

13231

No. _____

Supreme Court of Illinois

Dibbler

vs.

Briggs

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 28

Dubler
vs
Briggs

1862

Prepared

STATE OF ILLINOIS, ss.

SUPREME COURT

Third Grand Division.

April Term, 1862.

HENRY E. DIBBLER, etals. }
VS.
CALEB T. BRIGGS. }

ERROR TO GRUNDY.

DEFENDANT'S AUTHORITIES AND ARGUMENT.

It is not denied by the Plaintiff in error, that a sufficient amount of money went into the hands of Wood, the Deputy Sheriff, to satisfy all the executions that are shown to be either in the hands of the Sheriff or any of his deputies, as will appear by the state of the case agreed upon between the parties. But it is insisted by the plaintiffs that part of those monies went into his hands as the agent of the defendant.

The answer to that is, that while in the sale of the property under the chattle mortgage, he may be considered, so far as the sale is concerned, as the agent of the defendant; but after the money arising from the sale came into his hands, that agency ceased by the agreement of the parties, as appears by the evidence, and it was to be received and considered by Wood as payments on the executions mentioned in the assignment of the mortgage.

The proceeds of this sale then stood in the same position with the other payments of \$178.71 and \$120, made by the defendant to Wood on the executions then in his hands, as appears in the case agreed upon. The fact that the money came into Wood's hands as the proceeds of a sale, cannot alter the right of the defendant to say it shall be applied on the executions in his hands, or even on any one of them, if he chose so to do, any more than his right to direct the application of the cash which he himself handed to Wood, and as he did so direct, and Wood did consent so to receive it; and as Wood was undoubtedly the agent of the plaintiff to collect, receive and apply the money, on the executions; can any doubt exist that the defendant is discharged on these executions to the amount so received by Wood. The assignment of the mortgage shows it was received by Wood to secure these executions, he was pressing Briggs on them. Briggs hoped to pay, but Wood required security on them. He offered the chattle mortgage and Wood accepted it, and the assignment shows for what purpose, and then they stipulate if Wood receives anything on the mortgage it shall be as payments on the executions.

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There is no evidence that Wood did not recd this execution in full.— The execution seems to be lost or carried off by Wood, and we have the right to believe, in the absence of proof to the contrary, that he kept his agreement and did his duty as an officer, by endorsing it paid in full, as the evidence shows he received more money on them than to pay all that appear to have been in his hands.

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J. N. READING,

Atty. for Deft. in error.

28 - 77

Debit & Receipts
Acct. & Points

Given May 5. 1862
J. L. and
Clark

STATE OF ILLINOIS, SS.

SUPREME COURT

Third Grand Division.

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J. N. READING,

Atty. for Deft. in error.

28 - 77
Debbles Buzg
Augt. & Posals

Issued May 8, 1862
J. J. Leland
Clerk

STATE OF ILLINOIS, SS.

SUPREME COURT

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J. N. READING,

Atty. for Deft. in error.

Gibbler vs Briggs
Argt. & Points

DEFENDANT'S AFFIDAVIT

CALLED BY BRIGGS

HENRY H. DILLER, etc.

WITNESSES

By

1862

Filed May 8, 1862
L. H. Lane
Clerk.

STATE OF ILLINOIS, SS.

SUPREME COURT

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28
Deeble & Buegg
Acct & Print

DEBENDYAL'S VULNERABILITIES

CITIZEN'S BRIDGE

BRIDGE & DIRTWAY

Y B R I T

THIRD GRAND DIVISION

Index May 3. 1842
J Leland
Clock

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SUPREME COURT
Third Grand Division.
April Term, 1862.

HENRY E. DIBBLEE, etals. }
VS. } ERROR TO GRUNDY.
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PLAINTIFF'S POINTS AND AUTHORITIES.

This was a motion to set aside execution and cancel the judgment, and was sustained by the court below.

This was not a proper motion. The motion should have been to satisfy or discharge the judgment. It was claimed by the defendant in error, that the judgment was satisfied by payment. There is a difference between a cancellation and a satisfaction. To cancel means, first, to cross and deface as a writing, to blot out, to expurge, to erase, to efface. Secondly to annul. It is not denied that the judgment was regular. If the motion would be proper under any circumstances, it it would be obviously improper and erroneous to cancel a regular judgment.

If it is admitted that the deputy of the Sheriff, could act in his official capacity after the absconding of the Sheriff, as would seem to have been held by this Court, 22 Ill. 86, yet it is contended by plaintiffs in error in this case, that the evidence as per the stipulation of parties, shows that the deputy acted as the agent of the defendant in error, and not in his official character. The mortgage was assigned to him as collateral security for the executions, he agreeing with the execution debtor to apply the proceeds on the executions. The plaintiffs in error, or their attorney knew nothing of this transaction. No levy was made on the execution, and the deputy did not proceed in due course of law. The Sheriff can only discharge an execution by proceeding to execute it in due course of law. *Bank of Orange Co. vs. Wakeman* 1, Cowen 46. The sale was made by virtue of the power in the chattel mortgage.

Where a Sheriff in South Carolina sold negroes under a mortgage after condition broken, it was held that he acted as agent of the mortgagee, and not in his official character, and the court refused to order the surplus proceeds of the sale, after satisfying the mortgage, to be applied to junior executions. *Robbins vs. Reff* 2, Hill S. C. 406.

The deputy acting as the agent of the defendant in error, it was the duty of the defendant to see to the application of the proceeds of the sale. There is no evidence even that the execution was in the hands of the deputy at the time the sale was made. The plaintiffs in error, or their attorney had no notice of the sale, and knew nothing of it, and no opportunity was given them to see to the application of the proceeds.

Possession of money by a Sheriff, sufficient to satisfy a prior judgment, is not *per se* a satisfaction. *Pennsylvania vs. Winger* 1, Rawle 295.

The receipt of a promissory note of a greater amount than the judgment by the attorney of the judgment creditor payable to the debtor, which the attorney was to collect, and in consideration of which the execution was returned unsatisfied, and the money due on the note was lost by the attorneys neglect, held that the judgment was not discharged. *Langdon et al Adams, vs. Potter et al.* 13 Mass. 317.

The testimony of Mr. Reading was improperly admitted because irrelevant, and because it was in regard to the terms and conditions of the assignment of the mortgage, of which the written assignment was the best evidence.

J. W. NEWPORT.
Atty. for Plff. in error.

*See stipulated copy of
assignment of mortgage
filed herewith.*

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Possession of money by a Sheriff, sufficient to satisfy a prior judgment, is not *per se* a satisfaction. *Pennsylvania vs. Winger* 1, Rawle 295.

The receipt of a promissory note of a greater amount than the judgment by the attorney of the judgment creditor payable to the debtor, which the attorney was to collect, and in consideration of which the execution was returned unsatisfied, and the money due on the note was lost by the attorneys neglect, held that the judgment was not discharged. *Langdon et al Adams, vs. Potter et al.* 13 Mass. 317.

The testimony of Mr. Reading was improperly admitted because irrelevant, and because it was in regard to the terms and conditions of the assignment of the mortgage, of which the written assignment was the best evidence.

J. W. NEWPORT.
Atty. for Plff. in error.

*See stipulated copy of
assignment of mortgage
filed in case*

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Dibble
vs,
Briggs

author's

Filed May 2, 1862
J. Leonard
clerk



STATE OF ILLINOIS, ss.

Third Circuit Division.

April 16, 1862.

BY THE COURT.

Wm. H. Thompson, Clerk.

STATE OF ILLINOIS, SS.

SUPREME COURT

Third Grand Division.

April Term, 1862.

HENRY E. DIBBLEE, etals. }

VS.

CALEB T. BRIGGS. }

ERROR TO GRUNDY.

PLAINTIFF'S POINTS AND AUTHORITIES.

This was a motion to set aside execution and cancel the judgment, and was sustained by the court below.

This was not a proper motion. The motion should have been to satisfy or discharge the judgment. It was claimed by the defendant in error, that the judgment was satisfied by payment. There is a difference between a cancellation and a satisfaction. To cancel means, first, to cross and deface as a writing, to blot out, to expunge, to erase, to efface. Secondly to annul. It is not denied that the judgment was regular. If the motion would be proper under any circumstances, it it would be obviously improper and erroneous to cancel a regular judgment.

If it is admitted that the deputy of the Sheriff, could act in his official capacity after the absconding of the Sheriff, as would seem to have been held by this Court, 22 Ill. 86, yet it is contended by plaintiffs in error in this case, that the evidence as per the stipulation of parties, shows that the deputy acted as the agent of the defendant in error, and not in his official character. The mortgage was assigned to him as collateral security for the executions, he agreeing with the execution debtor to apply the proceeds on the executions. The plaintiffs in error, or their attorney knew nothing of this transaction. No levy was made on the execution, and the deputy did not proceed in due course of law. The Sheriff can only discharge an execution by proceeding to execute it in due course of law. *Bank of Orange Co. vs. Wakeman* 1, Cowen 46. The sale was made by virtue of the power in the chattel mortgage.

Where a Sheriff in South Carolina sold negroes under a mortgage after condition broken, it was held that he acted as agent of the mortgagee, and not in his official character, and the court refused to order the surplus proceeds of the sale, after satisfying the mortgage, to be applied to junior executions. *Robbins vs. Ruff* 2, Hill S. C. 406.

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J. W. NEWPORT.

Atty. for Plff in error.

See stipulated copy of assignment of mortgage filed in case.

Dibble

As

Briggs

Messrs. Briggs

STATE OF ILLINOIS

THIRD CIRCUIT

SOUTHERN DISTRICT

Filed May 2, 1882

J. Leland
et al.

MEMORANDUM

CIVIL CASE NO. 100

BY VERDICT OF THE JURY

The jury find in favor of the plaintiff and award to him the sum of \$1000.

It is the duty of the jury to find the facts and to apply the law to them. In this case the facts are undisputed and the law is clear. The plaintiff has shown that he is entitled to the sum of \$1000 and the jury have found in his favor.

The defendant has shown that he is not entitled to the sum of \$1000 and the jury have found in his favor. The plaintiff has shown that he is entitled to the sum of \$1000 and the jury have found in his favor.

The jury find in favor of the plaintiff and award to him the sum of \$1000. The defendant has shown that he is not entitled to the sum of \$1000 and the jury have found in his favor.

The jury find in favor of the plaintiff and award to him the sum of \$1000. The defendant has shown that he is not entitled to the sum of \$1000 and the jury have found in his favor.

The jury find in favor of the plaintiff and award to him the sum of \$1000. The defendant has shown that he is not entitled to the sum of \$1000 and the jury have found in his favor.

The jury find in favor of the plaintiff and award to him the sum of \$1000. The defendant has shown that he is not entitled to the sum of \$1000 and the jury have found in his favor.

The jury find in favor of the plaintiff and award to him the sum of \$1000. The defendant has shown that he is not entitled to the sum of \$1000 and the jury have found in his favor.

The jury find in favor of the plaintiff and award to him the sum of \$1000. The defendant has shown that he is not entitled to the sum of \$1000 and the jury have found in his favor.

STATE OF ILLINOIS, ss.

SUPREME COURT

Third Grand Division.

April Term, 1862.

HENRY E. DIBBLEE, etals. }

VS.

CALEB T. BRIGGS. }

ERROR TO GRUNDY.

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J. W. NEWPORT.

Atty. for Plff. in error.

An stipulated copy of assignment of mortgage filed in case!

28

Dibble

as

Briggs

Pluff Power

Filed May 2 1872
S. L. Lark
C. M.

28.

2 Orville & Co, Supreme Court of,
vs the State of Illinois
Colab J Briggs }

Forider in Error

And the said Defendant by his
Attorney James N. Reading Comes & says
That there is not any error in the said Record
& proceedings aforesaid, as is above thereof al-
leged, and prays that the said Writ of Error
may be dismissed with costs

J. N. Reading
Atty for Deft in Error

Filw April. 28. 1862
L. Velando
C.R.

Supreme Court of the State of Illinois

1
H & Biddle & Co

vs

Cole & Briggs

} found in error

After the said Defendant
Cole & Briggs by his Attorneys
Reading & Wallace Comes and
denies that there is any error
in the record & proceedings
aforesaid as is above ~~stated~~
thereof alleged, and prays
that the said appeal may
be dismissed with costs.

Reading & Wallace
Attys at Law

⁸⁰
Dibble et al
C. T. Briggs
Judes in error

Filed April 25, 1861.
L. Deland
Clerk.

W E Dibblee & Co

vs

Caleb S Briggs.

Grundy County Court

1

State of Missouri
Greene County

That proceedings motions orders
judgments and decrees had been made ordered and
decreed in and before the Greene County Court at the June
Term thereof begun and held at the Court House in Morris
on the first Monday in June and being the seventh day of said
Month in the year of Our Lord One thousand eight hundred
and fifty eight and of the Independence of the United States
the Eighty second

Present Hon Colquhoun Greene County Judge

Alonso O D Wallace Sheriff

Henry W Armstrong County Clerk

As it remembered that at the said Term of Court the
following among other proceedings were had to wit

In the Matter of

W. C. Dibble & Co

vs

Orlando Briggs

Assumpsit

Wherefore to wit on the Twenty Eight
day of May 1858 the said Plaintiffs by C. W. Newport
their Attorney filed in the office of the Clerk of said Court
his Declaration in the words and figures following
to wit

Grand Jury Court of the June Term A.D. 1858
 State of Illinois
 Grand Jury Court }

Wm. E. Little Richard W. Clark & Addison
 G. Bickford Partners trading under the firm name of
 W. E. Little & Co. Plaintiffs in this suit, by P. W. Newport
 their Attorney complains of Olet S. Briggs Defendant
 who was summoned & of a copy of a subpoena
 Ser that whereas the said Defendant heretofore tuit
 on the twenty seventh day of November in the year of
 Our Lord One thousand Eight Hundred and fifty
 seven at Morris tuit at said County of Grundy now do
 his certain Promissory Note in writing bearing date
 the day and year aforesaid and there and there delivered
 the same to Edmund B. Warren in and by which said
 note said Defendant by the name style and description
 of O. S. Briggs promised to pay to the order of the
 said Edmund B. Warren sixty Dollars ninety days
 after the date thereof with interest at ten per cent
 per annum if not paid when due which period hath
 now elapsed For value received

And the said Edmund B. Warren to whom or to whose
 order said Note was payable afterwards tuit on the day
 at Morris that is to say at the County of Grundy aforesaid
 and year aforesaid, endorsed said Note in writing by
 which said endorsement the said Edmund B. J.

Warren then and there ordered and appointed the
 said sum of money in said Note mentioned to be
 paid to said plaintiffs and there and there

delivered said Note, so indorsed to the said
Plaintiffs of which the defendant then and there
had notice

By means whereof, and by force of the statute in
such case made and provided the said Defendant
became liable to pay said Plaintiffs said sum of
money mentioned in said Note and being so liable
in consideration, thereof, then and there undertook and
promised to pay the same to the said Plaintiffs
according to the tenor and effect of the said Note,
and of the indorsement aforesaid, to wit, at the place
aforesaid

And whereas also the said defendant afterwards
to wit on the said Twenty seventh day of November AD
1857 at Morris town at the said County of Grundy
procured his certain other Promissory note in writing
bearing date the day and year aforesaid and
then & there delivered the same to the said Edmund
B. Warrick & thereby then & there promised to pay the
said Edmund B. Warrick the sum of Fifty Five ²⁵/₁₀₀
Dollars in four months after the date thereof
with interest at ten per cent per annum if not
paid when due which period hath now elapsed
and the said Edmund B. Warrick then & there endorsed
the said note to the said Plaintiffs of which the
said Defendant then and there had notice & thereby
then and there promised to pay the amount of the
said note to the Plaintiffs according to the tenor

effect thereof & of the endorsement aforesaid yet
tort at the County aforesaid yet the said defendant
wrote disregarded his said promise & wrote not paid
the said note or any part thereof

And whereas also the said Defendant afterwards
tort at the first day of April in the year of our
Lord one thousand eight hundred and fifty
eight tort at said County became and was
indebted to the Plaintiff in a large sum of money
tort Two Hundred dollars for money before that
time lent and advanced to said defendant by
said Plaintiff at said Defendants request;
and also in the like sum for money before that
time paid, laid out, and expended for said Defendant
by ^{the} said Plaintiff at the like special request of
said Defendant and in the like sum for money
before that time had and received by said Defendant
to and for the use of said Plaintiff and also
in the like sum for goods wares and merchandise
before that time sold and delivered by said
Plaintiff to said Defendant at the like special
instance and request; and also in the like sum
for the labor care and diligence of said Plaintiff
before that time done and performed by said
Plaintiff for said defendant and at the like
instance and request of said Defendant and
also in the like sum, then and there found to
be due and owing to said Plaintiff on account

stated between them and being so indebted
 said Defendant in consideration thereof they and
 there undertook and promised to pay said
 Plaintiffs said several sums of money above men-
 tioned when thereunto afterwards requested
 Yet the said Defendant not regarding his said
 promise and undertakings but contriving &c
 although often requested so to do hath not paid
 said Plaintiffs either of said sums of money above
 mentioned or any part thereof but so to do hath hitherto
 wholly neglected and refused and still doth
 neglect and refuse to the damage of said Plaintiffs
 of Two Hundred Dollars and therefore they bring
 this suit &c

J W Newport
 Plaintiffs Attorney

Copy of Instrument and account sued on
 4/11/00

Morris Novr 27 1857

Ninety days after date I promise
 to pay to the order of E B Keanna Sixty dollars value received
 If not paid when due to bear interest at ten per cent

C J Briggs

Endorsed as follows
 "July 5 1858

For value received I guarantee the payment
 of the within note

E B Keanna"

\$55²⁸/₁₁Morris Novr 27th 1857

Four months after date I promise to
 pay to the order of E B Barnes Fifty five ²⁸/₁₁ Dollars
 value received If not pay when due to bear interest
 at two per cent

C S Briggs

Endorsed as follows

"July 5th 1858

"For value received I guarantee the payment
 of the within note E B Barnes"

C S Briggs To W E Dibble & Co Dr

In money lent and advanced	\$20000
In money paid laid out and expended	\$20000
In money paid and received to and for the use of said Plaintiff	\$20000
In goods wares and merchandise sold and delivered	\$20000
In labor and services	\$20000
In balance due on account stated	\$20000

And afterwards suit on the first day of the said
 June Term the following other proceedings were had
 W E Dibble & Co

vs

Caleb S Briggs

Assumpsit
 }
 }
 }

This day came the said
 Plaintiffs by J H Kaufman their Attorney and the
 said Defendant being three times solemnly called
 come not nor comes any one for him but he makes
 default herein It is therefore considered and ordered
 by the court that said Plaintiffs ^{have} judgment by

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against the said Defendant for their damages herein
And it appearing to the Court that this suit is
brought upon one instrument of writing for the
payment of money only, and that the damages
of said Plaintiffs in this case rest in computation
it is therefore ordered by the Court that the clerk
assess compute and report the said damages
Whereupon the clerk proceeded to make the assessment
and computation aforesaid and reported to the Court
the sum of (\$121⁴¹) One Hundred and Twenty one
⁴¹/₁₀₀ Dollars as the amount of the Plaintiffs damages
herein which assessment and computation upon
examination by the Court, appearing to be just
and correct is by the Court approved and allowed
It is therefore considered and ordered by the
Court that the said Plaintiffs have and recover
of the said Defendant the said sum of (\$121⁴¹)
One Hundred and twenty one ⁴¹/₁₀₀ Dollars being the
amount of the damages assessed and computed
as aforesaid together with their costs and charges
herein expended and that they have execution
therefor against the said Defendant

And afterwards tried at the September Term 1889
the following other proceedings were had to wit

D & Dibble & Co

vs

Caleb T Briggs

} Motion to Stay Execution on
} former Judgment

On the fifth day of the Term
J. M. Reading Attorney for the Defendant asks the
Court for a Stay of Execution until the December
term of this Court to enable said defendant to
prove payment of this judgment to the late
absconding Sheriff which was granted by the
Court

And afterwards term at the December Term
A.D. 1859 the following other proceedings were had
D & Dibble & Co

vs

Caleb T Briggs

} ^{to set aside} Motion ~~Stay~~ Execution & Cancel
} Judgment

Now term on this 8th day of the
Term come the parties unto the Plaintiffs by
J. M. Newport their attorney as well as the
Defendant by J. M. Reading his Attorney and
having submitted the case to the Court, the
Motion was sustained to which ruling of
the Court the Plaintiffs then and there
excepted,

And afterwards come the parties unto and
file the following

State of Illinois } Grand Jury Court
 Grand Jury } December Term AD 1859

Calib T Briggs

ads

W C Libble & Co

} Motion to set aside Execution and
 } cancel judgment

^{That the following stipulation embraces all the facts on which the judgment of the Court was rendered}
 It is agreed by and between the parties to this cause; that an Execution issued on the Judgment of Libble & Co against said Briggs on the 24th day of June 1858 and was delivered to P M Newport the attorney for the said Libble & Co but said Newport does not remember whether said Execution was delivered by him to the Sheriff of said County of Grundy A C Wallace in person or to one of his deputies but that the same was delivered to one or the other of them

It is also agreed that said Sheriff left this State on or about the 20th day of July AD 1858 with moneys in his hands collected as said Sheriff and unapplied on the executions to which said moneys belonged And that from the time said Sheriff left, as aforesaid until the present time it is not known where said Sheriff was then or now is That on the 24th day of July 1858 the said defendant in the said Execution Calib T Briggs assigned to one W A Woods a deputy of the said Sheriff Wallace in whose hands said

Execution there was a certain Chattel Mortgage as collateral security for the payment of the following Executions: One in favor of Daniel Horn against said Briggs for \$8.33 with interest from the 26th day of April 1858 and in favor of E D Roseman against said Briggs for \$138.15 with interest from March 1858 and the Execution of the said Dibble & Co for \$31.50 with interest from June 1858 That there was also in the hands of the Sheriff of said County not provided for by the assignment of said Chattel Mortgage an Execution in favor of S M Munn dated May 3^d 1858 for \$188.10. The said Woods sold said property in said Chattel Mortgage mentioned on the 11th day of September 1858 for the sum of \$337 but did not ^{so} apply the proceeds of said sale on payment of said Executions as is known and did not so apply said money so far as is known & there is no proof that any of said money was applied on the Dibble & Co Execution But himself absconded on the 13th day of September 1858 as is supposed with the proceeds of said sale

It is also agreed that \$178.71 was paid in August and September 1858 and \$120 in April 1858 to said Woods to apply on executions then in his hands against said Briggs by said Briggs

It is also agreed that it was stated by said Woods and the friends of said Sheriff

Wallace at the time said Wallace left as aforesaid and for some weeks afterwards that he had gone to the state of Iowa in pursuit of horse thieves, and that about the first day of September 1858 it began to be generally believed by the acquaintances of said Wallace that he would not return.

It is further agreed between the parties that there is no proof that the said Dibble & Co or their Attorney had any knowledge of the transfer of said Chattel Mortgage to said Wood for the purpose aforesaid and that their said Attorney knew nothing of said sale of said property until after the said Wood absconded. But that said Mortgage & transfer were Recorded in the Records office of the County of Jerny on the 26 day of Aug 1858 ^{from the same}. Nor is there any evidence that said Dibble & Co who reside in the city of New York knew anything of their said Execution being in the hands of the said deputy Sheriff Wood and their said Attorney has no recollection of such knowledge at the time on his part, and that he never informed said Plaintiffs to that effect, that said Execution is lost and cannot be found; And that diligent search has been made for the same among the papers left by the said Wallace and that no testimony was offered to show that said Execution was in the hands of said Wood at the time of the sale of said property.

It is also testified by Mr Reading that said Woods

agreed at the time of receiving the said Mortgage that if the Executions were not otherwise paid during the lives of the same that the property in said Chattel Mortgage should be sold and that the proceeds of said sale were to be considered as payments on said Executions

This last testimony of Mr Reading was objected to by the Attorney for Dibble & Co and objections overruled and the ruling of the Court then excepted to by said Attorney for Dibble & Co

C. N. Reading Atty for Briggs

J. W. Newport Atty for Dibble & Co

State of Illinois
Grundy County } ss

I Perry A Armstrong Clerk of the Grundy County Court do hereby Certify the foregoing to be a full & correct copy of the Record Proceedings had in said matter in & before said Court & the stipulation of the attorneys of the parties in said cause

In testimony whereof I have hereunto set my hand and affixed the seal of the Grundy County Court at Morris this 10th day of April A.D. 1860
Perry A Armstrong
Ck

State of Illinois, Supreme Court
Third Grand Division.
April Term 1860.

H. C. Dibble & co.

Plaintiffs in Error.

vs.

Caleb T. Briggs

defendant in error.

Error to Gundy.

And the said H. C. Dibble & co. plaintiffs in error, by J. W. Wroport their Attorney, come and say that in the record and proceedings aforesaid there is manifest error in this, to wit.

1st The said judgment, ^{and order of the Court} was manifestly against the evidence in the case.

2. The Court erred in holding that the said H. A. Woods, was at the time said chattel mortgage was so assigned to him as aforesaid, a deputy Sheriff of said County of Gundy, and that he was a deputy Sheriff of said County when said property was sold on said Chattel mortgage.

3. The Court erred in holding that at the time of the transfer of said chattel mortgage, and the sale of the property on the same, the said H. A. Woods was an agent of said plaintiffs in error.

4. The Court erred in admitting the testimony of Mr. Reading in regard to the agreement of said Woods at the

14
time he received the transfer of said
chattel mortgage in regard to the
disposition of the property secured
by the same and the proceeds
of the sale of the said property.

5th The said motion of the said
defendant in error was sustained,
and the judgment and order of
the Court thereon given in favor
of the said Caleb T. Briggs, whereas
by the laws of the land the judgment
of the Court ought to have been
given in favor of the said H. E.
Dibbler & co.; wherefore the said
H. E. Dibbler & co. pray that the
said judgment and order of the
Court may be reversed, annulled
and held for nothing, and that they
may be restored to all things they
have lost by reason thereof.

J. W. Newport

Atty for Plff's in Error

State of Illinois Supreme Court
 Grundy County 3rd. Third Grand Division
 April Term 1860.

Caleb T. Briggs
 ads. } Enor to Grundy.
 H. C. Dibbles & Co. }

It is hereby stipulated and agreed between the parties to the above action, that this cause is to be heard by the Supreme Court on the stipulation of the parties copied in the foregoing record, and that service of a writ of scire facias is hereby waived, and the appearance of the parties entered, and that the right to a hearing at the present term of said Supreme Court shall not be prejudiced by any delay in filing the foregoing record & stipulation.

J. W. Newport
 J. W. Beaman.

²⁸ ~~346~~ ~~85~~
Supreme Court
April Term 1860.

H. C. Dibbler vs.

vs.

Caleb T. Briggs.

Filed Apr. 24. 1860
L. Island
Clk.