

12020

No.

Supreme Court of Illinois

Strawn, et al

vs.

O'Connor, et al

71641 7

1849

James Strawn et al.

vs

James O'Connor et al.

1849

12020

State of Illinois 3p.
La Salle County

Pleas before the Hon. John D. Catron one of the
Justices of the Supreme Court of said State & presiding Judge
of the Ninth Judicial Circuit of said State at a Circuit Court
commenced & held in & for the County of La Salle aforesaid
on Friday the fifth day of November A.D. 1847. The
same being the seventy second year of the Independence
of the United States of America.

Present,

The Hon. John D. Catron, Presiding Judge.

Be it remembered that at the Term of Court aforesaid,
to wit: on the 19th day of said Month of November, the following
proceedings were had in said Court, to wit:

James Strawn & John Channer
vs

James Channer, William F. Hagg, et alms & the sales under them.
Thomas G. Conant & Henry Hurlbut

Motion to set aside two exe-

This day came the plaintiffs
& Glover & Seland their Attorneys & the defendants by Champlin,
How & Swift their Attorneys & this motion is taken up for hearing
& after having heard & duly considered the evidence & arguments
of Counsel, the Court overruled the motion. It is therefore con-
sidered that the defendants recover from the plaintiffs their
costs & charges by them herein expended & that they have execution
therefor. And thereupon the plaintiffs prayed for & obtained an
appeal to the Supreme Court of this State, upon condition
that they file their Appeal bond herein, within twenty days,
in the penal sum of one hundred & fifty dollars, with
Joseph C. Glover, Burton C. Cook & Edwin S. Seland
as their securities in said Bond.

And during said term of Court, afterwards, on the 20th day of said month of November, a bill of exceptions was filed in said cause in the words & figures as follows, to-wit:

State of Illinois, La Salle County & Circuit Court
thereof - Nov. Term 1847. -

James Strawn &
John Obanner - Plaintiffs

vs
James Obanner, Thomas G. Conant, Wm. F. Flagg & Henry
Hurlbut - Sheriff of La Salle Co. -

Motion to set aside sale of real
estate by Sheriff &c. -

Be it remembered, that on this
19th day of Nov. Term 1847, came the said plaintiffs by
Glenn & E. S. Seland their Attorneys and the defendants
by their Attorneys and plaintiffs moved the Court to set aside
a sale made by Wm. Reddick then Sheriff of La Salle County
on the 4th day of July A.D. 1846 of the following described premises,
to-wit: That part of Lot one in Block twelve in the Town of Ottawa
in La Salle County described as follows, commencing at the South
East corner of said Lot, the line runs North thirty four feet,
thence West eighty feet, thence South thirty four feet, thence
East eighty feet to ^{the} place of beginning, on two executions
issued on two judgments, viz: one on a judgment in favor
of Thomas Conant against James Strawn for one hundred
and fifty dollars and twenty nine cents damages & four
dollars & sixty two and a half cents costs rendered in the
Circuit Court of La Salle County on the 11th May A.D. 1841 -
and the other upon a judgment in favor of Wm. F. Flagg
against said Strawn for forty five dollars & thirty one cents
damages and two dollars & eighty seven & a half cents, ren-
dered in said Court November 16th 1841 - and to have satisfac-
tion of said judgments entered upon the Judgment Docket

of said Court - to grant an order directing Henry
Hurlbut now Sheriff of said County to pay back to John
O'Connor \$180 dollars, now in said Hurlbut's hands, paid
to him by John O'Connor as redemption money for redeeming
an undivided half of said premises - And thereupon plaintiffs
in support of said motion read in evidence, the affidavits of
James Shaw - John O'Connor, E. S. Seland & Theophilus L. Dickey
which were in the words & figures following -

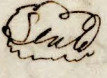
This Indenture made this eighth day of March in
the year of our Lord one thousand eight hundred & forty two
between James Shaw & Mary Shaw his wife of the County of
La Salle & State of Illinois of the first part and Varanus Eels
of the County of in the State of Illinois of the second part, Witnesseth:
that the said party of the first part for and in consideration of the
sum of four hundred and seventy five dollars to them paid
paid by the said party of the second part the receipt of which
is hereby acknowledged do by these presents grant bargain
sell remise release convey & confirm unto the said party of the
second part his heirs & assigns all that certain tract or
parcel of land situated in the Town of Ottawa County & State
aforesaid, described as follows, to wit: Commencing at the South
East corner of Lot No (1) one in Block No (12) twelve, boundary
line runs thence North thirty four feet thence West eighty
(80) feet across said Lot thence South thirty four (34) feet to the
South West corner of said Lot thence East along the South line
of said Lot eighty (80) feet to the place of beginning -

Together with all & singular the hereditaments and
appurtenances thereto belonging or in any wise appertaining.
To have & to hold the said premises as above described with the
appurtenances unto the said party of the second part his heirs
& assigns forever and the said party of the first part for himself
and his heirs doth hereby covenant & agree to & with the said
party of the second part his heirs & assigns that he is well

seized of the premises above conveyed as of a good and
undefeasible estate in fee simple and has good right to
sell & convey the same in manner & form as aforesaid, and that
the above bargained premises in the quiet and peaceable possession
of the party of the second part his heirs or assigns against
the claim of all persons whomsoever will forever warrant and
defend - In testimony whereof the said parties of the first part,
Wm: James Strawn & Abby Strawn have hereunto set their hands
& seals the day & year first above written -

The word "LaSalle" in the fourth line erased before signing
in presence of - Geo. H. Davis

Signed Sealed & delivered in presence of
Geo. H. Davis

James Strawn 
Abby Strawn 

State of Illinois
LaSalle County

I George H. Davis Notary Public in & for
said County do certify that on this day appeared before me James
Strawn whose name appears signed to the foregoing deed of convey-
ance and who is personally known to me to be the identical person who
signed the same and acknowledged that he had executed the same
as his voluntary act & deed for the uses & purposes therein ex-
pressed, and Abby Strawn wife of the said James Strawn having
been by me made acquainted with the contents of said deed and
being by me examined separate & apart from her husband, ack-
nowledged that she had executed the same and relinquished her
dower to the premises therein conveyed voluntarily freely & without
any compulsion of her said husband.

Given under my hand & official Seal at Ottawa this eighth
day of March 1842

Geo. H. Davis C. P. 

Filed March 9. 1842.

State of Illinois

LaSalle County James Strawn being sworn says that



Recorder Office
La Salle County Mo. 3
I hereby certify that the within is a true copy of the
recd of a Dec as recorded in this Office in Book No 8 of Deeds page 36437
from James Shawm wife to James Cole -
Attest - S. M. Raymond Recorder.

the foregoing is according to the best of his recollection
a copy of the Deed he gave to Varanus Ellis & that the
original deed was delivered by him to said Ellis & that it is
not now in his power -

Sworn & Subscribed before me

This 8th day of November 1847

Jas. Shawn

H. G. Cotton Probate Justice.

State of Illinois

La Salle County

James Shawn of said County being sworn
on oath states that on the twentieth day of February A.D.
1845 Varanus conveyed by deed of warranty of that date
to George H. Harris & John Channer the following described
parcel of land, to wit: That part of Lot one in Block twelve
in the Town of Ottawa described as follows, commencing
at a point on the East line of the lot sixteen feet North
of the South East corner thereof, the line runs North
eighteen feet thence West eighty feet across the lot -
thence South thirty four feet - thence East three feet
thence South sixteen feet, thence East seventy seven
feet to the point of beginning - that the consideration
expressed in the deed is two hundred & fifty dollars - that
the actual consideration was as follows - a short time
before the execution of the Deed by Ellis, (there then being against
this deponent in the La Salle Circuit Court in the State afore-
said a judgment in favor of Thomas G. Conant against
this deponent for the sum of one hundred and fifty dollars
and twenty nine cents damages & costs amounting to four
dollars and sixty two & a half cents, rendered on the eleventh
day of May A.D. 1841 - also another judgment in said
Court in favor of William F. Flagg & against this depo-
nent for the sum of forty five dollars & thirty one cents

damages and two dollars and eighty seven & a half cents costs rendered Nov. 16th 1841) it was contracted and agreed by parol between this deponent one the one part and George H. Stonis and James Obanner on the other part, that the said George H. Stonis and James Obanner should pay & discharge the said two judgments & all said costs, & that in consideration thereof the said Varanus Eells should make the aforesaid conveyance, that Eells did make the conveyance under & by virtue of the contract & that this deponent settled with & satisfied said Eells for having so conveyed his property as aforesaid - This deponent further says that in making said contract said James Obanner was acting for John Obanner & took the deed from Eells to John Obanner for the half of the premises so conveyed by Eells to Stonis & John Obanner.

Sworn & subscribed before me
this 6th day of November 1847.

Jas. Strawn

Henry G. Cotton Probate Justice.

State of Illinois

LaSalle County

John Obanner being duly sworn on oath states that the contract mentioned above in the affidavit of James Strawn between the said Strawn on the one part and the said George H. Stonis & James Obanner on the other part, that the said Stonis & Obanner should pay & discharge the two judgments in said affidavit described & that Varanus Eells should make the deed in said affidavit described was entered into as said Strawn has stated. This deponent does not know in what manner the matter was arranged between Strawn & Eells, but he does know that the said James Obanner acted for this deponent in making said contract & after the making thereof informed him what he had done. That the payment of one half the amount paid on the said two judgments was

paid by said James Oberner for this deponent, the said James Oberner before that time being indebted to this deponent in a larger amount for the services of this deponent before that time rendered to said James & for cash before that time loaned by this deponent to said James Oberner, that in this manner this deponent paid for said property & for this cause the conveyance from Gardiner Ellis was made to the said George A. Storis & to this deponent & not to said Storis & James Oberner. This deponent further says that the said Storis & James Oberner instead of paying said two judgments & having them satisfied & discharged as they had agreed with said Storrow to do, caused or permitted the following described property to be sold thereon by William Reddick Sheriff of said La Salle County on the fourth day of July A.D. 1846, viz: that part of lot one in Block twelve in the Town of Ottawa described as follows - commencing at the South East corner of said lot the line runs North thirty four feet - thence West eighty feet - thence South thirty four feet - thence East eighty feet to the place of beginning. This deponent states that he was present on said fourth day of July when said property was offered for sale, & in order to save his rights he bid off the same for the sum of three hundred dollars, that he was unable to raise the money to pay his bid, & the property was again put up for sale by said Sheriff & struck off by him to John C. Champlin, the said Champlin not then being present. This deponent does not recollect the amount of the bid of said Champlin, This deponent further says that the executions by virtue of which said sale was made have not even unto the present day been returned into the Clerk's office from which they were issued, that no certificate of purchase has ever been filed in the recorder's office of La Salle County. This deponent further says that he learned from an answer filed by

James Obanner in a certain suit in Chancery now pending in the La Salle Circuit Court on the Chancery side, which said answer was drawn by the said John C. Champlin as the solicitor of said James Obanner & is in the hand writing of said Champlin & to which the Court is referred, in which said suit, James Strawn is Complainant and George H. Bonis, James Obanner, Ellen Obanner & this deponent are defendants, that said James Obanner was the purchaser at said Sheriffs sale on said two judgments & took the certificate of purchase, This deponent further says that on the third day of July A.D. 1847 he paid to the Sheriff of La Salle County in specie the sum of one hundred & eighty dollars & instructed the said Sheriff to use the amount necessary in paying the purchaser the amount of his bid & ten per cent interest & to repay to him the excess if any, that the object of this payment was to redeem an undivided half of the premises so sold, that he made a payment of a sum which he conjectured & supposed would exceed the one half of the purchase money paid at the said Sheriffs sale & ten per cent interest, he having at the time no means of ascertaining the exact amount necessary, the Sheriff who made the sale being absent, except by inquiry of the purchaser. This deponent further says that the premises sold by the Sheriff were sold by said Strawn to Varanus Ellis by warrantor deed in March A.D. 1842 & that the said Ellis had conveyed to this deponent an undivided half of the same & as such grantee of Strawn he was attempting to redeem with his above described information & no other, & that said redemption was made for the reason that he feared to run the risk of proving the invalidity of said Sheriffs sale. Said deponent further states that the annexed instrument of writing is in the hand writing of George H. Bonis & that the same was executed by said

I agree to pay George A. Davis & John Abner the
sum of ten dollars & eighty three cents per month for the
building now occupied by me on the west side of the Public
Square in the old Town of Ottawa at the end of each month
that I occupy the same, and I further agree to surrender
up the possession of the premises at any time possession may
be demanded should I fail to pay the sum above mentioned
at the end of each month.

Ottawa Oct. 23^d 1845.

Michael Reidan

Sworn & subscribed before me }
this 8th day of November 1847 }

Henry G. Cotton Probate Justice.

State of Illinois }
LaSalle County }

I Theophilus S. Dickey being sworn say
that some time ago & I think in the early part of the year
1845 I was the attorney who had charge of the collection
of a judgment in favor of W^m. F. Hagg against James
Strawn for forty five dollars and thirty one cents & costs
rendered in the LaSalle Circuit Court November sixteenth
A.D. 1841 - That George H. Cronis about that time, viz:
in 1845 called upon me & stated in substance that he and
Obanner were about making a purchase of the Strawn
property in Ottawa & which property I understood to be the
property on the west side of the Public Square in Ottawa
where James Strawn used to live & which I have since
learned is on lot one in Block twelve & wanted to know
what time I could give them on the Hagg judgment if
I could be sure of getting my money without further trouble.
Said Cronis proposed to me I think to take their obligations
as payment of the judgment, which I declined, I however
agreed to give six months time I think, but the length
of time I do not recollect distinctly within which I
would not prep the collection of the judgment, upon the
promise of said Cronis that it should be paid up within
that time. The time expired it was not paid up, but
it was afterwards paid at two different payments. The
payments were made by George H. Cronis & James
Obanner. I do not know who were concerned in the
purchase of the Strawn property above alluded to. —

Ch. Nodan -
Sworn & subscribed before me this 8th day
of November A.D. 1847.

H. G. Cotton, Probate Justice.

John Connor

State of Illinois
La Salle County

E. S. Leland being sworn says that some time prior to the third day of July A.D. 1847 he applied to John C. Champin for information in relation to the sale made by the Sheriff mentioned in the above affidavit of John Connor & enquired of him who was the purchaser at said sale & what was the amount of the bid & requested to see the Certificate of purchase & states that his object in making the enquiry was to enable the said John Connor to redeem from the sale. That said Champin states that he was acting as the attorney of James Connor & that he did not think under the circumstances he ought to give deponent the information sought - Deponent further says that he applied to William Reddick the Sheriff who made the sale several times prior to said third day of July A.D. 1847, that said Sheriff promised to give him the necessary information to enable said John Connor to redeem from said sale, but owing to some cause unknown to this deponent the information sought was not obtained in time & the redemption was made by guess, this deponent believes however that the information was not intentionally withheld by said Sheriff but that it was owing to the press of business of the Sheriff & his consequent inattention. This deponent further states that he was acting as the attorney for said John Connor in making the above enquiries. This deponent further states that he is informed & believes that the said Thomas G. Conant has received full satisfaction of his said judgment against said Strawn.

E. S. Leland

When the last payment was made on said Flagg judgment I was requested to assign the judgment instead of entering satisfaction if it made no difference to me, & I did assign it to James Obanner or George H. Otis or to both of them - but my best recollection is that the assignment was made to James Obanner.

Given & subscribed before me
this 8th day of November 1847.

J. L. Dickey

Henry G. Cotton Probate Justice.

Also, a copy of a record of a Deed, the Certificate of the Recorder and the affidavit of James Strawn which are in the words & figures following (Here take them in as before copied into this Record) Also, the answer of James Obanner on file in this Court & the endorsements thereon which was in the words & figures following -

La Salle Circuit Court March Term A.D. 1847.

The Separate answer of James Obanner respondent, to the amended Bill of Complaint of James Strawn, Complainant -

This respondent saving all benefit of exception to the many errors & insufficiencies in the said Complainant's Bill & amended Bill contained, for answer, nevertheless to so much & such parts of said Complainant's amended Bill as amended as this respondent is advised is material to be answered unto answering saith:

That he admits that the agreement mentioned in said Bill between sd. Otis & sd. Strawn, to have been entered into substantially as therein alleged, but for greater certainty craves that the said agreement may be produced as an exhibit on the hearing & proved to the satisfaction of the Court & that respondent may inspect the same - and defendant is not informed whether the purchase money therein men-

tioned has been paid by said Shown as therein alledged, but as this alledged fact is not known to respondent, he prays that Complainant may be held to proof thereof on the hearing.

This respondent is also informed & believes that full payment has been made by sd. Complainant of the purchase money in the said articles of agreement mentioned by Ed. Shown as therein alledged, and also, that a draft of a deed a copy of which is in that behalf set out in Complainant's Bill was presented by E. S. Seland Esq. one of the Solicitors for Complainant to his Co.-defendant Otton's for execution, but on whose behalf presented defendant does not know, & is informed & believes said Otton's never knew, but believes & insists that the same was never presented by or on behalf of, or under the authority of, the Complainant or any other person having any legal or equitable interest in the premises described in said deed. Respondent also is informed & believes that said Otton's then refused & has always refused to execute the aforesaid draft of a deed, as well for the reason aforesaid as the reasons hereafter stated. Respondent now states saith that the Complainant before the commencement of this suit conveyed all his interest in the premises mentioned in Complainant's Bill to one Varanus Eells. - That Ed. Eells, also before the commencement of this suit, conveyed the South eighteen feet of said premises to defendants John Obanner & Ellen Obanner and that the purchase money therefor, to wit: the sum of two hundred & eighty dollars or thereabouts was paid by this respondent out of his own money & funds in no wise directly or indirectly out of the money or funds of the said John & Ellen Obanner, separate or joint, or was intended to, or can, as to any equities, or the pretence of any between this respondent and sd. John & Ellen, operate in any other manner as a trust in them, of said premises for the benefit of this respondent.

Respondent further saith that the remainder of said lot before the commencement of this suit was conveyed by said Ellis to his co-defendants Louis & John Obermer - That sd. purchase was made, as to the undivided half of the remainder of sd. lot so conveyed as aforesaid to John Obermer by this respondent - The purchase money therefor, to wit: the sum of about three hundred & fifty dollars was paid by this respondent of his own money & funds and in no wise out of those of sd. John Obermer - That said purchase was made by respondent for his own use & benefit - That said John Obermer has no lien or claim whatever, or incumbrance, on sd. last mentioned part of sd. lot, except the mere naked legal title, and Respondent insists that he holds that in trust for him this respondent - Respondent further saith that before the commencement of this suit he had purchased of his co-defendant Louis, all his interest in his undivided half of sd. part of said lot so conveyed to John & Ellen Obermer and paid him a part of the purchase money therefor, and that the balance of said purchase money has since been paid by him to said Louis.

Deponent further says that the co-defendant Louis in part consideration of his purchase of him of the undivided half of the lot the part of said lot as above described, promised to convey & release to him this deponent, the legal title to the whole of said lot described in Complainant's Bill - This defendant further saith that after the conveyances were made by Varanus Ellis as before described it was discovered that the whole of said lot mentioned in Louis' Bond to Shaw was subject to two judgments in the La Salle Circuit Court against Seth Shaw, one in favor of Thomas G. Conant & the other in favor of William F. Flagg and amounting to the sum of about two hundred & eighty five dollars on the day of sale, which was the 4th day of July 1846, when said lot was sold on sd. judgments to this

complainant & paid for by him out of his own money to the amount of said sale - Defendant further saith that sd. last mentioned sum of money was in reality the consideration money paid to Eells for the conveyance of the North part of said lot as aforesaid, because, Eells having conveyed the South part of said lot with covenants of warranty and seizen, which were broken or liable to be by the lien of the aforesaid judgments, conveyed the North part of said lot in satisfaction of said breaches or liability - said North part being at that time of about the same value with the amount of said judgments and the said Eells agreed to convey the sd. North part to this respondent & others in satisfaction of said covenants of warranty & seizen or the liability on them of said Eells and the said Eells conveyed to the said John Obanner by the direction of this defendant, and the whole of the purchase money was paid by this defendant, and the purchase made by him for his own benefit alone, and the said John Obanner has not any right or claim whatever in said last mentioned part of said lot except the mere naked legal title without any other interest or claim therein whatever. And in respect to the undivided half of said last mentioned ~~lot~~ part of said lot, this Respondent has paid said others in full therefor, & has received or is entitled to receive a deed from him therefor - and claims therefore that he is both the legal & equitable owner of said last mentioned part of said lot. - Defendant further saith, that after the purchase of Eells as aforesaid & the conveyance by Eells as aforesaid to John & Ellen Obanner, of the South eighteenth part of said lot, defendant made permanent improvements thereon to the amount of at least three hundred dollars, that said improvements were made & paid for by & with this defendant's own money & in no way by the funds, labor or means of any kind of said John Obanner. This defendant further saith that after the purchase

by himself & Ed Stonis of the North half of said lot as
aforesaid & the conveyance thereof by D. Eells to Dr. John Obanner
Stonis as aforesaid, this defendant & Dr. Stonis made permanent
improvements thereon to the amount of the value of at least
two hundred dollars, the whole of which has been paid by
this respondent out of his own money & means, since the con-
veyance of Eells as aforesaid, and not one cent of the value
of said improvements or purchase money has been paid for or
contributed by either John or Ellen Obanner or any other
person except this respondent. (as this defendant has
repaid Stonis all the money expended by him as herein be-
fore stated, in his purchase of Stonis).

This defendant further saith, that the said Ellen Obanner
is an infant daughter of this defendant residing in his
family. This defendant further saith that he has always
been and now is in possession of the whole of the premises described
in the Bond from Stonis to Strawn, except that Ed Stonis was
in possession of the North quarter of said tract, for a short time
between the time of Dr. Stonis' purchase from Eells and his
sale to this defendant as herein before described.

This defendant further saith that said John Obanner is a
man without any pecuniary means and for several years
before the conveyance by Eells herein before mentioned resi-
ded in this defendants family, & was supported by him, but
that said John never rendered this defendant services suf-
ficient to pay for his support, or ever paid this defendant for
his support in any other way, nor was this defendant ever
indebted to said John in any way whatever.

Without this that any other matter or thing in the
Complainants Bill contained and herein & hereby answered
is true wherefore defendant prays to be hence dismissed
with his reasonable costs.

Hors, Champlin & Swift
Sols. for Complt.

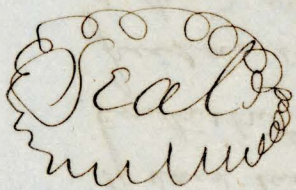
To the reading of James Connors answer, the defts. who appeared objected, but the objection was overruled & d. answer read & the d. defts. who appeared excepted to the opinion of the Court in allowing the same to be read. - Plaintiffs also produced & read two executions & the returns thereon which were as follows:

State of Illinois ³ Set.

LaSalle County ³

The People of the State of Illinois,
to the Sheriff of said County ~~_____~~ Greeting:

We command you, that of the goods & chattels, lands and tenements of James Strawn which shall be found in your County, you cause to be made the sum of one hundred & fifty dollars & 29 cents which Thomas G. Conant has lately in our Circuit Court of our said County, recovered against him for his debt & damages in a certain action of Debt: and also, the further sum of four dollars & sixty two cents & a half which was adjudged to him for his costs & charges in that behalf expended, whereof the said James Strawn is convicted as appears to us of record; and have you the money ready in ninety days from the date hereof, to render to the said Thomas G. Conant for his debt & damages and costs aforesaid. Hereof fail not make return of this writ in ninety days from the date hereof, with an endorsement thereon, as to the manner in which you may execute the same.



Witness, Joseph Cloud, Clerk of said Court, & the
seal of said Court, at Ottawa, this 24th day of
July A.D. 1841.

J. Cloud Clerk.

"Collect interest from May 11th 1841."

By virtue of the within writ I have levied on the following Real estate, to wit: part of Lot one (1) in Block twelve (12) in the Town of Ottawa, described as follows, commencing at the South East corner of said Lot the line runs North thirty four (34) feet thence West eighty feet across said Lot thence South

thirty four (34) feet thence east eighty feet (80) to the place
of beginning, this tenth day of August A.D. 1841, and on the
fourth day of July A.D. 1846 I sold the said Real Estate to
John C. Champlin for two hundred & eighty dollars and fifty
two cents which satisfies this writ and one in favor of William
F. Flagg - I paid the plaintiffs demand to him.

William Reddick Sheriff.

"Recd. this writ at 2 P.M. July 30.th 1841"

State of Illinois }
La Salle County } Sec.

The People of the State of Illinois,
to the Sheriff of said County - Greeting:
We command you, that of the goods & chattels, lands and
tenements of James Strawn which shall be found in your
County, you cause to be made the sum of forty five dollars
& thirty one cents which William F. Flagg has lately in our
Circuit Court of said County, recovered against him for his
damages, by reason of certain trespasses by the said James
Strawn to the said William F. Flagg lately done; and also,
the further sum of two dollars & eighty seven & a half cents
which was adjudged to him for his costs & charges in that
behalf expended, whereof the said James Strawn is convicted
as appears to us of Record; and have you the money ready in
sixty days from the date hereof, to render to the said William
F. Flagg for his damages & costs aforesaid. Hereof fail not,
& make return of this writ in sixty days from the date hereof
with an endorsement thereon as to the manner in which you
may execute the same.

Seal
of
Court

Witness, Joseph Cloud, Clerk of said Court & the
seal of said Court at Ottawa this 25th day of February
A.D. 1842.

J. Cloud Clerk.

"Collected interest from November 16.th 1841"

By virtue of this writ I have levied on the Sixth thirty

four feet of Lot one (1) in Block twelve (12) in the Town
of Ottawa being eighty feet by thirty four feet and on the
fourth day of July A.D. 1846 I sold the same to John C.
Champlin for the sum of two hundred & eighty dollars
& fifty two cents which satisfies this execution & an order
in favor of Thomas G. Conant against James Strawn -
The sale was made at Public Vendue at the door of the
Court House in Ottawa at two O'Clock P.M. of said day.
I paid the plaintiffs demand to James O'Connor the assignee
of this judgment. William Reddick Sheriff.

Thereupon the defendants in resisting said motion -
produced & read in evidence the affidavits of Geo. H. Stonis,
James O'Connor and James Strawn - and the answer of
Geo. H. Stonis in Chancery - and an affirmation of said Flagg
judgment - all which were in the words & figures following,
viz:

James Strawn & John O'Connor } No. 1. LaSalle Cir. Court
vs. } motion

James O'Connor & others } George H. Norris being
duly sworn on oath saith that James O'Connor made
the purchase of the north eighteen feet of the lot de-
scribed in Affs. affidavits ~~with this affiant on his own~~
in the name of John O'Connor with this affiant on his
own account and for his own benefit as he professed
at the time with the knowledge of John O'Connor & paid
therefor, with his own money, as affiant, from his knowl-
edge of the transaction at the time had reason to believe
and did believe, and now believes, and that it was so known
to and understood by John O'Connor at the time. -
Geo. H. Norris

Subscribed and sworn to

before me this 18th day of Nov. A.D. 1847.

L. Leland clk.

No. 2. Term LaSalle Cir. Court 1847

James Strawn &
John O'Connor
vs.

Motion to set aside sale on Exm.

James O'Connor & others } James O'Connor being duly sworn
on oath saith, that he is as he is advised & believes, the
owner of the whole of the premises described in plaintiffs

affidavits and that his title thereto was derived as follows; to the south sixteen feet of said lot, running 77 feet back, by Deed from Varanus (Culls, to John O'Connor & Ellen O'Connor, the consideration money for which conveyance, was paid by this affiant, wholly out of his own money and means, and not in whole or in any part out of the money or means of said John & Ellen, or either of them, nor was affiant, at the time of such conveyance or at any time since, indebted to said John or Ellen, or either of them nor was there ever any agreement at any time between this affiant & said John & Ellen or either of them that ~~should~~^{the} purchase should be for their benefit, or the benefit of either of them - nor were the said John^{or} Ellen ever at any time in possession of the premises.

That the consideration money paid by this affiant for the said south sixteen feet which cost him the sum of at least three hundred and eighty and that ~~as~~^{the} improvements on said south sixteen feet which cost him the sum of at aforesaid was the sum of two hundred and five - dollars; and affiant further saith, that since said purchase & before the sale on the Executions mentioned in Plaintiffs affidavits, he made valuable and lasting improvements on said south sixteen feet which cost him the sum of at least three hundred and eighty and that said improvements were made wholly with the means & money of this affiant - and without any consultation or advice, privity of said John and Ellen or either of them, to the making of the same, affiant therefore insists upon these facts that said John & Ellen hold the said south sixteen feet aforesaid, as the trustees only of this affiant and without any beneficial interest therein, by said trustees or either of them.

Affiant further saith that he is the real bona fide, & beneficial owner as he is advised & believes, of the north eighteen feet of said premises described in Plaintiffs

affidavits, and that he purchased & paid for the same, wholly out of his own money, money and means and in no wise out of the money or means of the said John O'Connor, or any other person whatever, except affiant, and that said purchase was made for the sole benefit & use of this affiant, and in no way for the the benefit or use of the said John O'Connor, or of any person whatever, except this affiant, - nor was this affiant at the time of said purchase in any way indebted to said John O'Connor, nor was said John O'Connor in any way privity to the making of said purchase nor has said John any beneficial interest in the same or any part thereof.

That said eighteen feet was purchased of said Carranus (Cells as follows; said Cells having previously conveyed said South 16 feet to John & Ellen O'Connor, as aforesaid, with covenants and Surety & Warranty, which, at that time of the purchase of the north eighteen feet, were known to be broken, or liable to be so, by the existence of the two judgments against Strawn, Cells Grantor, as mentioned in Syst. affidavits - it was agreed between Cells of the one part and this affiant - it was agreed between Cells of the one part, and this affiant and one George H. Norris of the other part, that if he Cells, would convey said north 18 feet to them, they would, as the consideration therefor save said Cells harmless upon his covenants of Surety in the first mentioned Deed, as far as the Incumbrance of the two aforesaid judgments was concerned - that said Conveyance was accordingly made upon that consideration, and the Deed of affiant's half thereof was made by his affiant's direction to John O'Connor & the Deed of the other half thereof, was made by his affiant to said Norris whose interests this affiant has since bought out, and paid said Norris fully for. That said Norris & affiant, accordingly purchased in

the two aforesaid judgments, mentioned in Plaintiffs affidavits, and procured assignments of the same, and the money & means, paid by the affiant in making said purchases of said judgments, were wholly his own & in no wise, in whole or in any part with the money or means of said John O'Connor, nor was this affiant at that time or any other time, in any way indebted to said John O'Connor, nor was there ever any priority on the part of John O'Connor to or in the making of said purchase in any way - or in said premises in any way, except holding the same as herein before stated in part for this affiant.

Affiant further states that since the purchase of the north 18 feet aforesaid by himself and said Norris, improvements have been made on the same by the affiant, (including the improvement made by Norris, and pd. for by the affiant to him) to the value of at least two hundred and seventy five dollars, and affiant thinks more that said improvements were paid for by this affiant wholly out of his own means or with his own money, and in no part whatever with the money or means of said John O'Connor or of any other person whatever except this affiant, nor was there ever any priority on the part of said John O'Connor to the making of said improvements - or any agreements respecting the same between, said John and this affiant - and in fact that said John has no beneficial interest whatever in any of the premises mentioned in Plaintiffs affidavits, or any part thereof or in the improvements thereon, or any part thereof.

For these reasons, affiant caused said premises to be sold on the Conant & Plagg Executions, as he believed he had good right, under the circumstances, to do & on the sale on the 4th day of July 1846 caused them to be bid in by J. C. Champlin his attorney, for the amount of those judgments - the certificate of sale was taken in said Champlins name & assigned by him to this affiant.

that the amount paid by this affiant for the two judgments aforesaid was the full amount thereof, interest and costs. That John O'Connor is a man destitute of property and was mostly supported by this affiant for several years previous to the purchase from Wells and for sometime after.

Subscribed and sworn to before me } James O'Connor,
this 18th day of November A.D. 1847.
L. L. Land, Clerk.

James Strawn &
John O'Connor
vs.

Motion

(Executions)

James O'Connor
William F. Hagg
Thomas E. Conant
Henry Hurst.

La Salle Circuit Court Nov. Term A.D.
1847-

James Strawn one of the complainants herein being sworn says, that he has made a previous affidavit in this cause, which was sworn to & subscribed before Henry E. Cotton probate justice, on the sixth day of Nov. A.D. 1847 in which he uses three words to wit. "that in making said contract" (alluding to the contract made with affiant for Varanus Wells, for the conveyance of the property described in said affidavit) "said James O'Connor was acting for John O'Connor, and took the deed from Wells, to John O'Connor for for ^{the} half of the premises so conveyed by Wells to Norris and & John O'Connor." Affiant says, that in using the word that said "James O'Connor was acting for John O'Connor" in said affidavit, he used the word to express an influence merely which was caused from the fact, that said James directed the Deed made out in the name of John O'Connor

and

and that he has no other ground whatever for supposing for supposing that said James was acting for John and that he intended so to express himself in his former affidavit.

Subscribed & sworn to
before me this 18th day
of November A.D. 1847

James Strawn.

L. Leland Clerk.

M. Phaneury

La Salle Circuit Court Nov. Term A.D. 1846.

The answer of George H. Morris to the
Bill of Complaint of James Strawn
Complainant.

This defendant, saving all benefit of exception to the said Complainants Bills in the same manner as though the same had had been inserted on by demurrer or Plea for answer nevertheless to so much of said complainants Bill as defendant is advised is material to be answered unto, answering saith. That he entered into the agreement mentioned and set out in Complainants Bill, as therein alleged, as he believes, but for greater certainty prays that the same may be produced on the hearing and that defendant may inspect the same. The defendant admits ~~that~~^{that} the payment after purchase money, under said agreement, by said Strawn as alleged in said Bill.

The defendant also admits tender to him by, by O. P. Leland Esq. one of the solicitors in this cause, of the draft of a deed, a copy which is in that behalf set out in complainants Bill, but on whose behalf the same was presented, defendant did not know at the time of its presentation, does

not now know, but believed these and now believes, that it was not presented on behalf of the complainant, or any person having either a legal or equitable title or interest in the premises described in the complainants Bill, and insists on the in respect to the same as though the same had been pleaded.

And the said defendant also admits that he refused to execute the deed so tendered to him as aforesaid, both for the reason herein before stated and also for the reasons herein after stated, and this defendant also insists on the benefit of the facts and matters herein after stated, in the same manner as though they had been aptly and properly pleaded to the complainants Bill in the cause.

The defendant now saith: That the complainant before the commencement of this said conveyed all his interests in the premises described in the Complainants Bill in ~~this~~ ^{the} premises. The defendant to one Warrens Cells.

That the said Cells also before the commencement of this suit conveyed to John O'Connor & Ollen O'Connor, all his interests in the south eighteen feet of said lot, running seventy seven feet back from La Salle Street. Defendant has reason to believe and does believe that the consideration money for said last purchase was paid by one James O'Connor and that said purchase operated as trust in favor of the said James O'Connor of that part of said lot so purchased in the name of John & Ollen O'Connor as aforesaid. Defendant further saith that the remainder of said lot was conveyed by said Warrens Cells to the defendant and John O'Connor, jointly, and that defendant has reason to believe, and does believe that the consideration money for the part of the lot last aforesaid, purchased in the name of John O'Connor and himself,

to the extent of ~~some~~ half was paid by James O'Connor and the said James O'Connor has also agreed to purchase of this Respondant his half of said part of said lot, so purchased of said Cells as last aforesaid, and paid here thereof in part; and agreed to pay him the balance thereof, and defendant stands ready to give the said James O'Connor a conveyance thereof, when he pays the balance due of the consideration money and also of the whole residue of said lot described, if the right thereto shall be found to be in said James as Respondant believes and insists it is, or to so much thereof, as the Court shall adjudge that he has an equitable right to, and this Respondant knowing that the equitable interest in the last described portion of said lot was in James O'Connor promises the said James O'Connor to make a release thereof to him, ~~at a very long~~ before the commencement of this suit.

Defendant further saith, that after the conveyances by Varanus Cells before spoken of, it was discovered that the whole of the lot, mentioned in defendant's Bond to Strawn was subject to two judgments mentioned in the La Salle Circuit Court against said Strawn one in favor of Thomas P. Conant and the other in favor of William F. Slagg to the best of defendant's recollection and amounting together to the sum of about two hundred and fifty dollars, that said lot before the filing of complainant's Bill was sold said judgments for the sum of about two hundred & fifty dollars, and was purchased by said James O'Connor who paid the purchase money to the Sheriff who made the sale. That said sum so paid on said Executions, was in reality the purchase money or consideration, paid to Cells for his conveyance of the north part of said lot before described, to defendant and John O'Connor because Cells, having conveyed the south part with covenants of warranty, and the north part aforesaid being of about the same value with the judgments aforesaid agreed to convey the same to said

James O'Connor who was the only, real party in interest in the purchase of said south part of said lot aforesaid in satisfaction of the breach of warranty in his Deed of said south part aforesaid. Defendant as before stated was the original co-purchaser of said north part of said lot and he and said James made improvements on the same after said purchase, of the value of about two hundred dollars, - but defendant having agreed to dispose of his interest as aforesaid to said James (said James having agreed to pay him) for his share of the improvements aforesaid, and also having purchased the said property under the aforesaid judgments as aforesaid. Claims that he is the legal & equitable owner of said undivided half of said north part of said lot as aforesaid, subject to his

Defendant also further saith that the James O'Connors made improvements, by the erection and repair of buildings, upon the south part of said lot herein before described, after the purchase of the same from O'Call & the conveyance thereof by O'Call to John & Ellen O'Connor as aforesaid, to the value of about three hundred dollars, as defendant believes, - that said James has always been in possession of said property since said last named purchase & said John of no part thereof, - that said James is a man of substance and property, & said John is not as defendant believes, - that said John is a sort of a cousin of said James as defendant believes, and that said Ellen O'Connor is an infant daughter of said James, - and finally, that the Bill filed in this cause is a fraudulent proceeding on the part of John O'Connor, to cheat James O'Connor out of his just rights in the premises and was filed as defendant believes without without the knowledge and consent of the complainant.

The defendant craves leave to refer to the judgments and executions, herein before mentioned, also to the Records

of the several deeds herein before mentioned, or so many thereof as are not recorded the same not being in his power of or possession, and for leave to read the same judgments, Executions, and proceedings under them, & Records of Deeds aforesaid on the hearing of this cause, and to be hence dismissed with his reasonable costs in this behalf most unreasonably incurred.

J. C. Champlin

George H. Norris

State of Illinois }
Lasalle County }

I George H. Norris, the above Respondent, being duly sworn on my oath do say, that I have heard the foregoing answer by me subscribed, read & am acquainted with the contents thereof, & that the same except as to hearsay & belief is true & as to matters of hearsay & belief therein contained, I believe the same to be true.

Subscribed & Sworn to before me

George H. Norris.

this 17th day of November A.D. 1846

L. Leland Clerk

which was all the evidence on the motion —

And thereupon the Court after duly considering said motion overruled said motion & refused to grant the same in any part thereof. To which decision of the Court the plaintiff excepts & prays that this may be made a part of the record.

J. D. Caton

And on the 29th day of November A.D. 1847, the plaintiffs filed in the Clerk's Office of said Court, their appeal bond in the words & figures as follows, to wit:

Know all men by these Presents that we James Strawn and John O'Connor as principals and Edwin S. Deland Joseph V. Glover and Burton C. Cook as sureties are holder and stand finally bound and obliged unto James O'Connor, William G. Flagg, Thomas G. Conant and Henry Barthert their heirs, executors, administrators and assigns, in the penal sum of one hundred and fifty dollars.

To the payment whereof made well and truly to be made to said James O'Connor, William G. Flagg, Thomas G. Conant and Henry Barthert, we do by these presents bind ourselves, our heirs, executors and administrators.

Sealed with our seals. Dated this twentieth day of November A.D. 1847.

The condition of this obligation is such that whereas at the November term 1847 a motion was made by said James Strawn & John O'Connor to set aside a sale of Real estate made by the Sheriff of Du Salle county aforesaid in which the above obliges were made defendants & which motion was heard of said term of said Court and from which decision of the Court the said plaintiffs have prayed an appeal to the Supreme Court of the said State. Now therefore if the said James Strawn & John O'Connor shall prosecute their said appeal with effect or shall in case the decision of said Court shall be affirmed by said Supreme Court, pay all

costs for which they may be liable, then this obligation to be
said otherwise, to be and remain in full form & virtue.

James Strawn *Seal*
John O'Connor *Seal*
Edwin S. Leland *Seal*
Barton C. Cook *Seal*
Joseph O. Closser *Seal*

State of Illinois }
La Salle County }

I, Lorenzo Leland Clerk of the
Circuit Court of said County do hereby
certify that the foregoing contains a true, full
& complete copy of the Record & proceedings in
the above named cause as the same appear
of record & on file in my office.

In testimony whereof I have here-
unto set my hand & affixed the seal
of said Court at Ottawa this 30th
day of October A.D. 1848.

L. Leland Clerk.

1000007

clo. 17.
James Shawm stal.
James O'Connor stal.
Transcript

Filed May 26th 1849.
Holland & Co.

Supreme Court of the State of Illinois.
June Term at Ottawa At 1849

John Connor & James
Shaw. vs James C
Connor William F Hagg
Thomas G Conant & Henry
Hailbut

} Motion to set aside & sub-
sequent proceedings in

It is hereby stipulated & agreed that the
plaintiffs in this motion shall dismiss their appeal & pay all
costs that have accrued in the matter.

Leland & Glavin
for plaintiffs

rept. to dips.

Filed June 11. 1849
Holland