

No. 12420

Supreme Court of Illinois

Dickerman, et al.

vs.

Burgess, et al.

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United States of America
State of Illinois
Winnebago County

Pleas before the Hon.
Benjamin R. Sheldon Judge of the fourteenth
Judicial Circuit of the State of Illinois
at a Term of the Winnebago County Circuit
Court begun and held at the Court House in
Rockford in said County of Winnebago
on the 18th day of February in the year of
our Lord one thousand eight hundred
and fifty six

Present the Hon Benjamin R. Sheldon Judge
William Brown States Attorney
John F. Taylor Sheriff

To Hon Ben^r. Sheldon Judge of
the fourteenth Judicial Circuit of
the State of Illinois presiding in
the Winnebago Circuit Court on the
Chancery side thereof.

In Chancery—

Your orator Alden
Thomas of the County of Winnebago & State of
Illinois humbly complaining, sheweth unto
your Honor, That for several years previous to
March in the year eighteen hundred & forty nine
he had had considerable dealing with one
Horatio O. Stone of the City of Chicago that
some misunderstanding having arisen between
your Orators said Horatio O. Stone whom
your Orator prays may be made Defen-
dant to this his bill of complaint, the said

Defendant commenced a suit against your Orator in the Winnebago County Circuit Court in the month of August in said year 1849 in which suit a certain trial was had at the March term 1850 of said Court, & a judgement was recovered by the said defendant against your Orator for the sum of Forty five Dollars & costs which were taxed at Ten dollars and twenty four cents.

Your Orator further shows that previous to the commencement of said suit the claim of said defendant had been presented to your Orator for payment, by one William T. Burgess a practicing Attorney at law, then residing in the County of Boone, now residing in Chicago (whom your Orator prays may be made a defendant herein) to whom your Orator made payments from time to time to a large amount, until the whole amount of the demand due to said Horatio O. Stone had in fact been paid, and the said William T. Burgess only claimed on behalf of said Horatio O. Stone about the sum of Fifteen Dollars from your Orator, on account of his fees, which he claimed your Orator had agreed to pay to him and which was the only question pending in said suit as your Orator supposed and had been repeatedly informed by said William T. Burgess.

Your Orator further shows that on the trial of said Cause the said William T. Burgess was the principal witness and by reason of his testimony the said judgement was obtained

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for at least thirty dollars more than said defendants had either of them pretended to claim; and said William, T. Purgeff soon afterwards became well satisfied and admitted that he had been entirely mistaken in his testimony on said trial as your Orator has been informed and believes; and for that reason your Orator supposed that said William, T. Purgeff who acted as said Horatio, O. Stones, sole Attorney on said trial and who pretended to be willing to settle the matter fairly; would not insist upon the payment of the whole amount of said Judgement so unjustly obtained through his own erroneous testimony

Your Orator further shows that afterwards in June Eighteen hundred and fifty an execution was issued on said judgement, with directions to the Sheriff of said County of Winnebago to collect the whole amount thereof, and sometime during the life of said execution, your Orator applied to the said William, T. Purgeff and urged upon him the outrageous iniquity of forcing from him the whole amount of said Judgement, well knowing as the said William, T. Purgeff did, that it was unjust, and your Orator consented to pay on said execution the sum of thirty one dollars besides the costs which the said Sheriff received from your Orator sometime about the month of November A.D. 1850 and paid

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the same over to the said William T. Purgep
as appears by an endorsement upon said
execution in his hand writing in words and
figures as follows "Nov 13, 1850 Rec'd on this con-
thirty one dollars & $\frac{12}{100}$ from the Shff. H.C. Stone
by W.T. Purgep"

Your Orator further
shows, that while the said Sheriff had said
execution in his hands, your Orator had
an abundance of property out of which said
amount could have been collected, and the
only reason why said Sheriff did not en-
force the collection thereof, was as your
Orator then understood and believes, that
your Orator advised him of the injustice
of the claim and insisted that the said
William T. Purgep would certainly relinquish
a part of said Judgement. And your Ora-
tor assured said Sheriff, that unless said William
T. Purgep would consent to receive such part in
satisfaction, your Orator would at any time
pay the whole amount of said execution, to said
Sheriff whenever he should require the same.
And your Orator may well remember
that he had during said time some com-
munication on the subject with said
William T. Purgep, but whether by letter or
in person, your Orator is not certain: he
is however very certain that in some man-
ner, said William T. Purgep, signified
his willingness to accept said sum of thirty
one dollars in satisfaction of said

8- demand, both to your Orator and the
said Sheriff, And both your Orator and
said Sheriff as your Orator is informed
and believes, so regarded the matter and
considered it at an end when said
money was paid over, but your Orator
through ignorance of the necessity of
having a formal discharge or satis-
faction of said execution, entered of
record, supposed it was sufficient for him
to pay over the money as agreed be-
tween himself and said William T. Bur-
gett. And your Orator is confirmed
in his recollection and belief that
the said Sheriff understood that the
payment of said ^{sum of} thirty one dollars
was satisfactory; by the fact that said
Sheriff held said execution in his
hands a long time after it had become
inoperative before said sum was paid
over by your Orator and by the fact that
he still retained said execution in his
hands a long time afterwards as appears
by his subsequent endorsement thereon
in words and figures as follows "The
execution returned by order of Plaintiff
Nov. 18th 1853.

H. R. Maynard Shff"

Your Orator further states shows
that from the time he paid said money
aforesaid he heard nothing more of said
Judgement, and had no idea of ever being

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called upon for any further payment upon it, but supposed the same had been fully and sufficiently satisfied until about the month of January Eighteen hundred and fifty four, when King H. Milliken Esq. then Sheriff of said County of Winnebago called upon your Orator with an execution which appeared to have been issued on said judgement on or about the 28th day of Decr A.D 1853. And calling for the collection of the balance thereof after deducting the amount theretofore paid by your Orator as hereinbefore stated. Your Orator according to the best of his remembrance and belief, at that time fully and distinctly informed said Sheriff of the whole history of the proceedings of said William T. Burgess in respect to said judgement, and at the same time your Orator distinctly stated to said Sheriff that he would communicate with said William T. Burgess, and ascertain what his purpose was in having another execution issued, and it was the understanding between your Orator and said Sheriff that nothing further was to be done with said execution until your Orator could see or hear from said William T. Burgess on the subject, your Orator assuring said Sheriff that in case said William T. Burgess should insist upon the said balance being paid then your Orator would pay it at any

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time when said Sheriff should call for it. Your Orator accordingly wrote to said Burgees, but never having received any answer and hearing nothing further from any person on the subject, Your Orator took it for granted that said William T. Burgees was so conscious of the injustice and iniquity of pressing the claim, that he had relinquished it, and your Orator well knowing that said Sheriff understood the whole history of the matter and presuming with the utmost confidence that he would take no measures to enforce the ^{said} execution without first calling upon your Orator, entirely forgot all about it, until his attention was called to it by being informed that his property had been sold and a Sheriffs deed executed and recorded as hereinafter stated.

Your Orator further shows that at the time the said Sheriff received the said last execution mentioned execution your Orator was the owner of a valuable lot of land in the City of Rockford described as follows viz: The East one quarter of the west three fifths of Lot Ten on the East side of Rock River, beginning at a point on the North side of said Lot at sixty nine feet and nine inches Easterly from the North west corner of said Lot: thence Easterly along the north

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side of said Lot twenty three feet and three inches thence southerly parallel with the west end of said Lot sixty six feet; thence westerly along the south side of the Lot, twenty three feet and three inches; thence northerly parallel with the west end of the Lot sixty six feet to the place of beginning; and was then engaged in erecting upon said Lot a valuable building which has since been completed; and said property including the lot and said building is worth at the present time in the opinion of your Orator, not less than five thousand dollars. And your Orator at the same time had and has continued to have in Rockford aforesaid other real Estate and a large amount of personal property unincumbered out of which said execution might at any time have been satisfied.

Your Orator further shows that after the time of said Sheriff's informing him of having said last execution and agreeing to wait until your Orator should further hear from said William F. Burgess, as aforesaid, your Orator had no knowledge whatever directly or indirectly, nor had he at any time the least suspicion that any steps had been taken by said Sheriff or any other person to collect said execution until sometime about the last of September or the first of

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October in the year Eighteen hundred and fifty five, when your orator was informed that a Sheriff's deed, of said above described premises, had been executed and recorded in the recorder's office of said County of Winnebago; And upon examination your Orator found such to be the fact -

Your Orator further shows that upon learning such fact, he immediately instituted an inquiry into the ^{trans}actions of said Sheriff and said William T. Burgess in relation to said execution, and as near as your orator has been able to ascertain the facts from information and as he believes them to be, ~~that~~ said Sheriff pretended to sell the said premises at auction on said execution on or about the tenth day of June A.D. 1854, but your Orator has been informed and believes, and therefore charges the fact to be, that so far from selling said premises in pursuance of the Law of this State, he never made a levy on said premises nor advertised the same as the Law requires. And your Orator further charges upon his information and belief, that at several different times appointed by said Sheriff for said sale, no person whatever attended to bid for said property, & that said Sheriff instead of returning said execution for want of bidders acting under the express directions of said William T. Burgess

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on the said tenth day of June A.D. 1854
struck off said premises to the said William
T. Burgess as the attorney of the said Hor-
atio C. Stone without offering the same at
public auction at all or at any time during
said day, and without crying the same to
or for a bidder at any time or place; and
your Orator further charges upon his
information and belief that neither the
said William T. Burgess nor any person
whatever was present at the time of said
pretended sale, but on the contrary thereof
said Burgess was ^{then} in Chicago, or somewhere
away from said County of Winnebago;
that no person whatever knew of such sale;
and that said Sheriff performed no other
act whatever in making such sale,
except merely, by himself ^{and} without the
knowledge or presence of any other person,
to make an endorsement on said execution
as follows "made the amount of the within
execution by sale of property described in
levy hereon, To W. T. Burgess Plff's Atty as
per his receipt attached hereto. Recd my
fees & paid Clerk his fees to H. Milliken Sheriff"
And your Orator further charges on his informa-
tion and belief that even the above reci-
ted endorsement although intended to bear
date as of said tenth day of June A.D. 1854,
was not in fact made until several
days afterwards, at the same time that
another endorsement was made by said
William T. Burgess as follows "Recd"

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thirty Eight Dollars & ³³/₁₀₀ from sale of land
within described H. O. Stone

by W. T. Purge's assignee

And your Orator has been informed
and believe, and he therefore charges the fact to
be, that said endorsement was made by
the said Sheriff by the express directions
of said William T. Purge's without any
reference to any sale having been made
of said premises at any time or place: And
that no money was paid by any person
at any time in pursuance of said sale

Your Orator further shows
that he is not fully advised in what ca-
pacity the said William T. Purge's acted,
or intended to act in said transaction
inasmuch as by the return of said
Sheriff it appears that said Purge's as Attorney
bid off said premises for said plaintiff Ho-
ratio O. Stone and by said endorsement
of said Purge's he assumed to act as assign-
ee without however there being any evidence
whatever of said judgement ever having been
assigned to him, your Orator however has
reason to suppose that although said suit
was brought in the name of said Stone,
yet he has never taken any interest in, nor
had any knowledge of the proceedings of
said William T. Purge's, and that in real-
ity the whole proceedings have been no more
nor less than a scheme of ^{the} said Purge's to
avail himself of his relation of attorney

to defraud and plunder your Orator for his own profit.

Your Orator further shows that though it appears by the return of said Sheriff that said premises were struck off either to said Horatio O. Stone or to said William T. Burgess, but to which, your Orator is not sufficiently advised, yet the said Burgess, as your Orator has been informed and believes, several days after the said 10th day of June A.D. 1854, & probably about the 17th day of said June, directed and induced the said Sheriff to give his certificate of sale to one John F. Farnsworth, Esq. at that time a resident of Chicago and Law partner of the said William T. Burgess and your ^{Orator} has been informed and believes and therefore charges the fact to be, that said John F. Farnsworth never had anything to do, directly or indirectly with any sale of said premises, nor did know or consent to have his name used in any manner in connection with said premises; but what object said William T. Burgess could have had in thus introducing the name of said John F. Farnsworth, your Orator is not advised, unless it was that under a consciousness of the nefarious iniquity of his scheme to defraud your Orator, he deemed it necessary to resort to some such tricks in order to cover up the glaring wickedness of his transactions and to make them seem

to have been done entirely different than what they really were - But your orator submits that this very shift of the said William H. Purges instead of concealing, has exposed the weakness and illegality of his proceedings to secure a title of said premises for his own use and gain - And your Orator shows that said Certificate of said sale with the various endorsements thereon is in words and figures as follows:

"State of Illinois Winnebago Countyss:
 J. King H. Milliken Sheriff of the County
 and State aforesaid, do hereby certify that
 by virtue of an execution and Fee Bill to
 me directed dated the 28th day of Decem-
 ber A. D. 1853, and delivered, in favor of
 Horatio C. Stone and against Alden
 Thomas, I did in pursuance of the
 Statute in such case made and pro-
 vided, on the 10th day of June A. D. 1854,
 between the hour of ten o'clock A. M. and
 five o'clock P. M. offer at public sale the
 following described property, to wit: The
 East one quarter of the west 3rd of lot ten
 in Block thirty in the City of Rockford
 on the East side of Rock River bounded
 as follows, beginning at a point on the north
 side of said lot at sixty nine feet and nine
 inches easterly from the north west cor-
 ner of said lot; thence Easterly parallel
 with the west end of said lot, sixty six feet
 thence westerly along the south side of
 said lot twenty three feet three inches.

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thence Northerly parallel with West end of
said lot sixty six feet to the place of begin-
ning, and John F. Farnsworth having
bid the sum of Thirty Eight & ³⁷/₁₀₀ dollars
he being the highest and best bidder at
sale, became the purchaser. Now if the
aforesaid property shall not be redeemed
within fifteen months from this date,
according to law, then the said John
F. Farnsworth will be entitled to a Deed
for the same. Witness my hand and
seal at Rockford this 10th day of June
A.D. 1854 K. H. Milliken Sheriff of Winneba-
go County Seal And on said certificate
are the following endorsements "June 10, 1854.
H. O. Stone vs Alden Thomas Certificate of sale,
State of Illinois County of Winnebago
Records Office. Filed for record June 17th
A.D. 1854, at 5 1/2 o'clock P.M. Recorded in Book
D, page 22 and examined. C. H. Spafford
recorder" For Value Received I do hereby
sell assign and transfer this certificate
of sale to John S. Burgefs and all my
rights and interest under and by virtue
of the same. Witness my hand and
seal this 10th day of July A.D. 1854. J. F.
Farnsworth, Seal " June 10 1854 H.
O. Stone vs Alden Thomas Certificate of Sale
expires September 10, 1855. Sept 12, 1855, Deed
executed on the within to John S. Burgefs
John F. Taylor Sheriff" as will appear by
said Certificate now on file in the Re-
corders office of said County of Winnebago

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And your Orator has been informed and believes and therefore charges the fact to be that said John F. Farnsworth never pretended to have any interest in said Certificate that said assignment is in the hand of writing of said William T. Burges and was made by said Farnsworth at the solicitation of said William T. Burges and without any consideration whatever being paid to him by any person, and without any intention of being instrumental in defaming your Orator or any other person, but supposing it that it was a matter of the said William T. Burges and was all right and proper. And your Orator further charges upon his information and belief that said John T. Burges not only never paid any consideration for said Certificate, but that he had no knowledge of nor agency in procuring the said assignment thereof.

Your Orator further shows that it appears from the endorsement of said John F. Taylor, and also by the record of Deeds in the said Records Office of said County of Winnebago, that the said John F. Taylor then being Sheriff of said County did on the aforesaid 12th Day of September A.D. 1853 execute a Sheriffs Deed of said premises in pursuance of said Certif-

icate of sale, to said John S. Burgess, and said deed was immediately recorded in said Records office, but your Orator has been informed and believes and so charges the fact to be, that said John S. Burgess is a brother of said William T. Burgess residing at that time in Chicago, having very little or no pecuniary means, and your orator believes that said John S. Burgess had no agency in procuring, and never paid to any person any consideration for the said assignment of said certificate of sale, nor had he ever any knowledge of the same or of the executing of the said Sheriff's deed until said William T. Burgess called upon him to procure the conveyance of said premises as herein after stated.

Your Orator further shows that soon after he ascertained that the said Sheriff's deed had been executed, he went to Chicago for the purpose of ascertaining upon what terms he could settle the matter with said William T. Burgess, and upon that occasion your Orator offered the said William T. Burgess, the sum of Fifty Dollars, but said Burgess at that time refused to give your Orator any satisfactory answer, alledging among other things that the title was in his said brother and was

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beyond his control because his said
brother was in California, whereas as
your has been informed and believes
it was untrue that said John S. Burgess
was then in California, but on the con-
trary thereof he was then residing in Chicago.

Your Orator further shows, that he
has recently learned by the record of deeds of
the Recorders off of said County of Winnebago
that on or about the thirteenth day of
September last past the said John S.
Burgess made and executed a Quit claim
deed of said premises to one Samuel P.
Burgess of the City Chicago (whom your
Orator prays may be made a defendant
to this ^{his} bill of Complaint, and your
Orator has been informed and believes
that although said Deed expresses a con-
sideration of three thousand Dollars, yet in
fact said Samuel P. Burgess did not pay
any consideration for such conveyance
but on the contrary thereof he is a young
man of very little if any pecuniary
means, is a cousin or some relative
of said William T. Burgess and your
Orator believes that the whole scheme
of said conveyance was a mere sham
proceeding or trick of said William T.
Burgess to still further conceal the real
and true condition of his own interest
and connection with said property,
and your Orator charges that whatever

shifts the said William T. Purgeff has resorted to, to keep the legal title of said premises in some one, other than himself, yet in fact, no person except the said William T. Purgeff claims, or pretends or expects to have any interest whatever in said premises, by virtue of any title derived or to be derived through said Sheriff's sale, and your orator charges that from the time of obtaining said judgement, and perhaps from the commencement of said suit all the proceedings of said William T. Purgeff with or against your orator have been had by him with the only purpose to avail himself of his position as Attorney at Law to appropriate to his own use, whatever he could get out of your Orator by fair or fraudulent means, and that he has used the names and agency of the other persons herein above named, not because they had any interest in, or expected to derive any benefit from said transactions nor because they had any intention to defraud your Orator, but only as means more effectually to defraud your Orator in manner as above set forth.

Your Orator further shows that sometime in the month of October or November last past, during the absence of your Orator from said County

the said William T. Burgess, as your Orator has been informed and believes, caused to be served on the tenants of your Orator now occupying said premises, a notice to quit said premises, for the purpose, and with the intention to commence an action of Ejectment to dispossess your Orator, and your Orator has been informed that said William T. Burgess has determined to commence such suit immediately. And your Orator avers that he has always since the commencement of said suit had and maintained and still has by his tenants himself or tenants the open, public and notorious possession of said premises, and has exercised unconditional control over the same.

And your Orator further shows that notwithstanding, he ought not in justice to pay any further sum to the said William T. Burgess in satisfaction of the aforesaid judgement, and your Orator believes that the title acquired by the Sheriff's sale aforesaid is so imperfect on account of the various fraudulent and illegal proceedings above set forth, that your Orator was under no obligation to pay to said William T. Burgess any other money, yet your Orator for the sake of avoiding controversy has been willing and has offered through his authorized agent,

as your Orator has been informed to pay the said William T. Burgees One hundred Dollars if he would relinquish all claim to said premises; but the said William T. Burgees does not signify his acceptance of said offer, to your Orator: on the contrary thereof the said William T. Burgees demands of your Orator the further exorbitant sum of Two Thousand dollars. And your Orator had well hoped that said William T. Burgees would have desisted from prevailing himself of his aforesaid illegal and fraudulent practices and would have restored to your Orator his aforesaid property free from incumbrance by reason of said Sheriff's sale. But now, so it is, may it please your honor, that the said William T. Burgees Horatio O. Stone and Samuel P. Burgees combining and confederating together and with divers other persons to your Orator unknown, to injure and aggrive your Orator in the premises, ~~will~~ still refuse to relinquish their pretended claim of title to your Orator's said premises - some times pretending that said Sheriff's sale was in all respects lawful and that said Samuel P. Burgees has a complete and good title to said premises through said sale; at other times pretending that at and by virtue of said sale the title of said premises

became vested in said Horatio O. Stone and at other times pretending that said William T. Burgeff has some kind of interest in said premises, at other times pretending that said William T. Burgeff has no interest whatever in said premises and that all the proceedings in respect to the aforesaid Sheriff's sale have been conducted fairly, legally and in good faith and that the said conveyances to the said John T. Burgeff and to the said Samuel P. Burgeff were made and executed for a good consideration; and whereas your Orator charges that such allegations and pretences are wholly unfounded and untrue; All which actings, doings and pretences are contrary to equity and good conscience to the manifest wrong and injury of your Orator.

In tender consideration whereof and forasmuch as your Orator is remediless at common law and can only obtain relief in this honorable Court.

To the end therefore that the said (William T. Burgeff, Horatio O. Stone and Samuel P. Burgeff may full, true, direct, and perfect answer make to all and singular the matters and things herein before ^{stated} and charged (Your Orator hereby waiving pursuant to the Statute the necessity of such answer of said defendants being put in under oath) and that as fully and particularly as if the same were

here repeated and they severally and specifically thereto interrogated.

And that it may be decreed by this honourable Court that the said Sheriff's sale be set aside and declared and rendered of no validity, force, or effect, and that the said several or conveyances to the said John J. Burgeess and to the said Samuel P. Burgeess be decreed, declared and rendered inoperative and void and that the same be cancelled and set aside to all intents and purposes and that the said defendants either or all of them be decreed to recover of your Orator by good, apt and sufficient deed of conveyance to be executed by all necessary and proper parties, whatever interest or title may have been or supposed to have been derived from or through said Sheriff's sale; And that the said William J. Burgeess be decreed to restore your Orator in all things in respect to the title of said premises to as good condition as at the time of said Sheriff's sale. And that the said defendants their Attorneys, officers and agents may be restrained by a writ of injunction out of this Court from selling disposing of, conveying or incumbering said premises or any part thereof or in any manner disturbing or interfering with your Orator's use, occupancy or possession thereof, and from proceeding further in any suit

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at Law already commenced or from
commencing or instituting any suit
at Law to recover the possession of said premises
And that your Orator may have such other
relief, or may have such further relief as the
nature of the case may require and shall
be agreeable to Equity, May it please this
Honorable Court, that your ~~order~~ orator
may have process of summons directed
to the said William T. Burge & Horatio C.
Stone & Samuel P. Burge commanding
them and each of them to appear at the next
term of this Court to make answer here-
unto; And also may have a writ of injunc-
tion to be issued by the Clerk of this Court
directed to the said defendants comman-
ding them and each of them to desist as
hereinabove set forth - and further
to stand to, and abide by such order and
decree herein as shall be agreeable
to Equity And your Orator will ever pray
Alden Thomas

State of Illinois

Winnebago County ss: On this eighth day of
December A.D. 1853, personally appeared before ^{me} the above
named Alden Thomas and under oath that he has read
the above bill subscribed by him and knows the contents
thereof & that the same is true of his own knowledge, except
as to matters therein stated to be on his information and
belief & as to those matters he believes it to be true.

C. H. Spafford

Clk

E. H. Baker, Joke

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Let a writ of Injunction issue as prayed for in
the within bill, upon the complainant filing with
the Clerk his bond to the within named defendants Wil-
liam T. Purgeys & Samuel P. Purgeys with
Security to be approved by the Clerk in the sum of
two thousand Dollars conditioned to prosecute
the within bill to effect & to indemnify the
said defendants against & to reimburse to
them, all damages & costs which they or either
of them may wrongfully sustain by occasion of
the said writ.

Freeport Dec 18, 1855

Benj. A. Sheldon

Cir Judge 14th Jud Cir, Alb

To Clerk Winnebago }
Circuit Court }
J

Endorsed "Filed Dec 8 1855"

Cts Spafford

Clerk

Know all men by these presents that we Alden
25 Thomas and
of the County of Winnebago & State of Illinois
are held and firmly bound unto William
T. Burgeß Horatio O. Stone & Samuel T.
Burgeß in the sum of Two Thousand
Dollars lawful money of the United
States, for the payment of which well
and truly to be made we bind ourselves
our heirs and administrators jointly
severally and firmly by these presents
Witness our hands this 7th day of
January A.D. 1856.

The conditions of the
above obligation is such that Whereas the
said Alden Thomas did on the 18th day of
December A.D. 1855 obtain an order from
the Judge of the Circuit Court of the County
of Winnebago aforesaid for an Injunction
against the said William T. Burgeß Horatio
O. Stone & Samuel T. Burgeß restraining
them from doing certain acts in
said Writ set forth

Now if the said Alden Thomas shall prose-
cute his said Bill to effect, and shall pay the
said Horatio O. Stone, Wm. T. Burgeß & Samuel
T. Burgeß all damages and costs which they
or either of them may wrongfully sustain by
occasion of said Writ then this obligation to be
void, otherwise to remain in full force & effect

Enoree Filed Jan'y 7th Alden Thomas Seal
1856. CH Spafford Johathan Weldon Seal
Clerk

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State of Illinois, Winnebago County, ss.
The People of the State of Illinois

To

William T. Burgess Horatio O. Stone &
Samuel P. Burgess,

Their Agents Solicitors & Servants
Greeting.

Whereas it has been represented
to us in our Circuit Court of Winnebago
County and State of Illinois on the
part of Alden Thomas Complainant,
that he has filed his Bill of Com-
plaint, that in said case at Court
on the Chancery side thereof against the
said William T. Burgess, Horatio O.
to wit: touching the matter of the said complaint of the said Alden Thomas against the said William T. Burgess, Horatio O. Stone & Samuel P. Burgess.
Stone & Samuel P. Burgess, are offering
or threatening to sell or encumber a certain
Lot or tract of Land situate in the City
of Rockford, County of Winnebago and
State of Illinois, To Wit The East
one Quarter of the West Three fifths
of Lot Ten in Block Thirty on the East
Side of Rock River beginning at a point
on the north side of said Lot at sixty
nine feet and nine inches easterly from
the north west corner of said Lot thence
easterly along the North side of said Lot
Twenty three feet and three inches, thence
Southerly parallel with the West end
of said Lot sixty six feet, thence Westerly
along the South side of the Lot Twenty
three feet and three inches, thence nor-

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thely parallel with the West end of the Lot sixty six feet to the place of beginning

And whereas it is further represented in & by said Complainant's Bill, that there is danger that said Defendants will sell or encumber said Real Estate to the prejudice and injury of said Complainant, and it appearing that such acts on the part of said defendants are contrary to Equity and good conscience —

We therefore in consideration thereof and of the particular matters and charges in said Bill of Complaint set forth do strictly Command and enjoin you the said William T. Burgess, Horatio Stone and Samuel P. Burgess your Attorneys Officers and Agents, each and Every of you, that you do absolutely desist and refrain from selling, disposing of conveying or encumbering said premises or any part thereof or in any manner disturbing or interfering with the use, occupancy or possession of said Complainant to said premises, and from proceeding further in any suit at Law already commenced, or from commencing or instituting any suit at Law to recover the possession of said premises until the further order of the Court in the premises.

L.S.
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Witness C.H. Spafford Clerk of our
said Court and the Seal of said
Court at Rockford this 7th day
of January A.D. 1856

Attest, C.H. Spafford
Clerk

Served this ~~within~~ writ on the within named
William L. Burgess by delivering a copy
hereof to him this the 20th day of
Feb 1856 also on the within named
Horatio C. Stone by delivering a
copy hereof to him this the 21st day
of February 1856 The within named
Samuel P. Burgess not found in
my County this the 25th day of Feb
1856

Fees 2 Services 100 Fees

2 Copy 100 paid

2 Miles 10 by plff

1 Return 10
\$220

James Andrews Sheriff
J. John H. Dart Deputy

In the Winnebago Circuit Court
In Chancery

The several answers of William
T. Burgess to the Bill of complaint
of Alden Thomas, against him
and others -

This Defendant, now and at all
times hereafter saving and reserving to
himself all advantage of exception to the
said Bill of complaint on account of
the many errors, uncertainties and
other imperfections therein contained,
for answer therunto or unto so much
and such parts thereof as he is ad-
vised is or are material for him to make
answer unto, he answering says -

That considerable misunderstanding
as to the amount due from said Com-
plainant to Horatio Stone a co-defen-
dant in this suit growing out of their
dealings with each other existing
prior to the commencement of the
suit mentioned in the said bill &
to procure a settlement & adjustment
thereof, the suit mentioned in said
bill was commenced and prosecuted
by this defendant & one Allen C. Fuller,
for and in the name of said Stone
against said Thomas - That according
to the best of this defendant's present

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recollection and belief the said Stone & the said Complainant always differed very materially as to the amount actually due from said Complainant to said Stone and that in the trial of said cause the said Stone had to rely in the absence of other testimony & for the want of other proof upon the statements & admissions of said Complainant as to the amount due from said Complainant to him -

This defendant further answering says that so much time has now elapsed since the trial of said cause and the occurrences preceding it & which led to the bringing of it that this defendant cannot rely upon his own recollection as to what was the facts in controversy, but states according to his best recollection & belief that the recovery in the case was by him at the time thereof considered fair & what was justly due and actually due from said Complainant to said Stone based upon the admissions of said Complainant made by himself to this defendant, this defendant denying all personal knowledge of the dealings between the parties said Complainant and said Stone out of which the indebtedness accrued to said Stone from him originally, other than by the admissions of the Complainant himself, by Notes of hand or otherwise, & such payments as said

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Complainant may have made in money to this defendant - That a few days after the said March Term of this Court 1830, this defendant is of the opinion he had a conversation with said Complainant, in which he said that in the testimony given by this defendant on the trial he was mistaken and that an allowance for some article or other had not been made as his statements to this defendant of the amount due would show - That considerable conversation occurred about it and finally this defendant said he could not even if there was any mistake interfere, as he had informed his client of the amount of the recovery - and he had no power to consent to a vacation or alteration of the judgement - that he would see said Stone, and if said Stone conceded that if the recovery was far too much and consented to correct the judgement that it should be done and in the meantime that no Execution should issue - That soon after this Defendant saw said Stone and applied to him for instructions in the matter and stated what said Complainant said as to the injustice of the Recovery - Said Stone replied that the defendant judgement was not in fact for as much as he was entitled to and that he should not

consent to any reduction of the Amount— This defendant cannot give any of the details of ^{the conversation with} either the Complainant or the said Stone for the reason above stated, he recollects such conversations to have been had, and the general purport of them soon after ~~this~~ afterwards this defendant notified said Complainant by letter or otherwise, but of this he is not certain as to whether it occurred before or after the execution issued, but thinks it was before, of the determination of said Stone and the Judgement not being paid he caused Execution to be issued on it and this defendant expressly charges that at no time since has he on any occasion to his recollection or belief given said Complainant the slightest intimation or any reason to expect that any reduction would be made from the amount of said Recovery.

And this defendant further answering says that as to the injustice of said Judgement he can from the statements of said Stone to him say, that it is perfectly right & just, of his own knowledge he can say nothing but from his knowledge of the said Complainant and the said Stone upon a question of veracity between them he is and always has been inclined to believe the statements

of said Stone as to the real intrinsic merits of said judgment —

And this defendant further answering says, that having ascertained from said Stone, that he claimed said judgment to be right, he caused execution to be issued thereon on the 19th day of June 1850, of the issuing whereof the said Plaintiff was well aware. That sometime during the life thereof as this defendant believes he paid said Sheriff holding said Execution thirty one dollars but what directions he gave him as to its application he was not aware then or since save from said Bill of Complaint and deems such directions entirely immaterial but whatever they may have been, the said Sheriff by no act of this defendant or of said Stone was ever authorized to make anything less than the face of the said execution and this defendant received said money as expressed in the receipt on the Execution to apply thereon and at the time requested the Sheriff to return the Execution for the purpose of issuing an Alias — This defendant then as at all times since the issuing of said Execution & for some time before insisting upon the right of said Stone to recover the whole amount thereof, though on various occasions he has or may have con-

ceded that he himself was mistaken in his testimony on the trial of said cause — such mistake not going to the merits of the case or controversy but to his recollection of said Complainant's admissions —

And this defendant further says that he accounted to and with said Stone for said money in a settlement and adjustment of their accounts between them, and paid the same over to him soon after he obtained the same and received directions from him to go on and collect the balance —

And this defendant further answering says that he supposed said Sheriff had returned said Execution and wrote to the Clerk of this Court directing an issue of an alias Execution on several occasions before an alias was in fact was issued, that he applied to said Sheriff several times for a return of said writ and he as often promised to return it, and at last this defendant went to Rockford on purpose — found said Sheriff and after a long search he found said Execution and made a return of it such as it is. This defendant knows of no reason why it was not returned sooner unless owing to the remissness of the Sheriff or the writ being mislaid — That about this time the defen-

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defendant purchased said Judgement from
 said Stone and paid him a valuable
 consideration therefor - That said defen-
 dant Stone was owing this defendant
 for legal services other than those in
 said said suit with said Complainant
 and turned this balance ^{due} on said
 Judgement which was about the amount
~~due~~ of said services, in payment of
 the same - That this defendant
 caused an alias Execution to be ~~send~~
 issued on said Judgement to collect
 the balance due on the 28th Day
 of September December 1853.

This defendant further answering
 says that as he is informed & believes
 the said Sheriff King, H. Milliken called
 on said Complainant with said
 Execution and requested him to pay
 the same - That said Complainant
 put him off from time to time
 until near the return day of
 the Execution, when said Sher-
 iff insisted on its being arranged
 in some way and thereupon said
 Complainant told him he must
 take property and turned out to said
 Sheriff the Real Estate described in
 the Bill of Complaint in this
 cause upon which accordingly the
 said Sheriff levied and advised this
 defendant of such levy and on

the tenth day of June 1854 sold said property under said Execution to said John H. Farnsworth

And this defendant further answering says that he has at no time done or said anything to said Complainant since the rendition of said Judgement other than saying he would make said application to said Stone, to induce or calculated to induce the said Complainant to believe that either the said Stone while he owned said Judgement, or this defendant since he acquired the same intended to take anything less than the amount of the same. That this defendant has repeatedly told said Complainant that not a cent of it would be abated, that so far as he was concerned he had paid a valuable consideration for it and could not afford to give him anything. That whatever the opinion of this defendant might be as to the justice of said Judgement, said Stone had always insisted that it was just and right and that upon the statement of said Stone this defendant must rely.

This defendant further answering says, that as to all that part of said bill that charged "That in re-

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ality the whole proceedings have been
 no more nor less than a scheme of
 the said Burgess to avail himself of
 his relation of Attorney to defraud
 and plunder "said Complainant" for
 his own profit" and all such other
 parts of said Bill as charge any fraud-
 ulent designs of this defendant upon
 the property of said Complainant,
 they are simply untrue and the counsel
 in drafting said Bill has drawn largely
 upon his imagination in charging
 any fraud upon this defendant in this
 matter with no other purpose it ap-
 pears to this defendant save to help out
 a case of gross willfulness and neg-
 ligence on the part of said Com-
 plainant in not paying his debts.

This defendant in this matter has
 been open and public in all his pro-
 ceedings and has taken no other than
 the ordinary steps pointed out by
 the Law to collect a debt, just as one
 says and unjust as ^{the} ~~another~~ says
 and to test whose statements was
 right in that matter - abundance of
 time and opportunity has been
 furnished the Complainant in this
 case - That this defendant did not select
 the property to be levied upon, but as
 informed by said Sheriff at the time
 of the levy and as he believes to be true
 the same was turned out by said Com-

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plainant - that said Sheriff has since told this defendant that the said Complainant told him he must take property and he accordingly went to the Records Office, there got the description and made his levy, which statement is true, in fact this defendant deems to be immaterial - That as this defendant is informed and believes, this ^{is} the only piece Real Estate of or belonging to said Thomas that then appeared of Record in the Records Office of said County, and of the value of it at the time of the levy this defendant knew nothing, at or before the sale he was informed it was worth three hundred dollars or about that sum - there being then no improvement on it as he understood -

This defendant further answering says that the said Complainant saw fit to force this defendant in the collection of a small demand to levy and sale of Real Estate in a then unimproved state and which could not be divided into parcels and must be sold together and took the privilege the Law gave him of redeeming in fifteen months, if he saw fit so to do -

That having failed so to do, the purchaser at such sale or his assignee was well entitled both at Law and in Equity to a deed of ^{said} Land & Premises,

And this defendant further answering says - that he was not present at said sale but from information and belief he charges that all the proceedings of said Sheriff in making said sale were regular and in strict compliance with the Law, including the Levy, advertisement, sale and certificate, that the return of said Sheriff is erroneous in stating that the land was bid off by this defendant, such not being the case - That the same was struck off and sold to the said John F. Farnsworth by arrangement between him and this defendant - that the said Complainant has been informed by said Sheriff that such was the case and the said Sheriff as this defendant has been informed and believes has offered to correct said mistake in his return in the presence of said Complainant - That the said Levy was made in due time and Endorsed an said Execution of its date - That the advertisement was in the manner and for the time required by Law - that the sale was a public one by public outcry at the place designated in such notices - and the Land was regularly struck off and sold to said John F. Farnsworth.

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And this defendant further answering
says that more than five Years had
elapsed at the time of filing the Bill
of Complaint in this cause since the
issuing of the first Execution upon
said Judgment and Even since the
receipt of the first payment on
said Execution - That the lapse of
time th since then in which the said
Complainant has had full oppor-
tunity to test the legality of said judg-
ment, during all which time the said
Stone, his Attorneys and assigns
have been prompt in their Endeavors
to collect such Judgment and by
his own statements said Complain-
ants attention has been repeatedly
called to it, at the rendition of said
Judgment, and during all which
time he has not been under any
disability which would prevent his tes-
ting the validity thereof by proceedings
at Law or in Equity yet the said
defendant has not during all that
time taken any steps or instituted any
proceedings legal or otherwise to vacate
said Judgment and procure a new
trial of said cause and therein has
been guilty of gross and wilful Laches
- and is barred and Estopped by the lapse
of time and such, his Laches from
now in any manner enquiring

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into the Justice or Equity of said Judgment — And this defendant relies upon this as a bar to any and all relief claimed by said Complainant touching said Judgment — and he prays to have the same benefit of this Exception as though he had pleaded the same to all that part of said Bill setting up fraud or mistake in said Judgment and upon this point he prays the Judgment of the Court.

And this defendant further answering says that he denies all fraud and unlawful combination with which he stands charged in said Bill of Complaint without this that any other matter or thing material or necessary for this defendant to make answer unto and not herein or hereby well or sufficiently answered unto, confessed or avoided, traversed or denied is true to the Knowledge or belief of these defendants — all which matters and things this defendant is ready to aver, maintain and prove as this Honorable Court shall direct: and humbly prays to be hence dismissed with his reasonable costs & charges in this behalf most wrongfully sustained.

L. F. Warner
Counsel

W. J. Burges

State of Illinois.
County of Cook

Ex
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I, William T. Burgess of said county
being duly sworn doth depose and say that
he has read the within answer by him sub-
scribed and knows the contents thereof and
that the same is true of his own knowledge
except as to the matters stated to be on infor-
mation and belief and as to those matters
he believes it to be true

Subscribed & sworn to before me

this 14th Day of February

A. D. 1856 Attest my hand
official seal

W. T. Burgess.

L. S.

H. V. Stubbings

Notary Public

Endorsed Filed Feb'y 22^d 1856

Le. H. Shafford

Clerk

In the Winnebago Circuit Court
In Chancery—

The answer & disclaimer of
Horatio A. Stone defendant to the
Bill of complaint of Alden Thomas
Complainant against him Samuel
P. Burgess & William J. Burgess

This defendant now and at all
times hereafter, saving and reserving all just
exception to the said bill for the many errors
uncertainties and other imperfections therein
contained, for answers thereto or unto
so much and such parts thereof as he is
advised is or are material or necessary
for him to answer unto, he answering
says that the Judgment recovered by this
defendant in this Court on the Common
Law side thereof & set out in said bill was
not for a greater amount than was justly
due from said Complainant to this
Defendant—

And he further answering
says that the said Complainant by
lapse of time and his negligence in
not asserting his rights, if any he had,
to obtain a review or new trial of said
Cause since the same was had and
Judgment rendered thereon, before the
filing of his said Bill of complaint is
now barred and Estopped from ob-
taining any such review or new

Trial and he insiste upon this defence and prays that he may have the same benefit thereof as if he had specially pleaded the same to said Bill and upon this point he prays the judgment of this Court

And for a further answer this defendants says, that before the issuing of the Alias Execution on said Judgment the 28th day of December A.D. 1856, he sold, assigned & transferred to William F. Burgess by parol and for a valuable consideration to him this Defendant paid, the residue of said Judgment due after deducting the payment of thirty one dollars thereon made —

And this defendant further answering says that he never had or claimed to have nor has he now nor does he claim to have or pretend to have any right title or interest of in or to the said Land in said Bill described or any part thereof, and this defendant disclaims all right and title of in or to the same and every part thereof

And this defendant denies all fraud and unlawful combination with which he stands charged and as to all other matters in said Bill he is a stranger & prays hence to be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained

Endorsed "Filed Feb. 22^d 1856

C. H. Shefford Clerk

Horatio O. Stone
Attorney at Law

In the Winnebago Circuit Court
In Chancery -

The several answer of Samuel
P. Surge to the bill of complaint
of Alder Thomas against this
defendant and others

This defendant saving all
just exception to said Bill of Com-
plaint for answer thereto, or to so
much thereof as he is advised is or are
material for him to answer unto,
he answering says:

That as to all that part of
said Bill as sets up any wrong or injus-
tice done said Complainant on the trial
of said cause and the rendition of said
Judgment in favor of said Horatio C.
Stone against said Complainant -
that more than five years had elapsed
at the time this defendant acquired
title under the same to the piece of
Land described in said Bill during
all which time the said Complainant
neglected to take any steps or institute
any proceedings to correct or review
the same and this defendant claims
and insists that the ^{said} Complainant is
now barred and estopped by his own
Laches & by lapse of time from setting
up or insisting upon any of the

grounds of relief based upon such wrong and injustice in the amount of said Judgment, if any such exists, and this defendant prays the same benefit of this Exception as if he had pleaded the same specially to that part of the ^{2nd} Bill in bar of such relief and upon this point he prays the Judgment of this Court —

And as to so much and such parts of said Bill as sets up irregularities in said sale committed by King, H. Williken the Sheriff of said County — in making the same under said Execution this defendant denying that any such irregularities exist, says that he is a bona fide purchaser for a valuable consideration by him paid without notice and he relies upon this as a defence to so much of said Bill as sets up said irregularities, if any such existed in fact, and prays relief thereon; and prays to be allowed the same benefit as if he had pleaded the same in bar of such relief — and upon this point he prays the Judgment of the Court

And as to the rest and residue of said Bill, this defendant says that he denies all facts set up by said Complainant in his said Bill to be true

except such as appear of Record in said
 Judicial proceedings and the sale
 thereunder had and the different
 mesne conveyances from the said
 purchaser Farnsworth at said
 sale to this defendant relying
 upon the Certificate of purchase
 as the best evidence of what there
 occurred, made so by Statute, and
 he denies all fraud and unlawful
 combination ~~into~~ with which
 he stands charged in said Bill
 without this that there is any other
 matter or thing in said Bill con-
 tained, necessary or material
 for him to make answer unto
 and not herein or hereby well
 or sufficiently answered unto con-
 fessed or avoided, traversed or denied
 is true to the knowledge informa-
 tion or belief of this defendant and
 he prays hence to be dismissed
 with his reasonable costs and char-
 ges in this behalf most wrongfully
 sustained - and also his damages
 should an Injunction writ be
 issued as prayed for by said Com-
 plainant -

Samuel P. Purgefs

Endorsed "Filed Feb'y 22^d 1846

W. J. Purgefs
 at counsel
 F. Warner, counsel

Ct Shafford
 Clerk

48 Winnebago Circuit Court
In Chancery
Samuel Burgess et al
vs
Alden Thomas

On answers filed
the defendants move to dissolve the
injunction granted in this cause

Warner Burgess
Endorsed "Filed Feb'y 22^d 1856 for dist"

C. H. Stafford

United States of America & Clerk
State of Illinois
Winnebago County

Pleas before the Hon.
Benjamin R. Sheldon, Judge of the four-
teenth Judicial Circuit of the State
of Illinois at a term of the Winnebago
County Circuit Court begun and
held at the Court House in Rock-
ford in said County of Winnebago
on the 18th Day of February in the year
of our Lord One Thousand Eight
Hundred and fifty six.

Present, the Hon. Benjamin R. Sheldon
Judge. — William Brown States Attorney
John F. Taylor Sheriff

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And afterwards to wit on the 25th day of February it being one of the days of the Feb'y Court Term of said Court the following entry was made as appears of record of the Court minutes

Alden Thomas
vs
William T. Burge
Horatio C. Stone &
Samuel P. Burge

In Chancery

And now come the Defendants by Warner Solicitor and file Motion to dissolve the Injunction herein. Motion also filed that the Plaintiff file Replication to the Defendants answer herein within four days

Winnebago Circuit Court

In Chancery
Samuel P. Burge et al.
advs
Alden Thomas

Bill

The Defendants move the Court that the Complainant file his replication to the answers of Defendants in this cause in four days from this day or that the cause stand for hearing on bill & answers

Entered "Filed Feb'y 22^d 1856

Warner & Burge
C. H. Shafford Clerk for Defts

Winnebago County Circuit Court

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In Chancery

The Replication of Alden Thomas
Complainant to the separate an-
swers of William T. Burge's Horatio
O. Stone and Samuel P. Burge's
Defendants to the Bill of Complaint of
the above Complainant

This repliant saving and reserving
to himself all & all manner of ad-
vantage of Exception to the manifest
insufficiencies of the said separate an-
swers of the said Defendants for replica-
tion therunto says That he will aver and
prove his said Bill to be true certain
and sufficient in the law to be answered
unto and that the said separate an-
swers of the said Defendants are untrue
uncertain, and insufficient to be replied
unto by this repliant without this that
any other matter or thing whatsoever
in the said answers contained mate-
rial or effectual in the law to be re-
plied unto confessed and avoided, trav-
ersed, or denied is true. All which mat-
ters and things this repliant is and will
be ready to aver and prove as this
Honorable Court shall direct. And

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humbly prays as in and by his said Bill
of Complaint he has already prayed
Taken & Proven
Sole for Complaint

In Winnebago County
Circuit Court, In Chancery

The Petition of
Worcester A. Dickerman & Caroline M.
Dickerman, Frederick A. Thomas, Harriet
N. Thomas and Edward P. Thomas,
Henry M. Thomas and Eliza Thomas
by Worcester A. Dickerman their next
friend respectfully sheweth that on the
9th day of December last past Alden
Thomas late of said County of Winnebago
deceased filed his bill of Complaint in
the Circuit Court of said County against
William J. Burge & Horatio O. Storie and
Samuel P. Burge in which said Bill
the said Alden Thomas sought to estab-
lish his title and interest in certain real
estate described in said bill, and which real
estate was claimed by said defendants on
some of them. And this petition further
sheweth that on the 22nd day of Feby last past
the said defendants filed their answer in
said suit and said cause was put in issue
at the February Term of said Court; And
on the 21st day of March last past the said
Complainant, Alden Thomas died at said
County of Winnebago leaving Caroline

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Dickerman wife of Worcester A. Dickerman.
 Frederick A. Thomas. Harriet A. Thomas.
 Edward. Thomas. Henry. Thomas and
 Eliza Thomas his surviving children and sole
 heirs at Law. The said Edward. Henry &
 Eliza being minors under the age of Eighteen
 Years. This petition further sheweth
 that the above named heirs at Law of the
 said Alden Thomas deceased are alone inter-
 ested in the recovery of said property which is
 worth four or five thousand Dollars, and
 that it is necessary to revive said suit in
 the name of said petitioners & that said
 suit may be continued to final hearing
 for the benefit and in the name of said
 petitioners. Oct. 10, 1856

Worcester A. Dickerman
 Caroline M. Dickerman
 Frederick A. Thomas
 Harriet A. Thomas
 Edward P. Thomas
 Henry M. Thomas
 Eliza Thomas
 By W. A. Dickerman
 their next friend

State of Illinois
 Winnebago County ss: Worcester A. Dickerman one of the
 above named petitioners being sworn says
 that the said petition is true as he is informed
 and believes,

Subscribed & sworn this
 10th day of Oct, 1856 } W. A. Dickerman

J. C. L. Southgate Dep Clerk
 Endorsed. Filed October 10th 1856
 J. H. H. d. Clerk

In the Winnebago Circuit Court
Alden Thomas

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vs

William T. Burgefs -
Samuel P. Burgefs
& Abratio O Stone

} Bill -

And the said de-
fendants as to the Petition filed the 10th
day of October 1856 in this Court by Frederick
A. Thomas, Harriett N. Thomas, Edward
P. Thomas, Henry W. Thomas, Eliza
Thomas, Caroline M. Dickerman & Worcester
A. Dickerman in right of said Caroline
his wife to revive this suit in their names
as heirs at law of said Thomas Alden
Thomas - deceased, and for their benefit
by their solicitors Wainer & Burgefs come
and consent that such order be passed and
made by this Court upon the minors
filing bond as required by law

Endorsed. Filed Feb'y 4. 1857

Warner & Burgefs
N. B. Demck, clk. Solis

In the Winnebago Circuit Court.

In Chancery,

Alden Thomas

vs

William T. Burgefs -
Samuel P. Burgefs +
Abratio O Stone

} Bill -

} And now at this day comes
Jason Marsh Solicitor for the
Complainant. And the Defendants by
their Solicitors also come, and on reading

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the Petition of Worcester A. Dickerman &
 Caroline M. his wife Frederick^a Thomas,
 & Harriet C. Thomas & Edward P. Thomas,
 Henry M. Thomas & Eliza Thomas, minors
 (who, said Edward P. Henry M. & Eliza
 appear & petition by said Worcester A.
 Dickerman as their next friend) - on file
 in this cause suggesting the death of said
 Complainant Alden Thomas, & that the
 said Caroline M. Frederick A. Harriet
 C. Edward P. Henry M. & Eliza are his
 children, & heirs at law - & that they as
 heirs of said Alden Thomas are solely in-
 terested in the recovery of the real Estate
 described in the bill, & praying that said
 suit might be revived & further prosecuted
 in the names of said petitioners to
 final hearing - & the said Defendants
 showing no cause to the contrary - It
 is therefore ordered that the said suit of
 Alden Thomas Complainant against
 William T. Burgess - Samuel P. Burgess,
 & Horatio C. Stone Defendants be
 revived in the name of said peti-
 tioners and they be at liberty further
 to prosecute the same as heirs at
 law of said Alden Thomas deceased,
 according to law -

United States of America
 State of Illinois
 Winnebago County Ss.

Pleas before the Hon Benj.
 R. Sheldon Judge of the
 fourteenth Judicial Circuit of the State

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of Illinois at a special Term of the Winnebago County Circuit Court for hearing and deciding Chancery Causes began & held at the Court House in Rockford in said County on the 27th day of April 1837 in the year one thousand eight hundred fifty seven:

Present Hon Ben R Sheldon Judge

And afterwards to wit on the 6th day of May it being one of the days of the aforesaid term the following entry was made as appears of record of the Court minutes:

Thomas

v

W^m J Burgess
Horatio Odell &
Saml Burgess

Now comes the Complainant by Marsh

Baker & Brown his Attorneys to

show motion. It is ordered that

this Cause be continued. It is

therefore ordered & considered by the Court that the Defendants have & recover of the said Plaintiff their Costs & Charges herein expended & that they have execution therefor.

Here follows entry of hearing of Cause

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In Remedy Circuit Court-

Hester A Dickinson et al

v

Samuel P Burgess et al

In Chancery of the September
Term A D 1837.

Be it Remembered that
on the 17th day of October A D 1837. and at the hearing
of this Cause Complainants introduced

duced the following evidence -

John C. Burgefs a witness produced in open court and sworn says - in substance I am a brother of William T. Burgefs a defendant in this case - I reside in Chicago and resided then the 30th September 1855 I am the person who executed the deed here shown me, (the counsel here shows the witness a deed dated the 13th day of September A.D. 1855, between John C. Burgefs & wife of the one part & Samuel C. Burgefs of the other -) I acquired the title to the land described in that deed through him. The transaction occurred sometime ago and I do not now remember much about it - I don't remember now from whom I got the title I supposed I knew at the time - I cannot from recollection say that I ever knew from whom I got the title - I never had in my personal possession a deed of the premises - I have paid a consideration for the premises to W. T. Burgefs in 1855 in September of that year - to the best of my recollection - The consideration I paid was somewhere between two & three hundred dollars - I paid it by a note - I don't know what has become of that note - The note was two hundred & fifty dollars - I gave it to W. T. Burgefs. It became due in April 1856. The note is paid. I paid it by selling the premises to W. T. Burgefs -

ms
10
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I have seen the note since it was given,
I think it was given up to me by W. J.
Burgee in Sept 1855. He held the note
about a year & a half - He gave it up to
me at the same time I conveyed the
premises to W. J. Burgee - The giving up
the note was the consideration and
other Borrowed money and I cannot
state the amount, I do not recollect -
I conveyed the property to him in September 1855
by this deed shown me. The Borrowed money
might have been forty or fifty dollars or
more I had borrowed the money previ-
ously at different times & was owing him
W. J. Burgee. In September 1855 I was
clerk for J. B. Doggett & Co. I think, or collecting
I am not certain that I was then in any
business - I have borrowed four or five
dollars at different times, the times I
cannot tell - W. J. Burgee had been in
Chicago about two years at the time of the
transaction in regard to the Land.

I signed the deed in Calvin Dr Wolffs office
in Chicago. At the execution of the deed
we did not look over our account, I
knew I was owing him about so much
Don't know whether he considered it that
amount or not - I do not know
what was said at the time the deed
was executed about the borrowed mon-
ey - I delivered the deed to W. J. Burgee
or left it in his office for him after it
was acknowledged - I gave the note

at the proposition of my brother W. T. Burgefs. Suppose it might have been at his request. I never had any dealings with any person but W. T. Burgefs concerning it. The proposition to give the note was made in Chicago as near as I can recollect - I suppose I conveyed the property at the request of W. T. Burgefs. I never made but one conveyance of the property, & was in Chicago at the time the request was made but what place I cannot state - Samuel P. Burgefs is a cousin of mine & W. T. Burgefs - he resides in Chicago he came there in the fall of 1846 or 1847 since that time he has resided in Morris Grundy County Ills & Duncan City Michigan & Chicago - I think in September 1856 he was residing in Chicago - that is the best of my recollection

I think he was residing in Chicago or Morris at the time the deed was made & executed - If he was in Chicago I think he was clerking with J. L. Doggett & Co but am not certain

I cannot recollect but my best recollection now is that he was residing in Morris - He was a married man When he was at Morris he was clerking a portion of the time for Bishop & Co but for who else I do not know - He was at Morris about two years, He was clerking for Doggett & Co three or four months ago, had been there for about

711
60
five months previous - He was at
Duncan from late in the fall of 1853, to
the fall of 1856 - then he came to Chicago
Before he went to Duncan he was in
Chicago a short time

I had no transactions with any one
but W. T. Burge's in relation to the land as
near as I now can recollect - I do not
know the value of the property in partic-
ular & do not know that I have ever
seen it - I have never taken any
interest to know the value of the
property -

The counsel here proposed to
ask the witness this question - Was
Samuel P. Burge's in September 1853
worth any property? which was objec-
ted to by Defendants Counsel but allowed
by the Court to which depts except & the
witness answered the question - I cannot
state whether he was worth property at
that time or not - He further testi-
fied He (S. P. B.) owned a store on the
north side of Chicago with some partner
person as a partner in 1850 or 1851 -

I know W. A. Marsh - was with
Doggett one year last June - I do not
know when S. P. Burge's went out of the
store whether he had property or not -

On cross Examination - by the
Depts the witness says -

I commenced business with

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Hatfield, in 1854 on the West Side in Chicago
W. J. Burgeff let me have the money to com-
mence business with two hundred & fifty dol-
lars, & this is for what the note about which I
testified was given

W. J. Burgeff requested me
to make the deed of the land to Samuel P. Burgeff.
The note was given up to me at the time the
deed was executed by me, at the same time
one note of two thousand dollars, and one
other note of one thousand was given by
Samuel P. Burgeff. I endorsed the notes
& left them with W. J. Burgeff - When the
note was given up the understanding between
witness & W. J. Burgeff was that their whole
account was balanced -

The witness is here requested to examine
the deed above alluded to, & then stated -
My impression when first examined was
that the deed of the premises was made by
me to W. J. Burgeff - It is sometime
since the transaction and my recollec-
tion is now not very distinct

W. J. Burgeff told me he had sold the property
to Samuel P. Burgeff & wanted me to make
deed to him Samuel P. Burgeff - And
I did so - my recollection about the
thing is not very distinct - William J.
Burgeff told me at the same time that
the title of the property was in me, it was
then the understanding that W. J. Bur-
geff would give me up my note and

square accounts with you if I would convey
the property to Samuel P. Burges -

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Re-examined by Complainant
I did state that from my recollection at
first that the deed was executed to W. T.
Burges. But my recollection was very
indistinct about it - I signed the deed
in DeWolf's office, & my wife, at my own
house - Don't recollect who was present
at time I signed it might have been
half a dozen - after the acknowl-
edgment I took the deed to W. T. Burges's
office & left it with him on in his of-
fice same day it was acknowledged, about
that time I saw Samuel P. Burges in
Chicago, but don't recollect that I saw
him that day - The

The Complainant here
introduced & read in evidence the execution
in the case of Stone vs Thomas and its
endorsements & return as follows, to wit:

State of Illinois

Winnebago County

{ The People of the State of Illinois
to the Sheriff of said County -

Greeting: We command you that of
the goods & chattels, lands & tenements of Allen
Thomas in your County, you cause to be made
the sum of Forty five dollars, which by
the judgment of our Circuit Court, within &
for said County of Winnebago at the March
term thereof, A. D. 1850 Horatio O. Stone

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recovered against the said Alden Thomas for the damages he sustained by the reason of the not performing certain promises + undertakings then lately made by the said Alden Thomas to the said ^{plaintiff} Horatio O. Stone — And also the further sum of seven ⁶⁸/₁₀₀ dollars which were adjudged by to him for his costs + charges, in that behalf expended, whereof the said Alden Thomas is convicted, as appears to us of record; and have that money ready in ninety days from the date hereof, to render to the said Horatio O. Stone for his costs + damages + costs aforesaid

Hereof fail not, and make return of this writ in ninety days from the date hereof, with an endorsement thereon as to the manner in which you executed the same.

Witness: C. H. Shafford, Clerk of our said Court
this 19th day of June A.D. 1850.

C. H. Shafford, Clerk.

Damages \$45.00 Costs 7.68³ total amount
\$52.68 — Judgment March 29-1850

This writ issued June 19-1850 Return day
Sept. 17-1850

Received on the within
thirty one dollars + Received my fees
Nov 13th 1850 — this execution returned
by order of Plaintiff Nov 13th 1850

H. V. Maynard Shff

Nov. 13. 1850 Recd on this Exⁿ thirty one
dollars + 1²⁰/₁₀₀ from the Shff

H. O. Stone by W. T. Burges

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State of Illinois } The People of the State
Winnebago County } W³ of Illinois to the
Sherriff of said County

Greeting: We command you as we have here-
before commanded you that of the goods and
chattels, lands and tenements of Alden Thomas
in your County, you cause to be made the sum
of Forty five dollars, which by the judgment
of our Circuit Court, within and for said
County of Winnebago, at the March term
thereof, A. D. 1850 Horatio O Stone re-
covered against the said Alden Thomas for
the damages he sustained by the reason
of the not performing certain promises
and undertakings then lately made by the
said Alden Thomas to the said Horatio
O Stone - And also the further sum
of Ten $\frac{00}{100}$ dollars which were adjudged
to him for his costs + charges in that behalf
expended, whereof the said Alden Thomas
was convicted, as appears to us of record and
have that money ready in ninety days from
thereof date hereof, to render to the said
Horatio O Stone for his damages + costs
aforesaid -

Hereof fail not, and make return of
this Writ in ninety days from the date hereof,
with an endorsement thereon as to the manner in
which you executed the same.

Witness: C. H. Shafford, Clerk of our said Court
Rockford, this 28- day of December A. D. 1853
C. H. Shafford Clerk
ck

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made the amount of the within Execution
by sale of property described in levy hereto
to W. J. Burgess plffs Atty as per his
Receipt attached hereto - Recd my fees
& paid clerk his fees K. H. Milliken Sheriff

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105-

Received this Execution for Collection
this 9th day of February in the year of
our Lord one thousand eight hundred
and fifty four - K. H. Milliken

Sheriff of Winnebago County
Recd thirty eight dollars $37/100$ from sale of Land
within described - H. O. Stone - by W. J. Burgess Atty
Damages \$45.00 - Costs \$10.24 - Total Amount
\$55.24 - Judgment March 29 - 1850 - This
Writ issued Decr 28 - 1853 - Return day
March 28 - 1854 - The Shff will deduct
\$31.00 + interest from November 13 - 1850 -
also \$5.00 p. to O. H. S. deduct per his order

C. H. Spafford Clerk

By virtue of this writ I have levied upon the East one quar-
ter of the west three fifths of lot ten in Block thirty in the
City of Rockford on the East side of Rock River bounded
as follows, beginning at a point on the north side of said
lot at sixty nine feet & nine inches easterly from the
north west corner of said lot, thence easterly along
the north side of said lot twenty three feet & three
inches, thence southerly parallel with the west end of
said lot ^{sixty} feet, thence westerly along the south
side of said ^{the} lot 23 feet 8 inches thence northerly par-
allel with west end of the lot sixty six feet to the
place of beginning, this 28th day of March 1854

K. H. Milliken Sheriff

7th
66
The Complainant also produced
King H. Millikin - who was sworn &
testified - says - I was Sheriff of this
County at date of execution. I have
seen this execution. I remember the trans-
action referred to by the execution and
its indorsements - The property de-
scribed in the levy on the execution is on
the East side of the River south side of
State street -

The Complainants propose
to the witness this question - What was
the value of the property in Sep-1853 -
to which the Defts object but the Court
allows the same to be put & answered and
the witness says - I think the build^{ings}
were on at that time, was then worth three
thousand dollars with the building on

Front width, twenty two feet and in
June 1854 the property was worth fifty
dollars per foot front -

The property was advertised under this
execution, it was adjourned several
times dont know how often - for want of
bidders - I wrote to W. J. Buzzells and
received a line from him - I wrote in
the first place the day to which I had
adjourned it and received a line from
him if he was not then to strike it
off in the name of John F. Farnsworth

On the day of sale the property was sold
as he directed - He wished me in his line

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6^{my}

to me to send him a certificate of sale to
Farnsworth & I did so - My recollection
is not distinct about it nor whether
there was any person present or not -
But a gentleman by the name of
Leavitt an attorney had an office in
mine, if he was not, then I do not
know of any one that was - No one
was present to make any bids -
It is my impression that it was not
cried off - my impression is not very
distinct - The place of sale was at the
Court House door - My office was in the
East wing of the Court house - Have
not now any recollection of going any
nearer than my office

Cop examined - my recollection is not
distinct as to my offering the land for sale
I cannot state from my recollection that
it was not offered for sale - I recollect ma-
king out & sending a certificate of sale to
W. T. Purge - but have no recollection
whether I went to the Court house door and
cried the premises for sale or not
I will not swear positively that I did
not go to the door of the Court house
& cry the land for sale - My atten-
tion was first called to the sale at
the time the Sheriff's deed of the same
was executed - My attention had not
been called to it from the time of the
sale up to the making of the Sheriff's

deed of the same

property on the Execution

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I did call on Alden Thomas the defendant in the execution for property on the execution and ^{asked him to turn out} ~~he~~ asked him several times. He did not turn out any property on the execution. I examined the records to find property to levy on + found a farm + this lot -

I knew my duty as Sheriff required me to cry the property for sale at the place advertised therefor and when I made out the certificate of sale to Farnsworth I supposed I had complied with the law in that respect.

The defendants here introduced + read the certificates of sale which with their indorsements are as follows - *certificates of sale*

State of Illinois

Winnebago County

} ss. J. King H. Milliken Sheriff
of the County and State aforesaid
do hereby certify that by virtue of an execution & Fee-Bill to me directed, dated the 28th day of December A.D. 1853, and delivered, in favor of Horatio O. Stone & against Alden Thomas I did, in pursuance of the Statute in such case made and provided, on the 10th Day of June A.D. 1854, between the hours of ten o'clock A.M. and five o'clock P.M.

1854

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offer at public sale the following described property, to wit: The East one quarter of the west $\frac{3}{4}$ of Lot ten in block thirty in the City of Rockford on the East side of Rock River bounded as follows, beginning at a point on the North said of said lot at sixty nine feet & nine inches Easterly from the north west corner of said lot, thence Easterly along the north side of said lot twenty three feet three inches, thence southerly parallel with the west end of said lot sixty six feet thence westerly along the south side of said lot twenty three feet three inches, thence northerly parallel with west end of said lot sixty six feet to the place of beginning & John F. Farnsworth having bid the sum of Thirty Eight & $\frac{3}{100}$ dollars, he being the highest & best bidder at sale became the purchaser. Now if the aforesaid property shall not be redeemed within fifteen months from this date according to law, then the said John F. Farnsworth will be entitled to a deed for the same.

Witness my hand & seal at Rockford, this 10th day of June A. D. 1854

R. H. Milliken seal

Sheriff of Winnebago County

For value Received I do hereby sell assign

John F. Farnsworth will be entitled to a Deed for
the same.

XXX

Witness my hand + seal at Rockford
this 10th day of June A. D. 1854

H. H. Milliken Seal

Sheriff of Winnebago County

State of Illinois }
County of Winnebago } Records Office -

Filed for Record
June 17th A. D. 1854 at 5 1/2 o'clock
P. M.
Recorded in Book B, page
22 + Examined

C. H. Stafford
Recorder

The witness further said these certificates
of Sale were executed by me as Sheriff
of Winnebago county

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7/1
The Defendants here move the court to
exclude all the testimony of said Millikin
given in the trial of this cause tending in
any wise to conflict in any wise with said
certificate or the facts therein stated.
The Court refused to exclude the same &
the Defts excepted -

The Defendants then showed the
witness a paper writing purporting to be a copy
of a letter written by the witness - and the
witness says I think the copy of the letter
now shown me is a copy of a letter I wrote
and sent to W. J. Burgess - I don't recollect
comparing it with the original with Orrin
Miller

For the purpose of introduc-
ing said copy the Defendants here pro-
duced Orrin Miller who was sworn &
says, I got the original of which the
one now produced (the one above al-
luded to) is a copy from W. J. Burgess
I had the original in the court room du-
ring one of the terms since this suit was
pending - Millikin, myself & Burgess
looked over original & Burgess & I com-
pared it with this & this is a true copy of the
original - the original was in the hand-
writing of said Millikin - I wanted to use
the original in another suit, I took the
original away with me - I have
searched for it during this term of the
Court - I had it in my office - but
I am unable to find it - it is lost -

The cross examination of K. H. Milliken was then continued by Defts

I wrote a letter of the purport of this to Mr. J. Burgess at the time I sent him the certificate of sale to John F. Farnsworth - Witness reads the said copy through & then says it contains in substance a statement of of what I wrote Mr. J. Burgess in regard to the sale of said land - The ^{said} copy is here read to the Court by the Defts as follows:

Rockford June 10th 1854

Mr Burgess

Sir I this day struck off to John F. Farnsworth Esq a part of a city lot belonging to A. Thomas on the ex. in favor of H. O. Stone for the amount of damages + costs \$38.33 as per order from you, the costs (Clerk + Sheriff) are \$15.95 you can remit the same & I will forward you the certificate of sale also a receipt to attach to the writ Yours Respectfully
(copy) K. H. Milliken
Sheriff, Win Co, Ill

Re-examined, by Complainant - witness attention called to the return on the execution says, that is the return that I made at the time according to my recollection ^{the best of} ^{the transaction} being sometime ago & I have not given the matter much thought, all the sale, was the endorsement on the

For

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execution & the certificates of sale but am not positive — I think the indorsement of payment of fees was made a few days after, the other indorsement was made at the time of sale — I recollect W. T. Burge's calling my attention to the return & saying he wanted me to alter it that the sale was made to Farnsworth — But as the matter was in Court I deferred to do it

Crop Examined, by Deft

W. T. Burge's said to me that the sale was made to Farnsworth and I ought to alter it. I agreed with him that it was made to Farnsworth but said I would not correct it — I then told W. T. Burge's that the sale was regular so far as I knew — I think I have so told Mr Burge's several times

Re-examined — by Compts —

The sale was made to Farnsworth by the direction of W. T. Burge's by his letter — I considered the sale made to Farnsworth, my reasons for it were the directions that I had from W. T. Burge's — I think no bidders were there at the sale

Volney A. Marsh called by Complainants & sworn says — I resided in Chicago in 1853 — and had resided there for two or two & a half years previous — was acting

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as clerk for J. P. Doggett & Co - I was principal Clerk of some parts of his business had charge of the whole when he was absent - I am acquainted with Samuel P. Burgess have known him three or four years at Chicago - He has occasionally been employed as a clerk for J. P. Doggett & Co at different times for the last four years - ~~I am acquainted with Samuel P. Burgess have known him~~ I have had some opportunity of knowing his circumstances - In the spring of 1853 he was clerking at Morris after he left there he came to Chicago in that year was there a short time & then went to Michigan - About the time he left Morris he wanted a situation at Doggetts he said he had no means and was anxious to get a situation -

His age at that time was about twenty five years - He had been a clerk in the retail department for some years - Doggett keeps about half a dozen clerks for the purpose of putting up goods, young men. He was employed at that - wages about forty dollars per month

I do not know of his having any pecuniary means except his salary. Somewhere July or August 1853 he went away from Chicago was absent some

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time cant say how long - I had a knowledge of how his accounts stood with Doggett at different times - There was a balance on the books ^{of Doggett} against him that had been standing some length of time, cant say how long it had so stood - it was so when he was with Doggett - Alden Thomas deceased married a sister of mine -

The complainants then called Jason Marsh - Sworn & testified - I was acquainted with Alden Thomas & had been since I can remember. I have known W. J. Burgeff since 1841 - I was the attorney for A. Thomas in the suit of H. O. Stone against him - in which the execution in this cause was issued - Previous to the trial of this cause W. J. Burgeff or myself or Mr Fuller, or both, or which I am not positive, talked about the question that was to be tried.

The Defts here object to any evidence being given either as to what occurred at the trial of said cause or going behind or dehors the records of the judgment therein, but the court overruled the objections severally & allowed the evidence to be proceeded with touching touching the said trial as hereinafter given - The witness then said the understanding between us in

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the case was that the only thing in controversy was the amount of fees to Burges as attorney which he claimed Thomas was to pay him - that was understood to be the question in controversy -

At the trial Mr Burges was the only witness sworn - Mr. Shaw was also sworn as to the state of the account both by the deft Thomas

At the trial a certain charge came up that Thomas claimed had been settled. But on the testimony of W. T. Burges. I can't say how it came up but that item was made a part of the judgment. My recollection is not now very distinct of what did occur in the trial

Some time after judgment execution being out I talked with W. T. Burges in relation to it we talked considerable - W. T. Burges admitted that he was mistaken in his testimony & held out the idea that he or Mr. Stone or that he would get Mr. Stone to relinquish that portion of the judgment -

I should think the amount was from eighteen to thirty dollars, don't recollect anything about the amount but think it would range somewhere along there - I communicated the fact to Thomas that Burges would communicate with Stone to

procure him to release reduce the
amount of the judgment -

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I have had several conversations
with W. J. Burgeff about the interest
of J. F. Farnsworth in the matter W.
J. Burgeff said that Farnsworth had not
any interest in it - That no con-
sideration ever passed to Farnsworth
any more than to accommodate
him W. J. Burgeff Last con-
~~versation~~ conversation was at Chicago, I told
him I expected to prove that by Mr
Farnsworth - that Farnsworth had
so told me & he said it was so -
Thomas had been in possession for
two or three years previous to the
sale, of the land sold & so remained
until he died: his heirs in possession
to present time -

On cross examination by Deft-Witness says -

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The money that was paid and endorsed on
the execution was paid after the conversations
referred to by my with Burgeff - about the
reduction of the judgment - I think W. J.
Burgeff said that he would try to get Stone
to make a deduction on the judgment -
After the trial was over Thomas explained
to me how the mistake occurred had occur-
red & I explained it to W. J. Burgeff.
and he said he would consult Stone
and try to have Stone deduct the same from

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the judgment — I was a brother-in-law
of A. Thomas, deceased

William Brown one of the counsel in the
case sworn & examined by complainant
says

I have known the premises in
question since 1847 — I have dealt in
lots on that side of the river, up until
lately — I should say that sixty dollars
per foot was what it was worth in June
1854. but have nothing to refer to —
In September 1853 building & lot worth
\$4000 — I do not know of any sales
for cash about June 1854

My estimate of the price was upon sales
one third cash, the balance on time —
I am not prepared to estimate prop-
erty here on cash sales — Money would
command 25 per cent per annum —

The complainants here introduced
& read in evidence The Sheriff, and as
follows to wit:

Sheriff of Win Co

To
John S Burges,

Whereas Horatio O Stone
did at a term of the Circuit Court begun
and held in & for the County of Winneba-
go in the State of Illinois on the 18th

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day of March in the year of our Lord one thousand eight hundred and fifty recover a judgment against Alden Thomas for the sum of forty five dollars & costs of suit upon which judgment an execution was issued dated on the 28th day of December A. D. 1853, directed to the Sheriff of said County to execute & by virtue of said execution King H. Milliken the said Sheriff levied upon the lands hereinafter described and the same was struck off and sold to John F. Farnsworth he being the highest & best bidder therefor and the time and place of the sale thereof having been duly advertised according to law.

And the said John F. Farnsworth having duly assigned his certificate of purchase to John S. Burge. Now therefore know all men by these presents deed that J. John S. Taylor successor in office of P. King H. Milliken Sheriff of said County in consideration of the premises have granted bargained and sold and by these presents do grant bargain & sell & convey unto the said John S. Burge his heirs & assigns the following described tract of land to wit: The East one quarter of the West $\frac{3}{4}$ of Lot Ten in Block Thirty in the City of Rockford on the East side of Rock River bounded as follows, beginning at a point on the North side of said Lot at sixty nine feet and nine inches Easterly from the North West corner

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of said Lot, thence Easterly along the North side of said Lot twenty three feet three inches thence Southerly parallel with the West End of said Lot sixty six feet thence Westerly along the South side of said Lot, twenty three feet three inches thence Northerly parallel with the West end of said Lot, Sixty six (66) feet to the place of beginning, situate lying and being in said County of Winnebago.

To have and to hold the said described premises with all the appurtenances thereunto belonging to the said John C. Purgeff, his heirs and assigns forever.

In Witness Whereof I have hereunto set my hand and seal this Twelfth day of September in the year of our Lord one thousand eight hundred and fifty five

John F. Taylor "seal"
Sheriff of said County

State of Illinois
County of Winnebago, ss.

I William Hulm
Clerk of the County Court of said County do hereby certify that on this Twelfth day of September A.D. 1855 came in person before me the above named John F. Taylor Sheriff to me personally known to be the real person described in & who executed the foregoing Deed & acknowledged the execution thereof

to be his free act and deed for the uses
and purposes therein set forth.

Given under my hand and the seal of
said Court Rockford Sept 12th 1853

William Hulm

Clerk

Filed for Record September 12th
A.D. 1853 at 9³⁴ o'clock A.M.

C. H. Shafford

Recorder

And rested - and this was substantially
all the evidence given by the complainant

The defendants then introduced and read
in evidence the deed from John S. Burges
& wife to Samuel P. Burges as follows
to wit:

John S. Burges

To

Samuel P. Burges of

This Indenture Made
this thirteenth day of September in the year
of our Lord one thousand eight hundred
fifty five, Between John S. Burges and
Lavinia his wife parties of the first part
and Samuel P. Burges of Chicago
Illinois of the second part, Witnesseth.
that the said party of the first for & in con-
sideration of three thousand dollars to them
in hand paid by the said party of the sec-
ond part the receipt whereof is hereby
acknowledged and the said party of the

second part forever released & discharged
therefrom have remise, released, sold con-
veyed and quitclaimed and by these presents
do remise, release, sell ^{convey} and quit claim unto the
said party of the second part his heirs and
assigns forever the following described lot
piece or parcel of land to wit: The East one
quarter of the West three fifths of Lot ten
(10) in Block thirty (30) in the City of Rock-
ford on the East side of Rock River
bounded as follows. beginning at a point
on the north side of said Lot at sixty nine
feet & nine inches easterly from the
Northwest corner of said Lot, thence Eas-
terly along the North side of said Lot twen-
ty three feet & three inches thence southerly
parallel with the west End. of said Lot sixty
six feet, thence Westerly along the south
side of said Lot twenty three feet & three
inches, thence Northerly parallel with the
west end of the Lot sixty six feet to the
place of beginning. To have & to hold the
same together with all & singular the
appurtenances thereunto belonging or in
any wise appertaining thereunto appertaining
& all the estate, right title interest and
claim whatever of the first said party of the
first part either in law or equity to the
only proper use benefit and behoof of the
said party of the second part his heirs
and assigns forever. In witness
Whereof the said party of the first part

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hereto set their hands and seals the day first above written. The words from "all the" to "in and to" nased before execution and delivery.

Signed, sealed and delivered in presence of,
John S. Burgeff - "seal."
Lorinda A. Burgeff, seal.

State of Illinois County of Cook ss. - I Calvin D. Wolf, a Justice of the peace in and for said County in the State aforesaid do hereby certify that John S. Burgeff and Lorinda A. his wife who are personally known to me as the same persons whose names are subscribed to the within Deed appeared before me this day, in person and acknowledged that he signed sealed and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth. And the said Lorinda A. Burgeff wife of the said John S. Burgeff having been by me examined separate and apart and out of the hearing of her husband and the contents and meaning of the said instrument of writing having been by me fully made known + explained to her acknowledged that she had freely and voluntarily accepted the same and relinquished her dower and all other right title + interest in + to the lands

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and tenements therein mentioned without
compulsion of her said husband and
that she does not wish to retract the
same. Given under my hand and
seal this 29th day of September
A.D. 1853,

Calvin D. Wolf, seal,
Justice of the Peace

State of Illinois

Cook County ss.: I Charles B. Farwell,
Clerk of the County Court of said County
do hereby certify that Calvin D. Wolf Esq-
uire whose name is subscribed to the proof
or acknowledgment of the annexed instru-
ment in writing was at the time of ta-
king such proof or acknowledgment
a justice of the peace in said County du-
ly commissioned sworn + acting as such
and authorized to take the same; and
further that I am well acquainted with
his hand writing and verily believe that
the signature to the said proof or ack-
nowledgement is genuine and further
that the annexed instrument is executed
and acknowledged according to the laws
of the State of Illinois. In Testimony
Whereof, I have hereunto set my hand
and affixed the seal of said Court at
the City of Chicago in said County
this 29th day of September A.D. 1853
C. B. Farwell

Clerk

Filed for Record Oct 28^d A.D. 1853 at
9 o'clock A.M. C. H. Spafford, Recorder

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United States of America } Pleas begun
State of Illinois } and held on the
Winnebago County } Seventeenth day
of December,

in the year of our Lord one thousand
Eight hundred and forty nine at the
Court in Rockford, in said County the
same being a Special term of the Circuit
Court in said County called by an order
filed in said Court on the seventeenth
day of November A.D. 1849, made by the
Hon. Hugh Henderson, Presiding Judge
of the Eleventh Judicial Circuit, in va-
cation, and in pursuance of Notice there-
of, given according to law, which said
notice is in the words and figures
following, to wit:

To the Clerk of the Winne-
bago County Circuit Court
of the State of Illinois.

Be it remembered that I Hugh Hen-
derson Judge of the Eleventh Judicial
Circuit of Illinois deeming it nee-
essary for the prompt & efficient ad-
ministration of Justice that a
Special Term of said Court be held
in the County of Winnebago in said
State, do hereby order and appoint
a special term of court to be held in and
for the County of Winnebago at the
Court house in Rockford in said Coun-
ty on the 17th day of December A.D. 1849.
Hugh Henderson Judge of the

The aforesaid Pleas and

Present

Hon Hugh Henderson Judge
 Meet H. R. Maynard Sheriff
 Along with States attorney
 C. H. Spafford Clerk

Win Cir. Court

Horatio C. Stone

vs.

Alden Thomas

For Sep. Term 1849.

Assumpsit

Damages \$25,000

The clerk will please issue Summons
 in this cause. Ret next term Dated
 August 24, 1849. Yours &c

Fuller & Burgess

Filed August 24th Plffs Attys
 1849. C. H. Spafford Clerk

State of Illinois

Winnebago County

ss The people of the State of
 Illinois to the Sheriff of said
 County Greeting: We

command you that you summon Alden
 Thomas to appear before the Circuit
 Court of said County, on the first day
 of the next term thereof, to be held at
 the Court House in Rockford on the
 first Monday of September next,
 to answer Horatio C. Stone in a plea
 of Assumpsit damages Two

hundred + fifty dollars; and have you
then + there this writ. Witness C. H. Spafford, Clerk of our Circuit Court at
Rockford this 24th day of August A.D.
1849

Attest: C. H. Spafford Clerk
"sum"

August 24th 1849 served the within by
reading to Alden Thomas

J. W. Maynard, Shiff
By H. Fuller Esq.

State of Illinois }
Winnebago County } p Of September Term A.D. 1849

Alden Thomas of said Winnebago County was duly summoned to answer Horatio O. Stone of a plea of trespass on the case on promises. And thereupon the said Horatio O. Stone, by his attorney A. C. Fuller complains. For that whereas the said defendant heretofore, to wit: on the eighth day of September in the year of our Lord one thousand eight hundred and forty eight at Chicago, to wit: at said Winnebago County made his certain promissory note in writing bearing date the day + year aforesaid + then and there promised to pay, by the first day of February next after the date of said note to the said Plaintiff by the name + style of H. O. Stone, or order

~~1834~~
the sum of one hundred and fifty six
dollars and seventy two cents for
value received with me after the first
day of January eighteen hundred &
forty nine, & then & there delivered the
said promissory note, to the said plain-
tiff by means whereof & by force of the
Statute in such case made & provi-
ded, the said defendants then & there
became liable to pay to the said plain-
tiffs the said sum of money in the said
promissory note specified according
to the tenor & effect of the said promissory
note. And being^{so} liable he the said defen-
dant in consideration thereof, afterwards
to wit, on the day & year aforesaid at
said Winnebago County aforesaid un-
dertook and then & there faithfully prom-
ised the plaintiff to pay to him the said
plaintiff the said sum of money in the
said promissory note specified accor-
ding to the tenor & effect of thereof.

And the said plaintiff avers that
the said defendants did not pay to the
said plaintiff the said sum of money
mentioned in the said promissory
note, to wit, the sum of one hundred &
fifty six ⁷²/₁₀₀ dollars according to the
tenor & effect thereof, but wholly neg-
lected & refused so to do, and still does
refuse though often requested & demanded
so to do, To the damage of the plain-

~~111~~

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tiff the sum of two hundred + fifty
dollars. And for that the said dependant
heretofore to wit; on the eighth day of
September in the year of our Lord one
thousand eight hundred + forty eight
at Chicago to wit: at said Winnebago
County made his certain promissory
note in writing bearing date the day
+ year last aforesaid + then + there promised
to pay by the first day of ^{March} next after the
date thereof to the said plaintiff, or order
the sum of one hundred + fifty ^{six} dollars
+ seventy three cents for value received
and two months interest, and then
there delivered said promissory note
to the said plaintiff by means whereof
+ by force of the statute in such case
made + provided the said dependant then
+ there became liable to pay to the said
plaintiff the said sum of money in the
said promissory note specified
according to the tenor + effect of the said
promissory note, + being so liable
he the said dependant in consideration
thereof afterwards to wit: on the day +
year aforesaid at said Winnebago
County aforesaid undertook + faithfully
promised the said plaintiff to pay him
the said sum of money in the said
last promissory note specified
according to the tenor + effect thereof
And the said Plaintiff avers that

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the said defendant has never paid to said plaintiff the said sum of money in the said last mention promissory ^{note} to wit sum of one hundred and fifty ¹³ dollars according to the tenor & effect thereof, but has wholly failed, neglected & refused so to do, and still does refuse, though often requested & demanded so to do - To the damage of the said plaintiff the sum of two hundred & fifty dollars.

And whereas, also the said defendant afterwards, to wit, on the first day of June in the year of our Lord one thousand eight hundred & fifty nine to wit at Rockford in said Winnebago became indebted to the said plaintiff in a large sum of money to to wit Two hundred & fifty dollars for money before that time lent & advanced to, and paid, laid out & expended for said defendant by said plaintiff at said defendants request, And for money before that time had & received by said defendant, to & for the use of of said plaintiff, and also in the like sum for goods, wares, & merchandise before that time sold & delivered by said plaintiff to said defendant at like special instance and request of said defendant & being so indebted the said defendant in consideration thereof then & there undertook & promised to pay said plaintiff said last mentioned sums of money when thereunto afterwards requested, Yet the said defendant not

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regarding his said promises + undertakings but contriving &c although often requested so to has not paid said plaintiff either of said sums of money or any part thereof but so to do hath hitherto wholly neglected and still doth neglect + refuse to the damage of said plaintiff of two hundred + fifty dollars and therefore he brings suit &c

A. C. Fuller

Plaintiffs Atty

Copy of notes declared upon in Declaration 156.72. By the first of February next I promise to pay H. C. Stone or order one hundred fifty six 12/100 dollars, value recd, with use after 1st Jan'y, Chicago 8th Sept 1848 Alden Thomas

2 \$156.73 By the first of March next I promise to pay H. C. Stone or order one hundred fifty six 13/100 dollars value received + two months Ante, Chicago 8 Sept 1848

Alden Thomas

To Horatio C. Stone Dr

To money lent and advanced	\$ 250,
money paid laid out + expended	250,
goods wares + merchandise	250,

Filed August 24th A. D. 1848

C. H. Chappard Clerk

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And afterwards to wit on the 18th day of December 1849 it being one of the days of the aforesaid December term the following entry was made —

~~Wm~~

Horatio O Stone

Alden Thomas

vs.

Assumpsit

And now comes the Plaintiff by Fuller his Attorney and on his motion it is ordered that the Defendant plead herein by Wednesday Morning next at nine o'clock

Winnebago Circuit Court

Alden Thomas

ads

Horatio O Stone

Spe Dec Term 1849

And the defendants by Marsh + Wright their attorneys come, and defend the wrong + injury when he says that he did not promise + undertake in manner + form as the plaintiff has above thereof declared against him and of this he puts himself upon the country &c + the plaintiff doth the like &c

And for a further plea in this behalf the defendant says actio non because he says that before the commencement of this suit to wit: on the first day of August in the year one thousand Eight hundred + forty nine at the

Winnabago County aforesaid he paid
the said plaintiff the several sums of
money in his declaration mentioned
& this he is ready to verify wherefore he
prays judgment of the plaintiff by
action aforesaid ought to have or maintain

And the defendant for a further plea
in this behalf says that the plaintiff ought
not further ^{said} his suit to have or maintain
Because he says that since the commence-
ment of this suit to wit on the twenty fourth
day of December 1849 he paid the said plain-
tiff the said several sums of money in his
declaration mentioned and all costs in
said action accrued up to that date &
this he is ready to verify wherefore he prays
judgment of the plaintiff his action
aforesaid ought further to have or main-
tain

Marsh & Wright

defts attorneys

And as to the said second plea Plff says
precludi now because he says that the said
Defendant hath not paid him the said
several sums of money in that plea
mentioned & of this he puts himself
upon the Country &c Fuller & Burges for Plff
& the Deft doth the like

And to the said third plea Plffs says precludi
now because he says that the said defen-
dant did not pay him the said several
sums of money in said declaration
mentioned & all costs in this suit up

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~~1848~~

to the time of such payment, accrued therein
+ of this he puts himself upon the country
+ e — + the debt doth the like + c

Fuller + Bunge for plff

Filed Dec 28 1849

L. H. Spafford clerk

And afterwards to wit on the 28th day of
March A. D. 1850 it being one of the days
of the March term the following entry
was made

Horatio Q. Stone.

vs
Alden Thomas

And now comes the the Plaintiff
by his attorney + the Defendant by his
Attorney also come, and thereupon
issue being joined herein the cause is
submitted to the Court for trial without
the intervention of a Jury. And the Court
after having heard the evidence + arguments
of counsel finds the issue for the Plaintiff
and assesses his damages at the sum
of forty five dollars. It is therefore or-
dered + considered by the Court that the
said Plaintiff have + recover of the said
Defendant the said sum of forty five
dollars damages as aforesaid as also
his costs + charges herein expended
+ that he have execution therefor

State of Illinois }
Winnebago County }

The people of the State of
Illinois to the Sheriff of said

95-
1857

County. - Greeting: We command you that of the goods + chattels, lands + tenements of Alden Thomas in your County, you cause to be made the sum of Forty five dollars which by the judgment of our Circuit Court, within & for said County of Winnebago at the March term thereof, A. D. 1857 Horatio O. Stone recovered against the said Alden Thomas for the damages he sustained by reason of the not performing certain promises and undertakings then lately made by the said Alden Thomas to the said Horatio, O. Stone - And also the further sum of seven $68\frac{3}{4}$ dollars which were adjudged to him for his costs + charges, in that behalf expended whereof the said Alden Thomas is convicted, as appears to us of record: + have that money ready in ninety days from the date hereof to render to the said Horatio O. Stone for his damages + costs aforesaid.

Hereof fail not and make return of this Writ in ninety days from the date hereof, with an endorsement thereon as to the manner in which you executed the same - Witness: C. H. Shafford, Clerk of our said Court. this 19. day of June A. D. 1857 -

L. S.

C. H. Shafford Clerk
Damages \$ 45, 00. - Costs \$ 7, 68³ Total
Amount \$ 52, 68. - Judgment March 29-

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1858

1850. This Writ issued ~~June~~ June 19 -
 1850. Return day Sept. 17 - 1850 -
 Received on the within thirty one dollars
 + Received my Fees Nov 13th 1850, this
 execution Returned by order of Plaintiff
 Nov 13th 1850 - H. R. Maynard Shff
 Nov. 13, 1850, Paid out this 24th = thirty one
 dollars + 12th from the Shff.

H. C. Stone by W. J. Purgefs

State of Illinois,
 Winnebago County,

The People of the State of Illinois
 to the Sheriff of said County -
 - Greeting: We command you as we have
 heretofore commanded you that of the goods
 + chattels, lands + tenements of Alden
 Thomas in your county, you cause to
 be made the sum of Forty five dollars
 which by the Judgment of our Circuit
 Court, within + for said County of
 Winnebago, at the March term there
 of, A. D. 1850. Horatio O. Stone recov-
 ered against the said Alden Thomas for
 the damages he sustained by reason of the
 non performing certain promises and
 undertakings then lately made by the
 said Alden Thomas to the said Horatio O. Stone - And also the
 further sum of Ten ²⁴/₁₀₀ dollars which
 were adjudged to him for his costs and
 charges in that behalf expended, whereof
 the said Alden Thomas was convicted,
 as appears to us of record; and have that
 money ready in ninety days from

Alden Thomas to the said

the date hereof to render to the said Horatio O. Stone, for his damages + costs aforesaid.

Herof fail out and make return of this Writ in ninety days from the date hereof, with an endorsement thereon as to the manner in which you executed the same.

Witness: C. H. Spafford, Clerk of our said Court Rockford, this 28-day of December A.D. 1853.

C. H. Spafford Clk.

By virtue of Damages \$45.00 Costs - \$10.24, Total Amount \$55.24 - Judgment March 29 - 1850. This Writ issued Dec 28th 1853. Return day March 28th 1854.

The Shff will deduct \$31.00 + interest from November 13. 1850, also \$5.00 p^a to C. H. S. deduct from his order

C. H. Spafford, Clerk.

By virtue of this writ I have levied upon the East one quarter of the west three fifths of Lot ten in Block thirty in the City of Rockford on the East side of Rock River bounded as follows, beginning at a point on the north side of said Lot at sixty nine feet + nine inches Easterly from the north west corner of said Lot thence easterly along the north side of said Lot twenty three feet + three inches, thence southerly parallel with the west end of said Lot sixty sixty feet, thence westerly along the south side of the Lot 23 feet 2. inches, thence northerly parallel with west

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end of the lot sixty six feet to the place of be-
ginning, this 28th day of March 1854
K. H. Milliken Sheriff

100

Received this Execution for collection
this 9th day of February in the year of our
Lord one thousand Eight hundred &
fifty four K. H. Milliken
Sheriff of Winnebago County

Made the amount of the within Execution
by sale of property described in levy
hereon to W. J. Burges Jeff Atty as
per his Receipt attached hereto.
Received my fees & paid Clerk his fees
K. H. Milliken Sheriff

Received thirty eight dollars ¹³/₁₀₀ from
sale of lands within described - H. O. Stone
by W. J. Burges, assistant.
Also the certificate of sale to Farmworth &
the assignment thereon endorsed as
follows to wit.

State of Illinois

Winnebago County

I King H. Milliken Sheriff
of the County & State aforesaid, do here-
by certify that by virtue of an Execution
& fee-Bill to me directed, dated the 28th
day of December A. D. 1853 and delivered
in favor of Horatio C. Stone and against
Alden Thomas. I did in pursuance of the
statute in such case made & provided, on
the 10th day of June A. D. 1854 between
the hours of 10 o'clock A. M. & five o'clock

~~100~~

100

P. M. offer at public sale the following described property, to wit: The East one quarter of the west $\frac{3}{4}$ of lot ten in block thirty in the City of Rockford on the East side of Rock River bounded as follows to wit: beginning at a point on the north side of said lot, at sixty nine feet and nine inches Easterly from the northwest corner of said lot, thence easterly along the north side of said lot twenty three feet three inches, thence southerly parallel with the west end of said lot sixty six feet, thence westerly along the south side of said lot, twenty three feet three inches, thence northerly parallel with west end of said lot sixty six feet to the place of beginning, and John F. Farnsworth having bid the sum of Thirty Eight + $\frac{3}{4}$ dollars he being the highest + best bidder at sale, became the purchaser. Now if the aforesaid property shall not be redeemed within fifteen months from this date, according to law, then the said John F. Farnsworth will be entitled to a deed for the same - Witnefs my hand and seal at Rockford, this 10th day of June A. D. 1854

N. H. Milliken Seal

State of Illinois }
County of Winnebago } Records office - Sheriff of Winnebago County

Filed for Record June 17th A. D. 1854
at 5 1/2 o'clock P. M. Recorded in Book D. page 22

and examined — L. H. Shafford Recorder

For value Received I ~~do~~ hereby sell
assign & transfer this certificate of sale
to John S. Burgess. And all my rights
& interest under & by virtue of the same
witness my hand & seal this 10th day of July
A. D. 1854 J. F. Farnsworth "seal"

Sept 12th 1855, Deed executed on the
within to John S. Burgess.

John F. Taylor
Sheriff

Which is all the evidence in the cause

And to reduce the same to writing
& preserve the same and the several
& various exceptions taken on the trial
the Court now here signs this bill of
exceptions & statement of evidence in
open Court this second day of February
A. D. 1858 — The Court having taken said
cause under advisement until this day

Benj. R. Sheldon

Filed March 5, 1858.

M. B. Demick

Win Co, Cir, Court
Worcester A. Dickerman dals

Cir Clerk

vs
Wm. J. Burgess dals

In Chancery

State of Illinois

Winnebago County ss: Lason Marsh being

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duly sworn doth upon his oath de-
pose & say that one of the complainants
in this suit viz: Harriett N. Thomas
has since the last term of this Court
intermarried with Evans Blake & now
is the wife of said Evans Blake.

Subscribed & sworn to this {
2^d day of February A.D. 1858 {
before me M. B. Derrick clerk } Jason Marsh
Filed Feby 2, 1858 O. A. Remoyer, Dep. Clerk

Win. Co. leir Court
Worcester A. Dickerman & als }
William C. Purges & als } In Chancery

The said complain-
ants by J. Marsh, their sol^r come &
ask leave for a rehearing of this cause
Feby 2^d 1858 J. Marsh
sol^r for compl^s

Filed Feby 2^d 1858
M. B. Derrick, CLK

Monday Feby 1, 1858.

United States of America { Pleas before
State of Illinois, Winnebago County } S. D. the Hon Benj
R. Sheldon Judge of the fourteenth ju-
dicial Circuit of the State of Illinois at
a term of the Winnebago County Circuit
Court for hearing & deciding Chancery
causes began & held at the Court House in the
City of Rockford in said County on the 1st
day of February 1858. Present Hon Benj
R. Sheldon Judge - Attest Morris B. Derrick Clerk

In the Winnebago Circuit Court

In Chancery

Thomas et al {

Bill

vs
Burger et al }

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And now on the second day of February and during this February term of this Court A. D. 1858 - come the parties by their Solicitors and the Court having had this cause under advisement since its last term of this Court and being now here fully advised thereon doth find that the said Sheriff's sale alluded to in the bill of ~~complaint~~ in this cause was conducted & made according to law and that the proofs in the cause do not sustain the allegations & charges contained in said bill - and that the injunction granted & issued in this cause should be dissolved and the bill dismissed -

And thereupon the said Complainants enter their motion for a rehearing - and also suggest to the Court upon affidavit filed that Evans Blake hath since the last term of this Court - intermarried with Harriett A Thomas one of said Complainants - and the said Evans Blake now here by Jason Marsh Esq. his solicitor returns enters his appearance - It is thereupon ordered by consent of Defendants that said Evans Blake be made a party com-

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plainant — And the Court being fully
advised on said motion for a rehear-
ing after agreement had — doth over-
rule & deny the same —

It is therefore ordered adjudged and
decreed that the injunction in this
cause be dissolved — That the said Bill
of complaint be dismissed at the costs
of the complainants and that the
defendants recover their costs against
said Complainants & have execution
therefor —

And the said Complainants
except to the finding & decree of the
Court — & pray an appeal therefrom to
the Supreme Court of this State
which is allowed on the Complain-
ants Dickerman Evans Blake &
Frederick A. Thomas as principals
with G. A. Sanford as surety filing an
appeal bond in the penalty of one thou-
sand dollars conditioned according to
law in twenty days from the rising
of this Court —

Benj. R. Sheldon

Filed Mar 21/58 Page 107

G. A. Penroyer Dep Clerk

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Know all men by these presents that
We Worcester A. Dickerman, Evans
Blake & Frederick A. Thomas as
Principals & Goodyear A. Sanford

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as surety are held and firmly bound unto William J. Burges, Samuel P. Burges & Horatio O. Stone in the sum of one Thousand dollars lawful money of the United States for the faithful payment of which we bind ourselves, our heirs, executors and administrators jointly & severally ~~jointly~~ by these Presents, In Witness whereof we have hereunto set our hands & seals this 20th day of March A. D. 1858.

The condition of the above obligation is such that Whereas on the day of March 1858 in the Winnebago County Circuit Court on the Chancery side thereof the above named William J. Burges Samuel P. Burges Horatio O. Stone recovered & obtained a judgment & decree against the above bound Worcester A. Dickerman Frederick A. Thomas & Evans Blake together with Harriett A. Blake; Caroline M. Dickerman, Edward P. Thomas, Henry M. Thomas and Eliza Thomas for the dismissal of said suit together with the costs thereof.

And whereas the said Worcester A. Dickerman, Frederick A. Thomas & Evans Blake at the time of making said Decree prayed an appeal therefrom to remove the same to the

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Supreme Court of the State of Illinois
 Now therefore if the said Worcester A. Dickerman Frederick A. Thomas & Evans Blake shall diligently prosecute their said appeal in said Supreme Court to effect or shall pay to said obligees all costs interest & damages by reason of said appeal & shall abide by & perform said Decree in case the same shall be affirmed in said Supreme Court then this obligation to be void and of no effect, otherwise to be & remain in full force.

Signed & sealed with
 our seals the day & year first above
 written

In presence of
 Jason Marsh atty
 Dickerman, Blake &
 Sanford. Jas B Thompson
 atty F. A. Thomas

Worcester A. Dickerman "seal,"
 Evans Blake "seal,"
 Frederick A. Thomas "seal,"
 George A. Sanford "seal,"

Filed Mar 22, 1858

M. B. Denick
 Clerk

State of Illinois

Winnebago County Circuit Clerk's Office } I Morris D Der
rick Clerk of the Circuit Court in & for said County do hereby cer
tify the foregoing to be a correct & complete copy of the records,
or papers on file in my Office in the foregoing entitled Cause
which they are correct copies of such original records of les
duly compared therewith by me

Witness my hand & the seal of said Court at
the City of Rockford this 12th day of April
1858.

M D Derrick Clerk
By A. Penney Dep Clerk

Frs/25.50

1859

Am Talmage

vs

Alexander Ferguson 1 lb

Record

Worcester District in Stats

vs

William L. Burgess

Filed April 20 1858

L. Leland
clerk

J. A. Parker

Thomas W. Burgess

Mr Marsh has mistated seriously the
facts in this case on the first page of
his brief—

1850. Nov. 13. The \$3. Paid by Thomas to the Sheriff is
Prescribed by B. to apply on Ex^{ce}

1853. Nov 13. fi. fa. Ptd in stead of 1850—

1854 June 10. - 5 1/2 months after fi. fa. is^d Land
worth \$1100. + not \$5000. as both these
Guts state was sold—

The certificates of that sale and
the letter were forwarded the same
day by mail—

1855 Oct. 13. quit claim by J. B. to S. P. B. — in
acknowledgment

There is no evidence when

Thomas first knew of the sale—

That he ever offered B. \$50—

That Burgess ever gave him notice to quit—

W. J. Pryor

159- 159

Purys
at
Dickman

men

Filed May 28 1838
L. Leland
Clk.

W. J. G. J. P.

Dickinson was }
us } a special from Poor
Pursuant to }
Argument by a special agent

The facts of this case appear in the abstract.

I regret to feel myself compelled by the facts, to characterize the conduct of the principal defendant as fraudulent, not only in law but in fact, & especially in his professional character, but it is due to justice, & the honor of the profession that when an attorney makes use of his office & position to defraud, that his conduct should neither be excused nor palliated. I shall therefore speak plainly.

II

¹⁰⁷ The sale of land by a sheriff is a vested statutory power and can only be made on compliance with the prerequisites. And when the sheriff, in the execution of his duty leads in the property, he is chargeable with notice of all defects or irregularities.

4 Galbr. (N.S.) 796 Todd vs Plunkett
20 Barb. 148 - 5 Conn. 592

Especially under our statute wherein, the sale is prohibited unless the prerequisites are complied with. Decisions made under statutes which are directory, are not a policeable.

The Atty of the plaintiff, being chargeable with all irregularities, he is bound to show the prerequisites of the statute complied with.

2^d There is no proof in the Sheriff's return or otherwise, that the land was ever advertised according to the time required by law.

9 Mass 241, the Court say "It was an official return that he" has advertised ~~according to law~~ as the law directs, a sale under such a return paper is void - and that it cannot be corrected by parol is decided in 7 Mass 388

3

The return shows the property was sold to W. J. Pugh, and no proof can be admitted to show the contrary - see 7 Mass. 388 -

If the sale had been otherwise regular & to a third person without notice of the irregularities, the Certificate could not be issued to any one but the purchaser.

The statute only authorizes it to be issued to him, and a certificate issued to any one else was void, & did not authorize a deed to be made upon it - This point is decided in 11 Mass. 327 Davis vs. McDickens - 11 Mass. 122

13 S. & M. 330 Matthews vs. Clifford

4

The weight of the evidence is that the land was not sold at the door of the Court House when it was advertised to be sold - and was not sold at all - This was clearly unauthorized by the statute, and is a practice which cannot be tolerated - And such an statute is a prerequisite, which makes the sale void as against the plaintiff in the execution or his attorney.

5 The proof shows Briggs only used Farnsworth's name to cover his fraudulent purpose, and that even if the issue of the Certificate to Farnsworth was legal, he only had it in trust for Briggs - therefore there can be no mutual assent fiduciary purchase

6 When the land is not sold, there is no sale at public vendue - when it is not sold at the place designated, it is a fraud on the execution debtor, and if the price be inadequate, as in this case, the Court will set it aside - This is as much of a fraud as in the case of lots sold en masse, which the Court has declared vitiated sales. *Day vs Graham* 435 & authorities in the cited

7 The debt, in the execution had a right to satisfy the judgment. Satisfied - The circumstances were such, that he had a reason to suppose Mr Briggs of all men would never sell his land at such a sacrifice without his knowledge.

II II The conclusion of the rights of the
plaintiffs is a claim in this case,
is the fact, that the property was
sold off by the attorney of the
plaintiff in the execution, under
circumstances such as that, he
if in any case he can sell off
property at a Sheriff's sale, he
will in this case be deemed as

even

decide as holding the property as
trust for debtor and creditor. For
the creditor to secure the payment
of the amount due on the judgment. For
the debtor, to retain to him the surplus
after payment of the judgment.

4 Johns Chy 188 Howl vs Parker

1 Cas 134 Hall vs Hall. When Lord Mansfield
says, "No attorney can be permitted to say in
" things in course of litigation, of which litiga-
" tion he has the management. This the policy
" of Justice will not endure."

The Howl vs Parker, Chancellor Kent says,
" indeed such gross inadequacy of price when
" taken in connection with the fact, that the sale
" was on a stormy day, and that the persons who
" were present but the thing is pretty, so could amount
" an inference of fraud on any other ground
" than the one I have stated - The most reason-
" able conclusion and the only one I can reach
" that the debt is that the mortgage is intestate-
" tionally made in trust for the respective
" interests of the parties to the execution"

Apply the principles, of this case to the
facts of the case at law, and the Roman
or Scriptural maxim quoted by Kent,

will require the same rule to be applied.
and if in that case, the Court could not
allow the Attorney to stand in any other relation
with honor to him than as trustee for
the parties, how can it do so in this
case.

Suppose the deft. in the first place ap-
pears as attorney for plff. before
him as witness on whose testimony
the judgment is occurred, and by a
mistake in his testimony, obtains
a judgment for \$30. more than the
Plaintiff was entitled to; and when
reminded of his mistake promises
to have it omitted to the ~~first~~ demand.
it would seem him if he had testified
to the truth - On the faith of this prom-
ise the deft. pays the judgment less
this unjust part of the judgment, &
the execution is ordered & returned. The
defendant had a right to suppose
he would do that, the injury which
suppose had thus done him would
be repaired and ~~by~~ believe the sum
or error would be received in satis-
faction of the judgment. It would
seem to me, that an honorable attorney
would have omitted the amount thus

obtained, without consultation with his client. But instead of doing so he purchases the judgment, and then at a ~~great~~ all events, when he had the unlimited control of it, any honest man would have righted the wrong he had done. But so far from doing so, he proceeds to upon it, make the false statement that Stow would not allow it, when in fact the judgment had become his own, & the consent of Stow was unnecessary.

When the alias execution was presented by the Sheriff to Thomas, he insists that Phipps had agreed to procure his release of the balance of the judgment and costs Phipps, who does not reply, but by his silence lulls him into security, and sells property for thirty five dollars worth four or five thousand dollars. Phipps knew Thomas relied upon his promise & yet the mistake occurred - he knew too that if Thomas had recovered the property he had sold, for that nominal amount, he would not have suffered the time of redemption to run out. He should have informed him,

and as Pugh now claims to know the
deaths of many in which the land
was sold, he knew that Thomas was
ignorant of the sale, and he lay by for
the purpose of defrauding him - he
meant to do it if he could - all of his
proceedings show it - his purchase
of the judgment, a thing unusual
with an attorney, and one a proceeding
always presumptive of fraud, and
only sustained on the clearest ev-
idence of fairness - he directed the
premises to be sold off in the name
of his partner. For what honest
purpose? Can any one imagine?
Then he directs without his knowledge
the certificate to be signed to his
partner - and then has the land conveyed
and reconveyed, for the purpose, patent
upon the record of cheating Thomas
out of four or five thousand dollars -
Of such transactions as these can be
sanctioned by a Court of equity,
if Attorneys are allowed by such tricks
and chicanery to plunder the community, and
Courts will sanction them, the profession
& the law deserve the punishment
which the vulgar or proach them.

No honest or honorable man can con-
sist himself with a profession, when
such transactions taint its character

I am happy to say the present administra-
tors of equity have declared similar pro-
ceedings venial in equity, and have
declared them violation of the human and
divine law.

Besides the clear & indignant declaration
of Chancellor Kent in *Deane vs Baker*,
the Supreme Court of Kentucky, in *Deo-
el vs McCleary et al* 7 Dana 388, have
equally vindicated the authority of a
Court of equity to relieve. They say.
"a purchaser by an attorney under his
" clients & execution upon which he has
" the control, misdisposes a Chancellor to
" look on the transaction with a peculiar
" jealousy & scrutiny, and should never be
" sustained when it was for a grossly inadequate
" price, & exhibits a semblance of unfairness -
In this case the inadequacy was not
so glaring as in the one at bar - and
at the sale there were two or three persons
besides the attorney & sheriff - and in principle
decides this case -

The Court say further, "it is too late to question
" the jurisdiction of a Court of equity to do
" aside a Sheriff, sale & conveyance"

They also say that the relief is not bank
by the lapse of five years, & would be
not in unduly -

As Confirmation of the two cases above cited
& I would cite

1st Freeman Chy 703 Negroes Bank

3rd Staining. 33 Leagill as Cahoon

7 Hill Johns 494 as bit as Dallow,

this is a strong case

7 Munro 616.

5 Pa. 213

The fact of the defendant taking the
round about way he has resorted
to, to Complicate the title & put him-
self in the position of a bona fide
purchaser, or to introduce some for his
justification, is Confirmation of his
intent to perpetrate a fraud. Honesty
never resorts to shifts & circumlocu-
tion to reach its object, but it is al-
ways the policy of those seeking to
perpetrate a fraudulent intent. They
are the footprints by which fraud
is traced to its source & motive

6 Barb 373. 382. 487

The sale should be declared void for ^{the} irregularities above
or the defendant should be declared to hold

to be a trustee for debtor & creditor, and
to convey the said to the trustee before being paid
the amount due on the judgment

Amos Goodrich
for Appellants

1859
In Sup. Court.
Worcester A. Dickerson
vs. Appellants

Wm. D. Dungey & Co.
Appellee

Argument of Goodrich
for
Appellants.

Worcester A. Dickerman Admr of
Alden Thomas & cohus

William J. Burgess
Oratio W. Stone et al

In Chancery

There appears in the Certificate of evidence in the above cause signed by Benjamin R. Sheldon Judge of the said Winnebago County Circuit Court and made part of the record in said cause immediately preceding following the evidence introduced by Complainants "The following viz: The Defendants then introduced & read in evidence the Deed from John S. Burgess & wife to Samuel P. Burgess as follows to wit: Here insert it"

And immediately after the aforesaid deed of preceding the record of proceedings in the case of Oratio W. Stone & Alden Thomas appears the following in the aforesaid Certificate of evidence viz: "Also the whole record of the case of Oratio W. Stone & Alden Thomas including the notice attached to the Declaration the notes on file the two executions & the return to the first which are as follows to wit: here insert"

State of Illinois

Winnebago County S. S. I. Morris B. Derrick Clerk of the Circuit Court in & for said County do hereby Certify that the above foregoing as set forth appears in the Certificate of evidence in said Cause signed by Benjamin R. Sheldon Judge of said Court and that the above foregoing is a true Copy of the said Certificate as is herein set forth

Witness my hand & the seal of said Court at Rockford this 1st day of May 1838.

M. B. Derrick Clerk
By W. A. Pennoyer Dep. Clerk

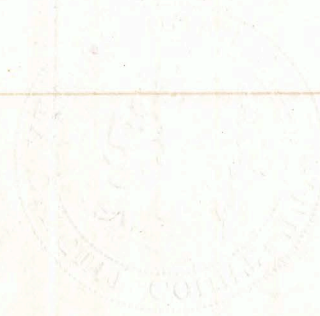
Dictum man sat

us

Supp sat

add^d Reord

Supplying an omission
in the bill of Excess



Charles F. Johnson
New York

In the Supreme Court

W. A. Dickerman et al vs April Term 1858

W. A. Burges et al vs Appeal from Kin Co.

I have felt so conscious in this case that the conduct of the case of Stone vs Thomas up to the selling of the land upon the fifa. merited no censure from any honorable minded right thinking man unprejudiced by his situation either as relative or hired counsel that I have not deemed it necessary to employ counsel to defend me - In this I may be wrong but at that point, the rights of the parties in this case determine - If I was right then, what I did afterwards was to protect myself against attempts to set aside a sale and remit me to the slow tedious process of the law.

That was the action of Stone vs Thomas - The proof in this cause shows that it was brought upon two notes of hand. The Defendant plead payment and introduced

myself and B. Shaw to prove it - he failed to prove by me what he expected to - Now the failure occurred Marsh, the Counsel, and the witness for the Complainant cannot tell - Thomas after the trial was over explained it to him and he explained it to me but what it was he cannot now say, but is very distinct and sure that I admitted I was mistaken - Mistaken in what and how?

To show the liability there is to error and mistake in occurrences that took place so long ago as that, in my answer I state that I was a witness for the plaintiff - that turns out not to be so - but I was with another witness sworn by the defendant; what I testified about this Court, nor the Court below don't know - Stone claimed and always claimed that the judgment was right - It is not pretended that I was more than Attorney for the collection of the demand originally and it is admitted that I knew nothing about the original transaction between the parties, and there is no proof

X
that the matter was anything more than a mistake on my part - Stone insisted upon the judgment - Upon what principle was I bound to refund the amount out of my pocket? plenty of time and opportunity were afforded to Thomas to test the judgment. Had he seen fit to do so - If he could prove the contrary why did he not move to set aside the judgment? If I made the mistake they say I did, and conceded it to be a mistake why did they not immediately apply to the Court to set aside the judgment -

The truth is that wilfully obstinate in giving all the trouble he could to Stone in the collection of his debt - Is there any doubt whatever but that if the thing had occurred as they say it did Thomas would not have rested easy when he had a brother-in-law for a lawyer & a ready witness to prove my admissions but would immediately have moved to set aside the judgment: no explanation and no excuse is sought to be given

Sept 1852
he was dealing
with an X month
man

for this delay - Thomas himself
in this Bill don't pretend to explain
how this mistake occurred; the
truth is it is merely thrown in
as a make weight to give the
high toned counsel in this cause
an opportunity to berate me.

The judgment was
recovered; they say they applied to
me to reduce the judgment; do
they say or prove that I agreed to do
so? No! I would apply to Stone for
that purpose. there is no proof
that I ever did so. or what Stone
said on the subject. All there
appears is his statement that the
judgment was right and he
assigned it to me.

It is true the original amount
of this judgment was small; to most
men, and under some circumstances
I might be liberal enough to put
my hand in my pocket and take
out that amount when I was
satisfied that by my own fault
and negligence I had given testi-
mony that had caused that much
loss to another party entirely innocent

of wrong; but that, it will be conce-
ded would be merely ex gratia -
But in this case if I was mistaken
& my testimony would rectify it
Thomas knew it as well at the trial
as he did after the term was closed;
he could then have told his lawyer
relative, witnesses as well as waited
until after Court rose he should
then have done it while I had it in
my power as Attorney of record to
have made the correction by virtue
of the authority that I had as such -
But No! he waits until after the
term is closed until I have
advised my client, and then
explains to his counsel how the
matter is; he explains it to me and
I say I will apply to have it cor-
rected - that is not done; the mat-
ter runs along for some time, unfor-
tunately for myself to close up some
matters of fees between Stone & myself
I brought the judgment but did not
take any written evidence of the
Assignment, which will afford an
easy solution to some very grave
charges made by the Counsel for the
Plaintiffs

And so Mr Goodrich thinks it a
disreputable thing for an Attorney
to buy a judgment recovered by his
client - How immaculate Mr
Goodrich would have this Court to
think he is - Hee buy a judgment
recovered by his client? why it
Shocks his moral sensibility, his
professional Honor - Champerty &
Maintenance, barratry, oppression
and fraud - and any other epithet
that will best cover up a weak cause
he at once resorts to - Did he ever
commence a suit or defend one and
agree to divide the gains & profits?
No man has practised as long as
he has, in Chicago and not done
it; and I will agree to find a dozen
such cases within the gentleman's
practice in as many years. Oh
no; he would buy half of one before
judgment, but he takes alive; he
would ^{not} buy a whole one afterwards
for the world

See 1 Wash Cir C. Rep 556

reference
wrong

The preposterous idea is advanced
that an Attorney cannot become a
purchaser for himself at a sale of lands

on the facts
in each case

I will venture the assertion that at least one fourth of all the lands sold in Illinois under judgments are bid in by the Attorneys either in their own name or by them as Attorney for the Plaintiff - and if we are to take the glosses & colorings given by the counsel to the cases they cite in all such cases the Attorney merely holds the property as trustee for one side or the other. - Now upon what are we to decide who he is trustee for?

But Mr Goodrich thinks I am neither honest nor honorable because when I had bought the judgment I did not release the whole thing to Thomas and when I had bid off the land that I did not go and tell him so, and then remind him from day to day & make sure that it was done - I suppose he would have me go on purpose personally from Chicago to Rockford and inform him of it & do it a reasonable number of times so that I should be sure he would not forget it - And then when Thomas had stood out all the processes of the law, when the

(2490-70)

party to collect a trifling debt of about twenty dollars had advanced nearly as much more in the shape of costs (see Milligan's letter) should take the amount of the sale and interest, and feel grateful that he had got it.

I am willing to concede that much angry and irritated feeling has been got up in this case. I concede that I am human & feel it. I know that in collecting a debt as it was originally of about \$300 - I never spent so much time, made so many trips backward and forward, hunted and begged as I have done in this. I finally waited, got judgment, waited again, and after five years of incessant persistent endeavor sold land upon it the title to which became absolute for the lack of redemption.

I submit to the Court if this record on the part of Thomas is not one continued history of laches and neglect. From the facts proved what claims has he who openly admits that he had abundance of property to pay

be expected
on the balance
of the
balance

and get don't pay - who pays a half of the amount & is repeatedly called upon by the Sheriff and still don't pay the balance, who neglects to turn out property and drives the Sheriff to examine the Record - who then obliges the ^{officer in execution} Sheriff to spend his time and money in searching the record, to see if the title is good or else takes it upon the statement of the Sheriff - All this cry is simply to cover up their own want of equity.

But the immaculate Mr Fordrich does not hesitate in order to cry loudly to falsify what is of record in the case, before his eyes conscious as he must be of the entire want of all claims of his client to the equitable interposition of this Court upon any other ground than that of inadequacy of price.

Hee says I appeared as Attorney there as witness on whose testimony the judgment is recovered. This is wholly untrue - The Plaintiff need-
ed no evidence: the note proved ^{this case} itself. Shaw and I were sworn by the Defendant

"Obtains a judgment for \$30 more than the Plaintiff was entitled to." of this there is no proof. Marsh can't tell whether there was a mistake or not; that is he could neither give his own story, his Client's story nor my story on the subject: he can't tell what I swore to, nor how much the mistake, if any, was. All he can do, is, parrot like, to say I talked with Burges, ^{about} it and he admitted it was a mistake - this don't prove it - I am talking now about the proofs in the case.

"And when reminded of his mistake promises to have it remitted" No such thing - Mr Marsh says "that his client explained the mistake to him & he to me and I promised to see Stone and get him to remit it." "that it would have been if I had testified to the truth" - here comes out the covert insinuation that these honorable Gentlemen never dared put upon the record before that I did not swear to the truth. So far in the Argument of this case I have not been called upon to

meet this and don't now deem it
worthy of more, than simply to say
that what the client thought & spoke
it is presumed the counsel repeats
in the heat of the Argument and if
the client thought and spoke so this
court can see how very probable it
is that this controversy has not
grown out of very amicable feel-
ings - "On the faith of this promise
the Deft ^{pays} ~~pays~~ the judgment up this
unjust part" - No proof of his paying
it on the faith of any such thing - He
paid \$31 - to the Sheriff, by way of
compromise, ^{as he says} ~~and he says~~ the Sheriff
neglected his duty to make the
balance - returned the execution
as he says "by order of the plaintiff"
I am not responsible for any other
but the returns the law allows to the
Sheriff, that is, "I have made the
money" - "I have levied on property"
or "nulla bona"

The Defendant had a right to suppose
he would see that the injury which
Burgess had thus done him would be
repaired and to believe the amount
received would be received in

Satisfaction of the judgment -
the proof shows no such thing -
why the Sheriff should see that any
injury I might have done Thomas
should be repaired I cant understand
And I utterly deny, and claim that
the proof utterly fails to show, that
Thomas had at any time any reason
to believe that, that would be received
in satisfaction - He in his bill
puts it on the ground of a com-
promise - but the immaculate
Goodrich knows more than he did

"It would seem to me that an honor-
able attorney would have remitted
the amount thus obtained" - When
I obtain a judgment by false swearing
it will do for the honorable coun-
sellor to say so - when I make an
honest mistake in my testimony
I will do what I can to rectify
it - But as for paying the judgment
that is recovered in consequence
of it, I really cant understand either
the morality or the honesty of it - the
Amount of the recovery of course has
nothing to do with the principle of
refunding it - If I am morally

bound to do it I must be under
all circumstances & at all times
and to all amounts, I certainly
never heard this proclaimed before,
and it could only have its origin
in the brain that was fertile
enough to conceive that an Attor-
ney bidding off land must buy it
for both Plaintiff & defendant and
not for himself or in trust for
the plaintiff alone

"He proceeds to enforce it under the
false pretence that Stone would
not allow it" Is there any proof
that Stone ever would allow this
judgment to be unjust? and is there
any proof that after I acquired it
I pretended that Stone would not
allow it?

The immaculate Goodrich here wilful-
ly misrepresents the record, or for
the sake of an Argument gets up a
case without any regard to the
facts upon the record - "When the
Alias Execution is presented by the
Sheriff he insists &c and writes Bur-
ges who does not reply, but by his
Silence lulls him into Security -"

why did not
Burgess make a
written statement -
in all such cases -

There is not a Scintilla of proof showing that he ever wrote such a letter or that I failed to answer, it is deny such to being easy. So far from it the Sheriff shows that he repeatedly called upon him to pay the Execution, he went to sleep easy if the duns of the Sheriff lulled him. "Sells property for \$35 - worth \$4^{or} 5000 - The property was then unimproved, worth as the witnesses say, who were sworn about \$1000 and not capable of division. "Bourges knew that Thomas relied upon his promise to get the mistake corrected" - Thomas did no such thing & the record shows that - What did he pay \$31⁰⁰ in the hope that I would not collect the balance for, if he relied on any such thing?

"He knew too that if Thomas had known the property had been sold for that nominal amount he would not have suffered the time of redemption to run out" I don't know about that, did Thomas ever show any intention to pay this debt? He had abundant time opportunity and property, he takes the law delays and allows the property to be sold

at a sale not for money but on
time with the privilege of redemption,
it is his business to see to its redemption.
I had had trouble enough
and why should I have informed
him? - because the property greatly
exceeded the bid - But it was all
I could do, - I would have been glad
to have raised the money out of personal
property! In the absence of action
by the Defendant the Sheriff must act.
He levied on the property - he must
take it, he could find no other but a
farm - I had a right to suppose
he knew of the levy and sale of it
there is no evidence to prove that
I knew that he did not know it,
and we both allowed the time to
run out and the purchasers rights
under the sale became fixed -

Now I submit to the court if
in any act of mine as shown by the
proofs in this case up to this point
the 11th day of September 1855 I
have deserved the stigma and

opprobrium so freely dealt in
by Mr Goodrich and I have no
doubt quite as freely by Marsh
Have I used anything but the
ordinary remedies pointed out
by law for the collection of a
debt, openly fairly and above
board - I did not go and tell him
that I had bid off his land - I had
a right to suppose he knew it.
I must to have done so either
go to Rockford on purpose or
have written to him neither
of these things did the law require
of me - and here I plant the defence
upon their legal rights and rights
which this court must respect -

What occurred after that, if what I had
done before was legal and fair
was a matter of the most perfect indif-
ference to Thomas. If I saw fit to
give this land away & buy it back again,
to sell it, mortgage or otherwise
encumber it, it was nothing to him
& could not affect him in any
way

but it is some thing
in the case

Now as to the regularity of the Sale under this Execution

The presumption of law is ~~that~~ the officer did his duty until the contrary appears

§ 12. Chap 57 R. S. provides that the Sheriff selling land under an execution shall make a certificate of such Sale to the purchaser & one to be recorded which "shall be taken and deemed evidence of the facts therein stated" § 21 of same Chap "Any deed (by Sheriff under Exⁿ) so executed shall be evidence that the provisions of the law in relation to the sales of land upon Execution were complied with until the contrary shall be shown"

We then have two provisions of the statute declaring what the effect of the acts of the Sheriff shall be, as to the parties to the action independent entirely of the Common Law rule I have above referred to. It is true the case of 11th Ill. 523 holds that when irregularities in the Sale are proved the Court will charge the Plaintiff or his Attorney with notice of the fact, constructively

prima facie only

although in fact they had no notice
whatever of those irregularities -
How unreasonably this must operate to
the prejudice of Plaintiffs in Execution
I don't care now to discuss at any
length. They have as good a right
as other persons to suppose that the
Sheriff will do his duty & to compel
them to follow every step that the
officer takes and see that he does his
duty, does seem to require more than the
plain construction of the law would
require. But that is of no consequence
here - this Court has held the doctrine
to be so and I submit to the ruling.

There is no proof whatever
that the Sheriff did not do his duty -
that is the first thing to be done and
until that is done, the Court must
give effect to the Statutory provisions
above.

I will now refer to the cases quoted by the counsel, and there is not one of them but the irregularities complained of were either proved or it was in such a state of the ^{Law} ~~case~~ ^{of the state} that the Plaintiff or person applying for a deed had to show affirmatively that the requirements of the Statute had been complied with. 20. Bar 148.

The notice of Sale in that case by Statute should be published six weeks. The ~~party~~ ^{proof} affirmatively showed that the notices had only been published 39 days - and was a case in which the Plaintiff in Execution had bid off the property.

P. Massachusetts - 288.

Whatever applicability this case might have under the Statute laws of Mass. 321. above quoted completely obviates it. The form of the deed in this case is that given by the Statute, and is evidence &c.

7 Mass. 388.

"The officers return must be in writing and when made upon his

precept and regularly returned,
it must be presumed to be true,
until the falsity of it be proved"
Here the certificate of Sale & the deed
are each in the nature of returns,
and the return of the Sheriff is that
he sold the land and his letter writ-
ten to me is signed officially
But this case was an action against
the Sheriff himself - His return
upon the ^{fact} of it was defective -
he did not apply to the Court for
leave to amend, but sought by
parol evidence to contradict it.

It seems to me that if this
case amounts to anything it is
on authority that parol evidence
should not be admitted to contradict
what the sheriff has returned.

3^d Admit that the sale was made to me what
right has Thomas to come in & say that
I cannot prevent the Sheriff to make the
deed to whomsoever he has a mind to
we are defending ^{there,} ~~now,~~ the simple
question is has the complainant
proved such facts as entitle him to
set aside the sale for irregularities

in making it: not has the Sheriff afterwards made a deed to some one that was not entitled to it - I might apply to correct this thing as the person to whom the sale was made but Mr Thomas is just as much a stranger to it as any other person.

11th Mo. the Court says the person to whom the sale was made is entitled to a deed, notwithstanding the deed made to a stranger which is merely void. But the Court don't set aside the sale -

11 Kenph 122 which was ejectment and 13. S. & M. 330 both decide what we do not dispute that the person to whom the land was in fact sold or his assignee is entitled to the deed -

The only question however is which shall control in this question the certificate and deed or the return on the fi. fa. -

In 1. Johns cases 153 Jackson vs Sterburgh, it is said by Lansing C. J. "The proceedings in the case of an extent upon an Elegit do

not apply to the writ of fieri facias,
on the writ of Elegit no sale can be
made, but the Sheriff takes an
inquisition by a jury who set off
the Morsity by Motes & bounds - The
inquisition is then necessary to be
returned and together with the
return constitutes the title, Here
the Sale and the Sheriffs deed are
Sufficient evidence of the title,
and if the purchaser can show that
the Sheriff has authority to sell it
is enough and he need not look
further"

See also 4 Wheaton 503

4th "The weight of the evidence is that
the land was not sold at the door
of the Court House where it was ad-
vertised to be sold and was not
cried at all"

When this case was first commenced
and prior to it the point was
seriously urged that a bid could
not be sent by letter to the Auc-
tioneer and that there must be a
personal attendance at the Sale
In fact until the filing of the bill it was

* This was a sale by
an est. the property was
exposed to sale & the bid
was by both

the only objection to the Sale that
I heard of. This point was the
great one upon which Thomas
and his counsel were going to break
up this Sale. But the case of ^{Byres} ~~Byres~~
vs Williams in 3. Bilt 368
so effectually disposed of that ob-
jection that it appears the Coun-
sel do not now rely upon it

Upon this branch of the case the
Court will recollect that it is for
the Complainant who comes to
set aside a Sale made under the
formalities and by virtue of judi-
cial proceedings, to prove affirma-
tively the irregularity complained
of

It is sufficient for the
defence to say there ^{are} ~~is~~ the certif-
icates of Sale and the Sheriffs
deed - If not conclusive on you
they are evidence made so by Stat-
ute - and by every principle of
Common Sense

Now what does the complainant
prove "That the Sheriff has forgotten
the transactions which attended

8
this Sale & does he swear that
he did not ^{strip property} cry off? No! all that
he recollects is about it is the
papers that he made at the time, he
don't say that those papers are not
true & he then knew what his duty
was and supposed he did it. He
told Briggs several times that so
far as he knew the sale was reg-
ularly made. He writes a letter at
the very time of the sale signs it offic-
ially in which he says "I this
day Struck off" &c. The very expres-
sions can only be used in reference
to a public sale & with all these things
staring him in the face this wit-
ness when called upon to swear that
he had not done what he had un-
der the solemnity of his official
oath certified to what he had re-
peatedly in conversation stated. what
he had aside from his official duty
stated in a letter written at the
time, when there was & could be no
inducement either by way of sympathy
for either party to mystify or misrep-
resent - under all these circumstances
merely say I cannot recollect

and I will not swear positively
either one way or the other - The
Complainant's Counsel takes him over
the ground again and again, and
makes no further impression - The
witness has forgotten - The memory
of man is frail - the law has
required certain things to be put
in writing, has given those writings
a certain effect - And in no in-
stance in my practice have I ever
seen more strongly the necessity
of this rule - by this witness nei-
ther party can prove anything -
had I been Plaintiff and obliged
to sustain my title by proving
the fact of public outcry by him
I could not have done it - They
are plaintiffs, they must prove that
it was not done - This is affirma-
tive evidence - See 18 W. Coughron
vs The People 268

The Sheriff might swear if such
was true that he did not cry the
property - other persons who were
there at the time and place of sale
and could have heard it could
also swear it did not take place

It is some times
convenient to
forget

everybody then
but the Sheriff -

Such proof is entirely wanting,
Saying nothing about the danger
to titles if the Sheriff is to be allow-
ed to contradict his return made
under his official oath - there
is no evidence in this case to weigh.
A want of recollection amounts
to nothing - and even an improp-
sion without assigning the slightest
reason for it is no evidence -
The Court below heard the evidence
of the witness, it was taken before
him in open Court - We gave it
a careful examination & decided
that it was clearly insufficient
that it failed to prove anything -
This Court has not his manner and
appearance, the questions propound-
ed and the answers he makes to
them, they can get nothing but a
general view of the manner of the
witness & the substance of his tes-
timony - We have not here the
benefit of the ordinary examination
in Chancery where both question and
answer are down, but the question
and the answer are consolidated and
what may have been a leading

question to the witness is here
put as his statement - A witness
who comes on the stand, as this
Sheriff does, to contradict his official
statements, his letter. and his repeat-
ed verbal statements deserves and
should receive a close scrutiny and
even had he sworn to the fact positive-
ly and unequivocally I submit
then that it would be a fair
question for the Court which to be-
lieve, his statements made at a time
when no inducements could have
been held out for him to misrepresent
repeated under similar circumstances,
or his statements made when his
sympathies were excited, saying noth-
ing of other appliances that might
be brought to bear upon him - I don't
wish to be understood that we think
there was anything wrong in the
Sheriff in this matter - he had
forgotten everything but what ap-
peared in writing - that is the sum
and substance of his testimony, and
it would be strange if he had not -
can it be expected that a Sheriff shall
recollect each and every sale that

takes place so as to be able to swear that his recollection is clear that he did cry off the property in a particular case to which his attention is for the first time called after the lapse of fifteen months.

In this case nothing whatever transpired from the time of the sale to the time of making the deed, 15 months, to call the Sheriff's attention to this sale, & under such circumstances his mere non mi recorder is to be weighed for one moment against his official certificates and his letter written & made when the occurrence took place. No plaintiff is safe in bidding off property under Execution. By this Court the Plaintiff stands charged volens volens with all irregularities. He cannot like other men trust to the officer that he will do his duty. He must see that his levy is endorsed, that he goes from pillar to post to post Notices. He must be personally present at the Auction and if we are to believe the Plaintiff's Counsel he can't

send his Attorney there because
the sale will be held for the
benefit of both parties & under
such ruling and with the right
of redemption absolutely forbidding
any body but himself to take the
land, if the Sheriff can come in
and say I forget whether I posted
the notices or not & I forget where
I posted them or how many or how
long before the sale, or whether
I cried it off or not, - any one
of these "I forgets" drives the plain-
tiff to sell over again.

I hope this Court will hesitate
long before adopting such a rule.
This case has its hardships I admit
and I have something yet to say
on that point - but it must be
decided according to law & its de-
cision involves a construction of the
rules of Evidence & if the Court
adopts the rule as claimed by the
Plaintiffs in error other cases will
be founded upon such ruling &
extreme cases form bad precedents
and such a ruling could not
be sustained in general practice a
moment.

I say then there is no evidence
to weigh - and the complainants
entirely failed to prove any irreg-
ularity -

Partlett vs Sale 4 Paige 509 -
"The certificate is the only legal
evidence that has been given in the
case as to the terms of the sale or
the actual amount of the bid,
And the Sheriff's present supposition
as to what the purchaser then
thought cannot now be received
to falsify his official certificate
given at the time of sale"

5th So far as using Farnsworth's
name is concerned until the
complainants below show some
irregularity in the sale it is a
matter of perfect indifference to
them. The reason of the use of his
name was that I had no written
assignment from Stone of the
judgment and I therefore preferred
to have the sale made to him - But
I am under no obligation to
explain that or the subsequent

of course not
it might be significant
and I don't wish to

dealings in this case between
myself and the other parties
They stand on their rights
I stand on mine - I claim that
no irregularity occurred in the
Sale, there is in fact no proof
in the case of any assignment
from Stone to me - So far as the
Record goes I as the Attorney of
Stone caused it to be sold to Carns-
worth - But these are all points
that need not be enquired into
unless the Court should find the
Sale irregular -

Sheriffs Statements ought to
be sufficient to charge him
under S 11 Chap 57 R.S. take
his Statements on this trial
and would they be any proof
whatever against him

I desire now to call the attention of the Court to the cases cited by the Counsel upon which he seems mainly to rely for a decree in this case

"But conclusive of the right of the Plaintiffs, to a decree in this case, is the fact that the property was bid off by the Attorney of the Plaintiff in the execution under circumstances such as that if in any case he can bid off property at a sheriffs Sale he will in this case be decreed as holding the property ^{as trustee} for debtor and creditor For the creditor to secure the amount due on the judgment. For the debtor to return to him the Surplus after the payment of the judgment"

4 J. Ch. R.

The sale in this case was in 1812 before redemptions were allowed and was of course final - It was an object for third persons to attend and bid as they got the land for their money and were not liable

to have it refunded to them with
ten per cent interest.

The facts show that the person who bought the land did not buy it for himself but for another that he stated to the Defendant in the Execution that he bought it for him and that the sale was a more temporary sale to prevent the further advertising of the land and that he would receipt the Execution as soon as paid up - That the sale was made on a stormy day when no persons were present but the bidder and the Sheriff - That this sale should be set aside for the reason assigned by the Court, namely that no opportunity was given to obtain a higher bid, is clear - It don't appear in that case that the property had ever been offered before & could not be sold - that the Sheriff had repeatedly adjourned the sale for want of bidders - nothing of the kind - But a sale is made under such circumstances as clearly show that it was designed at the time as

a more temporary thing, done
as a matter of form with the
expectation that the defendant in
Execution would pay the judg-
ment - It is fair to presume
that the Sheriff would not have
made this sale had he not had
such assurances from the bidder.

Don't look at the case at
bar - the Sheriff calls upon the
Defendant for property he turns him
over to the records of the County &
the Sheriff levies, and repeatedly
adjourns the sale for want of
bidders - He allows the Execu-
tion to run out in his hands
and nearly the time for a
Venditioni Exponas also to
run out before the bells & then
the sale is absolute; there are no
conditions attached to it to induce
the Sheriff to neglect his duty
and not adjourn the sale to
another time - and even if he
had, is not this Court aware that if
a man held an indivisible piece of
property worth \$100,000 and a judg-
ment should be obtained against him

for \$25 in any of the Courts of record in this State he could compel the judgment creditor to levy upon and sell it. If the Sheriff must adjourn the Sale from day to day until he finds some one who will bid an adequate price he may adjourn to all eternity, and it would be a virtual denial of all relief to the Plaintiff. Suppose in this case I had bid that property off for \$500 - of course all over my judgment would be paid to the Sheriff - he would pay it to the Defendant as he is entitled to the surplus. He would have the use of \$460 at 25 per cent, the going rate & at the end of one year have made out of my Money \$115 - then repay me the bid and ten per cent interest and have the use of ^{the} my property in the meantime - This may be Equity but it is a juggled kind of Equity.

Chancellor Kent never intended to say that an Attorney could not bid off property at a Sheriff's Sale

and the sale not be good against the Defendant. In this case cited by the Counsel he expressly disclaims deciding anything of the kind.

If the Plaintiff in the Execution may bid why may not this Attorney bid? Because it is said he as Attorney may control & direct the manner of the sale - but does he not do that as the agent of the Plaintiff? Can't the plaintiff do so without this Agency and bid off the land? This Court has had too many cases before it of sales to Attorneys and no lawyer before Mr Goodrich has been astute enough to suggest the idea that an Attorney was Trustee for both sides of a case.

The law upon this point is well laid down in 4th Cowen 733 - ~~Heawley~~^{by} vs Coamer - and I will quote at length the language of the Court.

"Can the Attorney on the record who issues an execution become a purchaser at the Sheriffs Sale on such Execution either for his own

benefit, or as the agent of others
against the interest and without
the consent of those for whose ben-
efit the execution issued - I
consider the fact that the purchase
was made by the attorney, without
the consent and against the interest
of some of his clients or those for
whose benefit he is supposed to act
as Attorney as important in this
case - For notwithstanding the Court
in Howell vs Baker 4 J. Chy. R. 121
said, that the rule disqualifying Soli-
citors and Attorneys from purchasing
at sales brought about by their Agency
had strong pretensions to be applied to
the case of an Application by the Defend-
ant in Execution to set aside a purchase
made by the plaintiffs Attorney, the
late Chancellor intentionally avoided
deciding that point, though it was di-
rectly before him in that suit. I think
the doctrine has never been carried to
that extent even in the English Courts
which have gone the farthest on this
subject. The reasons why the Attorney
or agent is not permitted to purchase
is, because it is supposed to be inconsistent

with the duty which he owes to those for whom he is employed to act. and from the relation which exists between the agent & his principal or between the Attorney and his client. But these reasons cannot apply to the Defendant in the Execution. The Plaintiff's Attorney owes no allegiance and is under no obligation of duty to take care of his interest. Neither is there any confidential connection existing between them. There can be no doubt of the right of the Plaintiff to purchase on his own Execution and I think there can be as little doubt of the right of the Attorney to purchase for his client with his agent; or to purchase for himself or as the agent of a third person with the like permission. There are cases in which the client himself is not permitted to purchase and in all such it may be proper to extend the like prohibition to his attorney or agent. The case of a Solicitor to a commission in Bankruptcy in England is one of this description."

The case of Ball vs Hallett 1 Cox
134. is precisely of that character
Scrass was the Solicitor of the
Executor & purchased in property
that the Executor could not buy
Now this property that was bought
in. in the case at bar was not in
"litigation" between any body, - it
was merely taken and sold in
satisfaction of a debt -

The case of Y Dana 388. is
full of irregularities on the part of
the Plaintiff and his Attorney suf-
ficient to set the Sale aside -
every one of which were proved. not
suspected but proved - The
Sale was an absolute one and no
redemption - It was made in
the woods without giving any
opportunity to any one to attend
and bid -

But supposing in the case at
bar that the Sheriff had employed
the town crier to travel all over
the city of Rockford from "early
morn to dewy eve" & he had
cried aloud and spared not, would

any body have come to the sale.
the Counsel knows they would not?

The truth is that the proofs
in the case at bar if they show
anything show a sale conducted
as sales ordinarily are conducted
in this State

I Monroe 612

The court alludes to the case of Howell
vs Baker and say without approving
or disapproving these authorities
and not wishing it to be understood
that we go the whole length of this
doctrine, they say they scrutinize
such a sale &c

In that case the court says
the inadequacy of the consideration
may not be sufficient per se to
overturo the sale but it is a cir-
cumstance with others &c

Now in that case large quantities
of land, were sold in a hurried secret
manner without giving the defendants
any opportunity to prepare for the
sale or persons desiring to bid to do
so - That was a sale where other
persons would have come in and bid

Is it so in the case at bar, any secrecy about that sale, or if the Sheriff had adjourned the sale to this time is there any proof that the Plaintiff in Execution would not be obliged to bid it off himself and wait until redemption runs out?

3. Harrington 23.

"More inadequacy of price" is no reason for setting aside a sale. Neither does it appear that there was any defect in setting up the notice of this sale. but the important objection is that it was made at an unusual place &c

Whatever objection there was, was proved distinctly.

7 Gill v Johnson 494. The counsel says "this is a strong case in what respect? It is strong in its proof beyond cavil or doubt that the Sheriff had neglected his duty. There was no "I don't recollect whether I did or not" about it

The want of proper notice - The
Sale at an improper place - The
Sale en Masse - disregarding
the rights of those who had other
liens - These are all proved, Verily
it is a Strong case - and in the
comparison the case presented
at bar suffers very much

5 Ex Indiana 213

Is the only case that I have
found that uses such language
as this - "Under these circumstances
it is not very clear but that the
Sale is void for inadequacy of price"
and refers to Benton vs
+ In. 66 - which holds directly
the reverse

In this case 5 In there were a
number of judgment creditors
and a difficulty seems to have arisen
about priority of liens - who the
purchaser was does not appear
The case is not very fully reported
and was ^{sent} back for new trial and
therefore I presume a more full
report of it does not appear

I have now gone through all the cases furnished by the Comd and the clear deduction is that where irregularities of Sale exist and are clearly shown to the Court that then a sale to the Plaintiff or his Attorney will be set aside but not otherwise

I now desire to call the attention of the Court to some cases

12 J. R. 427 - Jackson vs Cray
An attack upon a Sheriff's deed on the ground of fraud in the sale &c
The Sheriff was very much like the Sheriff in this case; he had forgotten so much of the transaction that upon the point where the fraud lay he had no recollection - The Court says "we are bound to consider the transaction to have been conducted in good faith unless the contrary appears"

3 How. Mis. Rep. 253 - Drake vs Collins -
When the Sheriff returns upon

the Execution that he advertised the property and there is no other proof, he being a Sworn Officer, it is to be presumed that he acted correctly

3. Genger 308. Rogers vs Jennings
It being the duty of the Sheriff to give the Defendant in possession whose land he is about to sell under an Execution. Notice under the act of 1799 ch. 14, we are to take it prima facie that the notice was given. The evidence of a non performance of this duty in this respect must come from the Defendant. The fact of advertising and otherwise making known the Sale, being matters in pais are prima facie proved by the recitals in the deed and on this presumption, that every sworn Officer does his duty, under the Statutes which are directory to him. To the same point is 6 Humphrey 260. Simmons vs McKissick. The onus of proof is upon the Defendant to show

that notice was not given"

Inadequacy of price + no ground
to set aside Sale -

11 J. R. 555 - a Bill filed to
enforce a Sale of 800 lots worth from
\$100 - to \$250 - each - Sold for \$11 -

A Sale made at Auction, and under
process of law ought not to be invali-
dated for mere inadequacy of price
without additional circumstances to
justify it -

3 Monroe 273. Hart vs Blight
A bill filed to enforce a Sale of
land upon a judgment for costs
8000 acres of land sold for \$25 -
~~the~~ ^{the} Court says - From inadequacy
of price a probable presumption
of fraud may be created, but
it was never held per se to
vitiate the Sale

2 Strobhart 288 -

It is settled law that when unfair
means have not been employed
to prevent competition at Sheriff's
Sale inadequacy of price however

great is no ground for setting
them aside - whether wise or not
this is the law of South Carolina

4 Snides & Marshall 620 -

2 Green 214. & 260 -

More inadequacy of price
insufficient

1 Saxton 1. & 60

1 Spears 351. -

2 La: 99 -

4 In^a 66. clearly recognizes
the doctrine and refers to cases -
But does not set aside the sale
on that ground but on account
of the number of liens, the sacrifice
of their rights, the irregularities
of the officer in sale & knowledge
by purchaser -

Having so far followed the
line of Argument given me by the
Plaintiffs in Error I now propose to
put this case upon the strict legal
rights of the Defendants in Error

It will be noticed that
no relief is asked for by the

Complainant below touching this judgment - It is not asked to be opened or set aside & new trial granted - In fact it is too clear to need more than a reference to authorities to show that, that comes altogether too late.

3. Graham on new trials - 1483 - It Seq. I will not do more than refer to it and the cases cited.

Then Stane who is bound to defend his sale of the judgment to me does not come prepared to show that, that judgment is just - His plea of laches is conclusive, and all the evidence that is introduced by the Plaintiff in the case should be entirely excluded by the court.

It would be a gross violation of every principle in the Administration of justice to allow the Defendant to prove defects in the judgment to set aside a sale made under it when he could not attack the judgment itself and still greater to conclude the Plaintiff

This is not all the facts -

by such evidence when he has plead
a complete bar

All the evidence then touching
this mistake must be laid out of
view and excluded

That leaves the case upon the naked
question of the regularity of the
Sheriffs proceedings and upon
that I need say no more than I
have

And now as to the hardships of
this case

X I concede it is a hard case
upon the Defendant in the execution
and had a decent regard been
paid to my feelings and my position
in this matter the case would not
now be in this court. Affailed with
vituperation, insulted by Client
before this bill was filed and by
the counsel and client afterwards,
I have uniformly said take back
in as clear and positive a manner
as you have charged and by
matter of record the grave
charges you have preferred against
me, and I am open to a compromise

persist in them if you will.
but you have no right to expect
grace from a man whose motives
and character you malign.

If, in this matter, from the
rendition of that judgment to the
day the redemption ran out,
I have been guilty of one unprofession-
al, or unmannerly act reverse the
judgment below & but if not
sustain it.

Time in its onward March has
swept into oblivion the grounds
of that judgment. Thomas knew
he could not prove his statements,
and never undertook to do so, while
the matter was fresh; had he given
Stone the opportunity he might
have put that beyond doubt. He
allows the time to slip by and
must be stopped.

His land is sold under
due process of law. He allows the
time to redeem to run out, the
purchaser takes the title, all the
defects that could be charged
to set aside a sale were indis-
criminately charged & an attempt

was made to prove but one
and on that the complainants
have utterly failed - Whatever
generosity might lead those hold-
ing title to do this Court cannot
relieve them

The limitation of Error as
applied to the attempt to open
the judgment. Aside from the
rules laid down by Courts of Equity
touching the time within which
Bills for new trials should be filed
there is another principle that it
seems must control and bar any
inquiry into the justice or in-
justice of that judgment

The limitation of writs of Error
in this State is five years - This
judgment was recovered in March
1850 and the Bill was filed in
December 1855. More than five
years having elapsed since the
rendition of the judgment -
Courts of Equity apply the limitations
of Courts of law in analogous
cases - There no writ of error
would lie to reverse this judgment

the party should not be allowed
where he labors under no disability
to file his bill in Equity to
do what he could not do at
law that is to reverse that judgment

See 10 Wheat. 150 Thomas vs
Harries Heirs. Story's Equity Plead-
ings § 410 - 3 Daniels Chy Pract-
ice 1726

I had written my reply to Goodrich's Argument before seeing that of Marsh: and therefore will only call attention to some of it where it is not sufficiently answered before

My receipt of the money is to apply on Execution - that was made Nov. 13. 1850

The Execution was not returned until Nov. 13. 1853 - The Sheriff who held it was dead at the time of the trial of this cause (that fact don't appear by the record however) and I could not show how often I had tried to get that Execution returned - I claim that I bought that judgment and paid a valuable consideration for it. Goodrich throughout his Argument concedes it - If so I ceased in regard to this to have the Character of Attorney and acquired that of judgment Creditor

The Sale was adjourned several times for want of bidders - The Sheriff used all the diligence in his power, and if he had returned

his Execution and got a vendi
what good would it have done
E. Bonnier Crst \$3399

So far as the Sale to Farnsworth is
concerned he adopted it by assign-
ing the certificate

The sale was either to Farnsworth or
to me. There is no other proof as to
his connection with it further than
my admissions that it was done
to accomodate me - as I have said
before, this is a matter between
Farnsworth & myself and Thomas
has nothing to do with it until
he establishes irregularity in the
Sale

Both the Gentlemen who have
argued this case have taken as
their Stand point & as though it
were conceded that the Sale
could not be Sustained unless I
showed that the Sales made Subsequent
to the Taking the Sheriffs deed were
made upon good Consideration
and without stopping to Satisfy the
Court that there is any irregularity in
this Sale, they proceed in an

argument based upon that
State of the case & I deem it
foreign to the case to justify those
matters until that be first estab-
lished

The defence in this case
placed themselves first upon the
ground that the judgment of the Court
in Stone vs Thomas could not be
disturbed & And not an authority
or reason do the gentleman give
showing that this ~~court~~ ^{Court} can disturb
it

The Counsel for the Plaintiff take it
for granted that they can go be-
hind a judgment of the Court and
aspume the injustice of it and
make such mere assumption a reason
for setting aside a regular sale

But judgments are final & conclu-
sive upon the parties and upon all
the world & The fact of the justice or
injustice of that judgment has yet to
be tried & It is not yet set aside the
counsel dont ask to set it aside
It is a judgment today & was when
the case was tried below & is
binding and conclusive upon the

court - but the counsel pay no attention to this, they talk & prate about that judgment being unjust as though it were conceded

The party most interested in sustaining that judgment, Stone, denies it - It is to me indifferent, for the judgment being set aside the sale will not follow it -

1. J. J. Marshall 484c in print - All that the court could do would be to direct a new trial - It can't order the refunding of the money or set aside sales made under it

It then must stand & be deemed by this court as final and conclusive between the parties - And no inquiry will be allowed in this court or elsewhere as to the justice or injustice of it -

It certainly is much more to be deprecated, this course of collaterally inquiring into it, than by a direct proceeding - If they are estopped from the direct they must equally be so, from the collateral

Second - The defence say there is no irregularity in the sale - They produce the evidence required by law to show the regularity of it and the Plaintiff do not show any irregularity

Third - it is a familiar principle in ^{Equity} ~~Chancery~~ that it does not help the Slothful, those who either sleep upon their rights or are slow to do justice to others -

Head I taken advantage of an honest poor man and sacrificed his property he being willing and anxious to pay, the case would present a different aspect to this Court - Thomas was litigious - Suit was necessary to make him pay & when judgment was recovered though advised of Execution and plenty of property, yet refuses to pay, is abusive to the witness whom he had called upon the stand - annoys them by delays - drives him to sell his land and advance money to pay costs pays no attention to the claim - allows the time of redemption

to run out & goes to attorneys to
get up a defence, when no defence
can be made, accuses the Attorney
who then owned the claim of specu-
lation & files ^athe bill charging him
with having all the time been
endeavoring to defraud him, and
dies leaving some minor and some
adult heirs & to him in his life
time, and to them since his death
I have repeatedly said I am not
conscious of ever doing any act to
defraud ~~you~~ in this matter My
record is clear & If the Sheriff
did commit irregularities in the
Sale which I deny & I certainly
knew nothing of them did not in-
tend that any such should exist
and if any did happen they are
merely technical & did you no
harm as it is certain that the
Sheriff would not have got a
higher bidder had he gone all
over Rockford to drum them
up. Now recant your false
charges and I will compromise
on fair terms

3
52
11
I have, in this matter a professional
character to sustain: If by selling
this land in the manner I have
done, I have done anything wrong
or out of character in the
judgment of this Court I shall
cheerfully submit to its decree,
but under such charges as are
made in that bill I don't feel
easy and no man can blame me
for insisting upon their uncondition-
al recantation or their proof.

M. J. Puyf

Burgess

AD 159-159

Dietman

Spts ay

Filed May 22, 1858

Leland
C. H.

Windsor
April Term

1855

In Supreme Court

Roxester A. Dickerman et al.

Appellants.

vs
William T. Burgess et al.

Appellees.

Appeal from Winnebago

Brief

[12420-99]

James Marsh
for Appellants.

1833. March — Stone obtained judgement against Thomas for \$45.00
 " June Execution was issued
 " Nov. 13 Burges recd. \$31. the Execution returned
 1834. Jan — Alias Eⁿ issued for the balance by order of Burges
 " June 10. Sheriff sold property worth from \$3000 to \$4000 for \$38⁵²/₁₀₀
 " " 17. Sheriff gave certificate of sale to Farnsworth
 " July. 10 Farnsworth assigned the Certificate to J.S. Burges
 1835. Sept. 12. Sheriff executed deed to J.S. Burges.
 " " 13 J.S. Burges quitclaimed to S.P. Burges
 " " — Thomas first knew of the sale. & offered Burges \$150.00
 " Nov. — Burges gave Thomas notice to quit.
 " Dec. 18. Bill filed compl. having offer Burges \$100.00

The Record in this suit discloses a case where a court of equity is called upon to interfere to relieve the heirs (mostly minors) of a judgment debtor from the unconscionable sacrifice of their property through the inexcusable rapacity of one seeking to avail himself of the technicalities of the law to appropriate another's property to his own gain.

Says Paulus. non omne. quod licet. honestum est

Says Paul. "All things are lawful unto me, but all things are not expedient; all things are lawful for me, but I will not be brought under the power of any."

But here it is insisted that it is neither lawful, honest, ^{honest, nor lawful} expedient for the defendant Burgess, an attorney of this Court, to be allowed to prostitute the position which an honorable profession gives him to improve upon the facilities growing out of such position, for the base purpose of robbing orphan children of property worth between \$3000. & \$6000 under the pitiful pretence of having purchased it at a Sheriff's sale for \$28³⁰/₁₀₀.

Because

[12420-100]

1. There was no sale "at public vendue" as required by the plain provisions of the Statute

2. There was no sale to Farnsworth therefore the Sheriff had no authority to give him a certificate of sale.

3. If there was any sale, regular or irregular, it was made to W. T. Burgep

4. The gross inadequacy of price stamps the whole transaction with a fraud, from which all fair minded men, & especially courts of equity, revolt.

5. There being no bidders at the sale the Sheriff had no alternative but to return the execution for want of bidders.

6. The efforts of Burgep immediately after the sale to cover up his tracks, by having the property conveyed to his brother & cousin (man of straw) together with the fact of having been the witness through whose testimony the judgement was unjustly obtained, clearly establish the fact of his fraudulent purpose, from the first, to avail himself of every possible advantage.

7. Burgep having purchased at such a grossly inadequate price, being the Pff. Atty. he must be deemed as having acted fraudulently, & as trustee for both parties

Upon the first point

The sale of land by a Sheriff is a matter of Statutory power not coupled with an interest, & if the performance of the pre-requisites to the exercise of such power, such as advertising &c. do not appear in the deed, or aliunde, the sale will be void.

Todd v Philkner 4 Fabr. (N. S.) 190.

20 Barb. 148. 5. 600. 392.

Rev. St. (1845) p. 302. § 11.

The Sheriff must use a reasonable discretion in the sale of goods (property); if a very inadequate price be offered, he should not sell, but return that they remain on his hands for want of buyers; so when he has no bid. Otherwise after *fi fa.* has been returned & venditioni exponas has been issued

3. Bour. Inst. 378. § 3392.

3. 6 amp R. 321.

Although the ^{particulars} questions under consideration in the above cases are somewhat dissimilar to this case yet the principles thus eliminated & applied are applicable here.

Upon the second point

It is insisted that a careful & strict consideration of the proof, would, even if some conflicting equity invited in a different direction, inevitably force the court to adopt the conclusion, that whether or not any sale was made to Burgess, most certainly none was ever made to Farnsworth. The return of the Sheriff on the execution establishes this fact conclusively & the ^{testimony} ~~evidence~~ of the Sheriff, that the only sale made at all by him was the mere making of this return on the execution, more than corroborates it. It matters not at all, what particular notion he may have had; to whom he supposed, he was making the sale, the only thing we have to do with is, what he did, & how he did it! It being then clear that Farnsworth was to all intents & purposes, an entire stranger to the sale, the Sheriff had no more authority to give a certificate of sale to him than to any other person; he could only pursue the provisions of the statute, & give the certificate to the purchaser at the sale; hence the certificate & the deed & indent were void & inoperative.

Rev. St. (1845), p. 302. Sec. 12.

Davis vs. McVickers 11. Ill. 327-9.

7. Map. 388.

Matthews v. Clifton

13 Sm. & Mar. (330), 336.

The Law makes the sale through the agency of the Sheriff. It is manifest that the Law was made no sale, in this case.

There is very little occasion to employ thought upon the vain attempt of Dungep to screen himself from the scrutiny of Equity by thrusting into view the names of Darnsworth & P. S. & S. P. Dungep. as granties; it requires but little knowledge of the rules of evidence, & but slight insight of the character & motives of human actions to warrant this court to assume that nobody but W. F. Dungep. has at any time (Irad.) or now has any interest in the success of this nefarious fraud.

All the questions arising from the relation of these several parties, to the various transactions since the sale. May be grouped together & considered as follows.

Dunlap's Policy on Agency 260	The rule is general that whatever
Price 33.	is known to the agent, is presumed
Doyle v. Fear 4 Scam (202) 252	to be known to the principal
1 Gil 435, 445	When the plff in the execution, or
11. Ill. 323.	his attorney, bids in the property
Raphie v. Morgan	he is chargeable with notice of
2 Scam 361-3.	all defects, or irregularities
Vardine v. Perry 2 Serg & R ⁴³⁴ 426.	
G. Wap. 241	
C. J. Ch. R. 440.	

Thus far the points considered and the authorities cited to sustain them relate more particularly to questions stricti juris, wherein the defendant in the action might always insist upon the purchaser at a sheriff's sale being protected by a strict compliance with statutory provisions. This the judgment debtor may always be demanded before he shall be deprived of his property, irrespective of any condition of price or other interest.

But the main consideration & strength of this case, is in its palpable equities, in the light of well defined rules of equity as deduced from numerous decisions in like cases. It is however a humiliating fact that no case has found its way into the books, displaying such flagrant disregard of common honesty with surroundings, in so many respects deserving the reprobation of all upright minds, as the case at bar.

And to the honor of the profession, be it spoken, that through a long series of decisions, eminent judges have uniformly guarded it with jealous watchfulness against the approach of successful speculation by its members. I have administered many useful lessons, which may well be repeated in this case, to that class of attorneys who are unwilling to be honest, except upon compulsion.

If the party becomes the purchaser at Sheriff's sale
his grantee gets no better title than the grantor
had. In all cases of a sale under a power, the
grantee purchases at his peril. If the
power fails, the title goes with it.

Dalcott argues. 1 Cow. p. 638

1. J. Ch. R. (410), 415.

The same reasons of policy which secure to an innocent purchaser a valid title do not exist when the judgement creditor (or his Attorney) becomes the purchaser; And it would be the height of injustice to allow the party guilty of the irregularity to take advantage of it. There is no objection to an inquiry into the regularity of the sale between the original parties, or subsequent purchasers with notice

Jackson v. Caldwell
1 How (622) 638 644

Blight v. Tolin
7. Monroe (612) 616

An unconscionable purchase by an attorney for the plaintiff in the execution will not be permitted to stand.

A court of Equity may presume a trust which sometimes may become necessary to avoid an odious speculation in the distresses of the debtor, when a court of Law would refuse to set aside the sale as a fraudulent violation of the Law.

H. 622

H. 616

Of the circumstances of the case in 7. Mon "shocked the moral sense" of the Chancellor so much that his "conscience revolted" How much more so this case

In this case, as in that, a court of Equity will presume the trust against the attorney to enable the heirs to redeem. & even to charge the attorney with the value of the property if it has passed beyond his reach

In *Noble v Dallas*
7 Gilb L. (494) 312

The Court say that Real Estate worth \$5800.
being sold for \$1100. at Sheriff's sale furnishes
intrinsie evidence of the irregularity, impropriety
or unfairness of the sale.

The want of judgement or
dereliction of duty in the Sheriff. (as to the place
of sale) if followed by a sale at a very reduced
price would be a sufficient foundation to
vacate the sale.

Now if a Sheriff's sale for one fifth the value of the property
connected with some other slight omissions in duty, or
indiscretion of the Sheriff, would be regarded
so fraudulent, as not to leave to the Court a
shadow of discretion as to vacating the sale? In Maryland
what is the Standard of morals; what the grade of the
conscience of the Chancellor, in Illinois, if our
Courts of Equity shall sanction a sale for one hundredth
the value of the property with so many omissions,
indiscretions, errors, improprieties & frauds, as
cluster around this case, in all its aspects.

He who is interested with the business of others ought not to be allowed to make that business an object of interest to himself. It tends to abuse & corruption. An Attorney can be permitted to buy in things in a course of litigation, of which litigation he has the management. This the policy of justice will not endure.

Howell v. Barker non omne, quod licet, honestum est.
4 S. Ch. R. (1762) 112

Proof in adequacy of price when taken in connexion with the fact that the sale was on a stormy day & that no persons were present but the Sheriff & the defendant (the attorney) would well warrant an inference of fraud.

It. It would ~~would~~ be very inequitable even if it were lawful to allow the purchaser in such case to appropriate the bid to himself.

In the case here cited the Chancellor in tender charity towards the defendant, held him to stand as trustee for the plaintiff & defendant in the execution.

A purchase by an Attorney under a client's execution over which he held control, & in which the Chancellor took on the transaction with peculiar scrutiny & jealousy, & should never be sustained when it was for a grossly inadequate price. It exhibits a semblance of unfairness.

Public policy & the analogies of the Law
require that they (such purchases) should be
considered per se as in the twilight between
legal fraud & fairness; and should be deemed
fraudulent, or in trust for the defrauder upon slight
additional facts.

Howell v. Harris; *McCreary v. Harris*

7. Daud (Ken), L. 389.

Propriety of price may be a controlling
element in connection with other circumstances
to set aside a judicial sale. And to
support such a sale, a court of equity
should require very strong authority
directly in point. & based upon very strong
reasons of public policy

Benton v. Shreve

4. Ind. (Poter), R. 66, p. 2.

It may well be asked here, what interest of public policy
will be subverted; wherein can this Court promote the
welfare of society, by sanctioning this sale & thus publishing
to the world, that ^{the} lawyers whose proclivities are all in
the direction of knavery, can very easily throw around
any lawful transaction, such a network of chicanery
stricks, as shall effectually shield them in
legalized robbery

The Court in *Gowan v Doe & Blackford* 2400
plainly determine that where there is
the least departure from the strict observance
of the Law, by the Sheriff in the sale of property,
it is not necessary that there should be very
flagrant omissions, nor very very gross irregularities
at the sale, to induce the Court to set aside a
sale; & that too, though there was no special
sacrifice. The reason seemed to be sufficient that
such sale indicated ingredients of fraud

As a last authority in point, it may not be
amiss to refer to a former decision of this Court
1 Gil 435 & 44 Gil 389, in which some consideration
is given to the fact of the purchaser being the plffs
attorney; but it is mainly for the purpose of showing
that this Court in that case set aside the sale, & that
too, though there was no special sacrifice for reasons
involving much less irregularity, much slighter
departure from the letter & spirit of the Law, and
immeasurably less inequitable & iniquitous concomitants
than this case presents

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