

No. 12499

Supreme Court of Illinois

Getzler.

vs.

Saroni, et al.

71641  7

United States of
North America
State of Illinois
County of Cook

Heads before the Hon-
orable George Manierre Judge of the
Seventh Judicial Circuit of the State
of Illinois, and presiding Judge of the
Circuit Court of Cook County in said
State, at a trial term thereof, begun
and held at the Court House in the
City of Chicago in said County on the
Second Monday (being the thirteenth
day) of April in the Year of Our Lord
One Thousand Eight Hundred and
Fifty Seven, just of the Independence
of the United States the Eighty First
Circuit. Honorable George Manierre
Judge of the 7th Judicial Circuit
John L. Wilson, Sheriff of Cook County
Charles Warren, State Attorney
Jesse L. Church, Clerk.

Be it remembered that on the tenth
day of January in the year of Our Lord
One thousand eight hundred and fifty
seven E. Martin Esq Solicitor for Catharine
Getzler who sues by William H. Davis

Her next friend filed her certain Bill of
Complaint on the Chancery side of said
Court which Bill is in the words and
figures to wit:—

To the Honorable George Manierre,
Judge of the Circuit Court of Cook County, In
Chancery sitting—

Humbly complaining sheweth unto
to your honor, your Petrix, Catharine Getzler,
of the city of Chicago, in the County of Cook,
in the State of Illinois, the wife of Andrew
Getzler, by William H. Davis, her next friend—

And your Petrix sheweth unto
your honor, that on the 12th day of July, Anno
Domini, one thousand, eight hundred and
fifty four, Charles S. Saroni and Isaac H. Ober-
er filed their Bill of Complaint in Chancery,
in this Honorable Court, setting forth that on
or about the seventeenth day of October, one thou-
sand eight hundred and fifty four, one, the
said Andrew Getzler became indebted unto the
said Complainants herein in about the
sum of one hundred and ninety eight Dollars.

That whilst the said indebtedness was then
remaining unpaid, the said Andrew Getzler
being then largely involved in debt to other
persons, did on or about the first day of January,
A.D. one thousand eight hundred and fifty three,
abscond from this State, with the intention
of removing his effects therefrom, to the injury of
the said Complainants therein and others
his creditors, That afterward on the third

day of January last aforesaid, the said Complain-
 ants therein duly issued a writ of attachment
 from this Court for one hundred and ninety
 eight ³⁴/₁₀₀ against the estate of the said An-
 drew Getzler, which on the fourth day of
 January, Anno Domini, one thousand eight
 hundred and fifty three, was levied upon Lot
 seven (7) in Block forty two (42) in the original
 Town of Chicago, in the said County of Cook,
 and that afterwards such proceedings were there-
 upon had, that on the twenty fifth day of Novem-
 ber, one thousand, eight hundred and fifty
 three, at a term of this Court then being held,
 the said Complainant therein did recover
 against the said Andrew Getzler the sum
 of two hundred and eleven and sixty three cents
 for their damages in the premises, and also
 their costs of suit in that behalf, with an ~~award~~
 award of special execution to make the same
 of the property so attached as aforesaid, and
 the said now stating Bill did further set
 forth that the said indebtedness to the said
 Complainant therein arose on or about the
 seventeenth day of October, Anno Domini, one
 thousand eight hundred and fifty one, at
 which time and also at the time of the
 making and delivery of the Deed thereafter
 mentioned, the said Andrew Getzler was

seized in fee simple, and was the owner of the said premises, - And that on or about the nineteenth day of April, one thousand eight hundred and fifty-two, by Deed of that date and after the said Indebtedness to the said Complainants therein, the said Andrew Getzler, did for the consideration of one dollar, therein expressed, convey unto Caleb D. Fitz, said Lot seven (7) in Block forty two (42) in the old town of Chicago, being the same premises levied upon as above mentioned - But on trust nevertheless for the use, benefit and behoof of, and as trustee for your Oratrix and her heirs, which said Deed was filed for Record in the office of the Recorder, of said County, on the thirty first day of May, one thousand eight hundred and fifty-two, that the said Deed so made by the said Andrew Getzler to the said Caleb D. Fitz was made without any good and valuable consideration received by the said Andrew Getzler therefor, and with the intent and for the purpose of hindering, delaying and defrauding the the just Creditors of ^{said} Andrew Getzler, among whom, the Complainants there were in the collection of their several and respective debt against him - That at the time of making said Deed, the said Andrew Getzler

was largely indebted to persons whose names were to the complainant therein unknown. And that the said Getzler was then insolvent, and unable to pay his debts. That in contemplation of such insolvency, and well knowing his Property to be insufficient to pay his debts, said Andrew Getzler combined and confederated with said Caleb D. Fitz with the purpose and intent of defrauding as well those persons to whom the said Andrew was then indebted, as those to whom he might thereafter become indebted. to convey away said property to him, said Fitz, in trust for his wife, said Catherine, and with that intent, the said conveyance was made to, and received by said Fitz, and said Catherine Getzler, that the said Andrew Getzler had no title except to that part of said Lot described as follows, namely a strip of Land extending from front to rear of said Lot twenty feet wide, and being the east twenty feet of the West twenty feet of said Lot. That at the time of making said conveyance, from thence until the running away from the state of the said Getzler, the said Land, or part of said Lot was in his actual occupation, and since that time and at the time of the

now stating Bill, the family of the said Andrew Getzler continued to reside upon it, ^{that at the time of the date of the said conveyance it} was worth about three thousand Dollars, and at the time of the said now stating Bill, it was worth five thousand Dollars—

That Lewis M. Allen, Henry J. Allen, Mitchell A. Mitchell, and Allen Mitchell being the firm of Mitchell and Allen, had caused an Attachment to be issued out of this Court, upon an indebtedness due them by said Andrew Getzler, against him returnable to the said May Term, and which among other things, had been levied upon the said described real Estate— That Christian G. Gunther, Charles G. Gunther, and John C. Gunther and William H. Gunther, composing the firm of C. G. Gunther and Sons, had also caused an attachment to be issued out of said Court, against said Andrew Getzler upon an indebtedness due ~~thence~~ from him returnable to said May Term of said Court, and returned levied among other things, upon the said real Estate, that Pierre Chonteau junior, Pierre Chonteau and John A. Sanford, composing the firm of Pierre Chonteau junior and Company, had also caused an attachment to be issued out of said Court, against said Andrew Getzler,

upon an indebtedness due from him returnable to said May Term of said Court, which had been returned levied among other things upon the said Real Estate— That George C. Treadwell, James Chase and Thomas Treadwell, composing the firm of G. C. Treadwell and Company, had also an attachment to be issued out of said Court, against the said Andrew Getzler, upon an indebtedness due from him returnable to said May Term of said Court, which had been returned levied upon the said Real Estate— That the said firm of C. G. Guthrie and Sons had recovered judgment on their suit for the sum of five hundred and ninety three dollars, and fourteen cents, and costs of suit, and had caused Execution to be issued against said property attached, and also that said firm of Pierre Chauteau Junior and Company had also recovered judgment in their suit for the sum of one thousand five hundred and twenty two dollars, and fifty six cents, and costs of suit upon which they had caused Execution to be issued against the property attached, and that judgment had not been recovered upon the other of said attachments, but they were still pending in Court— That at the March term of said Court, one thousand, eight hundred and fifty four,

an order was made by said Court, directing that the proceeds of the sale of the property levied upon, by all of said attaching creditors, whose attachments were made returnable to said May Term of said Court, should be divided pro rata among the said Creditors, and that the Sheriff should pay the money arising from any sale under the executions issued upon judgments then recovered, into court, to abide the further order of this Court.

That executions had been issued upon said judgments, to the Sheriff of Cook County, against the property attached under the respective writs of attachment, that by virtue of the same, the said Sheriff had sold some personal property levied upon to the amount of one hundred and fifty dollars, or thereabouts, and then held said Executions, not being able to sell said Real Estate for the want of bidders. That the said Real Estate thereinbefore described ought to be made liable to the payment of the said judgment, so recovered by the said Complainants therein, but that in consequence of the conveyance so made by said Andrew Getzler to said Fitz in trust for said Catherine Getzler, such sale could not be effected, and the purchaser obtain a clear title without the

aid of this Court— And the said Bill prayed the aid of this Court, in the premises, and that said Andrew Getzler, your oratrix his wife, Caleb D. Fitz, Lewis M. Allen, Henry S. Allen, Mitchell A. Mitchell, and Allen Mitchell, Christian G. Gunther, and Charles G. Gunther, John C. Gunther and William H. Gunther, Pierre Chonteau junior Pierre Chonteau and John A. Sanford, George C. Treadwell, James Chas., and Thomas Treadwell might, without oath, answer— And that the said conveyance from the said Andrew Getzler, to the said Caleb D. Fitz in trust for your Oratrix, might be declared as to the ^{creditors} ~~execution~~ of the said Andrew Getzler, null and void, and of no force and validity, whatsoever, and that the Sheriff of said County, might be directed to all said premises, thereinabove described under said Executions according to Law, and that in case a redemption thereof was not made in the time and manner pointed out by Law, then that he should make to the purchasers at such sale, a conveyance thereof, and that such conveyance when so made, should be declared to be an absolute and effectual bar to the said Andrew Getzler, Caleb D. Fitz, and your Oratrix of all right

and title in said premises, - And that in the Meantime, and until the order of this Court, the said Caleb D. Fitz, and Catharine Getzler might be enjoined and restrained from making any conveyance of said Real Estate, or Mortgaging, Leasing, or in any other manner, incumbering the same, and that the said Injunction might be made perpetual, and for other and further relief as Equity might require and for process -

And your Oratrix further sheweth, unto your honor, that the defendants named in the said stated Bill of Complaint, did not, nor did any or either of them appear to the said Bill of Complaint, and that afterwards at the November Term, this Court, one thousand eight hundred and fifty four, the said Complainants therein and on motion of their Solicitors it was ordered by this Court, that the said Defendants Plead, Answer, or Demur to the said Bill instanter, and no answer being interposed, it was ordered that said Bill of Complaint, and the matters and things therein set forth, be taken as confessed against them, for want of such answer, and that it be referred to the Master in

Chancery, in aid for Cook County, to take proof in the material facts and allegations set forth in said Complainants said stated Bill of Complaint, and that he report the same to this Court together with his opinion thereon, with all convenient speed.

That it does not appear from the Records in the said cause, that the said Master in Chancery did take any proofs or make any report in the premises—

That afterwards on the sixth day of January, one thousand, eight hundred and fifty five, a Decree was made, and entered in the said stated cause as ⁱⁿ substance as follows—

And now on the sixth day of January, one thousand eight hundred and fifty-five, this cause came on to be heard upon the Bill of Complaint, taken as confessed against all of said Defendants, and upon the proofs and exhibits filed in this cause, and it appearing to the Court, that due personal service of the Summons issued in this cause, has been had on the said Andrew Getzler, Catharine Getzler, and Basil D. Fitz and also that publication of a notice of the pendency of this suit, had been duly given as to the other defendants in this cause, who are all

now residents, by publishing the same in the Chicago Journal, a Newspaper published in said County, for four weeks successively, the first publication thereof being more than sixty days prior to the first day of the term of this Court, at which said Defendants were thereby notified to appear—

And the Court being satisfied as well from the Bill of Complaint as from the proofs before it in the cause, that on the Nineteenth of April, one thousand eight hundred and fifty two, the said Andrew Getzler without any good or valuable considerations, and with the intent and for the purpose of hindering, delaying and defrauding his creditors, among these were the Complainants in this cause, made, executed and delivered unto the said Caleb D. Fitz, the deed set forth in the Bill of Complaint, (see deed above) in trust for his wife, of Lot seven (7) Block forty two (42) C. I. said Andrew Getzler, being then seized of the east twenty feet of the west forty feet of said Lot—

And it further appearing from to the Court, that at the time of making said deed, said Andrew Getzler was largely indebted, and among others to Complainants, and to the firm of J. Gunther and Sons,

G. C. Treadwell, and Company, Mitchell and Allen, which said indebtedness still remains due and unpaid; at that time said Getzler was insolvent, and that the deed was made with the intent to defraud the parties to this suit, and future creditors—

And that said Real Estate has been Attached, Ordered that said Deed is fraudulent and void as against said parties to this suit, who have attached, and that said Real Estate be liable to be levied upon and seized upon, under said Attachment suits, and sold to satisfy the amounts due to the attaching Creditors—

Ordered that said Real Estate above particularly bounded and described, or so much thereof, as may be necessary, be sold by the Master in Chancery in the manner required for sale on Executions, that he make, duplicate, certificate one to be filed in the Recorder's office, and the other to be delivered to the purchaser— And in case no redemption be made, within fifteen months according to Statute, that he make a Deed to the purchaser, his heirs and assigns, proceeds of the sale to be divided amongst the Creditors—

Ordered that said Fitz and

Catherine Getzler and Andrew Getzler be forever enjoined from incumbering said Real Estate, so as to interfere with the rights of attaching Creditors, and that they join in making a Deed to the purchaser, with Covenants against their own acts, in case no redemption be made, and that in case of their neglect or refusal, the Master make such Deed, such Deeds when made, to be a perpetual against against said three last named defendants—

The purchaser under the Master's sale, to have immediate possession, after the expiration of fifteen months, if no redemption be made—

And your Oratrix further sheweth unto your Honor, that in pursuance of the said Decree, the said Master in Chancery, did sell the said premises by Public Vendue, to one William T. Burgess, but that your Oratrix has been informed and believes that the said William T. Burgess was then and is now, the Attorney for certain of the said attaching creditors, and that the said William T. Burgess did not buy the said premises for himself in good faith, but that he was merely the ostensible purchaser to bid in the property for the said attaching creditors, and that al-

though the said William J. Burgeess has pretended to complete his said purchase, yet he has not actually and in good faith, paid over his purchase money upon said sale, but that he now holds the said property as the attorney or Agent of and in trust for the said several Attaching Creditors aforesaid, as by the said stated Bill of Complaint, and Order and Decree, and other proceedings now remaining as of Record in this Honorable Court, reference being thereunto had will appear—

And your Oratrix further sheweth unto your honor, by way of supplement by leave of this Honorable Court first duly had and obtained for that purpose, That your Oratrix was at the time of the filing of the said Complainant's said stated Bill of Complaint, the wife of the said Andrew Getzler, and that the said Andrew Getzler was served with process in the said suit, at the said County of Cook, and that during all the time of the pendency of that suit, at the time of the said stated rule to plead, answer or demur, and also at the time of the taking the said stated Bill of Complaint as confessed, and at the time of the said Decree, your Oratrix was and remained and now is the said wife of the said Andrew

Getzler, and is a ferme Court, and that there has not been any order in the said stated cause, requiring or permitting your oratrix to answer therein separate and apart from her said Husband.

That before the time of the commencement of the said stated suit, that is to say on the first day of October, one thousand eight hundred and fifty three, Alfred E. Tilton, Matthew S. Maloney, and David S. Amard, filed their Bill of Complaint in the Circuit Court of the United States, for the Northern District of Illinois, on the Chancery side thereof against Caleb D. Fitz and your Oratrix setting forth among other things the said Andrew Getzler was indebted to the Complainants therein prior to first of April one thousand Eight hundred and fifty two, and that they had recovered a judgment in attachment upon said described property, and that the same had been sold to them by the Marshall for two thousand, three hundred and four Dollars, ^{fourty} ~~fifty~~ four and one half cents, and setting forth the said stated Deed to said Caleb D. Fitz, and praying that the said Deed might be set aside and declared void, as against the said Complainants therein.

That the said last stated Bill of Complaint was afterwards taken as confessed and such proceedings by default were thereupon had that by a Decree of the said Court made and entered on the twentieth day of November, one thousand, eight hundred and fifty four, the said Deed was declared fraudulent and void, as against the complainants therein, and was ~~declared~~^{decree} to be set aside, and held inoperative, and void as against the said complainants and the said Fitz was thereby ordered to convey said lot to the complainants within thirty days after service of a copy of the said decree, ^{as} by the said stated Bill of Complaint, Decree and other proceedings now remaining as of Record in the said Circuit Court of the United States, for the Northern District of Illinois, will fully, and at large, appear—

That before the time of any part of the indebtedness in the said several Bills of Complaint mentioned, that is to say, upon the tenth day of March, one thousand eight hundred forty six, by a certain Indenture of Mortgage of that date made between the said Andrew Gettler and youratrix his wife, of the first part, and the city of Chicago, for the use of inhabitants

of town thirty nine north of Range four-
teen East, for use of Common schools—
The said piece or parcel of Land and heredi-
taments hereinbefore particularly described,
were conveyed unto the said party hereto of
the second part in fee simple, subject to a
promise or condition therein contained, for
redemption by the said Andrew Getzler of
the said premises, on payment of the sum
of six hundred dollars, with interest at
the time and in the manner in the
now stating Indenture expressed as in
and by the said now stating Indenture,
which your oratrix prays may be produced
before this Honorable Court, and referred
to, will fully, and at large appear, That
the time ^{limited} ~~stated~~ in the said last stated
Mortgage, for the redemption of the said
premises, expired long before the commence-
ment of any of the said stated Attach-
ment suits, but that no redemption of
the said premises has been made, and
that therefore the Estate and interest
of the said city of Chicago, became and
now remains absolute therein at Law,
and that the only Estate and interest of
the said Andrew Getzler therein at the
times of the said Deed to the said Caleb D.

Fitz, was an equity of Redemption, and that the said Andrew Getzler had not at the time of the commencement of the said several Attachment suits, or any or either of them, any legal estate whatsoever, in the said premises subject to attachment—

That before and at the time of her intermarriage with the said Andrew Getzler, your Oratrix was possessed of the sum of fifteen hundred Dollars, and upwards, which was appropriated by the said Andrew Getzler, and that the actual consideration for the said stated Deed to the said Caleb D. Fitz was the natural Love and affection of her said husband towards her, and the said Deed was intended to operate and enure as a post-nuptial settlement, and to convey a separate estate to your Oratrix, and not for the purpose of hindering, delaying or defrauding the Creditors of the said Andrew Getzler or any of them. And your Oratrix further sheweth unto your honor, that the said Andrew Getzler is now absent from the State of Illinois, with the intention of returning to reside at Chicago aforesaid, as your Oratrix is informed by him, and believes and that the said premises here-

inbefore described, have been during his absence, from the state, and now are, and constitute the sole residence and homestead of your oratrix, and the family of children of the said Andrew Getyler, and your oratrix, and that on the said Master's sale, no allowance or provision was made for the homestead rights of the said ~~children~~ Andrew Getyler, or your Oratrix, or their said family of children—

That she has been informed and believes that all the indebtedness of the said Andrew Getyler and upon which the said several judgments and attachments were recovered in this Court, except the said claims of the said Savoni and Archer accrued subsequently to the date and execution and recording of the said Deed to Caleb D. Fitch, and that at the time of the execution and Recording the said Deed, there were no liens upon the said described property, save and except the said stated Mortgage—

And your Oratrix further sheweth unto your honor, that she is advised by her Counsel, that the aforesaid Decree of this Honorable Court, bearing date the sixth day of January, one thousand, eight hundred and fifty five, is erroneous upon the following grounds—

First—That it appears by the said Bill, of Complaint, orders and Decree, that your natix was during all ~~days~~^{the} time, a feme covert sued jointly with her said husband, and also that no order was taken or power given her to answer separately, and she insists that her right ought not to be prejudiced by her default to do that which she was not authorized to do by Law—

Secondly—That at the time of the commencement of the said stated suit, the whole subject matter thereof was depending in the circuit court of the United States, for the Northern District of Illinois, on the Chancery side thereof, and the Decree of the two Courts are conflicting—

—That the said Andrew Gettler, Caleb D. Fitz, and your natix had no legal estate in the said described property, but only an equity of Redemption, which was not subject to attachment by the Laws of this State—

Fourth—That the Deed to said Fitz was made upon a good, valid, and sufficient consideration in Law, and ought not therefore to be set aside—

Fifth—That if the said last named Deed were liable to be set aside, yet it could be so vacated only in favour of the person or persons, his, her, or their heirs, successors, Executors, administrators or assigns, and every of them whose debts such

demands or interests were hindered thereby, and could not be affected by indebtedness accrued subsequently to the executing and recording of the said Deed—

Sixth— That the said Premises are the homestead of said Andrew Gelfer, your Plaintiff, and their family, and yet that no allowance thereof was made to them—

Seventh— That the order of sale by the Master in Chancery, and the sale in pursuance of that order were not authorized by the statement of facts or proofs appearing on the records, and thus for three reasons—

First— That the statute law prescribes the only mode of making a sale of property attached for the benefit of the attaching judgment creditors, namely by the sheriff of the County under a special Execution—

Second— That the actions being in Rem, the attaching creditors have no right to a sale of the property, until they had at least obtained a judgment against it, but that the sale is ordered not only of so much as might be necessary to pay the judgments recovered, but those that might be recovered thereafter—

Third— That it does not appear by the said Bill, or the proofs or otherwise, in the Record of the said cause, that the said Master's sale

was prayed for, nor that it was the appropriate or expedient relief in the case and that the Decree was taken before the filing of the Master's Report—

That the said Decree is otherwise erroneous, and ought to be reversed—

And your oratrix further sheweth unto your Honor, that she has frequently requested the said Charles S. Saroni and Isaac H. Archer to vacate and set aside the said Decree, and to desist from prosecuting the same, and she hoped they would have accordingly desisted therefrom— But now so it is, may it please your Honor, the said said Charles S. Saroni and Isaac H. Archer colluding and confederating with one William J. Burgess, refuse to comply with such requests, and are endeavouring to disturb your oratrix, in the quiet possession of the said premises, and are attempting to carry out the provisions of the said Decree, and have pled in this Honorable Court, a motion for a writ of assistance to place the said William J. Burgess in possession of the said premises, and your oratrix fears that they will, that they will oust her from her aforesaid possession, and procure and execute the said writ of assistance, unless they are restrained by the order and Injunction of this Honorable Court.— So

the end therefore that the said Charles S. Saroni, Isaac H. Archer, Andrew Getzler, Galt D. Fitz, Lewis M. Allen, Henry S. Allen, Mitchell A. Mitchell, Allen Mitchell, Christian G. Gunther, Charles S. Gunther, John C. Gunther, Pierre Chonteau junior, Pierre Chonteau, John H. Sanford, George C. Treadwell, James Chase, and Treadwell, William J. Burgess, Alfred E. Tilton, Matthew S. Maloney, and David St Amant may without oath, which is hereby expressly waived, by virtue of the Statute in that case made and provided full true direct and perfect answer make to all and singular, the several matters and things herein before contained, and that as fully and particularly as if the same were here repeated, and they were severally interrogated thereto, and that the said cause may be reheard upon all and singular, the matters aforesaid, and the said Decree in this Honorable Court, heretofore made, may be reviewed, and be reversed - And the said sale and all other matters and things done in pursuance of the said Decree, may be set aside - And that in the meantime, and until the said cause shall receive the further judgment of this Court, the said Charles S. Saroni, and Isaac H. Archer, and all persons claiming

under or through them, may be restrained by the Injunction of this Honorable Court from prosecuting or attempting to prosecute the said Decree, and also from procuring or attempting to procure or execute the said writ of assistance and from disturbing or attempting to disturb your oratrix in the quiet possession of the said premises, and that upon the further hearing of this cause the said Injunction may be made perpetual, and that your oratrix may have such further or other relief in the premises as to your Honor shall seem meet, and the nature of the circumstance may require.

May it please your Honor, to grant unto your oratrix not only the writ of Injunction to be issued out of and under the seal of this Honorable Court, to be directed to the said Charles S. Savoni and Isaac H. Archer and all persons claiming under or through them, restraining them and every of them, from prosecuting or attempting to prosecute the said Decree, and also from procuring or attempting to procure or execute the said writ of assistance, and also from disturbing or attempting to disturb your oratrix in the premises, but also the writ of summons to be directed to the said Charles S. Savoni, Isaac H. Archer, Andrew G. Etzler, Caleb D. Pitz,

Lewis M. Allen, Henry S. Allen, Mitchell A. Mitchell, Allen Mitchell, Christian G. Gunther, Charles L. Gunther, John G. Gunther, Pierre Chontear junior, Pierre Chontear, John H. Sanford, George C. Treadwell, James Chase and Thomas Treadwell, William T. Burgess, Alfred E. Tilton, Matthew S. Maloney, and David St. Amand, thereby commanding them, and every of them, on a certain day, and under a certain pain therein to be expressed, and limited personally to be appear and appear before your Honor in this Honorable Court, and then and there full true direct and perfect answer make to all and singular, the matters and things hereinbefore contained, and further to stand to, perform and abide by such further or other direction, order or decree, in the premises, as to your Honor may seem just—

And your Oratrix will ever &c.

Catherine Getzler, by
W. H. Davis, her next friend.

Indorsed
State of Illinois?

Cook County }^{ss} Catherine Getzler, the above
named Complainant, maketh oath, and
saith that she has heard read the foregoing

Bill of Complaint, and she knows the contents thereof, and that the same are true in substance and in fact, except as to such matters as are therein stated ^{to be} on information and belief, and as to such matters, she believes them to be true -

Subscribed and sworn } Catherine Getzler
this Ninth day of Jan-
uary A.D. 1837. Before me

C. B. Farwell

Clerk County Court.

And afterwards, to wit on the 15th day of April, in the year last aforesaid, the said Defendants Burgess and others, by Farnsworth and ^{Burgess} ~~Bogart~~, their Solicitors, filed their certain demurrer to the said Complainant's Bill, which demurrer is in the words and figures following, to wit -

In the Cook Circuit Court
Catherine Getzler, wife of
Andrew Getzler, who sues
by her next friend

In chancery

vs

Bill

William T. Burgess, Charles
S. Saroni, Isaac H. Archer
Caleb D. Fitz, Andrew Getzler
et al -

The Demurer of the said
William T. Burgess, Charles
S. Savoni, Isaac H. Archer, three
of the Defendants to the
Bill of complaint in this
cause—

These Defendants by protesta-
tion not confessing or acknowledging all
or any of the matters contained in said
bill to be true in such ^{suit} manner, and form
as the same are therein set forth and al-
leged, do demur thereto, and for cause of de-
murer show that the said complainant
hath not in and by her said bill made or
stated such a case as doth or ought to entitle
her to any such discovery or relief as is ~~is~~ thereby
sought and prayed for from or against these
defendants wherefore these defendants demand
the judgment of this Honorable Court, whether
he shall be compelled to make any further
or other answer to the said bill, or any of the
matters and things therein contained, and
pray hence to be dismissed with their rea-
sonable costs in this behalf most wrongfully
sustained—

Harnsworth & Burgess
for Defts—

The Complainant joins in the above
Demurrer

Malden
Comptroller

Whereupon on the day and year last
aforesaid, in the Circuit Court aforesaid, it
being of the April term of said Court - the
following among other proceedings in said
Court, was had and entered of record in this
Cause to wit -

In the Cook Circuit Court -

In Chancery -

Catherine Getzler, wife
of Andrew Getzler, who sues
by her next friend,
William H. Davis

as
William T. Burgess, Charles S.
Larson, Isaac H. Archer, Andrew
Getzler, Caleb D. Fitz, Lewis M.
Allen, Henry S. Allen, Mitchell A.
Mitchell, Christian G. Gunther,
John G. Gunther, Pierre Chonteau Jr.
Pierre Chonteau, John H. A. Sanford
George C. Treadwell, James Chase,
Thomas Treadwell, Alfred E. Tilton,
Matthew S. Maloney, & David H. Amund

Bill -

And now at this day comes the complainant, by her solicitor Martins and the Defendants Burgess, Saroni and Archer, by their Solicitors Harnsworth and Burgess, also come— And the Demurrer of said Defendants to the Bill of Complaint in this cause came on to be heard, and was argued by counsel, and the Court being fully advised in the premises, is of the opinion that the said complainant hath not in and by her said bill, made or stated such a case as doth or ought to entitle her to the discovery or relief prayed for by her therein— and therefore sustains the said demurrer— And the said Complainant elects to stand by her said Bill of Complaint— It is therefore ordered that the said Bill be dismissed, and that the complainant pay the costs of this suit to be taxed—

Which decision of the Court, the said complainant excepts, and tenders now here to the Court her bill of exceptions, in the premises, which is signed and sealed by the Court—

And the said complainant also prays an appeal to the Supreme Court, which is allowed, It appearing to the Court, that the said Burgess has applied

In a writ of assistance as stated in said Bill - by agreement of parties, upon the complainant's stipulating to perfect said appeal, and have the same heard at the now next ensuing term of the Supreme Court - the said writ of assistance is to be withheld until the decision of such appeal at said Term - as provided in said Bill of exceptions, and thereupon it was further ordered that the complainant file here in Court, her appeal bond in said appeal, in the penal sum of one thousand dollars, to be executed by -

And thereupon, on the day and year last aforesaid, the said Complainant, by E. Martin, her Solicitor, filed in this Cause, her certain Bill of Exceptions, and appeal Bond, which are in the words and figures following, to wit -

In the Cook Circuit Court
Catherine Getzler, who sues
by her next friend, William
H. Davis -

In Chancery

Charles S. Savoni, Isaac H. Archer,
Andrew Getzler, Caleb D. Fitz, Lewis
M. Allen, Henry S. Allen, Mitchell

Bill -

A. Mitchell, Christian G.
Guntner, John G. Guntner,
Pierre Chonteau Jr. Pierre
Chonteau, John D. A. Sanford,
George C. Treadwell, James Chase,
Thomas Treadwell, William T.
Burgess, Alfred E. Tilton Matthew
J. Maloney & David St. Amard.

State of Illinois
County of Cook.

Be it remembered that on
this 14th day of April A. D. 1857. came the said
Complainant, by her Counsel, and the said
Burgess, Savoni and Archer, by their Counsel
also came, and the Demurrer to the Bill in
this cause was argued by Counsel, and the Court
now here being fully advised therein, sustain
the same, and order the Bill to be dismissed
at the costs of Complainant, to which Decision
the said Complainants now here except,
and pray an appeal to the Supreme Court
of this State

And application by said Burgess, be-
ing pending for a Writ of assistance to place
him in possession of the premises in the Bill
described, and the Complainant stipulating

to bring to a hearing this Appeal so prayed
 by him in this cause, at the now next ensu-
 ing term of the said Supreme Court, and
 having executed the Bond, hereto attached,
 and marked Exhibit "A", said Appeal is
 thereupon allowed - And that these several
 matters may be and appear of Record in the
 cause, the court now here signs and seals
 this the Bill of Exceptions, of said Complain-
 ant according to the Statute in such case
 made and provided -

George Manierre (Sealed)
 Judge of 7th Judicial Court
 Illinois -

In the Cook Circuit Court
 Catherine Getzler, who sues
 by her next friend, William
 H Davis

In Chancery

vs
 Charles S. Lavin, Isaac H. Archer,
 Andrew Getzler, Caleb D. Fitz,
 Lewis M. Allen, Henry S. Allen,
 Mitchell A. Mitchell, Allen
 Mitchell, Christian G. Gunther,
 Charles L. Gunther, John C.
 Gunther, Pierre Chontreau Jr

Bill -

Pierre Chontear John H. A
Sanford, George C. Treadwell,
James Chase, Thomas Treadwell,
William T. Burgess, Alfred
E. Tilton, Matthew S. Maloney
and David St Amand—

Know all men by these, that
we William H Davis and Owen J. Rose

are held and firmly bound unto said Wil-
liam T. Burgess in the penal sum of One
thousand dollars—for the payment of which
well and truly to be made to him, his heirs
or assigns, we bind ourselves, our heirs, executors and
administrators, jointly, severally
and firmly by these presents—

Signed, sealed and dated this 14th day
of May, A.D. 1857—

The condition of the above obligation
is such, that whereas the said Circuit Court
upon Demurrer filed by the said Burgess, Sa-
roni and Archer, to said Bill of Complaint
in this cause, did sustain the same, and
order the said Bill to be dismissed, from
which decision, of the Court, the said Com-
plainant hath taken an appeal to the
Supreme Court, of this State, which hath been

allowed by the Court, and application being also made by said Burgess, for a writ of Assistance to place him in possession of the premises described in said Bill, as stated in said Bill, which hath been ordered by the said Circuit Court to be stayed until the decision of said Appeal by the Supreme Court, at this now next ensuing term, the said Complainant undertaking that the said Appeal shall be heard by said Court, the same as if the appeal had been taken in time for that purpose to that term—

Now therefore if the said Complainant shall prosecute his said appeal with effect to the now next ensuing term of the Supreme Court, and shall pay the Judgment Costs interest and damages in case the Judgment shall be affirmed, and shall also in case said Judgment be affirmed, pay the said Burgess the fair Rent of the premises, described in this Bill, from the time said Burgess became entitled to the Wasting Seed, therefore to the time of possession being surrendered to him, then the above Bond to be void, otherwise to remain in full force and virtue—

This Bond is made by consent of parties, and no exception shall be taken

to the form or contents thereof—

W. H. Davis

Seal

C. J. Rose

Seal

State of Illinois }
County of Cook } ss



I, William L. Church,
Clerk of the Circuit Court
in and for said County,
in the State aforesaid,
do hereby certify the above
foregoing to be a true, per-
fect, and complete copy
of all the papers filed and proceedings had
and entered of record, in a certain cause late-
ly pending in said Circuit Court, on the
Chancery side sitting, wherein Catherine Getzler
by William H. Davis, her next friend, was
Complainant, and Charles S. Savoni et al
were defendants so far as the same appears
from the files and records of said court—

Witness my hand and seal the
seal of said Court, at Chicago, this 21st day
of April A.D. 1837—

Wm L Church

Clerk Cir Ct of
Cook Co

In the Supreme Court of the State of Illinois
in the Third Grand division
of the April Term. AD 1857

Catherine Getzler the wife of Andrew
Getzler by William H. Davis her next
Friend -

vs.

Charles S. Saroni Isaac H. Archer
Andrew Getzler Caleb S. Fitz Lewis
M. Allen Henry S. Allen Mitchell A.
Mitchell Allen Mitchell Christian G.
Guntner Charles L. Guntner John G. Guntner
Pierre Choubran Junior Pierre Choubran
John F. A. Sanford George O. Treadwell
James Chase Thomas Treadwell William
P. Burgess Alfred O. Filson Matthew S.
Maloney & David Saut Amant -

And now comes the Complainant by Edward
Martin her Solicitor and says that in the record
of the proceedings in the above entitled Cause
and in the rendition of the judgment therein
manifest error hath intervened to her prejudice
in this towit;

1st That it appears by the record aforesaid
that the Circuit Court of Cook County erred
in sustaining the defendants demurrer to the
said Complainants said Bill of Complaint

2 That it appears by the record aforesaid
that the said Circuit Court of Cook County
erred in rendering Judgment for the said
defendants in error when by the Law of the
Land said Judgment ought to have been
for the Plaintiffs in error -

And this the Complainant is ready to verify
by the record aforesaid wherefore for the reasons
aforesaid and others in the said record
appearing she prays process &c and that for
the errors aforesaid the said Judgment of
the said Circuit Court of Cook County may be
reversed set aside annulled and for nothing
esteemed and that he may be restored to all
things which he may have lost by occasion
hereof &c.

Amuel Martin for sets in
error -

And the said Appellants by
Farnsworth & Burges their Attorney,
come & say that in the Record &
proceedings aforesaid and in
the rendition of the decree aforesaid
there is no error wherefore
they pray Judgment &c
Farnsworth & Burges
for Appellants

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In the Supreme Court
April Term AD 1857

Gelsler

,

Savoni vs

Assignment of Errors

Filed April 24 1857
L. Leland
CLK.

Martin
for petitioner

1857-2

1814.
Catharine Getzler

vs.

Charles D. Saronian

Complete Record

Filed April 23, 1817
S. Likand
Clerk

Recd of 8.²⁵ Paid by Comptroller

Supreme Court
Savoni et al

ad
Gutzler

Brief for Dfts in Error

1st That an order was not taken for
Mrs Gutzler to answer Separately -

As to this it is a thing never heard
of before in this State, that to take a default
of a feme for want of an answer she being
duly served with process it was necessary
that an order should first be entered that
she be allowed to answer separately - If
the practice is wrong. it is so universal
that for the court to establish the
rule claimed by the counsel would
unsettle the title to a great deal of
property where such a proceeding
has not been taken - But such is
not the law -

The General rule is that she cannot
answer only jointly with her husband -
This rule is varied from sometimes for
her benefit sometimes for the Dfts - but
always on the application of one or other
party ^{then only} to further the ends of justice when
it is shown to the court that without a
departure from the general rule

injustice will be done to one or the
other party - This principle is clearly
to be deduced from all the cases -

1 Danb's Chy Prac. 190-200 = it 548

Service of process upon husband suffi-
cient for husband & wife 1 Sam. 501-⁸⁷¹

This rule is now varied so far as that
when the separator state of wife is sought
the charge it must serve on her also

But our statute can admit of but
one construction as to all persons - adult
& not insane - If being duly summoned
or notified and do not appear & answer their
default may be taken without going
through with the processes usual to the
old chancery practice - The statute dispen-
ses with them & enables the court to give
a decree although defendant might be
willing to stand out all the ordinary &
processes of attachment & sequestration -

2 Equity of redemption is a legal estate & until foreclosure the mortgagor is considered as holding the legal estate so far that it may be taken & sold under Execution

3 This whole question of fraud was before the court on the first bill - that ^{bill} was taken as confessed. If the defendants intended to contest that question there was their opportunity

4 The Statute makes no provision for a party who absconds - and leaves his family, she charges in her bill that he had left the State, but designed to return & reside there again -

Parties who are guilty of fraud have no right when convicted of it to turn round & claim rights secured to honest debtors -

Again this provision is for G. W. H. himself & not for his wife - she cannot file a bill to enforce rights of her husband

5 It was competent for the court having obtained jurisdiction of the matter for one purpose to do complete justice between the parties - The surplus if any arising from the sale should be under the control of a court of equity -

Again it is a matter of indifference
who made the sale her rights should equally
be protected either made by the Sheriff or by
the master the result could only be the same

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Getzler v Saroni et al

Shirley

In the Supreme Court of the State of Illinois at Ottawa
April Term 1857-

Getzler

vs.

Saroni & Co.

Brief for the Plaintiffs in Error

The Demurrer ought not to have been sustained.
II. Mrs. Getzler was not legally in default in the
original suit brought by Saroni & Co. - It appears
by her bill & is therefore confuted by the Demurrer
that at and during the time of the Saroni
suit she was a person sued jointly with
her husband (see abstract p. 5.) having a separate
estate in the property in controversy (Id. p. 6)
that she did not appear (Id. p. 3) and that no
order was taken requiring or permitting her to
put in a separate answer (Id. p. 5.)

During Coverture the legal existence of the
wife as a separate person, is suspended, she
cannot appear in Court unless by a next friend
or in some cases by herself alone, but under the
immediate order and sanction of the Court of
Chancery -

Without such an order her separate answer would
be void because of her incapacity.

Perine v Swaine 1 John Ch. Ca 24

Her incapacity is provided not to her prejudice
but for her protection.

Shanks v Derpant 3 Peters 242 -

The Supreme Court of this State has repeatedly held

See V II Porter p. 62
English et al v Roche et al

in the cases of Infants, that they are to be protected from any consequences resulting from their Incapacity, as a Judgment by Default.

Before the Complainants in the Original Suit could have defaulted Mrs. Getzler in a matter in which she had or claimed an interest separate from her Husband, they should have procured an order of the Court of Chancery requiring her to file her separate answer notwithstanding her Coverture.

Story's Equity Pleadings § 71 § 873
Ferguson v. Smith 2 John Ch. Ca 139
10 Ves 442

A Default is a punishment to the Defendant for ^{her} contempt in neglecting to appear and answer the Process of the Court and is so far analogous to and a substitute for the old English Rule of attachment for want of appearance or answer. But a motion for ^{an} attachment against a Person cannot be made until the Complainant has first procured his Rule requiring her to answer separately.
1 Smith Ch. Pr. 193.

III The Defendant Getzler had only an Equity of Redemption, the Legal Estate was vested in the City of Chicago. An Equitable interest in Land is not subject to attachment by the Statute Laws of this State.
Looney v. Wright 15 Ill. 95.

IV The Decree in the Original Suit vacates the Debt to Fitz not only in favor of Saroni & Archer who were Creditors at the time of its execution but also against all the attaching

She did not claim any separate interest but the Chancellor might have permitted her to do so today if application had been made.

* If so, what has Mrs. Getzler to do with it?

creditors: But the Bill of Complaint in that suit does not pretend that those attaching plaintiffs were creditors at the time of the deed nor does it show how they could possibly be injured by it. And although it is attempted to get rid of this difficulty by stating in the decree (see abstract p 4) that some of them were creditors at the time of the deed if it is submitted 1st That a recital in a decree is not of any force unless it be founded on a corresponding argument in the Bill and 2nd This recital omits to name the firm of Chauteau & Co and inasmuch as the deed was executed by the decree in favour of this latter firm as well as the others it is so far erroneous and the Bill of Review should have been sustained

IV It is submitted that the Equities of the Homestead Law ought to have been extended to the complainant and his family

* V The Action being in Rem and a Statutory providing the remedy given by statute must be strictly observed in every particular and therefore the sale of the attached property by the Master in Chancery instead of the attachment was Error

Eduard Martin

Sol. for Pl in Error

* Chancery jurisdiction having once been taken, the power of the Court was full and complete to the extent of carrying into effect all the Equities arising in the case.

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State of Illinois

In the Supreme Court at Ottawa

Geltzle

v

Saracini & Sons

Brief for Sells in Error

Filed May 7. 1857.

L. Deland

Clerk

C. Martin Solr.

Husband might authorize an
attorney to enter appearance for
his wife; and, on application,
the Chancellor would protect
her so far as the rules in Equity
could go, by force of ~~this~~
plenary discretionary power.

1854

Catherine Geitzler

by

Charles S. Paroni

154

12499

1857

14

15

11

11/11/11

11/11/11

