs vs the Plaintiffs.

By Smith & Dwyer
Attorneys

And upon come the said defendants into Court
and say there is no error either in the record and
proceedings aforesaid or in giving the judgment
aforesaid, and they pray that the said Court may
now here proceed to examine as well the record and
proceedings aforesaid as the matters aforesaid above
assigned for error, and that the judgment aforesaid
in form aforesaid given may be in all things
affirmed &c.

Dated Chicago April 29/89 Geo. Seville

Sol for Defs in error

SUPREME COURT,

STATE OF ILLINOIS.

IN CHANCERY.

JONATHAN RICHARDS, *et. al.*

Plaintiffs in Error,

vs.

HENRY C. HYDE, *et. al.*

Defendants in Error,

Error to Cook Co. Circuit Court.

Brief of Plaintiffs in Error.

This is an appeal from an order dismissing the bill, upon motion, for want of jurisdiction.

It is a bill filed in aid of an execution issued out of the Cook County Circuit Court, directed to the Sheriff of Winnebago county, and levied upon property in said county which is charged to have been fraudulently conveyed for the purpose of hindering, delaying and defrauding creditors. The facts in which the fraud consists are stated therein. The complainants reside in Cook county. The property is in, and one defendant resides in, Winnebago county. The other defendants are non-residents.

The defendants relied upon section 2 of the Chancery Code, but cited no authorities.

The plaintiffs in error claim that this proceeding is not an original bill, but supplementary and auxiliary to the suit at law, for the purpose of giving effect to the regular process of the court, and afford the complainants the relief sought, viz. payment of their judgment.

1. Upon principle. The court by Statute has authority to issue its process to a foreign county, commanding the Sheriff to obtain satisfaction of its judgments from the property of the defendant. By a familiar principle, the court having the power to direct the officer to make the execution out of the property of the defendant, by a necessary implication, would have authority to take the steps absolutely necessary to make the power effectual and practical. If a party can throw obstructions fraudulently (as in this case) in the way of the process of the court, and the court have no right to remove them, then the power of the court becomes entirely useless, for that power which depends upon the volition of the object towards which it is to be exercised is hardly worth the name.

In the case at the bar, if the allegations of the bill are to be taken as true in this proceeding, the defendant has fraudulently conveyed away his property for the purpose of defeating a process of the court regularly and within its authority issued. Now, must this court seek the aid of another forum to protect itself and its process from the fraud of the defendant? In other words, has it not *ex necessitate* power to *enforce* its commands as against fraud?

In *Steiff vs. Hart*, 1 Comstock, N. Y. Court of Appeals 20, the court say, page 30:

"Whenever a power is given by statute, *everything* necessary to making it effectual, or requisite to attain the end, is implied."

In that case a well settled rule of common law was determined, overruled by implication, because it interfered with the proper carrying out of a provision of the statute.

There are many other cases referred to in this case, in which this power has been exercised.

1 Kent Com., 464.

The doctrine is fully recognised in *O. Field vs. the People*, 2d Scamm., 79.

The Court of Chancery is not a separate tribunal, but the powers formerly exercised by Courts of Chancery exclusively are, by the constitution and statutes of this State, merely conferred upon the courts of law. (See Court Act, art. 5, sec. 1.) And the chancery code merely prescribes the *method of exercising that power* by the court having the power.

2. The question has been distinctly decided that a creditor's bill was not an original bill, but merely a continuation of the suit at law. In the case of *Haddan vs. Spader*, 20 Johnson's Reports, 554, which was a bill filed by a creditor to reach property fraudulently assigned, in page 574, the court say, "The jurisdiction of Chancery is supplementary and in aid of the common law process, and if confined to cases of fraudulent assignments I perceive nothing dangerous or alarming in the exercise of such a power; on the contrary, it seems wise and salutary in giving full and firm effect to the writ of *Fieri Facias*."

In the case of *Tarbell vs. Griggs*, 3d, Paige, 207, which was a creditor's bill filed in the State Court upon a judgment in the United States Court, the Chancellor held that the State Court had no jurisdiction, because it was in aid of the process of the United States Court: in other words, on the ground that it was not an original suit, which is the principle contended for in this case.

In the case of *Hatch vs. Dow & Rendick*, 4th McLean 112, the court expressly holds that a creditor's bill is a continuation of a suit at law and *not an original suit*, and decides that a change of citizenship after judgment, but before bill filed, does not divest that court of jurisdiction in the suit in equity, because it is a continuation of the same proceedings.

When a legal claim is established by a judgment, and courts of law are unable to afford adequate relief, from a defect in their process or powers, a Court of Equity may assist the creditor. 11 Vam. 283, 12 ib. 699, Walk. ch. 28.

E. M. DEWEY,
Of Counsel.

SMITH & DEWEY,
Attorneys for Plffs in Error.

268-218

STATE OF ILLINOIS.
SUPREME COURT.

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Plaintiffs in Error,

vs.

HENRY HYDE, *et. al.*

Defendants in Error.

Brief of Plaintiffs in Error.

SMITH & DEWEY,

Attorneys for Plffs. in Error.

Filed May 11, 1859
L. Leland
clerk

Paper

SUPREME COURT,

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The defendants relied upon section 2 of the Chancery Code, but cited no authorities.

The plaintiffs in error claim that this proceeding is not an original bill, but supplementary and auxiliary to the suit at law, for the purpose of giving effect to the regular process of the court, and afford the complainants the relief sought, viz. payment of their judgment.

1. Upon principle. The court by Statute has authority to issue its process to a foreign county, commanding the Sheriff to obtain satisfaction of its judgments from the property of the defendant. By a familiar principle, the court having the power to direct the officer to make the execution out of the property of the defendant, by a necessary implication, would have authority to take the steps absolutely necessary to make the power effectual and practical. If a party can throw obstructions fraudulently (as in this case) in the way of the process of the court, and the court have no right to remove them, then the power of the court becomes entirely useless, for that power which depends upon the volition of the object towards which it is to be exercised is hardly worth the name.

In the case at the bar, if the allegations of the bill are to be taken as true in this proceeding, the defendant has fraudulently conveyed away his property for the purpose of defeating a process of the court regularly and within its authority issued. Now, must this court seek the aid of another forum to protect itself and its process from the fraud of the defendant? In other words, has it not *ex necessitate* power to *enforce* its commands as against fraud?

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When a legal claim is established by a judgment, and courts of law are unable to afford adequate relief, from a defect in their process or powers, a Court of Equity may assist the creditor. 11 Vam. 283, 12 ib. 699, Walk. ch. 28.

E. M. DEWEY,

Of Counsel.

SMITH & DEWEY,

Attorneys for Plffs in Error.

268 218

STATE OF ILLINOIS.

SUPREME COURT.

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Defendants in Error.

Brief of Plaintiffs in Error.

SMITH & DEWEY,

Attorneys for Pliffs. in Error.

Filed May 11, 1859

L. Keland

Clk