No. 14463

Supreme Court of Illinois

Jackson

vs.

Warren

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division

No. 161

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1863.

JOSEPH JACKSON
vs.
MILTON WARREN.
} *Appeal from Stark.*

POINTS AND AUTHORITIES ON BEHALF OF APPELLANT.

I. This is an action of forcible detainer, brought by the appellee against appellant before a Justice of the Peace, and by appeal taken to the Circuit Court.

The plaintiff below claims the right to the possession as a purchaser under a decree, on foreclosure of a mortgage in his favor against one Heil Taylor, a master's sale and deed.

The proceeding was commenced under the Act of the Legislature of Illinois, approved February 20th, 1861.

Session laws 1861, page 176.

That part of the Act which has any bearing on this case is as follows:

"That chapter 43 of the Revised Statutes of 1845 shall be "extended to all cases between vendor and vendee, where the "latter has obtained the possession of land under a contract by "parol or in writing, and before obtaining a deed of conveyance "of the same, fails or refuses to comply with such contract to

"purchase, and to all cases where lands have been sold under a "judgment or decree of Court in this State, *and the party to* "*such judgment or decree, after the expiration of the time of re-* "*demption, refuses, after demand in writing by the purchaser* "*under the same, to surrender possession thereof.*"

This Act only authorizes the suit to be brought against "*the party to such judgment or decree.*" It does not authorize it to be brought against a person not a party to the judgment or decree. The appellant was not a party to the decree.

"In construing statutes we must be governed by the intention of the Legislature; though not by some hidden intention, which the language of the law will not justify, but where the language is plain and admits of no construction, we must take as we find it."

Foley *vs.* The People, Breese 31.
Hazell *vs.* Shelby, 11 Ill. 9.

"It is a rule in the construction of statutes that the expression of one thing is the exclusion of another, and it may well be insisted that when the Legislature has enumerated a variety of cases in which creditors shall be allowed to receive interest, that it was not their intention to permit them to demand it in cases not enumerated."

Sarnis *vs.* Clark *et al.*, 13 Ill. 546.

We contend then that this statute only authorizes suit to be brought against the person who was a party to the judgment or decree, and not against a stranger.

The proceedings under the statute of forcible entry and detainer being summary and contrary to the course of the common law, must strictly conform to the statute. The complaint is the foundation of the action, and must show sufficient on its face to give the justice jurisdiction, or the whole proceedings will be void.

Wells *vs.* Hogan, Breese 269.
Ballance *vs.* Curtenius, 3 Gil. 449.

It was as easy for the Legislature to provide that this suit should be brought against "any and every person *claiming under* the purchaser at such sale," as to provide that it should be against the purchaser, if they wished to do so. The statute is in derogation of the common law, and should not be extended by implication. The Legislature never intended this action to be brought against a person claiming *under the purchaser.*

I. The statute of 1861 provides for only *two* additional cases in which this action may be brought:

1. Where vendee obtains possession under a parol contract and refuses to go on with the purchase or give up possession, and no deed has been made.

2. Where lands have been sold under a judgment or decree and the party to such decree, after expiration of the time of redemption, refuses to deliver possession to the *purchaser.*

The demand for possession must be made by the purchaser; not by an assignee of the purchaser. It must be made after the time of redemption *of a party to the judgment.* In this case the defendant's below were not parties to the judgment. It is obvious from the statute that the purchaser must have a valid *deed* before he can demand possession.

II. The purchaser must have a valid deed before he can demand possession. Why? Because the Court may set aside the sale. Because the land may be redeemed, and yet the sheriff or officer might not recognize the redemption, and deed the land wrongfully. The officer who sold the land may have refused to receive the redemption money and then deeded to purchaser.

It follows then that before the plaintiff could maintain this action, he must have a valid conveyance of the land. Had he any such conveyance in this case? We answer he had not. The sale never was reported to the Court, and never was approved by the Court. Until it was reported *and approved* he had no title.

2 Daniel Chy. 1454, 1455.
4 Scammon, 156.
Tooley *vs.* Kane, 1 Smede and Marshall Chy. 518.
Childress *vs.* Hart, 2 Swan (Tennessee) 487.

III. The affidavits are so contradictory as to be absurd and render them void for uncertainty.

1. The first affidavit charges "that the said Heil Taylor (de-"fendant in the foreclosure) refused and neglected to deliver "possession of said premises to said Milton Warren, but wilfully "and unlawfully sold or pretended to sell said premises to one "James Jackson, and suffered and permitted said James Jackson "to take possession of said premises under said pretended sale;" all of which he had a perfect right to do. Until he was ousted he had a right to sell to whom he pleased, *wilfully* (i. e.) *of his own will.— Webster.*

The affidavit then states that the time of redemption has expired, that the premises are occupied by one Joseph Jackson, as the tenant of James Jackson, who purchased of Heil Taylor. This affidavit goes upon the ground that Joseph Jackson purchased of Taylor, and refused to deliver possession.

The amended affidavit charges that Heil Taylor, by collusion with one Joseph Jackson and one James Jackson, and for the purpose of preventing the said Milton Warren from obtaining possession of said premisss, fradulently suffered and permitted said Joseph Jackson to obtain possession of said premises without the consent of said Warren.

Now, the original affidavit charged a lawful sale by Taylor to James Jackson, and that Joseph Jackson was the tenant of James.

As amended, the affidavit charges a fraud and collusion upon defendant. The two charges are inconsistant and impossible and absurd.

IV. There was no pretence of any *fraud* in the case; all that was proved was a simple sale by Taylor to James Jackson. Nor was there any pretence that defendant went into possession for the purpose of *defrauding* plaintiffs title.

Hence all the instructions given for plaintiff were erroneous,

because they are grounded upon what was not proved, viz.: upon fraud and a desire to defeat plaintiff's title.

V. The affidavit as amended was totally insufficient, because it did not allege "*that the sale of the land to plaintiff below had "been reported to the Court and the* sale and deed approved." The report and approval were indispensable, and the sale wholly invalid until they were done.

WEAD & POWELL,
For Plaintiffs in Error.

161-132.

Jackson
as
Warren

Pltffs. Briefs.

Filed April 29, 1863

S Leland
Clk

Joseph Jackson
vs
Milton Warner } Appeal from Stark

Argument by E A Powell
on behalf of appellant

This is an action of
forcible or wrongful detainer brought by the
appellee against the appellant before a justice
of the Peace and by appeal taken to the Circuit
Court.

The plaintiff below claims the right to the
possession as a purchaser under a decree of
foreclosure of a mortgage in his favor against
one Neil Taylor, a Masters sale and deed.

This proceeding was commen-
-enced under the act of the legislature of Illi-
-nois approved Feby 21 1861 Session Laws 1861
page 176 ~~The~~

That part of the act which has any
bearing upon this case is as follows.

" That chapter 83 of the Revised Statutes
of 1845 shall be extended to all cases between
vendor and vendee, where the latter has obtained
the possession of land under a contract by parol
or in writing, and before obtaining a deed
of conveyance of the same fails or refuses to
comply with such contract to purchase, and
to all cases where lands have been sold under
a judgment or decree of court in this State and
the party to such judgment or decree after
the expiration of the time of redemption

refused after demand in writing by the purchaser under the same to surrender possession thereof"

In the first place I contend that under this act the proceeding can only be had against the party to "such judgment or decree" and that it will not lie against a stranger who may be in possession either before or after the decree and sale

This is a proceeding under a statute and seem many ~~proceeding~~ in its character and unless the words of the statute authorizes it. Cannot be maintained. In the case of Foley vs The People Reese 31. vice Supreme Court Recy "In construing statutes we must be governed "by the intention of the legislature though not "by some hidden intention, which the language of the law will not justify; but where the language "is plain, and admits of no construction we "must take it as we find it"

This is the case of the statute in question The words are plain and clear and admits of no construction The language is "and the "party to "such judgment or decree" This language excludes the idea that it was the intention of the legislature that the action should lie against a person who was not a party to the judgment or decree but who might be in the possession of the premises sold under such judgment or decree at the time the redemption expired

In the case of Davis vs Clark et al

13 Ill 546 our Supreme Court say "It is a rule in the construction of Statutes that the expression of one thing is the exclusion of another, and it may well be insisted that where the legislature has enumerated a variety of cases in which creditors shall be allowed to receive interest, that it was not their intention to permit them to demand it in cases not enumerated"

Before the enactment of this Statute the action of forcible entry and detainer could be maintained in this State in three cases. First Where there is a wrongful or illegal entry as contradistinguished from a forcible or violent one Second where there is a forcible one by means of actual violence Third And a forcible detainer where there is a wrongful holding over of a tenant Whitaker vs Gaulier 3 Gilm 448.

Now before the act under which this proceeding is instituted an action of forcible entry and detainer would not lie by a vendor against his vendee who had taken possession under his contract of purchase and who had failed to comply with the terms of his contract. but he was driven to his Ejectment. Nor would it lie by a purchaser at a Sheriffs. or Masters Sale. in such cases the only remedy was by Ejectment. (except in Chancery the decree might provide for the surrender of possession)

The object of this law is then to extend the action to the cases enumerated

and certainly it must come within the terms of the Statute or the action will not lie And if the doctrine laid down by our Supreme Court in the case viz 13 Sel 546 above referred to be correct. "that the expiration of one thing is the expiration of another" then when the legislature in this Statute says that "And to all cases where lands have been sold under a judgment or decree of court in this State and the party to such judgment or decree after the expiration of the time of redemption refuses &c. that it was intended to limit it to the case provided by the act. That is to cases where the vendee or judgment or decretal debtor was in possession; and did not intend to extend it to third persons in no way connected with the judgment or decree It seems to me that this is a plain proposition. If so then not only the original complaint but the amended one is clearly bad and the Court should have dismissed the suit Bruce 264

The court below as well as the plaintiffs counsel seemed to think the original complaint insufficient. and asked leave to amend And does the amendment made obviate the difficulty clearly not. Let us see what that amendment is. At the ** See record 2nd page is added the following " After the expiration of the term of fifteen months from the time of said sale under said decree and after the execution

of said decree, and after the execution and delivery of a deed by said Commissioner and Master in Chancery to said Melton Warren, on or about the first day of November A.D. 1860 by collusion with one Joseph Jackson and one James Jackson, and for the purpose of preventing the said Milton Warren from obtaining possession of said premises, fraudulently suffered and permitted the said Joseph Jackson to obtain possession of said premises without the knowledge and consent of said Milton Warren, and said Joseph Jackson since then has collusively held possession of said premises"

Now the plain English of this amendment is that after the sale and execution and delivery of the deed Joseph Jackson and one James Jackson by collusion with themselves without the knowledge or consent of the complainant and for the purpose of preventing him from obtaining the possession of said premises fraudulently suffered and permitted the said Joseph Jackson to take possession of said premises. With whom is it alleged the defendant was in collusion. The complaint seems to charge that Joseph and James Jackson colluded together I suppose they did and in consequence thereof took the possession of the premises. If this be the real meaning of the complaint and I can give it no other construction, then it shows clearly that it is not a case under the Statute of 1861 But if forcible entry and detainer

would lie at all it would be under the law as it stood before the passage of said act. The complaint most certainly does not charge that Joseph and James Jackson were in collusion with Neil Taylor the mortgagor. Even if it did it would not make the complaint sufficient

The court then it seems to me should have decided that the complaint as amended was insufficient

The next point to which I call the attention of the court is as to the sufficiency of the evidence The plaintiff below read in evidence to the jury a deed made by the Master in Chancery to the plaintiff and it was admitted by the defendant that a decree of foreclosure had been duly made But the plaintiff gave no other evidence of compliance with the decree than the recitals in the deed The testimony is set out in full in the printed abstract and it will be seen by looking at the abstract that is all the evidence there is not one word which shows any thing like collusion with Neil Taylor the mortgagor Admitting for the sake of argument that the complaint was sufficient by virtue of the amendment how it became necessary for the plaintiff below by evidence to establish the facts alleged in his complaint This it strikes me he has wholly failed to do. From the evidence it is fully

established that Neil Taylor the mortgagor left the mortgaged premises before the time the redemption expired By the law he had a right to the use and occupation of the premises for fifteen months after the sale A mortgagor is not at any period of time either before or after a decree of foreclosure or after sale a tenant of the mortgagee Neil Taylor had a perfect right to sell his equity of redemption in the premises either before sale or after and James Jackson had a perfect right to purchase and it would not be fraud or collusion to do so.

It also appears from the testimony of John Shaver that Layman Ayres was in possession of the land immediately after Neil Taylor left. There is no evidence to show that Ayres took possession under Taylor. He went into possession some two or three days before Taylor left. But there is no evidence that he went into possession under Taylor and even if there was such testimony it would make no difference as Taylor had a right to let any one into possession he pleased It is not like a case between landlord and tenant, in that case whoever goes into possession under a tenant stands in the place of the tenant and has no rights against the landlord that the tenant himself did not have But in the case of a mortgage the mortgagor is not the tenant of mortgagee

and the person entering into possession under a mortgagee cannot be treated as a tenant Hence the statute does not apply.

But it appears from the evidence that the appellant claimed to hold the land possession not only under Taylor but under a lease from Phelps He claimed the land under both. And it does appear in the testimony of Elijah Taylor that Lyman Hyres was a tenant of James Jackson

But there is one thing certain that there is a total failure in the evidence to show fraud and collusion without which the plaintiff below under the issue presented by the complaint could not recover.

The defendant below read in evidence to the jury a lease to James Jackson from Phelps. and it was proved that Joseph Jackson the appellant held possession as the tenant of James Jackson

The next point to which I call the attention of the court is to the instructions given by the court on behalf of the plaintiff below, all of which I contend were improper because the evidence did not warrant such instructions

The first instruction asserts "that if the defendant Joseph Jackson was in possession of the land through or under Neil Taylor either directly or through James Jackson as his tenant and continued in such possession after notice

is willing to deliver up possession then the jury will find for the plaintiff"

This instruction is entirely too broad

The second instruction is clearly wrong It asserts "that if James Jackson went into possession of the land under Taylor, and took afterwards a lease from Phelps for the land, and put the defendant into possession; and that these several acts were done for the purpose"

The evidence did not warrant this instruction In fact all the instructions given are of the same character. They are based upon the hypothesis, that the relation of landlord and tenant existed between the plaintiff and Neil Taylor

The court will pardon me for again alluding to the complaint The proceedings under the statute of forcible entry and detainer being summary and contrary to the course of the common law must strictly conform to the statute The complaint is the foundation of the action and must show sufficient on its face to give the justice jurisdiction or the whole proceedings will be void Wells vs Hogan Breese 264

The act of 1861 under which this proceeding is attempted to be had extends the former act to two additional cases The act is not to be extended by implication Then if according to the decision of this court in the case in Breese referred to this statute is contrary to the course of the common law then the

person invoking its aid must strictly conform to the statute, Thus in this case it should have been averred in the complaint that Joseph Jackson was a party to the decree of foreclosure This is not done nor even attempted to be The language of the statute confines it to the party to the judgment or decree, and leaves nothing to be inferred by implication, and cannot be extended to cases that do not come within the words of the statute

161

Joseph Jackson

vs

Milton Warren

No. 161

Argument of

E. N. Powell for

Appellant

Filed Apl. 30. 1863.

Leland

Clk.

Pleas and Proceedings had before the Circuit Court of Stark County in the sixteenth Judicial Circuit in the State of Illinois at a Regular Term of said Circuit Court begun and holden at the Court House in the Town of Toulon in said County on Monday the fourth day of November in the year of Our Lord one thousand eight hundred and sixty one, the same being the first Monday of said Month.

Present Hon Amos L Merriman Judge of said Judicial Circuit presiding
Alexander McCoy States Attorney for said Judicial Circuit
Elesha Greenfield Sheriff of said Stark County
Patrick M Blair Clerk of said Circuit Court

Be it Remembered that heretofore to wit, on the twenty seventh day of May A.D. 1861 an Appeal by the defendant to the Circuit Court of Stark County Illinois from the judgement of David M Cannel Esquire a justice of the Peace within and for said Stark County the Complaint of Melton Warren the plaintiff in the suit of Melton Warren vs Joseph Jackson before said justice together with the other papers in said suit was filed in the office of the Circuit Clerk of said Stark County which said Complaint is in the words and figures following, to wit

Original Complaint and Amendment

State of Illinois }
County of Stark } ss

The Complaint of Melton Warren of the Town of Buda in the County of Bureau and State of Illinois

who being first duly sworn upon his oath gives David
McCance Esq a justice of the Peace in and for the said
County of Stark to understand and be informed that at
the October Special Term A.D. 1858 of the Stark County Circuit
Court in a certain cause then and there in said Circuit
Court pending wherein Milton Warren was complainant
and Neal Taylor and Mary A Taylor were defendants,
in Chancery for the foreclosure of a Mortgage a Decree
was made and rendered by the said Court in favor of
the said Complainant and against the said Defendants
wherein the said Defendants were required to pay to the
said Complainant the sum of Four Hundred and thirty five
Dollars the amount found to be due to the said Complainant
in thirty days from the date of said Decree or in default
of such payment the premises therein mentioned and
described, to wit: The South Half of the South West quarter
of Section Number Four (4) in Township Number Thirteen (13)
North of the base line and in Range Number Seven (7) East
of the Fourth Principal Meridian, Situated in the County
of Stark and State of Illinois were required to be sold
to satisfy the said sum of Four Hundred and thirty five
Dollars interest and the costs of said cause by the
Master in Chancery in and for said Stark County.
that in default of the payment of the said sum of money
and in pursuance of the said Decree Martin Shallenberger
Esq then Master in Chancery in and for said County of Stark
and who was appointed a Special Commissioner for that
purpose did afterwards to wit: on the Thirty first day of
December A.D. 1858 Sell the said premises hereinbefore

described to this Affiant for the sum of Four Hundred and sixty six Dollars and Eighty one cents, that being the highest and best bid for the same. And that the said Neal Taylor and Mary Taylor having failed to redeem the said premises from such Sale to this Affiant the said Martin Ballenbger Esq Master in Chancery and Special Commissioner as aforesaid did afterwards to wit: on the fourth day of September A.D. 1860 Execute and deliver to this Affiant a Deed, conveying to him the said premises hereinbefore described in fee simple absolute, and that this Affiant is now lawfully entitled to the possession of the said premises under the law But this Affiant further gives to the said Justice of the Peace to understand and be informed that the said Neal Taylor refused and Neglected to deliver possession of said premises to said Milton Warren but wilfully and unlawfully * Sold or pretended to sell said premises to one James Jackson and suffered and permitted said James Jackson to take possession of said premises under said pretended Sale thereof That one Joseph Jackson now as the tenant of said James Jackson now occupies said premises and although the time of the redemption of said premises has long since expired yet the said Joseph Jackson refuses to deliver up the possession of said premises to said Milton Warren after demand in writing made by said Milton Warren upon the said Joseph Jackson to surrender the possession thereof to him - That on the 10th day of May A.D. 1861 at the County of Stark aforesaid the said Milton

* By way of amendment insert at the asterisk "Sold"

" Warren made a demand in writing for the surrender
" of the possession of said premises to said Milton Warren
" and said Joseph Jackson then and there refused
" to so deliver the possession thereof to said Warren
" and still refuses so to do said Affiant
" therefore prays that the said Joseph Jackson
" may be summoned to answer the said Complaint
" according to law" (Signed) "Milton Warren"
" Subscribed and Sworn to
" before me this 10th day
" of May A.D. 1861
(Signed) David McCance J.P. "

" State of Illinois }
" County of Stark } ss. This day personally appeared before the
" undersigned Clerk of the Circuit Court Milton Warren who being
" first duly sworn says that the matters and things contained
" in the foregoing amended petition are true and correct "
" Subscribed & Sworn to before me this" (Signed) "Milton Warren "
" 7th day of November A.D. 1861
" P M Blair Clk"

Original Complaint (Endorsed) "Filed in the Circuit Court May 9th 1861 P M Blair Clk"

Amended Complaint (Endorsed) " Filed as Amended this 7th day of November A.D. 1861 P M Blair Clk

(5)

And Afterwards, to wit, on the fifth day of November A.D. 1861, the same being one of the days of the Term as aforesaid of the Circuit Court of said Stark County and the Court being then judicially sitting the following proceedings were had in said Circuit Court in the case of Milton Warren plaintiff against Joseph Jackson Defendant and entered of Record, to wit:

Milton Warren
vs
Joseph Jackson
Appeal by Defendant

This day came the said defendant by E N Powell and J W Hewitt his Attorneys and move the Court now here to quash the writ herein and thereupon comes the plaintiff by Shallenberger and Henderson his Attorneys and enters his cross motion for leave to amend the complaint of the said Plaintiff herein And now the Court having heard the arguments of the said Attorneys upon said motion and cross motion the same are taken under advisement by the Court."

And afterwards, to wit on the Seventh day of November A.D. 1861 the same being one of the days of the Term of said Circuit Court as aforesaid further proceedings were had and entered of Record in said Cause to wit,

Milton Warren
vs
Joseph Jackson
Appeal by Defendant

This day came

the parties to this suit by their respective attorneys and this cause coming on to be heard on the motion of the said defendant to quash writ and cross motion of the said plaintiff for leave to amend the complaint herein and the Court being now fully advised in the premises it is considered by the Court that the said motion of the said defendant to quash writ be and the same is hereby overruled and that the said cross motion of the said plaintiff for leave to amend complaint be and the same is hereby allowed the said plaintiff to pay all costs that have accrued herein up to this time It is therefore considered by the Court that the said defendant have and recover of and from the said plaintiff the costs and charges by said Defendant in this behalf expended and that he have execution therefor - And now again on this day comes the said defendant by his Attorneys and enters his motion herein to quash the amended complaint of the said plaintiff filed by leave of Court herein and to dismiss this suit and the Court being now fully advised as to the said motion it is considered by the Court that the same be and said motion is hereby overruled - To which ruling of the Court in overruling said motion to quash the said amended complaint and to dismiss this suit the said defendant now here excepts and a bill of exceptions is allowed by the Court.

Continuance

And now it is considered by the Court that this cause be and stand continued to the next Term of this Court.

Proceedings at a Special Term of the Circuit Court of the County of Stark in the sixteenth Judicial Circuit of the State of Illinois began and held at the Court house in the Town of Toulon in the County of Stark and State of Illinois on the third Monday in the month of May in the year of our Lord one thousand Eight hundred and sixty two it being the nineteenth day of said Month

Present The Honorable Amos L Merriman Judge of said Judicial Circuit presiding. Alexander McCoy States Attorney for said Judicial Circuit Elisha Greenfield Sheriff of said Stark County and Patrick M Blair Clerk of said Circuit Court

And afterwards, to wit; on the Twenty second day of May A.D. 1862 the same being one of the days of said Special Term of said Circuit Court last aforesaid and the said Court being then judicially sitting further proceedings were had in said Cause and entered of record, to wit;

Milton Warren
vs
Joseph Jackson

Appeal by Defendant

Trial

This day came the said plaintiff by M Shallenberger and J G Anderson & G A Clifford his attorneys and the said defendant also appearing by J W Hewitt and E A Powell his attorneys and the issues being now joined herein it is ordered by the Court that a jury come to try

(81) this cause when come twelve good and lawful men to wit Frederick F. Smith, David Nicholson, John Snare, Joseph Woodward, James M Rogers, Hugh G Godfrey, Edward Tickle, A Wright Dewey, Thomas Dugan William A Sweet, Anderson S Perry and Lowell Smith who were duly empanneled and sworn according to law as a jury to try this cause and a true verdict to render according to the evidence. And now this day the jury empaneled in this cause having heard the evidence herein, the arguments of Counsel and the instructions of the Court retire to consider of their verdict"

And afterwards to wit; on the twenty third day of May A.D. 1862 the same being one of the days of the Term last aforesaid and the Court being there judicially sitting further proceedings were had in said cause and entered of Record, to wit

"Milton Warren
vs Appeal by Defendant
Joseph Jackson

And now on this day the jury empanneled and sworn in this cause after due deliberation return into Court and say "We the jury find the defendant Guilty in manner and form as alleged in the Complaint" Whereupon comes the said defendant by his attorneys and moves the Court now here for a new trial of this cause

Verdict

(9)

And Afterwards to wit on the 27th day of May A.D. 1862 the same being one of the days of the Term last aforesaid and the Court being then judicially sitting further proceedings were had in said cause and Entered of Record, to wit;

Milton Warren
vs
Joseph Jackson
Appeal by Defendant

Motion for new trial overruled

This day came the parties to this suit by their respective attorneys and this cause coming on for hearing upon the motion of the said defendant for a new trial of this cause And the Court being now fully advised in the premises doth order and adjudge that the said motion for a new trial of this cause be and the same is hereby overruled It is therefore considered by the Court that the said plaintiff have and recover of and from the said defendant the possession of the premises described in the Complaint of said plaintiff and that he have a writ of restitution therefor And also that said plaintiff have and recover of and from the said defendant the Costs and Charges by said plaintiff about this suit in this behalf expended and that execution issue therefor

Judgement

Bill of exceptions & Appeal allowed

Whereupon again comes the said defendant by his said attorneys and presents to the Court here his bill of exceptions herein and prays an Appeal to the Supreme Court of this State, which said Bill of exceptions is thereupon signed by the Court and said Appeal allowed upon condition that said defendant enter into and file

his bond in the penal sum of Two Hundred Dollars with James Jackson as his security which is accordingly done"

And Afterwards, to wit on the said 27th day of May A.D. 1862 the said defendant in said cause filed in said Circuit Court his Bill of exceptions And Appeal Bond in said cause which said Bill of Exceptions and Appeal Bond are in the words and figures following, to wit

Bill of exceptions

State of Illinois }
County of Stark } ss. Stark County Circuit Court
Special May Term A.D. 1862

Milton Warren }
vs } Forcible Detainer
Joseph Jackson } Appeal by Defendant

Be it remembered that this cause coming on for trial before a jury, the plaintiff to maintain the issues upon his part introduced and read in evidence to the jury the following certificate of purchase, to wit:

Plaintiffs Evidence

Certificate of Purchase

State of Illinois }
County of Stark } ss. Be it Remembered that in pursuance of a Decree of the Stark County Circuit Court made at the October Special Term thereof A.D. 1858 I did after having given the notice required by said Decree on the 31st day of December A.D. 1858 at the Door of the Court House in Toulon in said County, at the hour of two O'Clock P.M. of said day offer at public Sale to the

(11)

highest and best bidder the following described tract of land to wit the South half of the South West quarter of Section No Four in Township No Thirteen North of Range No Seven East of the fourth principal Meridian in said State Also two acres off the East End of the North half of said quarter And thereupon said premises were struck off to Milton Warren for the sum of Four Hundred and sixty six dollars and eighty one cents he being the highest and best bidder therefor, And that said Milton Warren will be entitled to a deed for said premises on the 31st day of March A.D. 1860 unless redeemed according to Law

Given under my hand and seal this 31st day of December A.D. 1858"

(Signed) "Martin Shallenberger" (L.S.)

"Master in Chy Stark Co Ills"

"And it being admitted and agreed to that said Milton Warren filed his Bill in Chancery and such other proceedings were had and regularly taken at the October Term A.D. 1858 of the Stark County Circuit Court State of Illinois in a suit wherein said Warren was complainant and Hial Taylor and Mary Taylor were defendants as to result in the foreclosure of and sale under a mortgage deed executed by said Hial Taylor and Mary Taylor his wife to said Milton Warren And the Plaintiff further to maintain the issues upon his part then read in evidence a deed from the Master in Chancery of said Stark County to Milton Warren made under the decree of the Court

(12)

in the last above named cause - which said Masters Deed is in the words and figures following, to wit,

Masters Deed

Know All Men By These Presents that whereas at the October Special Term of the Stark County Circuit Court A.D. 1858 in a certain cause in said Court pending wherein Milton Warren was complainant and Neal Taylor and Mary A Taylor were Defendant, an order or decree was made by said Court in the words and figures following to wit.

State of Illinois }
County of Stark } ss

Stark County Circuit Court
October Special Term A.D. 1858

Milton Warren
v.
Neal Taylor &
Mary A Taylor

And now this Cause coming on to be heard, and it appearing that the said defendants have been duly served with process in said Cause and they appearing not therein It is ordered by the Court that the said Bill of Complaint filed in said cause be taken for confessed by and against against said defendants. And Now this Cause being heard upon the merits and it appearing to the Court that there is due and owing of principal and interest on said promissory notes and Mortgage in the pleadings in said Cause mentioned to the said Complainant the sum of four hundred and thirty five dollars It is ordered that the said defendants,

[redacted]

pay the said complainant the said sum with interest ~~thereon~~ thereon at the rate of six per centum per annum and the Complainants costs in said cause within thirty days from and after the first day of the said term of this Court and in default thereof it is ordered adjudged and decreed by the said Court that the said defendants and all persons claiming by through or under them be and stand absolutely and forever barred and foreclosed of and from all Equity and right of Redemption in the said mortgaged premises and that the said Mortgaged premises be sold to satisfy the said sum, interest and the Costs of said cause by the Master in chancery in and for said County who is hereby appointed Special Commissioner to make said sale - The said Commissioner is hereby directed and required to make such sale at public Auction to the highest bidder for cash in hand first giving four weeks public notice of the time and place of such sale which shall be made at the front door of the Court House of said County of Stark in the Town of Toulon and between the hours of ten O'clock A. M. and four O'clock P. M of the day of sale - And which said notice shall be given by publication in the Stark County News a weekly Newspaper published in the Town of Toulon in said County of Stark and by posting up written or printed advertisements thereof in four of the most public places in the said County at least four weeks previous to such day of sale And out of the

(24)

moneys arising from said sale the said Commissioner shall pay first the Costs of this suit and the expenses of said sale. Second he shall pay to the said Complainant the said sum with interest as aforesaid up to the day of said sale, Third the overplus if any he shall retain subject to the order of this Court And the said Commissioner shall execute to the purchaser or purchasers at such sale a certificate of purchase and if said premises be not redeemed according to Law he shall execute to the legal holder of such certificate a deed conveying said Mortgaged premises, to wit: Two certain tracts or parcels of land situated in the County of Stark and State of Illinois and described as follows to wit; Being the South half of the South West quarter of section four (4) in Township thirteen North (13) and range seven (7) East and in the fourth principal meridian containing eighty acres more or less also two acres of land off the East End of the North half of the said described quarter section of land this piece being four rods in width East and West, and Eighty long North and South And thereupon the said defendant or any person or persons claiming by through or under them or either of them shall surrender to the Grantee in such deed the possession of said Mortgaged premises And the said Commissioner shall report his doings hereunder to this Court at the next Term thereof

E. S. Powell

And whereas also the said Master in Chancery and Special Commissioner Martin Shallenberger did on the 31st day of December A.D. 1858 at the door of the Court House in Toulon offer said premises at public Sale to the highest and best bidder for cash in hand after having given notice of the time and place of said sale in manner and form as required by said decree and thereupon said premises were struck off to Milton Warren who then and there bid therefor the sum of Four Hundred and sixty six dollars and eighty one cents he being the highest and best bidder therefor and did execute and deliver to said Warren a certificate of purchase for said premises in due form of Law And whereas the said Neal Taylor and Mary Taylor have failed to redeem said premises according to law"

Now Therefore I Martin Shallenberger late Master in Chancery in and for said County and Special Commissioner appointed by said Court in consideration of the premises, by virtue of said decree and in consideration of the sum of one dollar to him in hand paid by said Milton Warren do hereby grant bargain sell and convey to said Milton Warren his heirs and assigns the above described tract of land to wit The South Half of the South West quarter of section No four in Township No thirteen North

(161) " of Range No Seven East of the fourth principal
" meridian in the State of Illinois containing eighty
" acres more or less. Also two acres off the East
" End of the North half of the said described quarter
" of land To Have And To Hold unto him
" the said Milton Warren his heirs and assigns
" to his and their own proper use benefit
" and behoof forever.
" Witness My hand and Seal this fourth
" day of September A. D. 1860
" Martin Shallenberger [L.S.]
" Late Master in Chancery and Special
" Commissioner
" State of Illinois }
" County of Stark } ss
" On this day personally appeared
" before the undersigned Clerk of the County Court
" in and for said County Martin Shallenberger
" to me well known to be the real person who
" executed the foregoing deed as Late Master in
" Chancery and Special Commissioner and
" acknowledged that he had executed the same
" freely and voluntarily for the uses and purposes
" therein expressed "

[L.S.]

" Witness My hand and
" seal of said Court this 4th
" day of September A.D. 1860
" Miles A Fuller Clerk "

It being further admitted that the decree copied in said Masters deed is a true copy of the decree rendered by the Court in the cause in which it purports to have been rendered —

The Plaintiff further to maintain the issues upon his part introduced and had sworn the following witnesses who testified as follows

Plff's Witnesses

Andrew Pike - says that - I served a notice upon Joseph Jackson - I think I served the notice upon Joseph Jackson on May 10th 1861 - at his House on the land mentioned in the notice - that is the S½ of the S.W. qr of Sec 4 Tp 13 N. R. 7. E in Penn Township Jackson is a man of family - I read the notice to Jackson and delivered him a copy - I read them and knew it was a true copy -

The Plaintiff's Counsel then read in evidence said notice which was in the words following to wit.

To Joseph Jackson & Heil Taylor

Notice and demand of Possession

Take Notice, that I hereby demand that you quit and immediately deliver up possession of the South Half of the South West quarter of Section No four in Township No Thirteen 13 North of the base line and in Range No Seven (7) East of the 4th principal meridian in the County of Stark and State of Illinois, being the same premises sold to me under a Decree of the Stark County Circuit Court in the 31st day of December A.D. 1858 which said decree was rendered in said Court at the October Special Term thereof A.D. 1858

" in a certain proceeding therein Pending in the Chancery
" side of said Court for foreclosure of a certain Indenture
" of Mortgage wherein I Milton Warren was complainant
" and said Hial Taylor and Mary A Taylor his wife
" were Defendants, upon which said sale the said
" premises not having been redeemed according to
" law a Deed of Conveyance thereof was duly executed
" to me by the proper commissioner and officer of said
" Court on the 4th day of September A.D. 1860 the
" possession of which said premises you the said Joseph
" Jackson illegally hold as derived from and through
" the said Hial Taylor.
" Mr A G Pike is hereby authorized to receive pos-
" session of said premises for me.
" Dated this 8th day of May A.D. 1861
" Yours &c
" Milton Warren

" Thomas Stark Sworn and testified as follows - I am acquainted
" with the parties to this suit I know James Jackson when
" I see him - I lived a half a mile from the land in
" Controversy - Joseph Jackson moved on the land in Controversy
" about the middle of September 1860 - As late as the middle
" of said September - He has lived upon the land ever since -
" Hial Taylor left and went away two years ago last
" November - Joseph Jackson stated to me that his father
" bought Hial Taylors right to said land and if he held
" the land he James Jackson was to give Taylor one
" Hundred dollars - otherwise to give him nothing

This conversation was about the time Hiel Taylor moved away. I never had any conversation with Joseph Jackson about the said land since said Jackson moved on the land

Cr/s Examination - This conversation was before he Joseph Jackson went onto the land.

Harvey Harris - Sworn and testified as follows.

I live on the North Half of the Quarter Section of land containing the land in controversy. I remember about the time that Joseph Jackson moved on the land it was either in September or October 1860. Might have been about the middle or last of September - not earlier than September - I think it was after the fourth - He has lived on the land ever since and lives there now - About six weeks after Jackson moved in I went to see him about fixing fence - I asked Joseph Jackson what he would take for his claim - He said that he was keeping possession of the land for his father (James Jackson) that he had nothing to do with it - only to keep possession for him - would see his father thought he would sell - He also said that Warren had tried to cheat Hiel Taylor - That he was on the land to hold possession for his father - They were going to keep the land until it would pay Taylor for his improvements - I dont know whether Taylor had made any improvements or not - Joseph Jackson did not tell me that they had bought Taylor's interest in the land in controversy

Cross Examination - I have no interest in said land or this suit - When I went to buy Jackson's interest I went

" for myself - I did not go for Warren - I think I had
" this Conversation in Octoter 1860 - It was after Joseph
" Jackson went upon the land -

" John Shaver Sworn, and testified as follows -
" Am acquainted with parties to this suit I know old man
" Jackson when I see him - I live about a half a mile
" from the land in controversy - Joseph Jackson moved
" on said land in September or October 1860 - It was
" later than the 4th of Sept - He has lived there ever since -
" I had a conversation with Joseph Jackson about his
" possession a year ago last March. He said he was
" holding possession for his father - He said that if his
" father James Jackson gained the suit ~~the~~ then James Jackson
" was to pay Neil Taylor a certain amount of Money and
" if not they dident loose anything -
" Mary Taylor is the wife of Neil Taylor - Neil Taylor
" went away two years ago last fall - Jackson said
" he claimed under the tax title to said land by Lease
" from Phelps of Peoria - Lyman Ayres was in possession
" of the land after Taylor left Ayres did not go out
" until two or three days after Jackson went in possession
" of the land And Ayres went into the possession
" two or three days before Taylor Went Out
" Ayres and Jackson were related to eachother by marriage
"Cross Examination This suit was not commenced when
" Jackson spoke about gaining the suit. He dident say
" what suit - He said he expected that Warren would sue
" him and try to put him off the land

(21)

"Peter Shaver - Sworn and testified as follows —

"I am acquainted with Joseph Jackson and his father and Milton Warren - Jacksons land joins me on the West. I knew Joseph Jackson moving on the land in Controversy in the fall of 1860 - Either in Sept or Oct. I should Judge it was after the 4th of September - I had a Conversation with Joseph Jackson in which he stated he held the land in Controversy under his father - I had a conversation with him in the winter after he came there - He said they held the possession and had all the right and title Neil Taylor had. The Old gentleman also said so - they were together once when they told me this - I was acquainted with Neil Taylor before he went away from there - He lived neighbours to me - Taylor left I think in the fall of fifty nine - Lyman Ayres went on to the land about two weeks before Taylor left not positive as to time - Ayres went out in 1860 a little after Jackson moved in Neil Taylor is connection of Jacksons and Ayres by Marriage."

"Cross Examination James Jackson showed me a lease at the time he told me about the land - It was signed by a man by the name of Phelps - He dident say he took possession under the lease - He showed me the lease and wished me to read it. He said he obtained it from Phelps of Peoria said that he claimed the land under Phelps as well as under Taylor - that he had that title from Phelps with all the title Taylor had - James Jackson said at that time that Lyman Ayres

(22) was his tenant.—

William Thomas Sworn and testified as follows.
Am acquainted with the parties to this suit— I live 3½ miles from the land in controversy— I was not living there at the time Joseph Jackson moved on the land— I had a conversation with Joseph Jackson. I went to see Dr Milliken to rent land— Joseph Jackson was present and said that a part of the land in controversy would be for rent after while. That they had bought out Neil Taylor— This conversation was between the 12th and 14th of February a year ago.

Defendants Evidence

The Defendant to maintain the issues upon his part Read in evidence the following lease— the signatures to which were admitted to be genuine by Plaintiffs Counsel, to wit;"

Lease

This Indenture made this Sixth day of February 1860 Between William R Phelps of the City and County of Peoria State of Illinois party of the first part and James Jackson of the County of Stark State of Illinois party of the second part Witnesseth, that the said party of the first part for and in consideration of the Covenants and agreements hereinafter mentioned to be kept and performed by the said part of the second part, his executors, administrators and assigns, ha demised and leased to the said party of the second part, all those premises situate, lying and being in the Township of Penn in the County of Stark and State of Illinois known and described as follows, to wit

"The South West quarter of Section Four (4) in Township
"Thirteen (13) North of Range Seven (7) East of the fourth
"principal meridian To Have And To Hold the said
"above-described premises, with the appurtenances unto the
"said party of the second part his executors administrators
"and assigns from the sixth day of February 1860 for and
"during and until the sixth day of February A.D. 1861
"And the said party of the second part in consideration
"of the leasing of the premises aforesaid by the said party
"of the first part, to the said party of the second part do
"covenant and agree with the said party of the first
"part his heirs, executors, administrators and assigns
"to pay the said party of the first part as rent for the said
"demised premises, the sum of One Dollar and all taxes
"legally assessed on said land. — — — — —
"And the said party of the second part further Covenants with
"the said party of the first that at the expiration of the term
"in this lease mentioned, he will yield up the said
"demised premises to the said party of the first part in as
"good condition as when the same were entered upon
"by the said party of the second part, loss by fire or
"inevitable accidents, and ordinary wear excepted,
"It is further agreed, by the said party of the second
"part, that neither he nor legal representatives will
"underlet said premises, or any part thereof, or assign
"this Lease, without the written assent of the said party
"of the first part first had and obtained thereto.
"It is hereby Expressly Understood and Agreed by and
"between the parties aforesaid that if the rent above reserved

or any part thereof shall be behind or unpaid on the day of payment, whereon the same ought to be paid as aforesaid; or if default be made in any of the covenants herein contained, to be kept by the said party of the second part his executors administrators and assigns, it shall and may be lawful for the said party of the first part his heirs executors, administrators, agent, attorney or assigns at his election to declare said term ended, and unto the said demised premises, or any part thereof either with or without process of law, to reenter; and the said party of the second part or any other person or persons occupying in or upon the same to expel remove and put out, using such force as may be necessary in so doing, and the said premises again to repossess and enjoy, as in his first and former estate, and to distrain for any rent that may be due thereon, upon any property belonging to the said party of the second part, whether the same be exempt from execution and distress by law or not; and the said party of the second part, in that case hereby agrees to waive all legal rights which he may have to hold or retain any such property under any exemption laws now in force in this State, or in any other way, meaning and intending hereby to give the said party of the first part his heirs executors administrators or assigns, a valid and first lien upon any and all the goods, chattels or other property belonging to the said party of the second part as security for the payment of said

" rent, in manner aforesaid, anything hereinbefore
" contained to the contrary notwithstanding. And if
" at any time said Term shall be ended at such election
" of said party of the first part his heirs executors
" administrators or assigns, as aforesaid, or in any other
" way, the said party of the second part his executors
" administrators and assigns, do hereby covenant and
" agree to surrender and deliver up said above described
" premises and property peaceably to said party of the
" first part, his heirs, executors, administrators and
" assigns, immediately upon the determination of
" said term as aforesaid; and if he shall remain in
" possession of the same ten days after notice of
" such default, or after the termination of this lease,
" in any of the ways above name he shall be
" deemed guilty of a forcible detainer of said
" premises, under the Statute, and shall be subject
" to all the conditions and provisions above named,
" and to eviction and removal, forcibly or otherwise,
" with or without process of law, as above stated.
" In Testimony Whereof, the said parties have hereunto
" set their hands and seals, the day and year first
" above written "'

" Wm R. Phelps (Seal)

" James Jackson (Seal)

" (Endorsed) " This Lease is hereby extended for a further
" term of six years from the sixth day of February A.D. 1861

" Recd February 21st 1861

" W. R. Phelps (Seal)

(26)

Elijah Taylor produced and sworn as a witness on behalf of defendant testified as follows – I do not know whether Lyman Ayres rented the land in Controversy of James Jackson in the year 1860 – or not I know that Ayres paid rent to James Jackson in the year 1860 by giving said Jackson a share of the grain, He paid him the grain in threshing time in said year – He paid him near three hundred bushels of wheat – Jackson furnished the seed to sow the land – and Jackson was to get half of the wheat raised on the land for his rent – Ayres was in the possession of the land during the year 1860 and until Joseph Jackson went into possession

The foregoing was all the evidence in the case –

The Court then instructed the Jury in behalf of the plaintiff as follows, to wit.

Plaintiffs Instructions

1 If the Jury believe from the Evidence that the land in Controversy was sold under a decree of the Stark County Circuit Court, in a suit where Neil Taylor was defendant, to the plaintiff, on the 31st of December 1858 and that the master in Chancery on the 4th of September 1860 made and delivered a deed for the Land to the plaintiff and that after the date of the Deed the defendant Joseph Jackson was in possession of the land, through or under Neil Taylor either directly or through James Jackson, as his tenant, and continued in such possession, after notice in writing to deliver up the the possession to plaintiff, then the

" Jury will find a verdict for the plaintiff, although it should
" appear that defendant went into possession of the land
" before the date of the deed - provided such possession
" of Joseph Jackson was by collusion with Heal Taylor

2 " If the jury believe from the evidence that that James
" Jackson went into possession of the land under Heal
" Taylor and took afterwards a Lease from Wm R Phelps
" for the land, and put the defendant into possession,
" and that these several acts were done for the purpose
" of defeating Warrens title under the decree collusively
" with the defendant then the jury will find a verdict
" for the plaintiff."

3 " If the jury believe from the evidence that the only possession
" the defendant had at the time plaintiff made demand
" in writing for the same was derived from Heal Taylor
" with a knowledge or notice of the rights of the plaintiff
" they will find for the plaintiff provided Also the jury
" believe defendant was still holding under & in collusion
" with Heal Taylor"

4 " Under the Statute of 1861 extending the action of Forcible
" Entry and Detainer to cases where lands have been sold
" under a judgement or decree of Court in this State,
" and the party to such judgement or decree after
" expiration of the time of redemption refuses after
" demand in writing by the purchaser under the same
" to surrender possession thereof," such actions may be

maintained against persons who by collusion with such party to such decree or judgement, come into possession of such lands though they are not parties by name to such decree or judgement"

5 If the jury believe from the evidence that James Jackson went into the possession of the land through or under Neal Taylor before the Expiration of 15 Months from the sale by the Master, and that afterwards he took a Lease of the Land from Phelps not bona fide for the purpose of occupying the Land as the tenant of Phelps, but to aid as a color in really holding through Taylor and that after the date of the Masters deed he put Joseph Jackson in the possession - and that Defendant has continued in possession after notice in writing - the jury will find a verdict for the plaintiff - provided the jury also believe from the Evidence that such acts were for the purpose of defeating the claim of plaintiff and with full notice thereof & that the said defendant & said James Jackson were parties in such Collusion

6 Fraud though not presumed in the absence of evidence, may be established by circumstances the same as any other fact, the Jury are to consider all the circumstances proved in the case and if from those circumstances it appears that Neal Taylor by collusion with James Jackson and he with the defendant succeeded to the

"possession of the premises in controversy and that
"defendant still holds said possession by such collusion
"at the time plaintiff made demand of the said
"premises, held such possession so obtained through
"said Hial Taylor, then the jury will find the defendant
"guilty of wrongfully detaining possession of said
"land."

to the giving of which instructions for the plaintiff the defendant by his counsel then and there objected and the Court overruled said said objections and gave said instructions - to which order of the Court overruling said objections, and the giving of said instructions the defendant by his counsel then and there excepted - And the Court thereupon gave the following instructions for the defendant, to wit:

Defts Instructions

1. "The jury are instructed by the Court that the issue
"to be tried by the jury in this cause is whether
"the plaintiff had at the time of the commencement
"of this suit the right to the possession of the land
"in controversy"

2 "The jury are also instructed that the burden of proof
"is on the plaintiff in this cause to prove all the
"material allegations and Statements made in
"his complaint, And if the jury believe from the
"evidence that the plaintiff has failed to prove to
"the satisfaction of the jury any material part of said
"Complaint then they will find for the Defendant

3" Before the Jury can find for the plaintiff they
" (the Jury) must be satisfied from the evidence that either
" the said defendant (or James Jackson) obtained the
" possession of said land from said Niel Taylor
" by fraud or collusion, and was holding the possession
" of said land at the time of the commencement of this
" suit for the purpose of preventing the plaintiff
" from getting the possession of said land

4" If the Jury believe from the evidence that the plaintiff
" bought said land at a sale made by the master
" in chancery - under a decree of foreclosure in
" a cause wherein Niel Taylor and Mary Taylor
" his wife were defendants - that the time for the redemption
" of said land under said sale expired on the first day
" of March A.D. 1860 - and also that said defendant claimed
" title to said land from said Niel Taylor at the time of
" the commencement of this suit - then and in that
" case if the Jury also believe from the evidence that
" said defendant or any person under whom he claimed
" acquired said title from said Niel Taylor in good
" faith prior to the said first day of March A.D. 1860
" then the Jury will find for the defendant

5" If the Jury believe from the evidence that the defendant
" obtained, and was at the time of the commencement
" of this suit holding, the possession of said land

" in good faith under a lease executed by a person
" other than Hil Taylor or Mary Taylor or any person
" claiming under them or either of them - although
" it is not proven that said lease was given by a
" person having the paramount title to said land,
" they the Jury will find for the defendant"

6 " The Jury are instructed by the Court that if they believe
" from the evidence that at the time of the Commencement
" of this suit the defendant held the possession
" of said land as tenant of James Jackson, then
" before plaintiff can recover in this action he must
" show a collusion between the defendant, said James
" Jackson and Hil Taylor, and the Jury are also
" instructed that the admissions of the defendant
" in regard to the title of James Jackson aforesaid
" will not bind said James Jackson unless
" such collusion is proved"

" And thereupon the Jury after hearing the arguments
" of Counsel and said instructions of the Court
" found a verdict in said cause which said
" verdict is as follows to wit:
" We the Jury find the defendant guilty in manner
" and form as alleged in the complaint

" And thereupon the defendant by his Counsel made his
" motion in writing to set aside the verdict in this cause
" and for a new trial for the following Reasons to-

"1st Because the verdict is against law

"2 Because the Verdict is against the evidence

"3 Because the Court gave improper instructions asked in behalf of the plaintiff

" And the Court after considering the same overruled the said motion of said defendant, and rendered Judgement upon said verdict against the defendant to the overruling of which said motion said defendant by his Counsel then and there excepted — Said Defendant

And now the defendant by his counsel prays the Court that the Hon Judge of this Court will sign and seal this his Bill of Exceptions which is done "

"A L Merriman"

(Endorsed) "Filed May 9th 1862"

"P M Blair Clk"

(33)

Appeal Bond

Know all men by these presents that we Joseph Jackson and James Jackson of the County of Stark and State of Illinois are held and firmly bound unto Melton Warren of said State in the penal sum of Five Hundred Dollars Current Money of the United States for the payment of which well and truly to be made we bind ourselves our heirs executors and administrators jointly severally and firmly by these presents - Witness our hands and seals this twenty seventh day of May A.D. 1862

The Condition of the above obligation is such that whereas the said Milton Warren did on the twenty seventh day of May A.D. 1862 in the Circuit Court in and for the County and State aforesaid recover a judgement against the above bounden Joseph Jackson in an action of forcible detainer - for the possession of the South Half of the South West quarter of section No Four in Township No Thirteen North of Range No seven East of the 4th principal meridian - and also for costs of suit - from which said judgement of the said Circuit Court the said Joseph Jackson has prayed an appeal, and obtained the same to the Supreme Court of said State of Illinois

Now if the said Joseph Jackson shall duly prosecute his said appeal with effect and shall moreover pay the amount of the judgement costs interest and damages rendered and to be rendered against him in case the said judgement shall be affirmed in the said Supreme Court then the above obligation to be void

(34) " otherwise to remain in full force and
" virtue "

(Signed) "Joseph Jackson (L.S.)
"James Jackson (L.S.)

(Endorsed) "Filed May 27th/62 P. M Blair Clk"

State of Illinois }
Stark County } ss. I Patrick M Blair Clerk of the Circuit Court in and for said County and State do hereby certify that the above and foregoing is a full true and complete transcript of the Record and proceedings had and of the papers on file in said Circuit Court in the cause of Milton Warren plaintiff against Joseph Jackson Defendant as the same appears of Record and on file in my office

In Testimony Whereof I have hereunto set my hand and affixed the seal of said Circuit Court at Toulon in said County this 19th day of January A.D. 1863

Patrick M Blair Clerk

Milton Warren
vs
Joseph Jackson } Forcible Detainer –

It is hereby agreed and stipulated that the following named papers were duly filed in the above entitled cause – and were omitted from the above record, by agreement of the counsel on both sides – they not being deemed necessary to a hearing of the said cause in the Supreme court – to wit

A proper transcript from the Justice of the Peace.
The original writ issued by the Justice –
The appeal Bond taken by the Justice –
The appeal Summons – issued by the Clerk of the Circuit court – All of which papers are admitted to be regular and to conform to the proceedings in the said Circuit court –

H Skallenberger
Atty for Plff
James N Merritt –
Attorney for Defendant –

Joseph Jackson Appellant
vs
Melton Warren Appellee
} Supreme Court of Illinois 3rd Grand Division April Term AD 1863

And the said appellant by Merritt Powell and J W Merrill his attorneys comes and says that in the record and proceedings aforesaid and in the rendition of the judgment aforesaid there is manifest Error for that the judgment was rendered in favor of the appellee and against the appellant when by the law of the land the said court should have been rendered in favor of the appellant and against the appellee Wherefore he prays that the said judgment may be reversed and that he may be restored to all things he has lost by reason thereof And the appellants assigns the following special errors

1 The court erred in overruling the motion of the said defendant below to quash the complaint and dismiss the suit and in allowing the said plaintiff to amend her said complaint

2 The court erred in overruling the defendants motion to quash the said complaint as amended

3 The court erred in giving the instructions given on behalf of the plaintiff below

4 The court erred in overruling the motion for a new trial

5 The court erred in admitting in evidence the deed to plff below

Merritt Powell & Merrill
for Appellant

And now comes the said appellee by G. A. Clifford his atty and says that in the record & proceedings aforesaid and in the rendition of the Judgment aforesaid there is no error & this &c

G. A. Clifford
Glenn, E[illegible] & Campbell
for Appellee

Joinder filed April 22nd 1873
L. Leland Clk

186
Joseph Jackson
vs
Calvin Warren

Record

Filed April 20. 1873
L. Leland
Clerk

[redacted]

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1863.

JOSEPH JACKSON
vs.
MILTON WARREN. } *Appeal from Stark.*

APPELLEES POINTS AND BRIEF.

The complaint is sufficient.

I.

The act of 1845, sec. 1, provides that if any person shall make any entry into lands except where entry is given by law, this action may be sustained.

Scates Stat. 521.

The complaint shows that the land in controversy was sold under a decree of the Stark Co. Circuit Court *vs.* Heil Taylor, and that the plaintiff was the purchaser; that the time of redemption expired, and the plaintiff received a master's deed for the land, Sept. 4, 1860. Taylor's right to the possession of the land then ceased. If the defendant then took possession of the land by collusion with Taylor directly or indirectly through James Jackson, for the purpose of keeping the plaintiff out of the possession to which he was entitled, such entry was one not given by law, and the complaint is good under the statute of 1845.

But under the law of 1861, the complaint is good.

The law of 1845 provides, that "if any person shall hold over the possession of lands and tenements after the expiration of the time for which

the same were let to him, *or to the person under whom he claims*," this action will lie. The act of 1861 provides, that the provisions of the law of 1845 shall extend "to all cases where lands have been sold under a judgment or decree of Court in this State and the party to such judgment or decree, after the expiration of the time of redemption refuses, after demand in writing by the purchaser under the same, to surrender possession thereof."

Laws of 1861, p. 176.

A mortgagor in possession after sale becomes *quasi* tenant of the purchaser.

Royce *v.* Bradburn, 2 Doug. (Mich.) R., 377
Carroll *v.* Ballance, 26 Ills. 9.
Laws 1861, page 176.

By procuring possession immediately or mediately from the tenant, the appellant but stepped into the tenant's shoes, and must hold the possession in the same capacity as did the tenant to whose rights alone he succeeded.

Ballance *v.* Fortier, 3 Gilm. 291.
Goodlet *v.* Cleaveland, 12 B. Mon. Ky. R., 430.
McCartney *v.* Hunt, 16 Ills. 76.

In construing an amendatory act, it is a fixed rule that the old law must be considered.

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It would not be held with us that the confirming of the Master's report should take place before the estate would be held to be in the purchaser.

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In Enland, from the sale to the confirmation of the Master's report, any person may put in bids, and for that reason the purchaser there is considered but a bidder, to be reported to the Court, always subject to be overbid and defeated until confirmation, so *non constat* that he is a purchaser, and for *that reason* the title is not vested. The reason ceasing under our practice, the law ought to cease.

1 Lomax Dig. 532, [405.]
4 Kent's Com. 192.

The English practice of opening biddings does not prevail in this country.

The English method of selling under a decree varies from ours, and is favorable to openings of the sale; whereas the sale at public auction with us is ordinarily a *valid, binding* contract *as soon as the hammer is down.* The master sells at public auction on due notice, and the purchaser becomes entitled to a deed, unless there be fraud, mistake or some occurrence of special circumstances, affording, as in other cases, a proper ground for relief.

4 Kent's Com. 192.

And it is submitted that the case of *Garrett* vs. *Moss* et al., 20 Ill. 549, does not run against the current of American authorities upon this point.

A purchaser, holding a master's deed upon a sale made upon a decree of foreclosure, is *prima facie* the legal owner, and his rights under it can only be defeated by "fraud, mistake, or some occurrence which might be relieved in equity." His deed makes him a "purchaser" within the meaning of the statute, and it will not be contended that the legislature intended that a justice of the peace and his jury shall pass upon the

regularity or sufficiency of the proceedings in a Court of Chancery upon a foreclosure. The certificate of purchase and the Master's deed furnished abundant evidence that the appellant was a "purchaser" where land was sold under a decree of Court, particularly in a proceeding of wrongful detainer, where it is emphatically settled that *title* is *immaterial*.

Even under the English practice of opening sales to receive bids, a purchaser, till the sale is confirmed, is protected by Court.

1 Lomax's Dig. 535, (top paging.)

Taylor, and those under him, from the moment of sale, became tenants at sufferance of the purchaser, whether there was a report of the sale made and confirmed or not. Taylor's right of redemption in equity and under the statute was absolutely gone, and being a *quasi* tenant he has no right to question the title of appellee.

The Court will not disturb the verdict unless it is clearly wrong.

French *v.* Lowry, 19 Ill. 158.

Or, clearly and palpably against the weight of evidence.

Archdale *v.* Moore *et al.*, 19 Ill. 158.

Nor, where there is evidence to sustain it.

Ohio & Miss. R. R. Co. *v.* Brown, 25 Ill. 124.
Goodell *v.* Woodruff, 20 Ill. 191.
Bloom *v.* Carter, 24 Ill. 48.
Bush *v.* Kindred, 20 Ill. 93.
Allen *v.* Smith, 3 Scam. 97.

G. A. CLIFFORD, and
GLOVER, COOK & CAMPBELL,
Appellees Attorneys.

† But if it were the law that the Masters Deed is not valid until confirmed by the Court it would cut no figure in this case for under the act of 1861 (part 176) his deed is required in order that the purchaser may maintain the action

The Statute provides that the purchaser under the decree may maintain the action "after the expiration of the time of redemption after demand in writing by him." If the time of redemption has expired and he has not yet received any deed whatever he may make the demand & maintain the suit - and the deed would be complete evidence of the expiration of the Redemption also though it had not been confirmed

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Joseph Jackson

vs

Milton Warren

Appellee's Brief

Filed May 2. 1863

L. Leland Clk

Supreme Court of Illinois
Third Grand Division
April Term A.D. 1863

Joseph Jackson
v
Milton Warren } Appeal from Stark

Argument of G. A. Clifford for Appellee

The Appellee, Milton Warren, at the October Special Term 1858 of the Stark Co. Circuit Court obtained a decree against Abril Taylor and wife in foreclosure of a mortgage on the S 1/2 of the S.W. qr. of Sec. 4. T 13 N. R. 7 E. of the 4th principal meridian for the sum of $135 interest and costs to be paid in thirty days from the adjournments of Court. On default of payment M. Shellenberger Master in Chancery of Stark Co. was appointed a Special Commissioner to sell the mortgaged premises. He sold the premises on the 31st day of Dec. 1858 to the Appellee and a certificate of purchase was duly executed and delivered to him as the purchaser. Upon which certificate the said Master in Chancery duly appointed Commissioner in the

4th day of September 1860 executed and delivered a Deed to the Appellee as such purchaser. It is admitted that the proceedings of foreclosure and sale were regularly had See Abstract page 4.

After the 4th of September 1860 the Appellant entered into the possession of the premises and continued in the possession to the commencement of this suit before the magistrate.

On the 10th of May 1861 the Appellee made a demand in writing on the Appellant for the possession of the premises upon which there is no question.

The Appellee thereupon filed his complaint before D. McBance a justice of the peace of Scott Co. alleging the foregoing facts and stating further that Noel Fowler one of the defendants in the decree (Mary Fowler his wife being the other) had neglected & refused to deliver up the possession of the premises but had wrongfully transferred his possession to one James Jackson, and that the Appellant had received the possession from said James Jackson as pretended tenant of his, to his demand in writing had been

made an appellant for to surrender the possession of the premises to the appellee and that he refused to do so. Upon this complaint a trial was had before the justice of the peace and a jury which resulted in a verdict for the appellee from which the appellant appealed to the Scott Co. Circuit Court. At the Nov. Term of said Court appellant moved to dismiss the suit for want of a sufficient complaint and appellee moved for leave to amend which last motion was granted on terms and the complaint was amended charging collusion on the part of James Jackson and the appellants with Abel Taylor to defeat the appellee in recovering the possession of the premises. See Abstract pages 2 & 3

The main attack made upon the complaint is that the appellant is not a party to the decree of foreclosure and it is urged that the act of 1861 only gives this remedy against a person who was originally a party by name to the decree.

The act of 1861 is entitled "An act to amend the statute in relation to Forcible Entry and Landlord and Tenant. The enacting clause reads "That Chapter 43 of the "Revised Statutes of 1845 shall be ex- "tended to all cases between vendor and "vendee, where the latter has obtained "possession of lands under a con- "tract, by parol or in writing, and before "obtaining a deed of conveyance, fails "or refuses to comply with such con- "tract to purchase, and to all cases where "lands have been sold under a judg- "ment or decree of court in this State, "and the party to such judgment "or decree, after the expiration of the time "of redemption refuses, after demands "in writing by the purchaser under the "same, to surrender possession thereof"

We believe the complaint was sufficient

1st under the law of 1845 independent of the amendatory law of 1861 as an unlawful entry. Whatever might have been the relation of Taylor, the mortgagor before the sale whether as tenant of the mortgagee or a wrong doer after the sale he was at most

[redacted]

but a tenant at sufferance of the purchaser, and the courts have gone so far as to hold that where a mortgagor cut wood from the mortgaged premises after sale and the same was levied upon by a creditor of the mortgagor and by execution and sold upon the mortgaged premises that the purchaser at the sheriff's sale of the wood acquired no title. The wood being upon the mortgaged premises and cut after sale on foreclosure the purchaser bought with notice. Such is the relation of the mortgagor after foreclosure that he has no rights more than a trespasser upon the premises, and the appellant coming upon these premises after the statutory time of redemption had expired made an entry thereon wrongfully and in face of the foreclosure proceedings and decree had which were notice to him, and in face of actual notice (See Abstract of Evidence of Thomas Scott, Harvey Harris & John Shaver pages 5 & 6).

Sullivan v. Matthews, 19 Vt. 322

We believe that the complaint was sufficient in law under the

first section of the law of 1845 (Scale Statute, 521 and that ~~he~~ appellant entered upon this land wrongfully and where entry was not given by law, whether Taylor let him in or not. If

But the complaint is sufficient under the amendatory act of 1861

The appellant's counsel ~~ing~~ that the appellant not being named in the decree as a party to it the remedy does not extend ~~to~~ against him and they call for a construction of that act.

The act of 1861 is amendatory of the law of 1845. By the various acts of the legislature, this form of proceeding has been extended to various cases ~~where~~ to recover possession of premises where the relation of landlord and tenant exists or may be said to exist, whether the tenancy exists by special contract or by operation of law. The relation of landlord and tenant must have been in the mind of the lawmakers, when they gave title to this act as they call it "an act to amend the statute in relation to landlord

Forcible Entry and Detainer and Landlord and Tenant" and we may look to the title of an act for light to illuminate the obscurities of any of the words of an act. The Statute of 1845 already provided that wherever this remedy may be resorted to under that act in the case of a tenant holding over after the expiration of the time for which the premises were let to him, it may be used against a person claiming under the one to whom the premises were let. This amendatory law becomes a part of the law of 1845 and if the mortgagor becomes the tenant of the purchaser as the authorities say he does, or a quasi tenant, a person claiming under him is within the letter of the law. A construction of a statute ought not to defeat the intent of the legislature that would be a strictness amounting to a repeal of the law. A construction should be sensible and such an one as will give effect to the intent of the law maker

The legislature had already provided this remedy for several classes of cases which this court has noticed in former decisions and the legislature of 1861 having in view the action of Forcible Entry and Detainer and the various relations of Landlord and Tenant determined to extend this form of action to two other classes of cases; one, where the relation of vendor and vendee by a determination of the contract of purchase had become a species of tenancy, and to another class of cases, viz; "cases where lands have been sold under a judgment or decree of court, after expiration of the time of redemption and refusal on demand in writing to surrender up possession" - The evident, clear and palpable purpose of the legislature was to embrace within this remedy, cases of this class; and the question would be whether the complaint shows a case of this class? Who is the party to this decree within a reasonable, legal sense of the word party? Third Tayloreand

Mary Taylor, his wife, were named in the decree as defendants, because they stood in relations of grantors in of the land described in the mortgage - The decree of foreclosure was against the land and the proceeding was to subject their equity of redemption to sale - Noel Taylor from the execution of the mortgage might be considered the tenant of the mortgagee, from condition holden as a tenant at will, or at sufferance. His wife joining in the mortgage was a party to release her dower - The decree was against her and him. The purchaser at the ~~mortgage~~ masters sale became the absolute owner of the legal title and of the equity of the mortgagor and entitled to the immediate fruition of the subject of his purchase including the possession of the land. Not Noel Taylor nor Mary Taylor his wife could affect his right of possession, nor should they do by indirection what they could not do directly - A person stepping into Noel Taylors shoes becomes a party to the decree - The whole body of the law renders every

Mortgagee

me dealing with a party to a record subject to the operation of that record as a party to it as much so as if he were expressly included in it by name- The construction contended for by the appellant would squelch the very life out of the law. A statute must have such a construction as will not suffer it to be eluded. The People v Utica Ins. Co. 16 Johns. 381- Harding v The State 20 Ala. 54- ~~Low~~

Would it not be suffering a statute to be eluded and evaded ~~for Low~~ to permit Oziel Taylor and Mary Taylor his wife to go to James Jackson, his relative and, say by the act of 1861, "I being a party to the foreclosure, Milton Warren the purchaser can put me out of possession of the mortgaged premises by forcible entry & detainer, now I will let you have the possession to keep Warren out and if you succeed you shall pay me one hundred dollars If you do not then nothing." As you are not named in the decree you will not be liable to this proceeding."

The appellant's construction of the law is precisely that - "Party to a decree" means more than that by any reasonable or just construction, any person dealing with the party makes himself a party - See brief

If the complaint was sufficient the evidence was sufficient

It is urged that the deed was invalid, because the record does not show that the sale was reported to the court.

We contend that the deed was valid and sufficient to clothe the appellee with all the rights of a "purchaser" under the statute of 1861. The title vested immediately in the purchaser upon the delivery of the Masters deed to him. The contract of purchase under our law and practice was complete when the land was struck off to him at the Master's sale subject only to the right Taylor had to redeem under the statute, and as any other contract to be set aside for fraud mistake or other ground of relief

it binds both the court and the purchaser. The English practice on Masters sales has never prevailed in this country. There the purchaser was reported to the court as a preferred bidder, the bidding was opened and any one might come in and advance the bid and for that reason until the sale was confirmed in the purchaser he was but a bidder before the court. There it was not a law in equity but a rule of practice. not law. If the property sold was destroyed by fire or otherwise impaired it was not the loss of the bidder if it happened between the sale and the confirmation, and the bidder might come in and have an abatement of his bid for the injury. Such is not the law here. Had the dwelling house upon the premises in controversy been burnt down after the masters deed to appellee would it not have been his loss? Could he then go before the court before the Master had reported and have the value of the buildings destroyed

deducted from the amount of his bid and the consideration of his deed reduced? Such is not the law or the practice in this country. The sale of the Master is absolute as any other sale. The practice of requiring him to report is for other purpose and not to pass a title. See 4 Kents Com. 192-1 Lomax Dig. 532 [405] 535 and cases there cited. The Sales by Administrators and Guardians rest upon different principles. Sales by Masters are under the equity jurisdiction and practice of Courts of Chancery while those of Guardians are wholly dependant upon statutory regulations.

These two points of the Appellants, ~~are~~ the complaint and the Masters deed, are the substance of the appellants objections to the proceedings in the lower court, in which we cannot conceive there is any error which should reverse this case.

We do not believe it was necessary for us to show fraud, if it was there are circumstances, in which

the jury might decide. There was such a privity existing between Ubil Taylor and the appellant, a notice of record and a notice in fact that he has no claims to protection as an innocent man

161 132

Joseph Jackson
v
Milton Warren
Assignment of
S. A. Cliffford
for appellee

Filed May 12. 1863
L. Leland
Clerk

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1863.

JOSEPH JACKSON } *Appeal from Stark.*
vs.
MILTON WARREN. }

APPELLEES POINTS AND BRIEF.

The complaint is sufficient.

I.

The act of 1845, sec. 1, provides that if any person shall make any entry into lands except where entry is given by law, this action may be sustained.

Scates Stat. 521.

The complaint shows that the land in controversy was sold under a decree of the Stark Co. Circuit Court *vs.* Heil Taylor, and that the plaintiff was the purchaser; that the time of redemption expired, and the plaintiff received a master's deed for the land, Sept. 4, 1860. Taylor's right to the possession of the land then ceased. If the defendant then took possession of the land by collusion with Taylor directly or indirectly through James Jackson, for the purpose of keeping the plaintiff out of the possession to which he was entitled, such entry was one not given by law, and the complaint is good under the statute of 1845.

But under the law of 1861, the complaint is good.

The law of 1845 provides, that "if any person shall hold over the possession of lands and tenements after the expiration of the time for which

the same were let to him, *or to the person under whom he claims*," this action will lie. The act of 1861 provides, that the provisions of the law of 1845 shall extend "to all cases where lands have been sold under a judgment or decree of Court in this State and the party to such judgment or decree, after the expiration of the time of redemption refuses, after demand in writing by the purchaser under the same, to surrender possession thereof."

Laws of 1861, p. 176.

A mortgagor in possession after sale becomes *quasi* tenant of the purchaser.

Royce *v.* Bradburn, 2 Doug. (Mich.) R., 377
Carroll *v.* Ballance, 26 Ills. 9.
Laws 1861, page 176.

By procuring possession immediately or mediately from the tenant, the appellant but stepped into the tenant's shoes, and must hold the possession in the same capacity as did the tenant to whose rights alone he succeeded.

Ballance *v.* Fortier, 3 Gilm. 291.
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It would not be held with us that the confirming of the Master's report should take place before the estate would be held to be in the purchaser.

Hoff. Master's Prac. 252.

In Enland, from the sale to the confirmation of the Master's report, any person may put in bids, and for that reason the purchaser there is considered but a bidder, to be reported to the Court, always subject to be overbid and defeated until confirmation, so *non constat* that he is a purchaser, and for *that reason* the title is not vested. The reason ceasing under our practice, the law ought to cease.

1 Lomax Dig. 532, [405.]
4 Kent's Com. 192.

The English practice of opening biddings does not prevail in this country.

The English method of selling under a decree varies from ours, and is favorable to openings of the sale; whereas the sale at public auction with us is ordinarily a *valid, binding* contract *as soon as the hammer is down.* The master sells at public auction on due notice, and the purchaser becomes entitled to a deed, unless there be fraud, mistake or some occurrence of special circumstances, affording, as in other cases, a proper ground for relief.

4 Kent's Com. 192.

And it is submitted that the case of *Garrett* vs. *Moss* et al., 20 Ill. 549, does not run against the current of American authorities upon this point.

A purchaser, holding a master's deed upon a sale made upon a decree of foreclosure, is *prima facie* the legal owner, and his rights under it can only be defeated by "fraud, mistake, or some occurrence which might be relieved in equity." His deed makes him a "purchaser" within the meaning of the statute, and it will not be contended that the legislature intended that a justice of the peace and his jury shall pass upon the

regularity or sufficiency of the proceedings in a Court of Chancery upon a foreclosure. The certificate of purchase and the Master's deed furnished abundant evidence that the appellant was a "purchaser" where land was sold under a decree of Court, particularly in a proceeding of wrongful detainer, where it is emphatically settled that *title* is *immaterial.* *

Even under the English practice of opening sales to receive bids, a purchaser, till the sale is confirmed, is protected by Court.

1 Lomax's Dig. 535, (top paging.)

Taylor, and those under him, from the moment of sale, became tenants at sufferance of the purchaser, whether there was a report of the sale made and confirmed or not. Taylor's right of redemption in equity and under the statute was absolutely gone, and being a *quasi* tenant he has no right to question the title of appellee.

The Court will not disturb the verdict unless it is clearly wrong.

French *v.* Lowry, 19 Ill. 158.

Or, clearly and palpably against the weight of evidence.

Archdale *v.* Moore *et al.*, 19 Ill. 158.

Nor, where there is evidence to sustain it.

Ohio & Miss. R. R. Co. *v.* Brown, 25 Ill. 124.
Goodell *v.* Woodruff, 20 Ill. 191.
Bloom *v.* Carter, 24 Ill. 48.
Bush *v.* Kindred, 20 Ill. 93.
Allen *v.* Smith, 3 Scam. 97.

G. A. CLIFFORD, and
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Appellees Attorneys.

* But if it were the law that the Masters deed is not valid until confirmed by the Court it could cut no ice in this case, for Under the act of 1861- (page 176) no Deed is required in order that the purchaser at the sale may maintain the action -

The Statute provides that the purchaser under the Decree may maintain the action "after the expiration of the time of Redemption after demand in writing by him" If the time of Redemption has expired she has not yet received any deed whatever he may ~~give~~ to make the demand & maintain the Suit - and the Deed would be competent evidence of the expiration of the Redemption also though it has not been confirmed -

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Joseph Taylor

vs

Milton Warren

Appellees Brief

Filed May 5. 1863

S. Scates Clk