

No 9- 11

Nov Term 1859.

Ralph

vs

Lefler & others

vs to Hardin

Affirmed

8686

No. **8686**

Supreme Court of Illinois

James Ralph

vs.

John H. Lefler et al

71641  7

1 State of Illinois }
Hardin County } ss.

Present before the Hon. Wesley
Sloan Judge of the 19th Judicial Cir-
cuit Court. And presiding in the County
of Hardin, at the Court House in Elizabethtown on the 9th day of October in the
Year A.D. 1858.

It is remembered that on the 20th
day of March in the year 1854, James
Ralph filed his Bill in Chancery against
John H. Lefler, Emily Ann Lefler, Andrew Mc-
allen, William Potts, & Lewis Savinder, which
is in the words and figures following, to-wit,

"State of Illinois } In the Circuit Court
Hardin County } ss. Spring Term 1854
To the honorable Judge
Bill of the Hardin Circuit Court in
Chancery sitting. Your Orator, James
Ralph, humbly complaining, Respect-
fully sheweth unto your Honor,
That at the March Term of the Hamilton
Circuit Court in the year 1848, William
Fellows, Cornelius Fellows, and Benja-
min S. Adams of the firm of W. & C.
Fellows & Co, received a Judgement a-
gainst one Auden McCallen for the
Sum of \$194.00, and costs of suit, that
afterwards, on the 31st day of March
in the year 1848, the said Wm. Fellows
& Co caused a fieri execution to be is-
sued on said Judgement to the Sheriff

2826-1

2 of Hardin County, State of Illinois
for said sum of \$794.00, and costs
of suit, which ~~fifa~~ execution, as af-
foresaid, came to the hands of Lewis La-
vender, Sheriff in and for the County
of Hardin aforesaid. That afterwards, to-
wit, on the 26th day of April A.D. 1848,
the said Lewis Lavender, Sheriff, as affore-
said, by virtue of said ~~fifa~~ execution
levied upon the following real estate
of the said Andrew McCallen, to wit
Lot number six (6), in the old plat of
Elizabethtown, County of Hardin and
State of Illinois, and the appurtenances
together with a number of other Lots
and one tract of land, All of which will
more fully and at large appear by refer-
ence to a copy of a Certificate of Levy
made by the said Lewis Lavender, Sheriff as
aforesaid, recorded in a Book for that
purpose in the Clerk's office of the Har-
din County Circuit Court, page 20, here-
with filed and prayed to be taken as
a part hereof. (Marked A).

Your orator further states, that after-
wards, to wit, the said Lewis Lavender
Sheriff as aforesaid, by virtue of said
~~fifa~~ execution, so levied on said town
lot, number six (6) aforesaid, on the 28th
day of June A.D. 1848, after having
advertised the same according to Law,
sold said town lot to one William Potts
he being the highest and best bidder

therefor, at and for the sum of one hundred and seventeen dollars and fifty cents (\$175.50), all of which will more fully and at large appear by reference to a copy of a certificate of purchase, made by said Lewis Linnard, Sheriff, as aforesaid to the said William Potts herewith filed and prayed to be taken as a part hereof. Marked (C)

Your orator further states, that at the October term of the Saline Circuit Court, in the State of Illinois 1852, one Lucinda Ralph, recovered a Judgement against the said William Potts for the sum of fifteen hundred dollars and costs of suit, and that afterwards, to wit, on the 15th day of October in the year 1852, the said Lucinda Ralph caused a fifa execution to be issued against the said

William Potts, upon said Judgement for said sum of \$1500.00 and costs of suit, directed to the Sheriff of Hardin County, State of Illinois, which fifa execution came to the hands of John W. Ralph, then Sheriff in & for said County of Hardin aforesaid, and by him levied, to wit, on the 15th day of October in the year 1852, on said town lot in Elizabethtown, number six (6), which was certified to the recorder in and for said County of Hardin, and by him filed in his said office on the

16th day of October 1852, all of which will more fully and at large appear, by reference to a ~~certified~~ ^{copy} of said Certificate of Levy herewith filed and prayed to be taken as a part hereof, Marked (C)

Your orator further states, that afterwards, to wit on the 6th day of December in the year 1852, the said John W. Ralph, Sheriff as aforesaid, by virtue of said fifa execution and levy so made as aforesaid, sold said town lot number six (6) in Elizabethtown aforesaid to one Charles Mott at and for the sum of one hundred dollars (subject to a mortgage of Joseph McCallen on the same), he being the highest and best bidder for the same all of which will more fully and at large appear by reference to a copy of the Certificate of Purchase, filed in the Recorder's Office in and for said County of Hardin, bearing date, the 6th day of December in the year 1852, herewith filed and prayed to be taken as a part hereof Marked (D)

Your orator further states, that afterwards, to wit on the 13th day of March in the year 1854 the said Charles Mott endorsed said Certificate of Purchase so made by him as aforesaid, of said town lot number six (6) aforesaid, to your orator, and your orator then and there became the proprietor thereof, and the

5. said William Potts defendant in said
Execution, so levied upon said town lot-
having failed to redeem the same with-
in twelve months from the date of the
sale thereof, and no Judgement Cred-
itor having redeemed under the statute
in such cases, Made and Provided - the
said John W. Ralph in pursuance to
his said said certificate so executed to
the said Charles Mott and so assigned
to your orator. On the 15th day of
March in the year 1854, made and
executed a deed to your orator for said
town lot, number six (6) in Elizabeth-
town aforesaid, all of which will more full-
ly appear by reference to said deed, bearing
date, the 15th day of March in the
year 1854, herewith filed and prayed
to be taken as a part hereof (Marked C).
Your orator states that he is informed and
and charges that the said Andrew McCallen
did not redeem said town lot number six (6)
in Elizabethtown, so sold by the said
Lewis Lammear sheriff as aforesaid
by virtue of the execution, so issued against
him in favor of W. & C. Fellows & Co, from
the clerk's office of the Hamilton Cir-
cuit Court aforesaid - within twelve
months, nor by any Judgement Creditor
thereafter for him, but wholly failed
so to do - And that by virtue of said sale
under said execution, so issued from the
clerk's office of the Hamilton Circuit Court
aforesaid of said town lot, number six

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Callen to one Emily Ann S. Leften, wife of
one John H. Leften of said County of Hardin
and State of Illinois, was filed in the re-
corder's office in and for said County,
bearing date the 14th day of October in the
year 1852, and acknowledged on the
same day before one Eugene Rueda
Justice of the Peace for Gallatin County—
All of which will more fully and at large
appear by reference to a copy of said record
herewith filed and prayed to be taken
as a part hereof, Marked (L)

Your orator further states that the said
Certificate of redemption, so made by the
said Lewis Savinder, sheriff as aforesaid
to the said Andrew McCallen, filed herein
Marked (H) bears date of the 28th day
of July 1848, but your orator expressly
charges that said Certificate was
falsely dated, and that said Certif-
icate of redemption aforesaid, in point
of fact, was made and executed by the
said Savinder to the said McCallen
on or about the date of its filing, to wit, the
9th day of November 1852. Your orator chan-
ges that the said Lewis Savinder and the
said Andrew McCallen combined and
conspired together and dated said
Certificate of redemption back, for the
purpose of defeating the levy and sale of
said execution in favor of the said Lu-
cinda Ralph, issued from the Clerk's office
of the Sacine Circuit Court aforesaid.
Now, your orator expressly charges, that

8. no redemption was ever made by the said
Hansen McCallen from the sale of said
town lot, under the execution in favor
of the said M & C. Sellers & Co aforesaid,
either directly nor indirectly, until after the
levy of said execution in favor of Linda
Ralph vs. William Potts, and so levied
upon as the said Potts' property, and
then, and not until then, was there any
effort made by the said McCallen to re-
deem said town lot. Your orator express-
ly avows that the lot here in controversy is
lot No. 6 in the old plat of Elizabeth town.

Your orator further states that the cer-
tificate of levy in favor of M & C. Sellers
& Co is dated the 24th day of April 1848,
and filed the same date.

Certificate of Purchase to William Potts da-
ted 28th of June 1848 and filed 3rd of
July 1848, - time of redemption expired on
the 28th day of September 1849.

Certificate of levy on said town lot of D. W.
Ralph, Sheriff, is dated and filed the 16th
day of October 1852, as the property of the
said William Potts, and the sale under
said levy was made to Charles Mott on
the 6th day of December 1852, the certi-
ficate of purchase was filed with the recorder the same day.
Your orator further states and charges that
the said Lewis Savanah Sheriff as aforesaid
in place of executing a certificate of re-
demption to the said McCallen aforesaid, he
ought to have made and executed a deed
to the said William Potts who was en-

9 entitled to a deed for the said town lot, by virtue of the purchase so made by him under the execution in favor of M & C. Fellows. He as aforesaid, as he was by Law bound to do. Your orator further charges that the said William Potts took possession of said town lot by virtue of said purchase, exercised acts of ownership over the same, leased the same out, and collected the rents therefor, up to the time of said levy, so made by virtue of the execution in favor of the said Lucinda Ralph and against him the said William Potts aforesaid.

Now your orator charges, that inasmuch as the said Asaiah McCallum failed to redeem said town lot number six (6) as aforesaid, according to Law, from the purchase of the said William Potts, he the said Sen is Taxender, Sheff as aforesaid is bound by Law to make him a deed for the same, and that inasmuch as the said William Potts failed to redeem the said town lot, number six (6) from under the sale so made to the said Charles Mott according to Law, and that your orator having duly purchased the certificate of purchase from the said Charles Mott, and having procured a deed from the Sheff, therefore, that he is entitled to the immediate possession of the same. Your orator further charges that the said Emily Ann D. Lefter purchased said town lot number six (6) aforesaid, with a full knowledge of all the facts herein

10 charged, and that she was particularly
warned and notified that said property was
levied upon as the property of the said Wil-
liam Potts, and that the said Andrew McCallen
had no title to the same. that he had failed
to redeem the same from the purchase ~~of~~
made by the said William Potts under the
execution aforesaid. Notwithstanding
said warnings and notifications, she, the
said Emily Ann D. Leffer, persisted in said
purchase, and actually purchased the
same, as will appear from the said ~~Deed~~
Deed from McCallen and wife, ~~to her~~, fi-
led herein, marked (G), and now has
the possession of the same and abso-
lutely refuses to deliver up the possession
thereof as in equity and Justice she ought
to do, to your orator.

Your orator further charges, that
in as much as said certificate of re-
demption was dated back and does
not bear its proper date, it therefore
became a fraud upon the rights
of your orator in the premises, and is
fraudulent and absolutely void; - that
the said Lewis Lavender and the said
Andrew McCallen combined and con-
federated together for the purposes
aforesaid. Your orator further charges
that the said Leacy so made upon said
town lot by virtue of the execution in fa-
vor of the said Lucinda Dalpe against
the said William Potts from the
date of its filing with the County Re-

11 order, took priority of time over the date of the filing of the said certificate of Redemption, so made by the said McCallen, even if the said said certificate of redemption bore its legitimate and proper date, which your orator expressly charges that it does not.

Your orator charges that said deed from the said Adam McCallen & wife to the said Emily Ann S. Lester, wife of the said John H. Lester is only a special warranty deed, in which the only warranties against himself his heirs &c. and against all other persons claiming by through or under him, and that the said Emily Ann S. Lester accepted of said deed for said Lot, with a full knowledge of all the allegations herein set forth — That the said McCallen's interest would not be in any manner affected by any decree that might be rendered in the premises. All of which actings, doings, pretences and refusals are contrary to Equity and good conscience and tend to the manifest wrong and injury of your orator in the premises. In consideration whereof and forasmuch as your orator can only have adequate relief in the premises in a court of Equity where matters of this nature are properly cognizable and relievable. To the end therefore that

Justice may be done in the premises
your orator prays that the said
12 John L. Lefter and the said Emily
Ann L. Lefter, William Potts, and An-
drew McCallen may be made parties
to this his bill of complaint, and
that they and each of them and their
confederates when well conceived may upon
their several and respective, corporeal
oaths to the best and utmost knowledge
remembrance and belief, except An-
drew McCallen, whose oath is hereby ex-
pressly warned, full true, direct and
perfect answer make to all and sin-
gular the matters aforesaid, and that
as fully and perfectly as if the same
were here repeated, and they and every
of them distinctly interrogations - - -
- - and that the said Andrew McCallen
may be compelled to file for the inspection
of this honorable court said original
Certificate of Redemption so made to
him by the said Lewis Savender afore-
said, and upon final hearing of this
cause, your orator prays that the
said Certificate of Redemption so
made by the said Lewis Savender Sheriff
as aforesaid to the said Andrew Mc-
Callen may by a decree of this hon-
orable court set aside and wholly
for nothing esteemed, as well also
the said deed from the said An-
drew McCallen to the said Emily Ann
L. Lefter, and that the said Lewis
Savender, Sheriff as aforesaid may
be compelled by a decree of this hon.

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 orable court, to make and execute
 a deed to the said, William Potts, or
 any other person. that this honorable court
 may direct, And that this honorable
 court will also decree to your orator
 the writ of "Habeas Corpus Possessionis," and
 that your orator may be placed in the
 peaceable and unmolested possession of
 said town lot as aforesaid. Your or-
 ator also prays the people's writ of Sum-
 mons in Chancery against the said John
 H. Lester and Emily Ann D. Lester, Wil-
 liam Potts and Lewis Savender, di-
 rected the Sheriff &c commanding &c,
 and such other and further relief in
 the premises as the nature of his cause
 requires, and to the true principles of
 Equity belong and as in duty bound
 will we pray &c

James Ralph

John W. McCallen Sol

The following is a copy which Exhibits
 (A)

Shffs. & State of Illinois
 Certificate of Lewis } Hardin County } ss. J. Lewis Saven-
 der, Sheriff of Hardin County and State
 of Illinois aforesaid, do hereby certify that by
 virtue of a certain writ of Fi Fa to me
 directed, from the clerk's office of the
 Circuit Court of Hamilton County Il-
 linois, in favor of William Fellows, Corne-
 lius Fellows & Benjamin D. Adams, of
 the firm of W & C. Fellows & Co, and against
 Andrew McCallen, dated the 31st

Day of March A.D. 1848, I did on this
 day the 26th day of April A.D. 1848
 levy on the following Real Estate, to-
 wit. The S. E. 1/4 S. W. 1/4, S. 21. T. 12. R. 8.
 40 acres. The S. E. 1/4 S. W. 1/4 S. 10. Lot 2 R
 6 E. 40 acres, containing in all 80 acres
 and also the following town lots, To-wit,
 which is designated on Record as, plot
 of the town of Elizabethtown, Lot
 No. 1, Lot No. 2, No. 3, No. 4, No. 5, No. 6, No. 7
 No. 8, No. 9, No. 10, No. 11, No. 12, No. 13,
 No. 14, No. 15, No. 16, No. 17, No. 18, No. 19, No.
 20, No. 21, No. 22, No. 23, No. 24, No. 25, No.
 26, No. 27, No. 28, No. 29, No. 30, No. 31,
 No. 32, No. 33, No. 34, No. 35, No. 36, No.
 37, No. 38, No. 39, No. 40, No. 41, No. 42
 No. 43, No. 44, No. 45, No. 46, No. 47, No.
 48, No. 49, No. 50, No. 51, No. 52, No. 53, No.
 54, No. 55, No. 56, No. 57, No. 58, No.
 59, No. 60, No. 61, No. 62, No. 63, No. 65
 No. 66, No. 67, No. 68, No. 70, No. 71, No. 72
 No. 73, No. 74, No. 75, No. 76, No. 77, No. 78
 No. 79, No. 80, No. 81, No. 82, No. 83, No. 84,
 No. 85, No. 86, No. 87, No. 88, No. 89, No. 90
 No. 91, No. 92, No. 93, No. 94, No. 95, No. 96
 No. 97, No. 98, No. 99, No. 100, No. 101, No.
 102, No. 103. And in old town plot No.
 6 and appurtenances thereon. The a-
 bove described town lots I have le-
 vied upon, all the right, title and inter-
 est to, that Andrew McClellan has
 or is entitled to in the afore said lots
 to, this the 26th day of April, A.D. 1848

Attest N. C. & Palmer Co. R. Lewis Lavender Sheriff T.C.
 This 28th day of June 1848

the Firm of M. & C. Sellers & Co., is
 Plaintiff and Andrew McCallen was
 Defendant &c. Si Se issued the 31st
 day of March A. D. 1848, and J. Lewis
 Lavender, Sheriff as aforesaid, did
 levy the aforesaid fine on the
 Town lot number 6, and all the appur-
 tenances belonging to said lot No. 6,
 lying and being situated in the Town of
 Elizabethtown in the aforesaid
 County of Hardin & State of Il-
 linois, and did sell the same at the
 Court-house door in Elizabethtown on
 the 2^{8th} day of June, A. D. 1848, and
 William Potts, being the highest and
 best bidder, who bid the amount of
 one hundred and Seventeen Dollars
 and fifty cents, he being the highest
 and best bidder therefor, who will
 be entitled to a deed for the same,
 unless the same shall be redeemed by the
 proper persons, pursuant to the pro-
 visions of the Law in such cases made
 and provided, at or before the expira-
 tion of fifteen months from the
 date hereof.

Given under my hand and seal this
 28th day of June A. D. 1848.

Lewis Lavender Sheriff A.C.

State of Illinois }
 Hardin County } ss J. James Mc-
 Callen, Clerk of the Circuit Court
 and Ex-Officio Recorder in & for

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the County and State aforesaid
 We hereby certify that the within
 is a true & correct copy or transcript
 of the Certificate of purchase, from
 Lewis Saunders Sheriff. to William
 Potts, as appears on file in my office
 In testimony whereof I have hereunto
 set my hand and affixed the seal
 of said Court at Elizabethtown
 This 16 Day of March 1854

L. S. Jas M^e Farlan Clk

The following is a copy which ex-
 hibits (C)

Shffs
 Certificate
 of
 Lewis
 as
 Potts
 propy

State of Illinois } ss I do hereby
 Hardin County } certify that by virtue of a certain
 writ of execution to me directed, from
 the Circuit Court of Saline County
 Illinois in favor of Lucinda Ralph
 and against William Potts, Dated 15th
 of October 1852, I did on this 16th
 day of October 1853, Levy upon the
 following Real Estate, here de-
 scribed, to wit - Town. Sit in Elizabethtown,
 Lot No. 6 and the appurten-
 ances thereon

John W. Ralph Sheriff

State of Illinois } ss J. James M^e
 Hardin County } Farlan, Clerk of the Circuit and Ex-
 officio Recorder in and for said
 County and State aforesaid, do

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Hereby certify that the foregoing is a true copy and correct Transcript of the Certificate of Levy, as executed by John W. Ralph, Sheriff, and filed as aforesaid, as appears upon file in my Office, this 16th day of March 1854.

In witness whereof, I have hereunto set my hand and affixed the Judicial Seal of said Court at Elizabethtown, This March 16th 1854.
 Jas W. Ralph Clerk

(J. W. Ralph)

The following is a copy which exhibits (10)

Shff. } State of Illinois }
 Certificate to }
 Sheriff }
 to }
 Matt }
 Ralph, Sheriff of said County. Do hereby certify that by virtue of an Execution No. 108 from the Saline Co. Illinois Circuit Court in favor of Lucinda Ralph is plaintiff and against William Potts. Defendant, sold at public vendue in Elizabethtown, on the 6th day of December 1850, in pursuance of the requirements of Law, Town Lot in Elizabethtown, Lot No 6 (six) and all the appurtenances, then belonging, subject to a mortgage, held on said premises by Joseph McCallen, levied upon and sold to satisfy said Execution, and that at said Sale, Charles Mott became the purchaser of the said described premises at and for the

19 sum of one hundred dollars, the same being the highest and best bidder offered therefor, and that said Charles Mott will be entitled to a deed for the same, unless said premises shall be redeemed at or before the expiration of fifteen months from said Day of Sale, by the proper persons, pursuant to the provisions of the law made and provided in such cases

Given under my hand and seal This 6th Day of December A.D. 1852

John W. Ralph Sheriff A.C.

State of Illinois }
Hardin County } ss J. Das McFarlane
Clerk of the Circuit and Ex-officio
Recorder in and for said County and
State aforesaid, do hereby certify that
the above and foregoing is a true and
Exact Transcript of the Certificate
of purchase above named, as Ex-
ecuted by John W. Ralph, Sheriff
as appears on file in my office.

On witness whereof, I have hereunto set my hand and seal of said Court, at Eliza Beth town
This 16th Day of March A.D. 1854
Jas. McFarlane Clerk

The following is a copy which exhibits
Shff. gits (2)
And Whereas Lucinda Ralph, did at the
Term of the Circuit Court for the Comm.
to Ralph

ty of Saline and State of Illinois re-
 cover a Judgement against William
 Watts for the Sum of fifteen hundred
 dollars and costs of suit, upon which
 Judgement an Execution was issued
 dated on the 15th day of October A.
 D. 1852, directed to John W. Ralph
 Sheriff in and for the County of
 Hardin and State of Illinois
 to execute, and by virtue of said Ex-
 ecution, the said John W. Ralph
 then Sheriff as aforesaid levied
 upon the Town lot hereinafter de-
 scribed, and the same was struck off
 and sold to Charles Wott at and for
 the Sum of one hundred dollars, he
 being the highest and best bidder
 therefor, and the time and place of
 said sale having been duly ad-
 vertised according to Law, and the
 said Charles Wott having duly
 assigned his certificate of purchase
 to James Ralph, Son, therefore
 known all by this deed, that J. John
 W. Ralph (then Sheriff as aforesaid)
 of said County of Hardin in consid-
 eration of the premises, have granted
 bargained and sold, and do by
 these presents, convey to the said
 Jas. Ralph, his heirs & assigns, the
 following described Town lot, to-wit,
 Town lot number six (6), situate in
 the Town of Elizabethtown, County
 of Hardin and State of Illinois, to

21 have and to hold, the said de-
scribed town lot, to wit, Town lot
number six (6) aforesaid, in Elizabeth
town, County & State aforesaid, with
the appurtenances there to belong in,
to the said John Ralph his heirs &
assigns forever

Witness my hand & seal This 15th
day of March 1854

John W. Ralph Sheriff. H.C.

State of Illinois }
Hardin County }
ed, that on the day of the date hereof
personally appeared before the under-
signed, Clerk of the Circuit Court, John
W. Ralph, whose name appears to the
foregoing deed, and who is personally
known to me to be the real person
whose name appears to said deed
and acknowledged the same to be his
own voluntary act & deed, for the
purposes therein expressed. All of
which is certified hereby.

In witness whereof I have here-
unto set my hand and affixed
the seal of said Court at Eliz-
abethtown the 15th of March 1854

Das' McFarlane Clerk

The following is a copy which exhib-
its (S)

Received July the 28th A.D. 1848
of Andrew McCallen the sum of one
hundred and eighteen dollars and

James
davis
Receipt
for
Redump
two

fifty cents in full redemption of Lot number six (6) in the town of Elizabethton in the County of Hardin and State of Illinois, together with all the appurtenances thereunto belonging, the same having been sold by me at public sale as Sheriff of the County of Hardin and State of Illinois, on the 28th Day of June A.D. 1848 to one William Potts for the sum of one hundred and sixteen dollars and fifty cents, he being the highest and best bidder therefor, by virtue of an Execution issued from the Clerk of the Circuit Court's Office of Hamilton County, State of Illinois, Dated the 3rd of March A.D. 1848 and a certain Judgement in said Circuit Court of said County of Hamilton in favor of William Fellows, Comelious Fellows & Benjamin F. Adams, and against the said Andrew McCallen. The above sum of \$118.50 being the amount of said Potts' bid, together with Ten per cent interest to date, being, the full amount of Redemption money for said Lot above described, as sold by me as aforesaid

Lewis Lavender Sheriff H.C.

State of Illinois } J. James McJannet
 Hardin County } es Clerk of The Circuit
 Court of Hardin County and Ex-officio
 Recorder in & for said County, do

hereby certify that the foregoing is a true and correct transcript of the Record of the receipt of redemption above named from Lewis Lavender Sheriff to Andrew McCallen as appears of record and recorded in Deed Book (C) Page 236.

In witness whereof, I have hereunto set my hand and affixed the Judicial seal of said Court At Elizabethtown 16th Day of March 1854

Das M^cFarlan Clerk

McCallen The following is a copy exhibiting (C)
Deed } This Indenture, made the fourteenth
to } day of October in the year of our Lord
1852 } eighteen hundred and fifty-two, between
 Andrew McCallen of Champaign County, Illinois, and Mary Ann his wife, of the first part, and Emily Ann D. Lester of Elizabethtown Hardin County Illinois of the second part
 Witnesseth - that the said Andrew McCallen and Mary Ann, his wife, for and in consideration of the sum of five hundred dollars to them in hand paid by the said Emily Ann D. Lester, the receipt whereof is hereby acknowledged, have and by these presents do grant, bargain, sell and convey unto the said Emily Ann D. Lester and her heirs and assigns all that certain lot or parcel of ground with the buildings thereon erected, situated in Elizabethtown Hardin County and known and designated upon the

plat of said town as No Six (6), Being the same lot which John Lane and wife by deed dated, ninth day of March A. D. 1846, Recorded in Book (A) Page 279 &c, granted & conveyed to said Andrew McCallen in fee Together with all the appurtenances and improvements thereto belonging or in any way appertaining, either at Law or in Equity. To have and to hold the same as an indefeasible estate in fee simple free from all claims or right of recovery by the said Mary Ann McCallen forever, and the said Andrew McCallen covenants and agrees with the said Emily Ann D. Leffer that he will warrant and forever defend the title in and to ~~the~~ premises hereby granted against all and every other person claiming the same by through or under him.

In witness whereof the said parties have hereunto set their hands and seals the Day and year first above written

Andrew McCallen *[Signature]*

Witnessed, sealed Mary Ann McCallen *[Signature]*
& delivered in the presence

Joseph T. Castle

State of Illinois

Gallatin Co

Before me personally appeared Andrew McCallen & Mary Ann, his wife, both personally known to me to be the real persons who subscribed the foregoing deed and acknowledged the same to

25-

be their voluntary act and deed
for the purpose therein mentioned. And
the said Mary Ann, being by me, sepa-
rate and apart from her husband
examined, she being of full age, and
the contents thereof made known to her
by me, declared, that she freely and of
her own accord, without any coercion
of her said husband, executed the same
and that she relinquishes all right
or claim to any power, which she may
now or hereafter may have in the said
premises as the wife of the said An-
drew McCallin.

In witness whereof I have here-
unto set my hand and seal This
14th day of October A.D. 1852
Henry Rickle *H.R.*
seal

State of Ohio }
Canton County } ss D. E. Hall
Clerk of the County Court of said
County, do certify that Henry
Rickle, whose genuine signature
appears to the foregoing acknowle-
gment is now on this day an acting Jus-
tice of the peace for said County
Duly, elected, and qualified, and
as such full faith and credit are given
all his official acts

GIVEN under my hand and seal of
said Court at Channecton Oct. 14th 1852
D. E. Hall. Clerk

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State of Illinois }
 Hardin County } ss. J. James M.
 Garland, Clerk of the Circuit Court
 and ex-officio Recorder of Deeds within
 and for said County and State afore-
 said, do Certify that the within is
 a true and correct Copy of the Record
 of the Deed within-named from Andrew
 McCallen, and Mary Ann, his wife to
 Emily Ann S. Lofth, as appears of
 Record, And recorded in Deed-book (A) page
 239.

In Testimony, whereof, I have
 hereto set my hand and affixed
 the Seal of said Circuit Court at
 my office in Elizabethtown this
 2nd day of March A. D. 1854
 Jas. M. Garland Clerk

McCallen } The following is a copy of the an-
 Answer } swer of Andrew McCallen.

The separate answer of Andrew McCal-
 len to the Bill of Complaint exhibited
 against him and others in chancery in
 the Circuit Court of Hardin County
 Illinois by James Ralph, Complainant.

This respondent saving and reserving to for
 answer unto so much of, and such parts
 of said Bill as he is advised it is ma-
 terial for him to answer, says, that it is true
 as is charged in said Bill that at the March
 Term 1848, of the Hamilton County Cir-
 cuit Court, W. & C. Fellows &c. received
 a Judgement against this Respondent

2) for the sum of \$794.00, and cost of suit. He admits, then an Execution issued on said judgement, directed to the Sheriff of Hardin County, which was by him levied on said Lot, No 6, as charged in said Bill, and that by virtue of said Levy, Lewis Earsunder, the Sheriff of said County of Hardin on the 28th of June 1848 sold said Lot number six (6) to the said William Potts for the sum of \$111.50.

This Respondent also admits that at the October Term 1852, of the Saline Circuit Court, Euziada Ralph, recovered a Judgement against said Potts for the sum of \$1500.00, and that on the 15th of October 1852, an Execution was issued on said last-mentioned Judgement, directed to the Sheriff of said County of Hardin, which said last-mentioned Execution came to the hands of John M. Ralph then Sheriff of Hardin County and was by him on the 16th day of October 1852 levied on said Lot, number six (6) - and that afterwards on the 5th of December 1852 - said Ralph as such sheriff aforesaid, by virtue of said last-mentioned Levy, sold said Lot number 6 to Charles Mott - as charged in said Bill. This respondent further admits that on the 13th of March 1854 said Mott endorsed the Certificate of purchase which was issued to him upon his said purchase, to said Complainant Jas. Ralph.

As to the failure of said Potts to redeem said Lot number six (6) from said last men-

tioned sale, this respondent has no knowledge but he has no doubt of such failure as he, said Potts, had no interest in redeeming said property from that or any other sale, as said lot number six (6) was the property of Emily Ann S. Lefter at the time of said last mentioned levy and sale, and not in anywise the property of said Potts. This respondent charges that he redeemed said lot number six (6) from said sale made as aforesaid under and by virtue of said Execution, which issued, the said Judgement rendered against this respondent in Hamilton County as aforesaid, within less than twelve months from the said first mentioned sheriff's sale by paying to Service Lavender, then Sheriff of Hamilton County, the full amount which was bid at such sale on said lot number six (6) with legal interest thereon, and this Respondent states that he was informed by said Lavender, that at the time of such redemption he obtained from said Lavender, Sheriff as aforesaid, a Certificate of such redemption, & he charges such to be the fact, but that this respondent has lost such Certificate, and cannot therefore produce it. It is true as charged in said Bill, that this respondent sold and conveyed said lot to & to Emily Ann S. Lefter. This respondent charges, that said Lucinda Ralph, James Ralph and Charles Woff all had notice at the time & before said Levy of said Execution from Saline County, that said lot number six (6) was not the property of said Potts, and now

having fully answered, he prays to be dis-
mised with his costs &c

Andrew McCallen

per Freeman Attor.

State of Illinois }
Gallatin County } as Andrew McCallen
states on oath that the matters and things
contained in the foregoing answer, so far
as stated from his own knowledge is true
and so far as stated from the information
of others he believes to be true

December 19th 1854

Subscribed and sworn } Andrew McCallen (seal)
to before me this 20th
December 1854 - as wit-
ness my hand and seal
of the Circuit Court of said County
J. E. Hall

Answer } The following is a copy which exhibits
Leffler } the answer of Leffler and wife.
Wife } The answer of John H. Leffler and Emi-
ly Ann Leffler, his wife, to the Bill
of Complaint exhibited against them
and others in Chancery in the Circuit Court
of Harlan County, by James Rapp.

These Respondents saying and reserving
themselves for answer unto so much of said Bill as they are advised
it is material for them to answer, say
that they admit the recovery of the Judg-
ment, the issuing of Executions, the levies
and sales, all as set forth in said Bill.
They say it is also true that the said

Emily purchased and received a conveyance for said Lot number 6 from said Andrew McCallum as stated in said Bill. But these respondents are informed, believe and charge that said Andrew McCallum did redeem said lot no. 6 from the said Sheriff's sale to said Potts man and by virtue of said execution, which issued from Hamilton County against said McCallum, as in said Bill set forth, written up ^{up} than twelve months from the time of said sale to said Potts, by paying to said Lewis Savender, then sheriff of ^{up} Hardin County, the full redemption money therefor.

These respondents are also informed, believe and charge that said James Ralph, Lucinda Ralph and Charles Mott, all had notice at the time and before the Levy of the execution in favor of said Lucinda, as set forth in said Bill, that said Lot number six (6) was not the property of said William Potts - and now having fully answered, they pray to be reimbursed with their costs &c.

John H. Seftin Test
Emily Ann D. Seftin Test

Per ^{up} Seftin atty

State of Illinois }
Hardin County } ss. John H. Seftin
and Emily Ann D. Seftin state on oath
that the matters and things set forth
in the foregoing answer, so far as stated
from their own knowledge are true

and so far as stated from the information of others, they believe to be true.
 Subscribed and
 sworn to before
 me this 3rd day
 of Dec. 1854

John H. Lefter
 Emily Ann S. Lefter

Gas' McFarlan Clk

After Wards Taint the following
 Order was made

April Term Wardin Circuit Court
 1854

James Ralph Complainant
 vs. Bill in Chancery

John H. Lefter
 Emily Ann S. Lefter
 William Potts
 Lewis Lander
 Samuel M. Collier } Defendants

Now on this ^{Day} came
 Rule to the Complainant by Warren, his sol-
 ansor icitor, and upon his motion it is order-
 ed that the said Defendants be and
 they are hereby ruled to plead answer
 or demurrer to Complainants Bill filed
 in this Cause by one o'clock tomorrow morning.
 &c. Also the following order.

Gas Ralph Complainant
 vs. Bill in Chancery
 John H. Lefter & al. Defendant

Order
 Dated
 6th Dec 1854
 Now on this Day came
 again the Complainant by Warren

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his Solicitor, as well also the defendants
 by Freeman, their Solicitor and the
 Court being now sufficiently advised
 in the premises. It is ordered by the Court
 that the said Defendant's Answer to the
 said Complainant's Bill filed herein
 be and the same is hereby sustained,
 and the said Complainant has leave
 to amend his said Bill of Complaint &
 this Cause is continued &c

Also the amended answer of John
 H. Lester & others

Defendants
 Amended
 Answer

The amended answer of John H.
 Lester and Emily Ann D. Lester, his
 wife, made by direction of the Court
 to the Bill of Complaint exhibit-
 ed by James Ralph against these
 Respondents and others in the Mar-
 tin Circuit Court. These respondents
 answering such parts of said Bill
 as they have not answered in their orig-
 inal answer herein, say, that they
 have no knowledge of any fraudu-
 lent combination between between An-
 drew McCullen and Lewis Laver-
 der in relation to the Lot in Contro-
 versy in this suit, and do not believe
 there was any such fraudulent com-
 bination, and, therefore they deny that
 any such existed. At the time and
 before the execution & delivery of said
 Deed of conveyance to this Respondent
 Emily Ann D. Lester, these Respondents

had no knowledge of any such fact as that the said Certificate of Redemption given by said Lavender to said M^cCallen, was anti-dated, and they have no knowledge now that such was the fact, except from the charges in said Bill - These respondents know that said Certificate of Redemption was not filed for record until the date which is endorsed on the back of same, only for the reason that the law presumes, as to the rights of third persons, that it was not filed until that time, they have no personal knowledge in relation to that fact.

They deny that the Complainant, Geo^r Ralph, cautioned these respondents or either of them from purchasing said lot from said M^cCallen until after the execution of said Deed to this Respondent, Emily Ann D. Lester.

As to the reasons why the said Deed contains a clause of special warranty, and no other, this Respondent, Emily Ann D. Lester, says that she knows of no particular reason which governed said M^cCallen in giving such a warranty - he gave no reasons to these respondents for so doing - and the reason why said Emily received the Deed, with such a warranty, was that she had a right to judge what kind of a Deed she would accept, and was willing to accept that Deed as it was, and this is the only reason why a special warranty

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Deed was given or accepted, as far as these respondents know. They are informed that Deeds of special warranty are very common and they see nothing extraordinary about the fact in this instance - the simple fact was that they wanted the lot - McCallum was willing to sell it - they were satisfied with the title as given in the Deed, and the trade was consummated in good faith, so these respondents have any knowledge of the motives of either party.

These Respondents deny that said Potts took possession of said lot by virtue of said sale to him - exercised acts of ownership ~~over~~ the same, and leased the same out and collected the rents therefor up to the time of the Levy of said execution in favor of Lucinda Ralph. But they charge that said James Ralph knew that said McCallum contracted the renting of said Lot all the time up to said Levy. They are informed, believe and charge that the redemption of said lot was made by said McCallum at the time set ^{as} forth in the original answer of these respondents, and that from thence forward the Rents of said Lot inured to the benefit of said McCallum, who then resided out of the County of Madison. That said Potts may have acted as agent of said McCallum in relation thereto, but beyond that they deny that said Potts set up any claim to said Lot.

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Deed was given or accepted, as far as these respondents know. They are informed that deeds of special warranty are very common and they see nothing extraordinary about the fact in this instance - the simple fact was that they wanted the lot - McCallum was willing to sell it - they were satisfied with the title as given in the Deed, and the trade was consummated in good faith, so these respondents have any knowledge of the motives of either party.

These Respondents deny that said Potts took possession of said lot by virtue of said sale to him - exercised acts of ownership ~~over~~ the same, and leased the same out and collected the rents therefor up to the time of the Levy of said execution in favor of Lucinda Ralph. But they charge that said James Ralph knew that said McCallum contracted the renting of said Lot all the time up to said Levy. They are informed, believe and charge that the redemption of said lot was made by said McCallum at the time set ^{as} forth in the original answer of these respondents, and that from thence forward the Rents of said Lot inured to the benefit of said McCallum, who then resided out of the County of Madison. That said Potts may have acted as agent of said McCallum in relation thereto, but beyond that they deny that said Potts set up any claim to said Lot.

These respondents deny having any participation or knowledge of any fraud upon the part of anyone in relation to the transactions connected with the lot, except that they believe that the Complainant never did believe that Joths Ezer had a title or the right to a title to said Lot.

And now having fully answered they pray as in their original answer &c.

John H. Sefton
Emily Ann D. Sefton

State of Illinois }
Hardin County } as John H. Sefton
states on oath that the matters and things set forth in the foregoing answer, so far as stated from his own knowledge are true, and so far as stated from the information of others - he believes to be true.

Sworn to and } John H. Sefton
subscribed this } Emily Ann D. Sefton
30th day of }
April 1855 }

Das M^cFarlane Clerk

Excepting } The following exhibit the ex ce p.
to M^c } tions to M^cCallins answer.
answ } Das Ralph } In the Hardin
as } Bill in Chanc } Court
John H. Sefton et al } April Term 1855
Exceptions taken to the separate an-

since of Andrew M^cCallen, one of the Defendants, herein taken by the Complainant, as to the insufficiency thereof. 1st For that the said Defendant has not to the best of his knowledge, Remembrance & belief answered, whether or not said Certificate was not ~~for~~ ^{by} dated.

2nd For that he does not answer and say whether said Certificate of Redemption, was not executed to him on or about the date of its filing with the Recorder of said County of Hardin, by the said Lewis Savender.

3rd For that he does not answer and say whether or not he and the said Lewis Savender did not combine & confederate together and date said Certificate back, for the purpose of defeating the levy and sale of said lot under the execution in favor of Lucinda Ralph.

4th For that he does not answer and say whether or not the said William Potts took possession of said town-lot by virtue of said purchase, exercised acts of ownership over the same, leased the same out and collected the rents therefor, up to the time of said Levy.

5th For that he does not answer and say whether the said Town-lot number 24 (S) was not sold by him to the said Emily Ann D. Leften after the levy of the ex-

execution in favor of Lucinda Ralph and whether or not she had full knowledge of said deed.

Qth For that he does not answer and say whether the deed made by him to the said Emily Ann D. Lefter, was a special warranty deed, and what was the object and intention of making such a conveyance.

Ans W. Warren for Compt

The exceptions to Lefter's de. answers

Ans Ralph } Hardin Circuit Court
April Term 1855

Exceptions
to
Lefter's
Answers

John H. Ralph et al.

Exceptions taken to the separate answer of John H. Lefter and Emily Ann D. Lefter, two of the Defendants herein taken by the said Complainant, as to the insufficiency thereof.

For that the said Defendants, John H. Lefter, and Emily Ann D. Lefter have not to the best of their knowledge and belief, answered, whether or not they had full notice of the deed of the execution in favor of Lucinda Ralph, at the time the said Emily Ann D. Lefter purchased said Lot from W. Warren, and whether or not she said not purchase the same with a full knowledge of all the facts.

Q^{ua} That they do not answer and say whether or not there was collusion

of the parties in executing a special
warranty deed.

3rd That they do not answer and say
whether or not there was collusion or
fraud in the execution and recovery of
said special warranty.

4th They neither admit nor deny col-
lusion or fraud, leaving the allegations
unanswered.

5th They do not answer and say wheth-
er said arrangement was not made be-
tween the said McCaslen & themselves
to defeat the execution of the said Lu-
cinda Ralph and the proceedings
thereupon.

6th Said answer is otherwise in-
sufficient, evasive uncertain, and im-
perfect

Jas W. Vance for Com.

Jas Ralph } Hardin Circuit Court
as } Pill in Chancery

Aaron McCaslen et al

Amended Bill Making Polls herein Party } Amendment to the original Bill.
State of Illinois } Hardin Circuit Court
Hardin County } March Term 1850
To the honorable Judge of the
Hardin Circuit Court in Chancery
sitting.

Your orator, Jas' Ralph, humbly com-
plaining, respectfully represents to your
honor, that on the 20th Day of March

in the year 1854, he filed his original Bill in Chancery against Andrew McCallen, Lewis Larcender, William Potts, John H. Lefter & Emily Ann D. Lefter, his wife, in the Hardin County Circuit Court. That afterwards, to wit, on the ~~of~~ August in the year 1854, the said William Potts departed this life, leaving but one child and legal heir of his body to wit William Potts, which is a minor three years of age and now living within the Jurisdiction of this honorable Court.

So the end therefore that Justice may be done in the premises, and that this cause may proceed to a final Determination, your orator prays that this may be taken as an amendment to his said original Bill, and that the said William Potts, legal heir of the said William Potts, may be made a party to said cause, and that a guardian ad Litem be appointed for said minor heir. He also prays that the writ of summons in Chancery against the said William Potts, commanding &c. and for relief as prayed for in his original Bill.

Dns Ralph
Jou Wm. Goel

In the Circuit Court in & for the County of Hardin & State of Delmar, held October the eighth Eighteen hundred and fifty eight. The following case was made

39. "Jas Ralph" } Complainant
as
John H. Leflar et al } Defendants

learn to }
open depo }
+ }
file am }
ended }
Bill }
Now on this day came the parties by
their Solicitors, whereupon leave is giv-
en to open depositions - Exceptions to Depo-
sitions filed and each of Potts suggested
and Complainant has leave to file sup-
plemental Bill making his heirs parties & could
at the Oct. term 1857 the following order was made to
Jas Ralph } Complainant
John H. Leflar et al } Bill in Chancery
Leflar's

And now on this day came the
said Complainant by Warren his atty, as well
also the said defendants by Turner
their attorney - Whereupon motion of
Shacklin is appointed Guardian ad
Litem for William Potts a Minor & one of the defen-
dants &c &c at the May Term 1858 the following order was made
Jas Ralph } Complainant
as }
John H. Leflar et al } Bill in Chancery
Leflar's

Order }
to relate }
the order }
of }
Ex Munis }
+ }
L. Lavender }
Now on this day came the parties by
their Solicitors and leave was granted
them to retake the evidence of Elijah H. Mor-
ris & Lewis Lavender, whose evidence was taken
at the last Term of the Court, but has been
lost. Thereupon said Witnesses were produced
in open Court, and their evidence taken down in writ-
ing by the Court. Lewis Lavender, one of the
Defendants herein having failed to answer Complain-
ant's Bill, being three times solemnly called, but
submitting }
the }
cause }
proceeds. Hereupon the cause was submit-
ted to the consideration of the Court upon Bill
answers, exhibits & depositions & the cause taken under
advisement by the Court.

Das Ralph } Complainant
 versus } Bill in Chancery
 John H. Leftan

Trinity Amos D. Leftan } Defendants
 Senial Lewis Lander }
 Order } William Potts }

dismising } This, having been submitted to the
 Bill } Court at the last term of this Court
 & proof heard & the caused taken under
 advisement -

It is ordered, adjudged & Decreed
 by the Court at the present Term that
 the Complainants Bill be dismissed
 and that the said Defendants re-
 cover their costs herein. Whereupon on
 the Complaint by his Counsel comes and
 excepts to the opinion of the Court &c

State of Illinois } Main Circuit Court
 Hardin County } ss Oct Term 1857

Das Ralph } Com-
 vs }
 Andrew McCallen -
 et al.

Answer } The answer of James MacCallin, who
 of } was appointed Guardian ad Litem
 ten. } of the minor heir in the above
 addition to } styled cause William Potts, for an-
 W Potts } swer to said petition, or so much and
 such parts thereof, as he is informed
 it is material or necessary for him
 to answer me to; always saving and ac-
 serving the right to his said

could to object and except to said Bill by reason of the many errors in formalities and insufficiencies therein answering, says, that he has examined said Bill and can see no cause, nor does he know of any why the prayer in said Bill should not be granted on proof of the allegations contained therein. But as his said Ward is of tender years and as this respondent is wholly ignorant of his said Ward's interest in said premises, he prays this honorable Court to protect him in all his rights -

And now having fully answered pray to

Das Macklin
Grand ad Littm
of Will. Potts

State of Illinois }
Hardin County } ss. At a Circuit Court
held in and for said County & State the
August Term 1854.

Das' Ralph } Complainant
vs. }
John H. Lefton }
Emily Ann D. Lefton } Defendants
William Potts }

And Lewis Savender
answer } Andrew McCallen } Now on this day came
appeared } the Complainant by Warren his attorney
Bills } as well also the Defendant McCallen by
Freeman his Solicitor, and the Court being
now sufficiently advised in the premises.

42 It is ordered by the Court that the said defendant be and he is hereby ordered to answer the said Complainant's Bill of Complaint filed herein by nine o'clock A. M. tomorrow morning & the cause is continued to.

Also to-morrow morning the following order was made.

James Ralph	Complainant
Ag't	
John H. Lefter	Bill in Chancery
Emily Ann S. Lefter	
Lewis Laperdier	Defendants
William J. Bates	
Andrew McCallum	

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Now on this day came the order said Complainant again by counsel his overlying Solicitor, as well also the said defendant Motine McCallum by Sweeney, his Solicitor, and to quash the said defendant by his Solicitor answer a motion to quash the summons filed herein. The Court being now sufficiently advised in the premises, It is considered by the Court that the said motion be and the same is hereby overruled. & this cause is continued.

State of Illinois }
Hardin County } ss At a Circuit
Court held in and for said County &
State, at the August Term A.D.
1850 thereof, the following order
was made

Das Ralph } Complainant
 vs. } Bill in Chancery
 John H. Lefter }
 Emily Ann D. Lefter } Defendants
 Lewis Lavender }
 William Potter }
 Andrew McCallen }

Now on this day came
 Rule again the said Complainant by War-
 ren his Solicitor and the Court being
 fully and sufficiently advised in the premises
 to it is ordered by the Court, that the
 said Defendants, John H. Lefter, Emily
 Ann D. Lefter, Lewis Lavender be and
 they are hereby ordered to answer to the said
 Complainant's Bill of Complaint filed
 in this cause by the 1st day of January
 next and this cause is continued to.

Also, State of Delaware } as At a
 Harkin County }
 Circuit Court held in & for said
 County, at the August Term A D 1854
 therefore the following order was made
 Das Ralph - Complainant
 vs. }
 John H. Lefter } Defendants
 Emily Ann D. Lefter }
 Lewis Lavender }
 Andrew McCallen }

Now on this day came a
 Order again the parties by their Solici-
 tors, and the said defendant Andrew
 McCallen by Freeman his Solicitor, re-
 sponding to the said Complainant's Bill
 filed in this cause, proofs being read

44 and the Court being now sufficiently advised in the premises, it is ordered by the Court, that the said Vermeil be and the same is hereby overruled & that the said Defendants, have to answer said Complainant's Bill by the first of January next & this cause is continued &c

State of Illinois }
Haidin County } At Also, At a Circuit
Court held in and for said County
at the April Term 1855 the fol-
lowing order was made.
Das Ralph } Complainant
vs. }
John A. Leffler }
Emily Ann D. Leffler } Defendants
Lewis Larman
William Potts
Adams McLeaster

Order. Now on this day came the Com-
plainant by Warren, his Solicitor,
as well also the Defendants by Fre-
except man their Solicitor. Whereupon the
exceptions to the answers of M^c-
Callan, John A. Leffler & Emily Ann
D. Leffler were considered by the
Court, and Exceptions 1, 2, 4, and 5
to M^cCallan's answer Sustained, and
3 & 6 overruled. Exception One
to answer of Leffler & wife Sustained
and 2 3 4 5 & 6 overruled, and the
Defendants need to put in suffi-
cient answer within 30 days

45- Parties have leave to take depositions.

At the August of the Circuit Court for Hardin County, State of Illinois, 1855, the following order was made.

James Ralph } Plaintiff

vs. John H. Lipton et al } Defendants

Now on this day came the Complainant by Warren his Solicitor, as well also the Defendants by their Solicitor, & the cause was continued generally -

State of Illinois } At a Circuit Court held in and for said County at the August Term A.D. 1856, the following order was made.

James Ralph } Plaintiff

vs. John H. Lipton
Ephraim Lipton
Leaves Languader } Defendants
William Potts
Warren McCallum

Now on this day came the parties by their Solicitors. Leave was granted to open depositions in this case & cause was continued.

The following is the answer to the
 46 original Bill
 Dnr. The answer of John H. Leflar & Emily
 to Bill of J. Leflar to the Bill of Complaint
 of James Ralph, filed in this Court a-
 gainst Lewis Lavender, ~~William~~ Potts
 and these respondents.

These defendants sav-
 ing and reserving to themselves the ben-
 efit of all and every, the manifold er-
 rors, misstatements &c &c in said Bill
 of Complaint contained, do answer to said
 Complainant's Bill, and for cause after-
 unner state that the said bill doth
 not show any equity to entitle the said
 Complainant any relief against these
 Defendants and also further.

1st The amount of Judgement in Ham-
 iltou County is left in blank.

2nd And also the amount of $\$11$ is said
 thereon.

3rd It is not shown that the Judgement
 in Hamilton County was rendered in this State.

4th No exhibit is made of said Judgement.

5th Lewis Lavender is not a proper party.

6th Or if Lavender is a proper party, Andrew
 McCallen should be a party.

7th That Complainant's remedy is at Law &
 not at Equity.

Wherefore these respondents insist that
 they should not be required further
 to answer said Bill of Complainant &c.

Steeleman for
 Respondents

The following is Ralph's answer to Bill.

47 Adam McCallen } In Hardin Circuit Court
 McCallen & others also } At Aug. Term 1854
 vs } James Ralph } In Chancery
 Bill }

And the said McCallen comes and submits to said Bill of Complaint herein - and assigns as cause of defence 1st - That the remedy of Complaint is adequate at Law.

2^d - The Complainant cannot come into Equity to compel the Sheriff to make a record until he shows a refusal on the part of the Sheriff so to do, or that some effort has been made to obtain such record.

Wherefore he prays judgement of the Court whether he shall answer further herein &c &c

Per Freeman atty.

Lefton & Wife's exception to depositions
 Lefton et al } In Chancery in Hardin
 atty } Circuit Court.
 Jas' Ralph }

Defendants except to the deposition of John W. Ralph.

1st - Because there was no notice of taking the same given to the Defendants

2^d - Because the 5th question and answers ^{thereto} are improper because the statements of Sanders are no evidence ag't the ^{other} Defendants

3rd - The answer to the 4th question is improper because there is no record

Evidence to show in whose name Lot Number Six A was assessed.

- 48 4th The Certificate does not show what suit the depositions are to be read in.
- 5th The Deposition, Caption or Certificate do not show that the depositions was taken between hours specified in Notice.
- Defendants except to deposition of Charles Hall
- 1st Because the Notice does not describe the parties of the suit
- 2nd Because there is no such place in Hardin County as the office of the County Court.
- 3rd The 2nd Question and answer are improper, as Leflar & Wife had no notice of the facts pretended to be stated therein
- 4th The Certificate shows the deposition was taken at a different place from that mentioned in the Notice

Freeman Atty.

The following is Leflar & others ex-
 ceptions to Depositions
 Leflar & Wife & others } Da Chancey, in the
 at } Hardin Circuit Court
 Gas Ralph } at Aug Term 1856

The Defendants come & except to the deposition of Lewis Davender & Miller McCallum taken herein on part of complainant

1st Because the Notice does not describe the suit in this - that the suit described in the Notice is against John H.

Declar, Emily Ann D. Declar, Lewis Law-
 nder & Aaron McCallan & the Cause
 described in the Caption to said deposi-
 tion is against those persons & one Wil-
 liam Potts.

2nd The Certificate thereto does show
 what Cause the Depositions are to be
 read in.

3rd That part of the 2nd question put-
 to said Lawender and the answer thereto
 which refers to the fact of a Sale of
 Lots under execution on and to whom, is
 improper because record evidence ought
 to be produced therefor.

4th The third question to Lawender is im-
 proper because the bill shows that
 such certificate of purchase is recorded.

5th The ninth question to Lawender is leav-
 ing & improper.

6th The subject matter of the 1st question
 & answer thereto put to McCallan is
 not properly the subject of decision
 in this case - and the same objection is
 taken to the 2nd question & answer to
 the same.

7th The Certificate does not show that the said
 Witnesses were sworn that before they gave
 their testimony, nor does it state the form
 of oath administered.

8th There is no sufficient evidence of service
 of notice on said McCallan and was no
 due diligence.

9th The Notice purposed to have been giv-
 en was to take the Depositions at

50 The office of the County Court
of Hardin County and there never has
been any such office.

10 There was no notice given to William
Potts.

11 The style of the Suit, parties &c
are not endorsed on the envelope, in
which said depositions were returned
to Court.

Wherefore &c
Freeman Atty.

Deposition of John W. Ralph.

57. Interrogatories to be administered to
John W. Ralph of the County of Hardin
and State of Illinois, a witness to be
produced, sworn and examined, in a cer-
tain Cause in Chancery, now pending
and undetermined in the Circuit Court
in and for the County of Hardin and
State of Illinois, wherein James Ralph
is plaintiff and Sadler McCallen,
John H. Leften, Emily Ann P. Leften
Levis Lavender, and William J. J. J. are
defendants, on the part & in behalf of
the said James Ralph as follows.

Question 1st Do you know the par-
ties, plaintiff & Defendants in the ri-
tle of these interrogatories named or
either of them, and which of them, and
how long you have known them Respec-
tively? I have known the parties
plaintiff & Defendants - the plaintiff
is my father. I have known the De-
fendants for ten years past.

Question 2nd Do you anything in relation to the
matter in controversy - Respecting Town
Lot No Six in the Town of Elizabethtown - if you re-
state all you know about it. - I was Sheriff of Hardin County
Illinois for the years 1850 and 1851
and on the 4th Day of December 1850
on an Execution to me directed from the
Circuit Court in favor of
Lucinda Ralph and against Wil-
liam J. J. I sold said Lot No, 6

52 in Elizabeth town as Sheriff of said County of Hardin to the highest bidder and that was Charles Matt, who became purchaser thereof for the sum of one hundred dollars.

Question 3rd Do you know anything of Mr Sefton or Mrs Sefton being notified of the title of said Lot, also if they had notice of said property being subject to an Execution in favor of Lucinda Ralph previous to their Seftons purchasing said property from McCallum, if you do state all you know about it.

Answer 3rd Previous to Mr Sefton's purchasing said Lot of McCallum, I went and informed them Sefton & Mrs Sefton that said Lot number six was subject to this Execution in favor of Lucinda Ralph. It was late at night, some 12 o'clock at night, said Sefton said at the time, John Ralph informed him of the incumbrance on the property, that he was much obliged to him for his information, as he did not wish to buy a Law Suit - This I am positive was previous to Mrs Sefton's purchase of said Lot of McCallum.

Question 4th Do you know anything in relation to William Potts claiming ownership of said Lot No 6, previous to the issuing of said Execution in favor of Lucinda Ralph as aforesaid?

Answer 4th Said property, say Lot number No 6 was assessed in the name of William Potts for the years 1850 & 1851, and he.

53 The said William Potts paid the Taxes on said Lot and I receipted for the same in the said Potts' name as I was collector of Revenues for Hardin County for those years

Question 5th Did you ever hear Lewis Lavender, one of the Defendants in this cause say anything Respecting said Lot & C. being subject to said execution in favor of Lucinda Ralph - if so - State when and where? -

Answer 5th - Said Lewis Lavender, one of the Defendants in this cause often told me, previous to the sale of said Lot Number Six, that he knew that it was subject to said execution in favor of Lucinda Ralph, which conversation, he the said Lewis Lavender had with me, at different times, in different parts of the County.

Question 6. Do you know of any other matters or things that may tend to the benefit or advantage of the plaintiff in this cause - if so. Declare the same ^{fully} as if you had been thereunto particularly in interrogated. -

Answer 6th. I do not recollect anything material which would benefit the plaintiff other than what I have already stated in my answers to the preceding Questions

John W. Ralph

54

State of Illinois }
 Hardin County } ss D Jas' McFar-
 lan Clerk of Hardin Circuit Court
 Do hereby certify that the foregoing
 Deposition was taken before me the
 8th Day of March 1856, at my of-
 fice in Elizabethtown in said Coun-
 ty and State, and that the said
 John W. Ralph was duly sworn
 before answering the Questions in
 this Deposition, and that he signed
 the same

In Testimony whereof I have
 hereunto set my hand and affir-
 ed the Seal of said Court
 at my office in Elizabethtown
 March 8th A.D. 1856
 Jas McFarlan Clk

Charles } The Deposition of Charles Mott a
 Mott } Witness produced, sworn and Exam-
 lepo, } ined before Jas' B. Sumner Notary
 public in and for the County of
 Hardin and State of Illinois, on the
 fourth Day of August, A.D. 1855, at
 the office of the County Court of
 Hardin County, in Elizabethtown
 Hardin County Illinois in pursuance
 of a notice here to attached to be read
 as Evidence on the Trial of a certain
 Suit in Chancery now pending and un-
 determined in the Circuit Court in
 and for the County of Hardin a-
 foresaid, wherein James Ralph

is Complainant, and John H. Lefton
Emily Ann D. Lefton, Lewis Savender
& Andrew McCallum are Defendants - on
the part and in behalf of the said Com-
plainant - by -

Question 1. Do you know the parties, plain-
tiff & Defendants, in the title of these
interrogatories named, or either of
which of them, and how long have
you known them respectively?

Answer 1 I have known Jas' Ralph
some 13 or 14 years, I have known
John H. Lefton, and Emily Ann
D. Lefton some 8 years. I have
known Lewis Savender some
15 years & I have known An-
drew McCallum some 8 or 9 years.

Question 2nd State whether ^{or not} you ~~know~~
anytime tried to purchase of An-
drew McCallum or any other per-
son, Town lot number six on the
old plat of Elizabethtown - if so
State where and what he said to
you, with regard to the title of
the property, if anything.

Answer 2nd - On or about the 1st of No-
vember 1851, I rented the said
Town lot number six of William
Booth for the purpose of a storehouse
and dwelling. And being desirous
of purchasing the said property, I
wrote to Andrew McCallum to know
what he would take for the same,

56 and making him an offer therefor. His answer was that I should see William Potts, and whatever arrangement I might make with him, Potts, would be all right. I think he said the title was in said Potts. I saw Potts, a few days after and he said he could not take the five hundred dollars for said property.

Question 3rd Please state what became of the letter written by said McCallen to you with regard to the property above mentioned.

Answer 3rd I have searched for the said letter, but cannot find it, it is undoubtedly lost.

Question 4th State if you know who exercised acts of ownership over said property. Town Lot No 6, and who collected the rents for the use and occupation of said property from the 1st of July 1849 until the 16th of October 1852.

Answer 4th So far as I could see the said William Potts exercised full ownership over said property up to the 1st of January 1852, at which time I gave him up the possession of the same, paying him the rents due therefor -

Prior to my renting the said property of said Potts, the same was in the possession of the said William Potts

57 And Thomas Beott, Subsequent to my
 delivering up the possession of the
 the said property, to said William
 Potts and paying him the rents of fore-
 said I have paid no attention to, who
 has occupied or exercised acts of owner-
 ship over the same

Charles Mott

I do hereby certify that the a-
 bove and foregoing deposition of Charles
 Mott was sworn to and subscribed
 by the Deponent, before me and
 in my presence. And that the said
 deposition was taken by me on
 the 4th day of August 1855 at the
 office of the County Clerk of Har-
 din County Illinois between the hours
 of 10 o'clock A.M. and six o'clock
 P.M. of the same day -

In witness whereof I have
 hereunto set my hand and
 affixed my notarial seal of office
 at Elizabeth town Illinois, this
 6th day of August A.D. 1855.

Das B. Turner. Notary
 Public of Hardin County

Lewis Deposition of Lewis Laverde.
 Laverde } Interrogatories to be administered to Lewis
 dep } Laverde & Miller McCallum of the
 County of Hardin and State of Il-
 linois, a witness to be produced, sworn

58 and Examined in a certain Cause in
Chancery now pending, and undeter-
mined in the Circuit Court in and for
the County of Hardin & State of Il-
linois, wherein James Ralph is Com-
plainant and John H. Lefton, Em-
ily Ann L. Lefton; Lewis Lowman
William Potts and Andrew McCal-
len are Defendants, on the part &
in behalf of the said Jas' Ralph
as follows -

Question 1st Please state whether or
not you are acquainted with the
parties, Complainant & Defendants
to this Suit - if so how long have
you known them?

Answer 1st I have known the Plaintiff for
15 years and the Defendants for 10
years.

Question 2nd Were you or were you act-
ing Sheriff of Hardin County Ills.
on the 28th day of June 1848. if so
did you or not on that day as such
Sheriff sell any town lots in Eliza-
abeth town, Hardin County Illinois,
& if you did please state what
lot, to whom you sold it, and by
virtue of what authority you
sold it.

Answer 2nd I was acting Sheriff of
Hardin County on the 28th day
of June 1848, and on that day sold
town lot No 6, described in the old

seat of Elizabethtown, and William Potts became the purchaser of said Lot by virtue of an execution, to me directed from the Hamilton Co. Circuit Court, in favor of Mr. & C. Fellows & Co of Louisville Ky. and against Andrew McCallen.

Question 3rd Did you or said you not execute a certificate of purchase for said Lot No 6 to William Potts and if so state whether or not the copy marked, Exhibit (18) in this cause & here shown you is a true copy of said Certificate?

Answer 3rd I did execute a certificate of purchase for Town Lot No 6 to William Potts, and Exhibit (18) filed in this cause, is a true copy of said Certificate.

Question 4th Did or said not Andrew McCallen, within twelve months from the day of the sale of said Lot No 6 to William Potts, redeem the same by paying you the purchase price of said Lot No 6 and ten per cent thereon or in any other way?

Answer 4th On the day I sold the lot to William Potts, he told me to come up & get the money, and I told him that I had no opportunity of sending the money to the said Fel-

60 Louis & Co., and would call and get it when I wanted it, and some eight or nine months afterwards I called on him, pots for the money and he told me to go to M^cCallen and get the money and I did go to M^cCallen and get the money.

Question 5th Did you or did you not execute to M^cCallen a certificate of Redemption of the said Lot Number six?—

Answer 5th I recollect giving to M^cCallen a receipt for the money or Certificate of Redemption and I do not know which.

Question Six - Did you or did you not execute to M^cCallen the receipt or Certificate of Redemption for said Lot No 6 on or about the time M^cCallen sold said Lot to Mrs Emily Ann A. Leffler?—

Answer 6 I do not recollect when it was executed.

Question 7. Did you or did you not execute the receipt or Certificate before he paid you the money?—

Answer 7. I did not

Question 8. On what day did he pay you the money?—

Answer 8. About the twenty-eighth of February 1849

Question 9. Did he or not pay you the money for pots, and pay just the amount that pots owed you as Sheriff for the purchase of the Lot, and some Wood Boots which pots had also purchased of you as Sheriff that same day said Lot was sold

Answer 9 - He did.

Question 10. Do you or do you not know any
 61 other matter or thing that will be of
 benefit to the plaintiffs or defendants
 in this cause

Answer 10. Nothing that I now recollect of.

Lewis Larned

And thereupon adjourned till to-morrow
 morning 10 o'clock A.M.

Since 6th - Met pursuant to ad-
 journment.

Also the Deposition of Miller
 McCallen.

Question 1st Have you or not been
 Miller acquainted with the prices of rents
 McCallen of houses and lots in Elizabethtown for
 depts the last four years past - and if so -
 please state what would be a rea-
 sonable rent for Lot No. 6 with the
 appurtenances thereon per year.
 during said time.

Answer 1st - I have lived in this town for
 four years past and have been acquaint-
 ed with the value of rents for that
 time and think that between fifty
 and sixty Dollars per year ren-
 ding the time is a reasonable rent. I
 am at this time paying seventy-two
 Dollars (\$72.00) per annum, but rents are
 rather higher at this time than they
 have been heretofore.

Question 2nd Do you or do you not know
 who has had the renting and received
 the rents for Lot Number six in Eliz-
 11

abettors for the last four years
~~past~~

Answer 2nd I think John H. Leften
 has had possession of said lot for three
 or four years or thereabouts and
 received the rents.

Question 3rd Do you or do you not know
 any other matter or thing that would
 be of any benefit to the plaintiff or defen-
 dant in this cause? -

Answer 3rd I do not.

William McEllan

I do hereby certify that the above
 and foregoing depositions of Lewis
 Lavender and William McEllan
 were sworn and subscribed to be-
 fore me and in my presence, and
 that the said depositions of the said
 Lewis Lavender ~~were~~^{was} taken by me on
 the fifth day of June A.D. 1856,
 and the deposition of the said Wil-
 liam McEllan was taken by
 me on the 6th day of June A.D.
 1856, between the hours of 10 o'-
 clock A.M. and six o'clock P.M.
 respectively, at the office of
 the County Court in Elizabethtown
 Haidin County Illinois.

Da wit ues whereof I have
 hereto set my hand and
 seal this June 6th 1856.

Das McEllan
 Master in Chancery
 of Haidin Co. Ill.

James Ralph

vs.

Dill

John H. Vester et al.

Elizabeth Morris Depo in open Court
 Oligiah H. Morris sworn - Do.
 long ago I can't say as to time Mr.
 McCallen got me to go over the River
 to see Mr Potts. I went over and got
 Mr. Potts and brought him to the other
 side of the River - then come over
 and got Mr McCallen - on the
 way going over Mr McCallen said to
 me he wanted to see Mr Potts and Mr
 Lavender. He said that Mr. Ralph
 was about to get that property, and
 he wanted to see Mr Potts and Mr.
 Lavender to fix it up. McCallen came
 back with me and I think he went
 to Mr Lavender, that evening. I
 think it was about the time that
 they had an execution against Potts
 the execution as I suppose, in favor
 of Lucinda Ralph, can't say as to
 whether it was before or after the
 sale, I think it was about that
 time. Mr McCallen & Mr Potts met
 across the river. They went to them
 selves - had a private conversation
 among McCallen and William Potts
 the persons above referred to.

Cross Examination

I don't remember
 the time. I can't say that I knew the
 Sheriff had the Execution, it was
 about the time of the Execution.

Lewis Savender sworn.

64

I believe that I was made a party to the suit - I have Lewis's interest in the result of the suit, either directly or indirectly. On the 28th of June 1848, I was Sheriff of Hardin County, as Sheriff I sold Lot No 6 on all execution from Hamilton County, against Andrew McCallen and in favor of Sellers & Co of Louisville. William Potts became the purchaser. The Lot Number six which I sold lies in Cincinnati, being so numbered on the old plat, in Hardin County. I executed a Certificate of purchase to William Potts, as purchaser of the said lot. I sold it to him for \$117.00. McCallen paid me the Redemption money for the lot within 12 months from the day of sale. I gave McCallen a Receipt or Certificate for the purchase Money. It was some three or four months from the sale to the time I gave him the Certificate or receipt aforesaid.

Cross examination.

Potts bid in the property. Potts never paid me any money. McCallen paid me the purchase money. This was the same money that McCallen paid me, when I gave him the Receipt or Certificate above mentioned. It is the only money I received on that property. I called on

65 Potts for the money, Potts told me to go to M^cCallen and he would pay it. I did go to him, M^cCallen, and he did pay me, & the money he paid me is the same that he paid me when I presented the receipt or certificate aforesaid.

Re-examination.

I expect I did give Potts a certificate of purchase, I also expect that I filed one - on day of the sale also after the sale Potts told me to come up to his house and get the money. I told him it did not make any difference about the money then, that when I wanted it I would call and get it. I called upon Potts for the money in 2 or 3 or 4 months after the sale. He told me to go to M^cCallen and he would pay the money. I went to M^cCallen and he did pay me the money for said lot. Wainst was in the house - he counted the money and wrote the said Receipt or certificate, I signed it as Sheriff. M^cCallen paid me the money on the same day and in a short time after Potts sent me to him.

Depositions taken in open Court in
Case of

Das' Ralph

versus
John H. Lefter et al

66
State of Illinois }
Hardin County } 88

I James M Farlan clerk of the Circuit Court
within and for said County Certify that the foregoing
Sixty five pages contain a full true and perfect
transcript of the case therein specified, as full
and complete as the same remains of record
in my Office.

Given under my hand and Seal of Office
the 19th October A.D. 1858,
Jas M Farlan clk

James Ralph
vs. J. M. Error
John H. Seftin
Emily Ann Seftin,
Andrew M. Callen,
William Potts &
Lewis Savander,

} Supreme Court,
} November Term
} 1858.

And the said Complaint by Marrow his Solicitor, and says
that the record and proceedings aforesaid and the rendition of
the decree aforesaid there is manifest error, in this, to-wit,

- 1st The Court erred in rendering a decree in favor of Defts.
- 2^d The Court erred in not rendering a decree in favor
of the Complainant.
- 3^d The Court in not granting the relief sought
by Complainant's Bill.

And the said Complaint prays that the decree aforesaid,
for the errors aforesaid, and for other errors apparent
on the record and proceedings aforesaid, may be reversed,
and altogether held for naught.

For M. Marrow atty for plff

Joinder in error

Almy for

defts McCallen, Seftin & wife.
Edwin Beecher, guardian ad litem
for William Potts.

James Ralph

by

John H. Seftin,

Emily Ann Seftin,

Lewis Savander &

William Potts.

Filed 22^d October 1858.

A. S. Johnston C. J.

Prepaid - \$7.00

In Supreme Court Nov^r Term 1859.
James Ralph, plaintiff in Error.
against. Error to Hardin Co.

Andrew McCallen, John H. Sepler,
Emily Ann J. Sepler ~~and~~ Lewis
Lavender, & William Potts, depts in Error.

In June 1848 Lot number six in Elizabethtown
was sold by Lewis Lavender as Sheriff under an
execution from Hamilton County favor of Fellows
& Co against Andrew McCallen. William Potts
purchased the lot for \$117. Certificate of levy and
purchase duly filed and recorded.

Afterwards McCallen claiming to have redeemed the
lot from the sale to Potts, sold the lot and executed
deed therefor 14 October 1852 to Mers. Sepler.

Two days thereafter an execution favor of Lucinda
Ralph against Wm. Potts the purchaser under the
Fellows execution was levied on the lot as being the
property of said Potts. On the sixth day of December
1852 the lot was sold under the Ralph execution
and bought by Charles Mott. March 13th 1854
Mott endorsed his certificate to the complainant,
James Mott Ralph. who obtained Sheriffs deed 15th
March 1852 and filed his bill in chancery 20 March 1852.

The bill avers that McCallen did not redeem the lot
from the sale to Potts, but that Lavender the Sheriff who sold
to Potts executed to McCallen after the levy of the Ralph

execution, a certificate of redemption by McCallen for
of said lot from said sale. And also that the certifi-
cate of redemption was not filed for record until
after the levy was made under the Ralph execution
and certificate of said levy filed for Record.

The defendants in their answers state that McCallen
did, within twelve months after the sale to Potts, redeem
the lot from such sale by paying to the Sheriff the
purchase money with the proper interest thereon.

There is no evidence shewing - when any of the certifi-
cates of levy, or sale or any of the deeds were filed
with the recorder.

J

The first question which is presented is of fact.
Did McCallen redeem the lot from the sale to Potts
within twelve months after the sale.

He most unquestionably did. The Certificate of
Lewis Savender the Sheriff who sold the lot is evi-
dence of this. See pages 21 & 22. of record.

This is an official act of an officer, and is pre-
sumed to be true - and there is no evidence to con-
tradict it. But to the contrary Savender in
his testimony states that McCallen did within
twelve months after the sale redeem, and that
he at the same time executed a receipt or cer-
tificate to McCallen for the purchase money
See pages 64 & 65. That receipt or Certificate
is on pages 21 & 22.

The next question is also of fact

Was the certificate of levy or sale under the
Ralph execution recorded or filed for record
before the Certificate of redemption by Mc-
Callen was filed for record.

The bill alleges such to be the fact and sets
forth a date to the filing for record of each of
said instruments. The Certificate of redemption
as having been filed 9th November 1852.

The plaintiff is concluded by the allegations in his bill. We are not. And we do not admit when any of these papers were filed for record. Then the Certificate ^{of redemption} was filed 9 Nov 1852 the bill so alleging. We are not presumed to have personal knowledge as to when the Certificates of levy and sale under Ralphs execution were filed for record. And the allegations in the bill as to such facts are not evidence against us - but proper and necessary subjects for proof. And there is no evidence to shew when they were filed. The court cannot presume that they were filed for record before the certificate of redemption was filed - especially as if they were so filed, the plaintiff could so easily have proven the fact.

The third question presented is one of law.

Was it necessary before the passage of the act of Feb. 12-1853, to make and record a certificate of redemption by defendant in execution.

The Statute in force at the time of the redemption. [See Statutes 1858 page 607 Sec. 13] Says that upon the payment of the purchase money and interest "the said sale, and the certificate

[of purchase] thereupon granted, shall be null and void^d

The law referred to by the plaintiffs Counsel, Statute 1858 page 969 Sections 27 & 28, does not apply. No certificate or other instrument in writing was required to be made.

A certificate of redemption if made, was not, before the act of 1853, if it is now, an instrument in writing relating to or affecting the title to real estate. The title remained, and remains, in the defendant in execution until a Sheriffs deed is made, certainly until fifteen months after the sale.

It is attempted to be shewn that Mrs. Sefler had ^{actual} notice before she purchased, of the levy under Ralphs execution. She denies such notice in her answer, but alleges that Lucinda and Jas. Ralph and Charles Moth ^{knew} had notice at the time of the levy of Ralphs execution that the lot did not belong to Potts.

John W. Ralph states that he notified Mrs. Sefler before her purchase, that the lot was subject to the last mentioned execution. This statement is untrue. The conveyance to Mrs. Sefler and the acknowledgment thereof were made on the 14th October. The execution ^{was} ~~did not~~

then issued. It was issued the next day, the 15th and levied on the 16th two days after the conveyance to Mrs. Sepler. See deed to Mrs. Sepler page 23 & acknowledgment page 25 Also see pages 3 & 4 and Certificate of Ralphs levy page 17.

The record shews that the complainant took the depositions of Charles Mott, Lewis Savender and John W. Ralph. That the defendants filed exceptions to those depositions. The record does not shew that the exceptions were disposed of; nor does the record shew what was done in the case at the May term 1857 at that term the exceptions may have been overruled or withdrawn. But concede that they were not withdrawn or overruled. Can the complainant reverse the decree because our exceptions to his depositions were not disposed of. He has not assigned this for error, and therefore cannot insist upon it at the trial. But it would be no ground of error if assigned. It does him no injury.

The record shews that the cause was tried upon bill, answers, exhibits and depositions. See page 39. Had the decree have been against us we could have complained that our exceptions

were not disposed of; but he cannot make such objection. He is benefitted not injured by such omission. Had the Complainant excepted to our depositions and his exceptions not disposed of and his bill dismissed - he could then complain. But where we except, the Complainant cannot complain that our exceptions were not disposed of.

Charles Mott states that he applied to McCallen to purchase the lot and Mc^e referred him to Potts and that whatever Potts should do in the premises would be right.

This is only evidence that Potts was considered by McCallen, (who resided in a different County,) thought Potts knew better as to the value of the lot than he did. Witness also thinks Mc^e Callen in that letter saw the title was in Potts. The letter was lost, and the witness's statement was four years after it was received by him. Mrs. Sepler had no knowledge of this letter at the time she bought, and if the letter amounted to any thing as against McCallen and if witness's recollection of what the letter contained was correct it is no evidence against Mrs. Sepler. The only real party defendant who has any interest

John W. Ralph states that the lot was assessed for the years 1850 & 1851 to Potts and that he paid taxes thereon for those years. Mott also says that he rented the lot from Potts from Nov '51 to 1st Jan following.

The reasonable inference from this is that Potts acted as agent for McCallen, in renting and paying taxes on the lot. The assessment in Potts name amounts to nothing. There is no evidence that McCallen or Mrs. Sepler knew that fact. It appears that Mott who rented from Potts must have known of the redemption by McCallen and that he was renting from the agent, otherwise why rent from Potts and apply to McCallen to purchase

I think the record in this case shows that Mrs. Sepler purchased the lot in good faith, without notice of any adverse claim. In fact without any adverse claim at the time. That she bought it from the owner of the lot - that the decree dismissing the bill was correct, and should be affirmed.

John Olney Atty for depts.

The record in this case is very defective.

No date or term is given at which the final order was made See page 40

The order page 42 has no date except "Also to-morrow morning the following order was made"

Savender was "Sworn" with process. page 39.

Ralphs deposition states certain transactions as in 1850 & 1851. See page 52 The bill and exhibits shew them to have been in 1852 See pages 3 & 4 &c.

Four different orders are taken at August term 1854 and cause continued each time, without setting aside former continuances

Page 38 is loose, and does not appear ever to have been attached to the record. Two pages are numbered 39. The certificate is as to 65 pages - there are 65 without 38

There is no system in copying papers or orders of Court. May term 1858 is on page 39 and August term 1854 is on page 43. April term 1854 is on page 31.

No order shewn for May term 1857

No date is given when any of the papers were filed except the bill

It is not shewn on what day any of the orders were made The Cer. of pur. to Mott recites sale in 1850 & is dated 1852 The record contains innumerable verbal errors.

As to imperfect records see 14 Ill. pages 13 & 14

9-11

James Ralph

against

John W. Lefler &

others.

Argument of
John C. Gray, Jr. 1875.

State of Illinois,
SUPREME COURT,
First Grand Division.

} SS

The People of the State of Illinois,
To the Sheriff of Hardin County.

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Hardin county, before the Judge thereof between

James Ralph plaintiff and John H. Siflu, Emily Ann J. Siflu, Lewis Surenader
Anna William Potts

defendants it is said that manifest error hath intervened to the injury of said James Ralph -

as we are informed by his complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Mount Vernon, before the justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said John H. Siflu, Emily Ann J. Siflu, Lewis Surenader and William Potts

that They be and appear before the justices of our said Supreme Court; at the next term of said Court, to be holden at **Mount Vernon**, in said State, on the first Tuesday after the second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if They shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Siflus and others notice together with this writ.

WITNESS, the Hon. John D. Catron Chief Justice of the Supreme Court and the seal thereof, at MOUNT VERNON, this twenty three day of May in the year of our Lord one thousand eight hundred and fifty nine -

Nash Johnston

Clerk of the Supreme Court.

109

SUPREME COURT.
First Grand Division.

James R. Leaph

Plaintiff in Error,

VS.
*John H. Siffert, Co. A. J. Siffert,
J. L. Laramie & M. P. Potts*

Defendants in Error.

Men SCIRE FACIAS.

Ret. & FILED Aug. 24 59.
Wash. D.C. Clerk
Serving *200*
miles by return *95*
postage *301*
J. S. Howard Siffert
H C 11/26

Delivered by reading to Mrs. J. S. Siffert
16th July 1859
Delivered on motion by reading
17th August 1859
James R. Leaph

STATE OF ILLINOIS, } ss. *First Grand Division*
SUPREME COURT.

THE PEOPLE OF THE STATE OF ILLINOIS,

To the Sheriff of *Gallatin* County,

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the Circuit Court of *Harden* County, before the judge thereof, between *James Ralph, Plaintiff,* and *John H. Sefton, Emily Ann J. Sefton, Lewis L. Sefton and William Potts*

defendant, it is said that manifest error hath intervened to the injury of said *James Ralph*

as we are informed by *his* complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Mt. Vernon, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said *John H. Sefton,*

Emily Ann J. Sefton, Lewis L. Sefton
and *William Potts* — — —

that *they* be and appear before the Justices of our said Supreme Court, on the first day of the next term of said Court, to be holden at Mount Vernon, in said State, on the *first Tuesday after the* Second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if *They* shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *John H. Sefton, Emily Ann J. Sefton, Lewis L. Sefton and Wm. Potts,* notice, together with this writ.

John D. Eaton
Witness, the Hon. ~~SAMUEL H. TREAT~~, Chief Justice of our said Court, and the seal thereof, at Mount Vernon, this *twenty second* day of *October* in the year of our Lord, one thousand eight hundred and fifty-eight

Noah Johnston
Clerk of Supreme Court.

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Samuel Phelps

Sept in com

vs. } Sec fee

John H. Sipton,

Emily Ann Sipton,

Lewis Sargent &

William Potts

Sept in com

Behind not found in my book
Office of William Phelps

Golden-60

STATE OF ILLINOIS, }
SUPREME COURT. }

ss. *First Term Division*

THE PEOPLE OF THE STATE OF ILLINOIS,

To the Sheriff of *Hardin* County,

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the Circuit Court of *Hardin* County, before the judge thereof, between *James Ralph - Plaintiff,*

and John H. Sefton, Emily Ann J. Sefton,

Lewis Laraman and William Potts

defendants; it is said that manifest error hath intervened to the injury of said *James Ralph*

as we are informed by *his* complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Mt. Vernon, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said *John H. Sefton, -*

Emily Ann J. Sefton, Lewis Laraman -

and William Potts - - - - -

that *they* be and appear before the Justices of our said Supreme Court, on the first day of the next term of said Court, to be holden at Mount Vernon, in said State, on the *first Sunday after the* Second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if *they* shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *John H. Sefton, Emily Ann J. Sefton, Lewis Laraman & Wm. Potts* notice, together with this writ.

John D. Caton
Witness, the Hon. ~~Samuel H. Treat~~, Chief Justice of our said Court, and the seal thereof, at Mount Vernon, this *twenty second* day of *October* in the year of our Lord, one thousand eight hundred and fifty *eight*.

Noah Johnston
Clerk of Supreme Court.



Heath

James Ralph
 Wm in em
 as } Secy Gen
 John H. Leffler
 Emily Ann S. Leffler
 Lewis Larcenard
 William Potts
 Deft in em
 Shuff & Co
 Sening 200
 Mel & Return 90
 290
 J W, Ralph shuff & Co

Return given by Heeling the same to the
 within named on the 28th day of October 1833
 John W. Ralph shuff & Co

Heath

Elizabeth Town Ill.
18th Oct. 1858.

Club Supreme Court,
Mount Vernon

Dear Sir,

Herewith find the rec-
ord in the case of Ralph W. Lipton & Co.
also the sum of \$7.00. Send a writ
to Hardin and one to Gallatin.

Yours Truly
Jas M. Warren.

James Ralph

My

John W. Lipton Esq

Feb 22^d. Canton 1881

A. Johnston Clerk

56.28.76
Sir in Coldest please find
with interest from your office
news of the person named
Lives in my Bail work
I am Sir

Respectfully yours
John J. Walters

Index

1. Bill

- 13 Shffs Certificate to Patts. of Sevey, exhibit (A)
- 15 Shffs Certificate of Purchase to Patts " (B)
- 17 " " of Sevey as Patts property " (C)
- 18 " " Purchase to Mott " (D)
- 19 " Deed to Ralph " (E)
- 21 Lavenders Receipt for Redemption " (F)
- 26 McCallens Answer
- 29 Leftin & wife Answer.
- 31 Rule to answer
- 31 Order sustaining Answer to Bill
- 32 Amended Answer of Leftin & wife
- 35 Exceptions to McCallens answer
- 37 Exceptions to Leftin answer
- 38 Amended Bill making Patts him a party
- 39 Order to file amended bill & submitting the cause to the court
- 40 Denial Order dismissing the Bill
- 40 Answer of James Macklin Gurd. additn to Patts,
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- 42 Order overuling Motion to quash Seemmes,
- 43 Rule for Leftin to answer
- 43 Order overuling Answer to Bill
- 44 Order sustaining exceptions to answers,
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- 45 Sean to open Deposits
- 46 Answer to Bill
47. McCallens Answer to Bill.
47. Exceptions to Deposits of
- 48 " " "
51. Deposits of John W Ralph
- 54 " " Charles Mott.
57. " " Lewis Lavender
61. " " M McCallens.
- 62 Evidence E. H. Morns taken in open court
- 64 " " Lewis Lavender

9

Ralph

on

Sept 1858

In duty

Feb 22^d October 1858.

A. S. Johnston M

Error to Academic

James Ralph

vs

John H. Lipton & Co.

Shapiro & Co.
Grand Jurors

Nov. Term 1859

It is agreed by Counsel
in this case, that the cause be sub-
mitted to the Court upon the Record,
Abstracts, Briefs, and such printed
or written arguments, that either party
may see fit to file, if they wish to do
so. That the Court shall enter the cause
when called on to order

Dated 17th Nov. 1859

Gas M. Warren atty
for Plt in Error

John Olney atty for
defendants in error

9

James Ralph

Dr.

John H. S. L. L. L.

Agreement.

Filed Nov. 19. 1859.

N. Johnston cly

James Ralph	} Supreme Court 3 ^d Grand Jurors Dwelling Houses
Or 3 Error to Hardin	
John H. Sifler	
Emily Ann J. Sifler	
Lewis Savender,	
Andrew M. Callen +	}
William Patts,	

The clerk of the Supreme Court will issue writs in the above cases, returnable to the next term of said court. Andrew M. Callen lives at Shawmutown Gallatin County, and the other defendants reside in the County of Hardin.

As M. Warren ally-
for plaintiff

James Ralph

Misplacé

Note by Clerk

McCallan is not a
party to the note of error
- Bob Ford with
See for -

STATE OF ILLINOIS
SUPREME COURT,

{ ss. *1st Grand Division* WRIT OF ERROR.
THE PEOPLE OF THE STATE OF ILLINOIS;

To the Clerk of the Circuit Court for the county of *Hardin* GREETING,

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the
Circuit Court of *Hardin* county, before the Judge thereof, between - -

James Ralph - - - - -

plaintiff, and *John H. Sifter, Emily Ann J. Sifter,*

Lewis Lavender and William Patts

defendant; it is said manifest error hath intervened, to the injury of the aforesaid *James Ralph*

as we are informed by *his*

complaint, and we being willing that error, should be corrected if any there be, in due form and manner, and that
justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly
without delay, send to our Justices of the Supreme Court, the record and proceedings of the plea, aforesaid,
with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at

Mount Vernon, in the county of Jefferson, on the *first Sunday after the 2d Monday of*
November next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the
error, what of right ought to be done according to law:

John D. Baten
Witness, the Hon. *WALTER B. SCATES* Chief Justice
of our said court, and the seal thereof, at Mount Vernon this

twenty second day of *October*
in the year of Our Lord One Thousand Eight Hundred
and Fifty-*eight*.

Noah Johnston
Clerk Supreme Court.



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~~45~~

James Rulph
pitts in even

as } Misfame

John H. Lipton,
Emily Ann Lipton,
Lewis Laramie &
William Potts
Defts in even

Issued and filed
October 22, 1858.
H. Johnston Clk

STATE OF ILLINOIS—IN THE SUPREME COURT—FIRST GRAND
DIVISION—NOVEMBER TERM, 1859.

JAMES RALPH,

vs.

JOHN H. LEFLER, et al. }

Error to Hardin.

Page 1. Charges that a judgment was obtained in the Hamilton Circuit Court in March, 1848, against Andrew McAllen in favor of W. & C. Fellows for \$794. On the 31st of March, 1848, execution was issued on said judgment to the Sheriff of Hardin Co.

Page 2. Said execution came to the hands of Lewis Lavender, sheriff of Hardin Co. On 26th of April, 1848, said sheriff levied said execution on town lot No. 6 in Elizabethtown with its appurtenances as the property of McCallen; that the certificate of levy was filed with the recorder of said Co.; that on the 28th of June, 1848, sold said town lot, No. 6, to one Wm. Potts for \$117 50.

Page 3. That the certificate of purchase was filed with the recorder of said county. that at the Oct. term of the Saline Circuit Court, 1852, one Lucinda Ralph recovered a judgment against the said Wm Potts for \$1500. On the 15th of Oct 1852, caused execution to issue to Hardin Co against said Potts, and levied on said town lot No 6, as the property of Potts, by the sh'ff of said Co of Hardin, and the certificate of levy filed with the recorder on the 16th of October, 1852.

Page 4. On 6th day Dec, 1852, said sh'ff sold said town lot No 6, to one Chas Mott for the sum of \$100, and executed a certificate of purchase dated 6th Dec 1852, which was filed with the recorder of said Co; on the 13th day of March, 1854, Mott assigned his certificate of purchase to the comp't.

Page 5. Potts failed to redeem said lot No 6 within the time required by law. The sh'ff on the 15th March, 1854, executed a deed to comp't. that said McCallen did not redeem said town lot No 6, sold under the execution in favor of W & C Fellows, nor by any judgment creditor.

Page 6. That Potts became the owner of said lot No 6, and said lot became liable to the debts of said Potts; that Lewis Lavender, sh'ff of Hardin Co, executed a certificate of redemption to McCallen bearing date 28th July 1848, which states that McCallen paid him \$118 50 for the redemption of said lot, and filed in the recorder's office of said county 9th Nov 1852, after the date of the levy of the execution in favor of Lucinda Ralph against Potts.

Page 7. McCallen, on 19th Nov 1852, sold said town lot No 6 to Emily Ann I Lefler, wife of John H. Lefler, and filed with the recorder on the 14th Oct 1852; that the certificate of redemption made by Lavender, sh'ff, to McCallen dated 28 July, 1848, is charged to be falsely dated; that said certificate was executed on or about the date of its filing with the recorder, 9th Nov-1852; that McCallen and Lavender combined and confederated together, and dated said certificate back for the purpose of defeating the levy and sale of execution in favor of the said Lucinda Ralph.

Page 8. That no redemption was ever made by McCallen from the sale of said lot, under the execution in favor of W. & C. Fellows, directly or indirectly until after the levy of the execution in favor of Lucinda Ralph vs Potts. That the certificate of levy of W & C Fellows is dated 26th April, 1848, and filed same date; the certificate of purchase to Wm Potts 28th June 1848, and filed 3d July 1848, time of redemption expired 28th Sept 1849.

The certificate of levy in favor of Lucinda Ralph, dated 16th Oct 1852 and filed the same date; that the sale to Mott was made 6th Dec. 1852 and filed the same day.

Page 9. That Potts took possession of said lot and exercised acts ownership over it and leased the same out, collected rents therefor up to the time of said levy; that the said Potts was entitled to a deed; that comp't. is entitled to possession of said lot; that Lefler purchased the lot with full knowledge of the facts herein charged.

Page 10. That leflers were warned and notified that said lot was levied upon as the property of Wm Potts, and that McCallen had no title to the same; that she persisted in the purchase.

Page 12. Prays that John H. Lefler, Emily Ann I Lefler, Wm Potts and Andrew McCallen be made party def'ts. to the bill, waiving the oath of McCallen; that McCallen be required to file said original certificate of redemption for the inspection of the court; that said certificate of redemption be set aside, as will also the deed from McCallen to Lefler, and the sh'ff. required to make a deed to the said Potts to said lot No. 6, and award a writ of possession to complainant.

Pages 13-14-15. Is the certificate of levy of the execution in favor of Fellows vs. McCallen.

Pages 15-16-17. Certificate of purchase to Potts.

Pages 17-18. Certificate of levy of execution in favor of Ralph vs. Potts.

Pages 18-19. Certificate of purchase to Mott.

Pages 19-20. Sh'ffs. deed to complainant.

Pages 21-22. Lavender's receipt for redemption to McCallen.

Pages 22-23-24. Deed from McCallen to Leflers.

Page 26. McCallen states in his answer that it is true as charged; that at March term Hamilton circuit court 1848, W & C Fellows & co. recovered a judgment against him for \$794.

Page 27. Admits the execution was levied as charged in the bill, and that lot No. 6. was sold to Potts for \$117 50; also that at the Saline circuit court Oct term 1852, Lucinda Ralph recovered a judgment against Wm Potts for 1500; that execution was issued and levied on said lot No 6, and sold by the sh'ff to chas Mott as charged; that said Mott assigned the certificate of purchase to comp't.

Pages 28. States that he does not know as to the redemption of said lot by the said Potts; that he has no doubt of such failure by Potts, as Potts had no interest in redeeming said property, as said lot was the property of Emily Ann I Lefler at the date of the said last mentioned levy, and sale, and not the property of Potts; that he redeemed said lot No 6 from sale made by virtue of execution issued in favor of Fellows, within less than twelve months from the date of the sh'ffs. sale, by paying to the sh'ff Hardin co the full amount; that he has lost said certificate of redemption; that he sold and conveyed said lot to Leflers as charged. charges that Lucinda Ralph, James Ralph and chas Mott all had notice at the time and before the levy of said execution from Saline county, that Lot No. 6 was not the property of Potts.

Page 29. The answer of Lefler and wife, state that they admit the recovery of the jdg'mt, the issuing of execution, levies and sales, as set forth in the bill.

Page 30. Admit the purchase by Wm Lefler from McCallen as charged: but charge that McCallen did redeem town ot no. 6 from the Sheriff's sale to Potts in less than twelve months from the time of the sale, by paying to the Sheriff the full redemption. That James Ralph, Lucinda Ralph and Chas. Mott all had notice at the time and before the levies of the execution in favor of Lucinda Ralph: that said lot No 6 was not the property of Potts.

Page 39. Complainant suggest death of Potts and amends his bill by making Wm. Potts the only heir at law of Wm. Potts dec'd a party to the bill.

Page 39. Order to open depositions, Death of Potts suggested, exceptions to depositions sustained, comp'nt has leave to file supplemental bill.

Order appointing Mecklin guardian ad interim for the minor heirs of Potts, leave is granted to retake the evidence of Elijah H. Morris and Lewis Layender.

Page 40. Decree that compl'n's bill be dismissed with cost.

Page 40. Answer of guardian ad interim.

Page 41. Rule to answer amended bill.

" 42. Order overruling motion to quash summons.

" 39. Order entering default against Lavender and the submission of the cause to the Court and taken under advisement.

COMPLN'TS EVIDENCE.

Page 52. Jno W. Ralph, witness, states that previous to Mrs. Lefler's purchasing said lot of McCallen, I went and informed them, Lefler and Mrs. Lefler, that said Lot No. 6 was subject to the execution in favor of Lucinda Ralph. Lefler replied that he was much obliged to him for the information as he did not wish to buy a lawsuit; that said Lot No. 6 was assessed in the name of Wm. Potts for the years 1850-'51, and Potts paid witness the tax on said Lot and rec'd to him for the same in his name; witness was collector of revenue for these years.

Page 55. Chas. Mott, witness, states that 1st Nov., 1851, he rented said lot No. 6 of Wm. Potts for the purpose of a store house and dwelling, also being desirous to purchase the same he wrote to McCallen to know what he would take for the same, making him an offer therefor.

Page 56. McCallen's answer was that witness should see Wm. Potts and whatever arrangement witness might make with him, Potts, would be all right; witness thinks he said that the title was in said Potts: witness saw Potts a few days after, and he said he could not take the \$500 for said prop'ty; that the letter from McCallen to witness has been lost; that Potts exercised acts of ownership on said prop'ty up to Jan'y 1852, at which time I gave him up the possession, paying him the rents, that prior to my renting said lot, the said Potts was in possession of it.

Page 61. Miller McClellan, witness, states that he believes that from 60 to 72 dolls. a reasonable rent for said property; that he was then paying \$72 a year for said property; that Lefler then had the possession of said lot three or four years.

Page 63. Elijah H. Morris, a witness, examined in open court, states that McCallen got him to go over the river to see Potts, that witness went over and got Potts and bro't him to the other side of the river; witness then come back and got McClellan; on the way over McCallen said to me he wanted to see Potts and Mr. Lavender; that Ralph was about to get the property and he wanted to see Potts and Lavender to fix it up McCallen and witness came back together and thinks that McCallen went to Lavender's that evening; thinks it was about the time that the execution was against Potts in favor of Lucinda Ralph; can't say whether it was before or after the sale; he thinks it was about that time; when Potts & McCallen met they went to themselves and had a private conversation.

Page 64. Lewis Lavender, witness, sworn in open court, states he sold said town lot No. 6 as sh'ff of Hardin co., 28th June 1848, on an execution in favor of Fellows & Co. against McCallen to Wm. Potts for 117, and executed a certificate of purchase to Potts; that McCallen paid him the redemption money within twelve months from date of sale; he gave McCallen a rec't or certf't for the purchase money.

Cross Examination.—Potts bid in the prop'ty; Potts never paid me any money; McCallen paid me the purchase money; this was the same money that McCallen paid him when he gave him the rec't or certf't; that was the only money he rec'd on the prop'ty; witness called on Potts for the money; Potts told him to go to McCallen, he would pay it; McCallen paid it; the money paid him was the same money he rec'd when he made the rec't or certificate.

JAS. M. WARREN, att'y for plt'ff in error.

9

Abstract

8686

Reporter

James Ralph, Plaintiff in Error,

vs.

John H. Lefler, et. al. Def'ts. in Error.

} Bill in Chancery. [Error to
Hurdin.

In this case the pl'ff. filed his bill in Chancery against the def'ts., charging that a certain town lot in Elizabethtown had been sold under execution as the property of McCallen to one William Potts for \$117 00; that McCallen had failed to redeem the lot, and that the property had been vested in Potts.

That one Lucinda Ralph had a judgment against Potts, and had execution levied upon said lot as the property of Potts, which was sold by the Sheriff to one Charles Mott, who assigned the certificate of purchase to pl'ff.

That after the sale or levy on said lot, McCallen claimed said property as his, producing a certificate of redemption from Lewis Lavender, Sheriff, who sold the same under execution against McCallen.

That the certificate of redemption bears date July 28, 1848, which was filed 9th Nov. 1852, after the sale to Mott.

Charges that said certificate of redemption was falsely dated, and combination between McCallen and Lavender to defraud the creditors of Potts. That really no redemption was ever made.

McCallen, on the 10th day Nov. 1852, sold said town lot to Emely Ann L. Lefler; That at the time of the purchase from McCallen, the said Lefler had notice of the levy and sale of said lot to Charles Mott.

The def'ts. all admit all the levies and sales, and the filing of the certificates as charged; but ~~denies~~ ^{denies} that the certificate of redemption was dated back, and charges that McCallen redeemed the said town lot within one year from the date of the sale.

The case was submitted to the court upon bill, answers, exhibits, replication and depositions; and the bill dismissed.

1 The certificate of redemption to McCallen from Lavender, Sheriff, is an instrument in writing, and should have been recorded. Revised Statute 1858 page 969 see 27 & 28. 2d. Having chosen a certificate of redemption, ~~as~~ ^{per statute} proof of redemption he should have ~~presented~~ ^{presented} the ~~same~~ ^{same} and had it filed and recorded. 3d. That there was really no redemption; the money paid by McCallen was only the purchase money of Potts.

*The Depositions in this case
was excepted by the Defendant &
not disposed of by the court.*

*For M Warren atty
for pl't in error*

STATE OF ILLINOIS—IN THE SUPREME COURT—FIRST GRAND
DIVISION—NOVEMBER TERM, 1859.

JAMES RALPH,

vs.

JOHN H. LEFLER, et al. }

Error to Hardin.

Page 1. Charges that a judgment was obtained in the Hamilton Circuit Court in March, 1848, against Andrew McAllen in favor of W. & C. Fellows for \$794. On the 31st of March, 1848, execution was issued on said judgment to the Sheriff of Hardin Co.

Page 2. Said execution came to the hands of Lewis Lavender, sheriff of Hardin Co. On 26th of April, 1848, said sheriff levied said execution on town lot No. 6 in Elizabethtown with its appurtenances as the property of McAllen; that the certificate of levy was filed with the recorder of said Co.; that on the 28th of June, 1848, sold said town lot, No. 6, to one Wm. Potts for \$117 50.

Page 3. That the certificate of purchase was filed with the recorder of said county, that at the Oct. term of the Saline Circuit Court, 1852, one Lucinda Ralph recovered a judgment against the said Wm Potts for \$1500. On the 15th of Oct 1852, caused execution to issue to Hardin Co against said Potts, and levied on said town lot No 6, as the property of Potts, by the sh'ff of said Co of Hardin, and the certificate of levy filed with the recorder on the 16th of October, 1852.

Page 4. On 6th day Dec, 1852, said sh'ff sold said town lot No 6, to one Chas Mott for the sum of \$100, and executed a certificate of purchase dated 6th Dec 1852, which was filed with the recorder of said Co; on the 13th day of March, 1854, Mott assigned his certificate of purchase to the comp't.

Page 5. Potts failed to redeem said lot No 6 within the time required by law. The sh'ff on the 15th March, 1854, executed a deed to compr. that said McAllen did not redeem said town lot No 6, sold under the execution in favor of W & C Fellows, nor by any judgment creditor.

Page 6. That Potts became the owner of said lot No 6, and said lot became liable to the debts of said Potts; that Lewis Lavender, sh'ff of Hardin Co, executed a certificate of redemption to McAllen bearing date 28th July 1848, which states that McAllen paid him \$118 50 for the redemption of said lot, and filed in the recorder's office of said county 9th Nov 1852, after the date of the levy of the execution in favor of Lucinda Ralph against Potts.

Page 7. McAllen, on 19th Nov 1852, sold said town lot No 6 to Emily Ann I Lefler, wife of John H. Lefler, and filed with the recorder on the 14th Oct 1852; that the certificate of redemption made by Lavender, sh'ff, to McAllen dated 28 July, 1848, is charged to be falsely dated; that said certificate was executed on or about the date of its filing with the recorder, 9th Nov-1852; that McAllen and Lavender combined and confederated together, and dated said certificate back for the purpose of defeating the levy and sale of execution in favor of the said Lucinda Ralph.

Page 8. That no redemption was ever made by McAllen from the sale of said lot, under the execution in favor of W. & C. Fellows, directly or indirectly until after the levy of the execution in favor of Lucinda Ralph vs Potts. That the certificate of levy of W & C Fellows is dated 26th April, 1848, and filed same date; the certificate of purchase to Wm Potts 28th June 1848, and filed 3d July 1848, time of redemption expired 28th Sept 1849.

The certificate of levy in favor of Lucinda Ralph, dated 16th Oct 1852 and filed the same date; that the sale to Mott was made 6th Dec. 1852 and filed the same day.

Page 9. That Potts took possession of said lot and exercised acts ownership over it and leased the same out, collected rents therefor up to the time of said levy; that the said Potts was entitled to a deed; that comp't. is entitled to possession of said lot; that Lefler purchased the lot with full knowledge of the facts herein charged.

Page 10. That leflers were warned and notified that said lot was levied upon as the property of Wm Potts, and that McAllen had no title to the same; that she persisted in the purchase.

Page 12. Prays that John H. Lefler, Emily Ann I Lefler, Wm Potts and Andrew McCallen be made party def'ts. to the bill, waiving the oath of McCallen; that McCallen be required to file said original certificate of redemption for the inspection of the court; that said certificate of redemption be set aside, as will also the deed from McCallen to Lefler, and the sh'ff. required to make a deed to the said Potts to said lot No. 6, and award a writ of possession to complainant.

Pages 13-14-15. Is the certificate of levy of the execution in favor of Fellows vs. McCallen.

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Pages 22-23-24. Deed from McCallen to Leflers.

Page 26. McCallen states in his answer that it is true as charged; that at March term Hamilton circuit court 1848, W & C Fellows & co. recovered a judgment against him for \$794.

Page 27. Admits the execution was levied as charged in the bill, and that lot No. 6. was sold to Potts for \$117 50; also that at the Saline circuit court Oct term 1852, Lucinda Ralph recovered a judgment against Wm Potts for 1500; that execution was issued and levied on said lot No 6, and sold by the sh'ff to chas Mott as charged; that said Mott assigned the certificate of purchase to comp't.

Pages 28. States that he does not know as to the redemption of said lot by the said Potts; that he has no doubt of such failure by Potts, as Potts had no interest in redeeming said property, as said lot was the property of Emily Ann I Lefler at the date of the said last mentioned levy, and sale, and not the property of Potts; that he redeemed said lot No 6 from sale made by virtue of execution issued in favor of Fellows, within less than twelve months from the date of the sh'ffs. sale, by paying to the sh'ff Hardin co the full amount; that he has lost said certificate of redemption; that he sold and conveyed said lot to Leflers as charged. charges that Lucinda Ralph, James Ralph and chas Mott all had notice at the time and before the levy of said execution from Saline county, that Lot No. 6 was not the property of Potts.

Page 29. The answer of Lefler and wife, state that they admit the recovery of the jdg'mt, the issuing of execution, levies and sales, as set forth in the bill.

Page 30. Admit the purchase by Wm Lefler from McCallen as charged: but charge that McCallen did redeem town of no. 6 from the Sheriff's sale to Potts in less than twelve months from the time of the sale, by paying to the Sheriff the full redemption. That James Ralph, Lucinda Ralph and Chas. Mott all had notice at the time and before the levies of the execution in favor of Lucinda Ralph: that said lot No 6 was not the property of Potts.

Page 39. Complainant suggest death of Potts and amends his bill by making Wm. Potts the only heir at law of Wm. Potts dec'd a party to the bill.

Page 39. Order to open depositions, Death of Potts suggested, exceptions to depositions sustained, comp'lnt has leave to file supplemental bill.

Order appointing Mecklin guardian ad interim for the minor heirs of Potts, leave is granted to retake the evidence of Elijah H. Morris and Lewis Lavender.

Page 40. Decree that compl'n'ts bill be dismissed with cost.

Page 40. Answer of guardian ad interim.

Page 41. Rule to answer amended bill.

" 42. Order overruling motion to quash summons.

" 39. Order entering default against Lavender and the submission of the cause to the Court and taken under advisement.

COMPLN'TS EVIDENCE.

Page 52. Jno W. Ralph, witness, states that previous to Mrs. Lefler's purchasing said lot of McCallen, I went and informed them, Lefler and Mrs. Lefler, that said Lot No. 6 was subject to the execution in favor of Lucinda Ralph. Lefler replied that he was much obliged to him for the information as he did not wish to buy a lawsuit; that said Lot No 6 was assessed in the name of Wm. Potts for the years 1850-'51, and Potts paid witness the tax on said Lot and rec'p'd to him for the same in his name; witness was collector of revenue for these years.

Page 55. Chas. Mott, witness, states that 1st Nov., 1851, he rented said lot No. 6 of Wm. Potts for the purpose of a store house and dwelling, also being desirous to purchase the same he wrote to McCallen to know what he would take for the same, making him an offer therefor.

Page 56. McCallen's answer was that witness should see Wm. Potts and whatever arrangement witness might make with him, Potts, would be all right; witness thinks he said that the title was in said Potts: witness saw Potts a few days after, and he said he could not take the \$500 for said prop'ty; that the letter from McCallen to witness has been lost; that Potts exercised acts of ownership on said prop'ty up to Jan'y 1852, at which time I gave him up the possession, paying him the rents, that prior to my renting said lot, the said Potts was in possession of it.

Page 61. Miller McClellan, witness, states that he believes that from 60 to 72 dolls. a reasonable rent for said property; that he was then paying \$72 a year for said property; that Lefler then had the possession of said lot three or four years.

Page 63. Elijah H. Morris, a witness, examined in open court, states that McCallen got him to go over the river to see Potts, that witness went over and got Potts and bro't him to the other side of the river; witness then came back and got McClellan; on the way over McCallen said to me he wanted to see Potts and Mr. Lavender; that Ralph was about to get the property and he wanted to see Potts and Lavender to fix it up McCallen and witness came back together and thinks that McCallen went to Lavender's that evening; thinks it was about the time that the execution was against Potts in favor of Lucinda Ralph; can't say whether it was before or after the sale; he thinks it was about that time; when Potts & McCallen met they went to themselves and had a private conversation.

Page 64. Lewis Lavender, witness, sworn in open court, states he sold said town lot No. 6 as sh'ff of Hardin co., 28th June 1848, on an execution in favor of Fellows & Co. against McCallen to Wm. Potts for 117, and executed a certificate of purchase to Potts; that McCallen paid him the redemption money within twelve months from date of sale; he gave McCallen a rec't or certf't for the purchase money.

Cross Examination.—Potts bid in the prop'ty; Potts never paid me any money; McCallen paid me the purchase money; this was the same money that McCallen paid him when he gave him the rec't or certf't; that was the only money he rec'd on the prop'ty; witness called on Potts for the money; Potts told him to go to McCallen, he would pay it; McCallen paid it; the money paid him was the same money he rec'd when he made the rec't or certificate.

JAS. M. WARREN, att'y for plt'ff in error

James Ralph, Plaintiff in Error,

vs.

John H. Lefler, et. al. Def'ts. in Error.

} Bill in Chancery. [Error to Hardin,

In this case the pl^{ff}. filed his bill in Chancery against the def'ts., charging that a certain town lot in Elizabethtown had been sold under execution as the property of McCallen to one William Potts for \$117 00; that McCallen had failed to redeem the lot, and that the property had been vested in Potts.

That one Lucinda Ralph had a judgment against Potts, and had execution levied upon said lot as the property of Potts, which was sold by the Sheriff to one Charles Mott, who assigned the certificate of purchase to pl^{ff}.

That after the sale or levy on said lot, McCallen claimed said property as his, producing a certificate of redemption from Lewis Lavender, Sheriff, who sold the same under execution against McCallen.

That the certificate of redemption bears date July 28, 1848, which was filed 9th Nov. 1852, after the sale to Mott.

Charges that said certificate of redemption was falsely dated, and combination between McCallen and Lavender to defraud the creditors of Potts. That really no redemption was ever made.

McCallen, on the 10th day Nov. 1852, sold said town lot to Emely Ann I. Lefler; That at the time of the purchase from McCallen, the said Lefler had notice of the levy and sale of said lot to Charles Mott.

The def'ts. all admit all the levies and sales, and the filing of the certificates as charged; but ~~denies~~ ^{denies} that the certificate of redemption was dated back, and charges that McCallen redeemed the said town lot within one year from the date of the sale.

The case was submitted to the court upon bill, answers, exhibits, replication and depositions; and the bill dismissed.

1 The certificate of redemption to McCallen from Lavender, Sheriff, is an instrument in writing, and should have been recorded. Revised Statute 1858 page 969 see 27 & 28. 2d. Having chosen a certificate of redemption, ~~as~~ ^{proof} of redemption, he should have ~~performed~~ ^{perfected} the ~~same~~ ^{statute} and had it filed and recorded. 3d. That there was really no redemption; the money paid by McCallen was only the purchase money of Potts.

*The Depositions in this cause
was excepted to by Defendant &
not disposed of by the Court.*

*Jas M. Warrum atty
for pl^{ff} in Error*