No. 12253

Supreme Court of Illinois

Newkirk.

vs.

Chapron.

State of Illinois }
County of Cook } S.S.

Pleas before the Honorable John M. Wilson Judge of the Cook County Court of Common Pleas within and for said County of Cook and State of Illinois at a Vacation Term of said Cook County Court of Common Pleas, begun and holden at the Court House in the City of Chicago in said County and State on the first Monday being the fourth day of June in the year of our Lord one thousand eight hundred and fifty five and of the Independence of the United States the seventy ninth

Present The Honorable John M. Wilson Judge
James Andrew Sheriff

Attest
Walter Kimbale Clerk.

Be it Remembered that heretofore to wit on the fifth day of June in the year of our Lord one thousand eight hundred and fifty four, came Adamson B. Newkirk, Plaintiff by John S. Cone his Attorney and filed in the Office of the Clerk of the Cook County Court of Common Pleas, his Declaration of a Plea of Trespass and Ejectment against Rosella Chapron Defendant which said Declaration is in words and figures as follows to wit.

State of Illinois } Cook County Court of
County of Cook } S.S. Common Pleas of June

3/12253-1

Term A. D. 1854.

Adamson B. Newkirk
v
Rosella Chapron
} Ejectment.

Adamson B. Newkirk (by John E. Cone his legally authorized Attorney) complains of Rosella Chapron of a Plea of Trespass and Ejectment, for that the said Plaintiff heretofore to wit on the twentieth day of May in the year of our Lord one thousand eight hundred and fifty four at the County of Cook and State of Illinois aforesaid was possessed of the following described piece or parcel of land in the County and State aforesaid, being part and parcel of the West half of the North east quarter of Section Eighteen Township Thirty nine North of Range Fourteen East of the third Principal Meridian, bounded and described as follows, to wit, Beginning at the North East corner of the said West half of the North East quarter of Section Eighteen, Township Thirty nine North of Range Fourteen East of the third Principal Meridian, running thence West five Chains and three links, from thence South seventeen chains and twenty eight links, from thence East five chains and three links, from thence North seventeen chains and twenty eight links to the place of beginning containing Eight acres and sixty nine hundredths of an acre, Which said described Premises the said Plaintiff claims in fee simple, and being so possessed thereof the said Rosella Chapron, afterwards, to wit, on the twenty second day of May in the year of our Lord Eighteen hundred and fifty four in the County aforesaid entered into the possession of the said Premises, and from thence hitherto unlawfully withholds from the Plaintiff the possession thereof. To the damage of said Plaintiff of Five dollars and therefore he brings suit &c.

by John E. Cone
Plaintiffs Attorney
54 Clark Street, Chicago.

Mrs Rosella Chapron

Madam,

You will please take Notice that a Declaration in Ejectment, of which the foregoing is a true copy will be filed on the first day of the next Term of the Cook County Court of Common Pleas to be holden at the Court House in the City of Chicago in said County on Monday the fifth day of June next with the Clerk of said Court and upon filing the same a rule will then be entered by the said Court requiring you to appear and plead to said Declaration within Twenty days after the entry of said Rule, and that if you neglect to appear and plead to said declaration a Judgment by default will be entered against you and the said Plaintiff will ~~recover~~ recovery possession of the said premises in the said Declaration described.

Dated at Chicago this 23rd day of May 1854

Adamson, B. Newkirk
by John E. Cone. Attorney

State of Illinois }
County of Cook } S.S.

John E. Cone being duly sworn deposes and says that he served a Declaration and Notice of which the foregoing is a true Copy upon the said Rosella Chapron by reading the same to her and explaining the purport thereof and delivering a Copy to her on the twenty third day of May A. D. 1854.

Sworn before me this
24th day of May 1854.

John E. Cone.

J. N. Hoisington
Justice of the Peace.

And thereafter to wit on the sixth day of July being one of the days of the July Vacation Term of said Court A. D. Eighteen hundred and fifty four, the following proceedings were had

[12253-2]

in said cause, and entered of Record in said Court, to wit.

Adamson B. Newkirk
vs
Rosella Chapron } Ejectment.

And now comes the said Plaintiff by I. E. Cone his Attorney and files herein his declaration and Notice in Ejectment and it appearing to the Court that the said Defendant has been duly served with a Copy of the Declaration of said Plaintiff against him and Notice therewith attached according to the Statute in such case made and provided And on Motion of said Plaintiffs Attorney it is Ordered that the said Defendant plead to said Plaintiffs Declaration in Twenty days or in default thereof, that Judgment be entered in this Cause for want of a Plea.

And thereafter to wit on the Eighteenth day of August A. D. Eighteen hundred and fifty four the said defendant by George Manierre her Attorney filed in the Office of the Clerk of said Court her Plea to said Declaration, in words and figures as follows, to wit.

State of Illinois } In Cook County Court of
Cook County } S.S. Common Pleas.

Rosella Chapron
vs
Adamson B. Newkirk } Ejectment.

And the said Rosella Chapron by George Manierre her Attorney, comes and defends the force and injury when &c and says that she is not guilty of the said supposed trespasses and ejectment above laid to her charge, or of any part thereof, in manner and form as

the said Adamson B. Newkirk hath above thereof complained against her, and of this the said Rosella Chapron puts herself upon the Country &c.

George Manierre
Atty for Deft.

And afterwards to wit, on the fifth day of October A. D. Eighteen hundred and fifty four, being one of the days of the September Term of said Court, the following proceedings were had in said cause, and entered of Record. to wit

Adamson B. Newkirk
_____ v _____ } Ejectment
Rosella Chapron . . . .

And now upon this day come the said Plaintiff by S. E. Cone his Attorney, and the said Defendant by George Manierre her Attorney also comes and issue being joined herein it is Ordered that a Jury come and thereupon come a Jury of good and lawful men to wit.

A. Burt. Martin Brannan. John McGovern. William Carrigan Jacob Miller. William Townsend, A. H. Johnson. H. McBride H. H. Bloss. William Wilson. Edward Dawlin. & L. F. Knott, who being duly elected tried and sworn well and truly to try the issue joined as aforesaid after hearing the testimony adduced, the hour of adjournment having arrived the further hearing of this cause is postponed until tomorrow morning and by agreement of said parties the Jury are permitted to separate.

And afterwards on the said sixth day of October in the year last aforesaid, as apt of the said September Term of said Court, the following proceedings were had in said Cause and entered of Record to wit

[12253-3]

Adamson B. Newkirk
v
Rosella Chapron ... } Ejectment.

And now again come the said parties by their said Attorneys and the Jury empannelled in this cause also come and after hearing the argument of Counsel and instructions of the Court, retire to consider of their Verdict, and afterwards come into Court and say, we the Jury find the defendant not guilty, as charged in said Plaintiffs declaration.

Therefore it is considered That the said Defendant do have and recover of the said Plaintiff her costs and charges by her about her said defence in this behalf expended and have execution therefor.

And afterwards to wit on the fifth day of April, being one of the days of the April Vacation Term of said Court A. D. Eighteen hundred and fifty five, the following proceedings were had in said cause, and entered of Record in said Court, to wit.

Adamson B. Newkirk
v
Rosella Chapron ... } Ejectment.

And now again come the said parties Plaintiff by John S. Cone his Attorney, and on his Motion it is Ordered that a New Trial in this cause be had on payment of the Costs herein in accordance with the Statute in such case made and provided.

And afterwards to wit on the thirtieth day of June being one of the days of the June Vacation Term of said Court A. D. Eighteen hundred and fifty five, the following proceedings were had in said Cause and entered of Record in said Court, to wit.

Adamson B. Newkirk
v
Rosella Chapron ..... } Ejectment.

And now again come the said parties by John E. Cone his Attorney, and the said Defendant by Arnold & Manierre her Attorneys also come and issue being joined herein, this cause by Agreement of said parties is submitted to the Court for Trial without the intervention of a Jury, and the Court after hearing the allegations and proofs submitted by said parties and arguments of Counsel, being now fully advised in the premises finds the defendant not guilty as charged in said Plaintiffs Declaration

And thereupon said Plaintiff enters his Motion herein for a New Trial in this Cause, which Motion after being heard is overruled by the Court to which decision of the Court the said Plaintiff now here enters his exceptions.

Therefore it is considered that the said defendant do have and recover of the said Plaintiff her Costs by her about her defence in this behalf expended and have execution therefor.

And thereafter to wit on the said thirtieth day of June in the year last aforesaid the said Plaintiff, by his said Attorney, filed in the Office of the Clerk of said Court, his Bill of Exceptions, in words & figures as follows, to wit.

State of Illinois } In the Cook County Court of
County of Cook } S.S. Common Pleas.

Adamson B. Newkirk
v
Rosella Chapron ..... } Ejectment.

Be it Remembered that on this thirtieth day of June A. D. 1855 this cause came on to be

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Cause tried by agreement of the parties before Hon. John M. Wilson Judge of the Cook County Court of Common Pleas the intervention of a Jury being waived.

The Plaintiff to support the issue on his part gave in Evidence, a Patent from the United States to one Truman G. Knight granting to him the West half of the North east quarter of Section Eighteen in Township Thirty nine North of Range Fourteen east of the Third principal Meredian which Patent was dated the 16th day of March A.D. 1837 showing the legal Title to have been in said Knight.

The Plaintiff further gave in Evidence a deed of Conveyance of the above described Land executed by said Truman G. Knight, by which deed the above described Land was conveyed in fee simple to one Ebenezer Jackson on the 17th day of February A. D. 1838, which said deed was duly recorded in the Recorders Office of Cook County on the 22nd day of February A. D. 1838.

The Plaintiff further gave in evidence a deed of Conveyance of the above described land executed by the said Ebenezer Jackson, by which Deed the said above described land purported to be conveyed in fee simple to the Plaintiff on the 18th day of May A. D. 1854 which said deed was duly recorded in the Recorders Office of the County of Cook on the 25th day of May A. D. 1854, and purported to show the legal Title to be in said Plaintiff.

The Defendant thereupon admitted that she was in possession of the Premises mentioned in the Plaintiffs declaration (being a portion of the Land above described) and claimed by the Plaintiff in fee simple at the time of the commencement of this suit. Whereupon the Plaintiff rested his case.

Defence.

And thereupon the said Defendant to support the issue on her part gave in Evidence. The Record of a

Judgment rendered at the November Term of The Municipal Court of the City of Chicago A. D. 1837 in favor of one Robert Gracia and against the said Truman G. Wright impleaded with others as defendants for the sum of One thousand eighty four dollars and sixty one and a fourth cents and costs.

The Plaintiff thereupon admitted that an Execution had issued upon said judgment within one year from the last day of the term of the Court in which the same was rendered.

Whereupon the said defendant offered in Evidence a paper purporting to be an alias Execution issued out of and under the Seal of the said Municipal Court of the City of Chicago upon the judgment aforesaid dated on the 20th day of February A. D. 1839. which said paper is in words and figures following, to wit.

"State of Illinois
County of Cook
City of Chicago } S.S.

The People of the State of Illinois to the Sheriff of Cook County Greeting: We command you as we lately did the High Constable of said City That of the Goods and Chattels lands and tenements of Henry Fake, Truman G. Wright and Anson Weed in your Bailiwick you cause to be made the sum of One thousand and eighty four dollars sixty one and 1/4 cents which to Robert Gracia was lately adjudged in the Municipal Court of said City, for his damages, costs and charges in a certain action of Assumpsit against them, at the suit of the said Robert Gracia in our said Court sustained, whereof the said Fake, Wright and Weed are convicted as appears to us of Record, and have you that money ready in Ninety days from the date hereof to render to the said Robert Gracia for his damages costs and charges aforesaid - Hereof fail not and make return of this Writ in the said space of Ninety days

{12283-5}

from the date with an endorsement thereon as to the manner in which you executed the same

Witness the Hon. Thomas Ford, Judge of said Court, and the Seal thereof at Chicago this 20th day of February A. D. 1839

(Seal)

N. L. Rucker (Clerk.)

(Upon which said paper and a paper thereto attached are the following indorsements)

"By virtue of the within Writ on the twenty first day of February A. D. 1839 I have levied on the West half of the North East quarter of Section Eighteen in Township Thirty nine North range Fourteen East of the Third principal Meridian. Also the West half of the North East quarter of Section six in Township Thirty nine North range Fourteen East of the said Meridian. Also the East half of the North West quarter of Section six in Township Thirty nine North range fourteen east of said Meridian Also the West half of the South West quarter of Section twenty six in Township Thirty nine North range Thirteen East of said Meridian Also the West half of the South West quarter of Section Thirty one in Township Thirty nine North Range Twelve East of said Meridian: And the half of the South West Quarter of Section four in Township Thirty eight North range Twelve East of said Meridian.

D. K. Gavin Sheriff of Co. Co. Ill,

by Edw. L. Hunter. Depy Sheriff"

"By virtue of the annexed Writ and after advertizing the property described on said Writ, and after an appraisement made according to Law, I did on the twenty fifth day of March A. D. 1839 at the door of the Clerks Office of the Circuit Court in Cook County, and State of Illinois, between the hours of nine in the morning and the setting of the Sun of the same day, proceed to sell the said property so described on this Execution and that the

Plaintiff in said Execution by J. N. Balestier his Agent bid for said property the sum of One thousand and five dollars and eighty one cents which being the highest bid therefor, the said Robert Gracia the said Plaintiff became the purchaser thereof, and the said amount was paid by him to me and satisfied the said Execution

Isaac R. Gavin. Sheriff C. C. Ill.
by Edw. D. Hunter Dpy Shff.

To the introduction of which said paper in Evidence the Plaintiff by his Counsel objected which objection was overruled by the Court; and the said paper received in Evidence To which decision of the Court the Plaintiff by his Counsel then and there excepted.

The defendant further offered in Evidence a Deed executed by the Sheriff of Cook County purporting to convey to said Robert Gracia on the 19th day of June A.D. 1841 all the lands described in the paper aforesaid, in consideration of the Sale aforesaid, which said deed was duly recorded and purporting to show the legal title in said Gracia. To the introduction of which Deed in Evidence the Plaintiff objected Which objection was overruled by the Court and the said Deed received in Evidence, to which decision of the Court the Plaintiff by his Counsel then and there excepted, which said Sheriffs Deed is in the words and figures following, to wit.

The defendant further offered in evidence a deed executed by said Robert Gracia purporting to convey to one Charles E. Meletta his heirs and asigns on the 2nd day of April A.D. 1841 the whole of the West half of the North east quarter of Section Eighteen Township Thirty nine North range fourteen East in Cook County, for a valuable consideration; which said deed was duly recorded and purporting to show the legal title in said Meletta. To the introduction of which said Deed in Evidence the Plaintiff by his Counsel objected which objection was overruled by the Court, and the said

{12253-4}

Deed received in evidence, to which decision of the Court the Plaintiff by his Counsel then and there excepted

The Defendant further offered in evidence a deed executed by the said Charles L. Melette purporting to convey to one James H. Rees his heirs and assigns on the 30th day of August A. D. 1845 Twenty acres of the said West half of the North East quarter of Section Eighteen aforesaid including that part of the tract of land aforesaid claimed and described in the Plaintiffs Declaration, for a valuable consideration which deed was duly recorded and purporting to show the legal title in said Rees. To the introduction of which said Deed in Evidence the Plaintiff by his Counsel objected. Which objection was overruled by the Court and the said Deed received in Evidence To which decision of the Court the Plaintiff by his Counsel then and there excepted.

The defendant further offered in evidence a deed executed by said James H. Rees with covenants of Warranty purporting to convey to one Francis Chapron his heirs and assigns on the 30th day of August A. D. 1845 All that part of the said West half of the said North east quarter of Section Eighteen aforesaid mentioned described and claimed by the Plaintiff in his Declaration in this suit, for a valuable consideration, which Deed was duly recorded and purporting to show the legal title in said Chapron. To the introduction of which said Deed in Evidence the Plaintiff by his Counsel objected, Which objection was overruled by the Court, and the said deed received in Evidence, to which decision of the Court the Plaintiff by his Counsel then and there excepted.

Thereupon the Plaintiff admitted that the Defendant was in possession of the Premises aforesaid as the Widow of the said Francis Chapron deceased and guardian of his Children and heirs at law.

The Plaintiff further admitted, that at the time and previous to the passage of the act intitled, "An Act to repeal part of 'An Act to incorporate the City of Chicago" approved February 15th 1839, one Henry L. Rucker was the Clerk of the said Municipal Court of the City of Chicago, and continued to have the custody of the Records dockets and papers of said Court, up to, and after the date of the aforesaid paper purporting to be an alias Execution as aforesaid and down to the time of the issuing the last executions as hereinafter stated.

Whereupon the defendant further offered in evidence a number of papers purporting to be process of said Municipal Court, and to have issued out of, and under the seal of said Court, and signed by said Henry L. Rucker as Clerk, subsequent to the passage of the repealing Act aforesaid and some of which purported to have issued subsequent to the date of the paper purporting to be an alias Execution as aforesaid, and as late as the 26th day of March 1839 Among which said papers, were some purporting to be Writs of Execution upon judgments rendered in said Municipal Court and Writs of Venditioni Exponas directed to officers who had previously to the date of said repealing Act levied upon upon property, by virtue of fi fa's issued out of said Municipal Court, prior to the date of said repealing Act. Upon some of which papers purporting to be Writs of Venditioni Exponas as aforesaid, were indorsements by said Officers that they had made Sale of the property therein described, in obedience to the command therein contained.

To the introduction of each and all of which said papers in Evidence the Plaintiff by his Counsel objected. Which objections were overruled by the Court; and the said papers received in Evidence. to which decision of the Court the Plaintiff by his Counsel then and there excepted.

[12253-I]

Thereupon the defendant rested her case - Thereupon there being no further evidence given nor offered by either party (this being the whole evidence in the cause) the Court found the issue for the Defendant.

And thereupon the Plaintiff by his Counsel moved for a New Trial upon the following grounds, to wit: That the Court erred in overruling the said several objections made by said Plaintiff to the Evidence offered by the said defendant and in receiving the same in evidence as aforesaid, that upon the law and evidence the finding of the Court should have been for the Plaintiff. Which said Motion was overruled by the Court. To which decision of the Court the Plaintiff by his Counsel then and there excepted. The Court thereupon caused a judgment to be entered for said defendant.

And because none of the said exceptions so offered and made to the opinion and decisions of the said Judge of the said Cook County Court of Common Pleas do appear upon the Record of the said Trial, therefore on the Prayer of the said Plaintiff by his Counsel the said Judge hath to this Bill of Exceptions put his hand and seal, according to the Statute in such case made and provided, this thirtieth day of June in the year of our Lord one thousand eight hundred and fifty five.

John M. Wilson (Seal)

It was thereupon mutually agreed by and between the parties in this cause, that it should not be necessary for the Clerk to transcribe into this Bill of Exceptions any of the deeds under which the Plaintiff derives his title; Nor the record of the Judgment or any of the deeds under which the defendant derives title; and that the statement of said deeds and judgment hereinbefore made should be sufficient evidence of the title under which the parties respectively

claim the Premises in question and of the regularity thereof.

John. A. Gore. Pltffs Atty.

Arnold & Mannerre. Defts Atty

State of Illinois }
County of Cook }

I Walter Kimball Clerk of the Cook County Court of Common Pleas, within and for the said County and State Do hereby Certify that the foregoing is a full true and correct Transcript of the original papers, Bill of Exceptions, and also of the Orders entered of Record in said Court, now on file in my office in the case of Adamson B. Sunkirk v Rosella Chapron.

In testimony whereof I have hereunto subscribed my name and affixed the Seal of said Court at Chicago in said County this third day of July A D 1855

Walter Kimball

Clerk

[12253-8]

Supreme Court of the State of Illinois
Of the June term A.D. 1854.

Adamson B. Newkirk
vs.
Rosella Chapron

Appeal from the Cook County Court of Common Pleas.

And now comes the said Adamson B. Newkirk plaintiff in this suit and says that there is manifest error in the foregoing and annexed record and in giving the judgment aforesaid in this; to wit:

1st That the said Cook County Court of Common Pleas erred in overruling the objection of said plaintiff to, and in receiving in evidence the paper purporting to be an execution issued upon the judgment of the Municipal Court of the city of Chicago in favor of Robert Gracia, after the law establishing said Municipal Court had been repealed.

2nd That the said Court erred in overruling the objections of said plaintiff to, and in receiving in evidence, each and every of the deeds offered in evidence by said defendant.

3rd That the said Court erred in overruling the objections of said plaintiff to, and in receiving in evidence, each and every of the papers purporting to be process of the Municipal Court of the city of Chicago and to have issued after the law establishing said Court had been repealed.

4th That the finding of said Court was not warranted by law nor the evidence but was wholly illegal and erroneous, and should have been for the plaintiff.

(12253-2)

4th That the said Court erred in overruling the motion of said plaintiff for a new trial.

There is also error in this, to wit: that by the record aforesaid it appears, that the judgment aforesaid in form aforesaid, was given for said Rosella Chapron and against said Adamson B. Newkirk; Whereas by the law of the land, the said judgment ought to have been given for the said Adamson B. Newkirk against the said Rosella Chapron for the recovery of the possession of the premises aforesaid.

And the said Adamson B. Newkirk the plaintiff in this suit prays that the judgment aforesaid may be reversed, annulled and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of said judgment.

Morris & Cone
Attornies for Appellant.

and appellee says—
There is no error &
prays affirmance of
the judgt—

Wood & Baker
for appellee

[12253-10]

Supreme Court of the
State of Illinois of the
June Term A.D. 1855

A. B. Newkirk

vs

Roselea Chapron

appeal

Assignment of errors

Morris & Cone
Attys for appellant

124

Adamson B. Newkirk

v

Rosella Chaffee

Appeal

Filed July 6th 1855.
L. Leland Clk.

Fees paid by Plaintiff
Trans. 85 cts Cert & seal 35
85 35

Construction.

Ascertaining meaning.

x Rick 235.

x x x 1 Peters Cond. 422.

x 15 John. 380.1.

4 Gilm. 259. 261.2.

x 2 Scam. 225.

x 3 Cowen 95.

To supply by implication such provisions as are within general intent, Even by the rejection of words,

x 10 Rick 242.3.

x 13 Rick. 348.9.

x x x 2 Scam. 225.

x 13 Ill. 565.

x 3 Gilm. 46.

The Error is in assuming that it was the design of the law to entirely abolish the Court.

Where two Stats or Sects appear to be in conflict to give effect to both.

12 Mass. 384.

x 9 Cowen 507.

x 4 Gilm. 271.

x 4 How. 51.

To protect rights where the construction is at all doubtful

x 3 Scam. 157. 160.

x 4 How. 51.

x 1 Gilm. 46. 61.

(12253-12)

Constitutional.

x 2 Howards 608. 611.

x 4 Gilm. 274. 5. 6. 7.

x 19 John. 83.

Scope of the Act.

12 Mass 384.

15 John. 380. 1.

Implication.

The only implication we are required to make to support this writ, is that the legislature intended the Clerk to continue to perform his duties so long as he cont[d] in custody of the records.

This implication is favored by express provision of the Act. 1st Because he is authorized to continue in such custody: 2nd Because the words are essential to the performance of duty: 3rd Because he is authorized to issue execution after the transfer is made: 4th Because it is consistent with the provisions of the whole act, and is not in conflict with any: 5th Because it prevents an interregnum in the office.

Because the other construction is in conflict with the law which declares that Executions shall be issued.

Cases in which similar implications have been made.

10 Pick. 243. 2 Scam. 225.
13 M. 348.9. 1 Gilm. 46.
13 Ills. 565.

But if this construction is doubtful then it is the duty of the Court for the protection of titles to uphold the writ.

1 Peters Cond. 422.5.
3 Scam. 157. 160.
4 How. 51.
1 Gilm. 61.

And especially is this the case when by so doing the Court avoids a construction which would make the law unconstitutional by suspending the rights of creditors.

Adamson Newhall
vs
Rosella Chapron.

Ejectment

Blatchford Com. Pleas

It is contended in this cause that the writ in question is void because issued out of the office of the clerk of the Municipal Court after the Court has been abolished.

It is said that Sec 1. of the act provides that so much of an act as establishes said Court, "and all matters connected therewith shall be repealed.

Point 1st

In the construction of a statute every part of the act is to be considered and the intention of the legislature is to be extracted from the whole.

General expressions are to be restrained by subsequent particular words and clauses which show that general words are to be understood in a particular sense.

12 Mass. 384.
15 Johns. 380. 1.
Bruce vs. Schuyler,

1 Peters Cond. 422.
9 Bacon Abr. 239. 240.
4 Gilm. ~~260~~. 259, 261. 2.
2 Scam. 225.
3 Cowen 95.

Particular Clauses

If Sec 1. were to be understood literally not only the Court but every matter connected with it would be utterly destroyed and extinguished:— And such would appear to be the construction given to it.

That this was not the object of the act is apparent:

2nd

1st From the obvious scope, design and extent of the law. What was the intent?

S/2253-137

2nd The design & purpose, and therefore the intent of the law was merely to abolish the jurisdiction of the Court so far as relates to any future exercise of judicial power, and not to limit, suspend, defeat or impair any vested right; — vested rights are legal interests or estates.

This is apparent from the various provisions of the law.

Secs 2. Provides for the transfer to, & final disposition of all pending suits by the Cir. Court; makes valid all process &c and
Sec 3. provides for the return of process to that court and invests it with jurisdiction to enforce return of process, & also provides for iss; Executions to Sheff of Cook Co;

Sec 4. Provides for the making of transcripts by Clk of Cir. Ct.: Sec 6. Authorises Sheff of Cook Co. to execute deeds for real estate sold by high Constable in his time.

Note,

Session Laws of 1838.9,
page 63.4.

It appears therefore that it was not the intent to deprive judgt creditors of their Executions; on the contrary it carefully protects them. The only doubt is as to the proper officer to issue them.

But it is contended that though such may have been the design of the Act with reference to the existing rights of creditors & others, and that to this extent the repealing clause is to be restrained by the particular intent of the subsequent provisions, yet that the writ in this case is void because the intent of the law was to suspend the functions of the clerk, and his functions were suspended by the Act before the writ was issued.

On this we contend:

3rd Point.

That it was not the intention of the act to suspend constantly all the functions of the ministerial officers of the Court;

1st Because this was not within the immediate design of the law which was only to suspend the judicial power of the Court,

2nd Because the act shows upon its face a contrary intent;

1st In this that by the 5th Sec. of the law the Sh. is directed to deliver the records within six week to the clerk of the Cir. Court, and is therefore authorized to continue in office until the act of transfer is completed. Sec 5. Act 1838.9.

2nd The clerk of the Municipal Court is authorized to continue to issue writs for the collection of his fees, according to law ("in the manner now provided by law") after he shall have transferred the records under the Act:

3rd The powers and duties of the High Constable are continued with respect to process in his hands which had been levied.

These provisions show that there was no intent to suspend the ministerial functions of the clerk, and that therefore the general repealing clause is to be understood in a restricted sense.

4th Pont. We contend therefore that in authorizing the clerk of the Court to continue in the

[12253-14]

custody of the records it was the manifest intent of the Legislature not to suspend the performance of the ministerial duties of the office during that period;

That therefore the act was not intended to take effect so far as the powers and duties of the clerk were concerned until the records were actually transferred.

2ly

A contrary construction of the act would lead to the greatest absurdity & injustice.

That this is the

~~In this~~;

2ly It is evident that the clerk of the circuit

That this is the true construction is evident from this:

1st Because so long as the custody of the old clerk continued within the period of six weeks subsequent to the passage of the law, no official act in reference to the records could be performed by ~~the clerk of the Cir.~~ him. Court could not enter upon his duties;

Note. Because the act does not provide for his Entering immediately upon his duties.

2ly There is no power in the act by which a transfer of the records could have been enforced and until they were transferred the powers vested in him by the act, otherwise necessarily lay dormant:

Because so long as his custody of the records, exist it cannot be said that he was out of office.

3ly The custody of the clerk was therefore exclusive so long as it continued under the act, because he was not required to transfer the records,

Because if the old clerk was entitled to the custody the other was not—and if not then he was not in office.

4ly The act only imposes a duty to transfer: and there could have been no breach of it if performed within six weeks

5ly If the time of the delivery within six weeks was optional with the clerk then it was in his discretion to continue in the custody

for the whole period: And if so then the Clerk of the Circuit Court having no power to obtain the custody could therefore perform no official act in reference to the records,

There considerations further show the intent of the Act that the powers & duties of clerk should not vest in the Clk of Cir. Ct; because such is the legal effect of the law, and the Legislature is presumed to intend all the legal consequences arising from their laws.

Note.

The act itself manifestly contemplates this because it provides for his giving bonds after the transfer — & the impression of the seal of the court, it securing to him access to the records.

Point.

We are therefore to assume that the Legislature intended to continue the old clerk in office until his successor, the Cir. Clerk should enter upon his duties; that until that time the Legislature intended that he should continue to perform the duties of the office as in the Common case of one clerk succeeding another.

Or we must assume that the Legislature contemplated an interregnum in the office.

2" Is the relation of that clerk to the office and the records was not official, what was it?

3rd Is it to be believed that the Legislature intended to relieve him of the usual and ordinary discharge of those duties which were incident to the custody of the records? —

4" That the intention was to create an interregnum in the office to the prejudice of the rights of third persons, especially in view of the pains taken by the law to protect them?

4th Is it to be believed the Legislature intended to deprive him of the power to perform those duties, while making no provision for their performance by another?

51 2258-15

5th Or that the grossabsurdity was intended of giving to one clerk the custody and to another the powers of clerk without the means of discharging his duties?

6th Is it not certain that while the custody continues with the old clerk that every duty incident to the possession of the office was continues also, together with his liabilities?

7th If his office did not continue then neither he or his bond would be liable for misfeasance in office?

8th If the office continued for one purpose it did for all.

Notes.

It cannot be intended that the legislature designes the old clerk to continue in office & yet that his functions should be suspended.

Point. Now, if this was not the intent that he should continue to perform the duties of the office, then we are reduced to this position:

That the legislature intended that there should be a suspension of the functions of clerk until after the transfer should be actually made, because they have given the custody of the records to the old clerk and not authorized the other clerk to take post, or in other words, enter upon his duties.

This would be unconstitutional — because it would create a suspension of the rights of pupils creditors. Such construction is therefore to be avoided.

2

We contend therefore that it is the duty of the court to intend that to be within the intent of the act which is a natural influence from the act and which the act renders into a legal necessity.

3rd Now, if the construction contended for be given to the act it would be to the prejudice of the rights of the public

That is to say to intend that the legislature meant he should perform the duties incident to the office while he omitted to keep the records.

Rules of Construction.

1st If it is apparent that by a particular construction of a statute, in a doubtful case great public interests would be endangered or sacrificed it ought not to be presumed that such was the intention of the legislature.

3 Scam. 157.
1 Gilm. 46.

2d The provisions of a statute ought to receive such reasonable construction if the words and subject matter will admit of it as that the existing rights of the public and individuals be not infringed.

Cases in which the Court will supply a power by implication. 2 Gilm. 259. 261. 2. 4 How. U.S. 51. 6 Bac Ab. 391.

3d If the literal expressions of the law would lead to absurd unjust, or inconvenient consequences, the court should give effect to the intent rather than to the words, if from the whole purview of the law and giving effect to the words used it may fairly be done.

× 15 John. 380. 1. × 2 Scam. 225. Bac Abft. 259. 3 Cowen 95. 4 Pick. 35. × 13 Pick 348. 9. × 13 Ills. 565. 1 Peters Cond. 422. 4 Gilm. 259. 260. 4 How. U.S. 51. × 10 Pick. 241.

4th Where two stats, or sections of an act conflict it is the duty of the Court to give such a construction to both as will uphold both.

12 Mass. 384. 9 Cowen 507. 4 How. U.S. 51 4 Gilm. 271.

{12253-14}

(In the construction we give the act be reconciled with the general provisions of the law?

Rule.

It is the only construction which will harmonize the whole act: it is consistent with the whole act, and with the design of the act.

1st It prevents an interregnum in the office to the prejudice of the rights of parties.

2d It reconciles the conflicting provisions of the law.

3d It violates no part of the act and there is no word in it which forbids such a construction to be given.

4th Besides it agrees with the contemporaneous exposition of the law by the clerks of both courts.

5th And there is no reason in public policy which requires a contrary construction to be given to it; but very reason why it should be. (And why should not the Court give it this construction?

6th It is the natural, genuine, obvious construction of the law from the words used and the design of the act. It is true there are no express words to this effect in the act but that such was the intent there can be no doubt.

Point. Again. We contend that any other construction than this would make the law unconstitutional, because it would expose the rights of judgment creditors by suspending the process of the Court or leaving it discretionary with the old clerk to prevent the iss. of execution by holding the exclusive the custody of the records.

2nd

The rights of a judgment creditor are within the protection of the Constitution and the suspension of the right to an execution, as by leaving it the discretion of another to permit one to issue, or a deprivation of that right, would impair the obligation of a contract; however minute the interferance might be, if in a material respect, it would be unconstitutional.

See also: 6 Wend. 576. 7 Hill. 344; 6 Pick. 508; Hyward vs McCrach 2 How. U. S. 611.
4 Gilm. 274. 5. 6. 7. 245,
19 John. 83.
20 John. 480.
14 Illinois 334,

3rd It would be unconstitutional because giving a retrospective effect to the act,

Courts will not construe an act so as to give it such effect, where it would disturb vested rights

Garrett vs Wiggins, 1 Scam. 335,
Jackson vs Howe, 19 John. 83.
Jackson vs Eaton, 20 John. 480

That it was the intention the clk should continue to perform his duties is evident from the fact that no one else could have performed them,

During six weeks his custody was exclusive & it was cont^d the whole time —

What was the pos^n cont^d for if he could perform no official act in reference to them?

This was not necessary for the mere purpose of delivery?

And if cont^d for one purpose was it not intended it should for all,

If it was not intended that the clk should perform adjutorium, then it is to be intended that the leg. designed an interregnum because such would be the legal effect of couting the exclusive custody with him.

See Brief.

It will intend that ours is the true construction because it is the natural & necessary inference from the act and full effect could not be given to the law otherwise.

Has the Court ceased to Exist?

No, the law

In Clark Com Pleas

Adamson Newkirk

v

Rosella Chapman

Brief

223

Newkirk
vs
Chapron } Appeal from Cook Co Court of Common Pleas.

If the judgment of the Court below shall be reversed by this Court the plaintiff moves that a judgment of recovery &c be rendered in this Court or in case the cause is remanded that it be remanded for judgment &c and not for a new trial.

The Court will see by the record that two trials were had in the Court below and a motion for another trial overruled by the Court; that the evidence shows that the plaintiff is entitled to recover -- and that the only effect of remanding the cause for new trial will be to delay the plaintiff in his right of entry. And that the defendants have had ample oppertunity for putting in every defence to the action and that they have no other defence than the title set up under said Sheriff's deed.

L. C. Cone for appellant.

(12253-19)

124

Supreme Court of
June Term 1844

A. B. Newkirk.

vs

Rosella Chapron

Motion for judgt.

Filed July 27. 1844
L. Leland Clk.

Chicago Jan. 17, 1856.

Hon. The Supreme Court of
the State of Illinois.

Several Citizens of this place interested
in the decision made or to be made in
the Case of McKinlay V. Chapman in
the Supreme Court, have retained me,
in case an opportunity for so doing can
be obtained; To argue the questions
of Law arising in said Suit.

I am informed and believe, that
the property depending upon the Result
of the present decision is worth at least
the Sum of Two hundred thousand dollars
that much of it has been transferred
by divers Mesne Conveyances to the present
holders and occupants in perfect good
faith — under the firm belief — and uni-
versally received Opinion, that the title
was perfect. I have examined the ques-
tion with some care — It would be pre-
sumption in me to Even State the Result
of my investigation, or wherein my

[12253-58]

Our views might be different from what I have understood to have been the information of our opinion or decision of the Court. Nor do I flatter myself, that any thing that I could say would be effected to change the opinion of the Court, deliberately formed upon full argument, and with a full understanding of all the points which could be presented.

In Mr Arnold's printed argument a new point is made, — and from what I have learned from him and others in relation to the argument of the cause, I am persuaded that, the strong confidence which the attorneys for the appellees had in their cause, made them less assiduous than they otherwise would have been in the preparation and argument of the cause.

Those not directly interested in the Results of the present Suit, feel, that if the Judgment of the Court is to stand without further argument, by Counsel employed to represent their interests that they have not been fully heard or represented — and are liable to be deprived of their holdings and possessions without an opportunity of being so.

In Consideration of the magnitude of the interests involved, and the importance of the question. I hope and Respectfully request that the Court will permit me to argue the questions arising in this Cause Orally at such time and place as may best suit the convenience

And it seems to me that a case like this ought to be an Exception to the General Rule in that Respect.

Respectfully

Yours &c

J. W. Shipley

[12253-21]

Supreme Court

Adamson B. Newkirk
vs
Rosalia Chapron —

To the Honorable, the Supreme Court of the State of Illinois.

The petition of Rosalia Chapron. Defendant in error in the above entitled cause, respectfully shows. That this cause was tried in the Cook County Court of Common Pleas before the Honorable John M. Wilson and a judgment rendered in her favor, and an opinion given by said Court a copy of which is herewith presented as a part of her petition.

That the cause was taken to the Supreme Court on an agreed statement of facts, and the case was argued at the last June term of this Court by Judge George Manierre for your petitioner.

Your petitioner respectfully but very earnestly prays that the Court will direct a re-hearing and re-argument of this case and begs leave to present the following as some of the reasons why a re-argument and re-hearing would promote

[12253-33]

the ends of justice

First.

In the decision of the question is involved the title to property amounting in value to more than a million of dollars and which for many years has been held and transferred in the good faith and without any shade of suspicion being cast upon it, and improvements amounting to many thousands of dollars have been placed upon such property

Second

Your petitioner would respectfully suggest that in a case, the decision of which will affect so large and important interests, and especially when it depends upon the construction of a Statute, it is not unusual for the Court to award a second argument.

Third

Your petitioner states that the case on her part was not argued by one of her counsel, and one in whom she relied in connection with Judge Maniere in consequence of no fault of hers but owing to circumstances unavoidable and which are particularly set forth in the affidavit of Isaac N. Arnold hereto attached.

Fourth

Your petitioner therefore states that, owing to sickness, your petitioners case was not fully argued by the counsel she had elected and she humbly, ~~fast~~ and respectfully, but earnestly prays that her counsel who was prevented from arguing the case at the last Term of the Court may have a hearing and be permitted to argue the case.

Your petitioner will not attempt to go over the grounds which seem to her clearly to establish the right of the Municipal Court Clerk to issue executions during the six weeks he held the custody of the records &c, but your petitioner would respectfully represent that the whole tenor of the Law repealing The Municipal Court of the City of Chicago shows a scrupulous care in preserving the rights of judgment creditors existing in said Court. The right of the Clerk of the Municipal Court to issue executions while he was continued in office and while he held the records &c was not questioned <u>at the time</u>, but this right was assumed by the Clerk, sanctioned by the bar of Chicago and by all parties interested, acquiesced in by the

[122 53-03]

Defendant in the execution in question, and also by Defendants in an indefinite number of other executions, and never questioned during all the changes of title for fourteen years and is only discovered at last by eyes sharpened by speculation and astute in finding defects in their neighbors titles

Your petitioner humbly submits that the construction which leads to so much injustice and producing results so evidently in direct conflict with the real intention of the framers of the laws, will be avoided, if it can fairly be done by this Court.

1. There can be no doubt that the clerk of the Municipal Court was continued in office for six weeks for certain purposes

2. The right to issue executions on judgments is not taken away by express terms

3. This right to issue executions is not given to the Circuit Clerk during this time

4. The right to issue execution must certainly have existed some where or in some one

If this right existed in some officer, and if it had not been expressly taken from the Municipal Clerk - if his official power continued for some purposes and if he was the legal custodian of the records where the execution in question was issued, is it a very far fetched inference and is it asking much of this Court - to assume, in accordance with which spirit and design of the law, that executions were to be issued by the Clerk of the Court - who had legal custody of records?

In the language of the Supreme Court in the People vs Th ____ 11 of Ills page 561 your petitioner humbly says

"That it was the will of the legislature that the duty of ~~custody~~ issuing these executions should be performed by somebody, is certain and it is to be regretted that they did not designate more clearly than they have done by whom these duties should be performed. As the case now stands the responsibility is thrown upon the Court, either of saying that for the want of sufficient legislation on this subject - no legal execution could be issued after the passage of the repealing law, or else of

determining from such rights as we have to whom this important duty has been transferred and that too in the absence of any express enactment making the transfer"

We say again in the language of the Supreme Court (11. Ills page 565.) in regard to the issuing of this execution "It is true the Legislature has not said so (that is that the municipal Clerk shall issue them) in express terms, but if there "ever was a case where the Court was "authorized by construction to hold the law "to be what the legislature most manifestly "designed it should be, this is that case. "It is the undoubted duty of the Court sometimes to look at consequences in construing "statutes, for the legislature must be "supposed to have had consequences in view "in passing it now it is out of the question "to suppose that the legislature in the en- "actment of this law ever designed to "destroy the means of carrying out all these "various laws" _____ So we say that it is out of the question to suppose that the Legislature in enacting this law ever designed to take away the right of enforcing judgments in the Municipal Court

"Such was never the design of the Legislature and to convey such as these it is the duty of the Court to look before we give a construction to the law which would produce such results although it is to be regretted that the Legislature has not by express and plain enactment superceded the necessity of construction in a matter so important in its results yet this Court will not in such a case hesitate to declare the law to be what the Legislature most palpably intended it should be".

In conclusion without any attempt to do more here than briefly to have suggested reasons for a re-argument and re-hearing your petitioner prays that she may be heard by her counsel before this Honorable Court and as in duty bound she will ever humbly pray &c.

Rosalia Chapron
by Isaac N. Arnold
her att'y

5/2253-05

Supreme Court
of the State of Illinois

Adamson B. Kerkirk

vs

Rosalia Chapron

Supreme Court of the State of Illinois

Rosella Chapron
appellee
ads
Adamson B. Newkirk
appellants

State of Illinois
Cook County
ss

Robert Kerwey of the City of Chicago in the said County being duly sworn maketh oath and saith that he and his partner Joseph P. Clarkson of Chicago aforesaid purchased at several times Two five acre tracts in Section Six Township Thirty nine Range Fourteen East - the title to which said tracts depends on the same question in issue in this Cause viz the validity of the writ of Execution which is the principal question upon this Honorable Court in this Cause -

That this Deponent and the said Clarkson purchased said lands in 1853 & 1854 in good faith and paid a large sum of money therefor -

That they have subdivided one great five acre tracts and have sold off a considerable portion thereof and have given deeds and contracts for deeds in the name of said Clarkson in whose name the titles were taken which deeds are warranty deeds and which Contracts call for warranty deeds to the purchasers -

And this Deponent further saith that they this Deponent and said Clarkson have paid the taxes

[12253-36]

and assessments on said lands since they acquired title thereto regularly and in good faith - And that their interest in said lands and liabilities on said Deed and Contract amount to over Twelve thousand dollars -

And this Deponent on his own behalf and on that of his partner and joint proprietor the said Clarkson prays that before a decision be made which will affect their said interests they may have an opportunity of being heard in this Honorable Court by their Counsel.

Subscribed and sworn to before me at Chicago in said County this 18th day of January AD 1856

L. C. Hall
Notary Public

Robt Harvey

Supreme Court of Illinois

Rosella Chapman
appellee
ads

New Kirk Appellant.

Affidavit of Robert Hervey

Henry & Clarkson
$12000-

Newkirk v Chapman

Ino E Cone for Plff

Question is one of title derived from pdgt & sale under Municipal Court of Chicago

Gale Stat 389. sec 1. Lien of pdgt for 7 years from last day of term

1 Scam R 236 Lien is only co-extensive with the county in which the judgement is rendered

1 Gil R 645 - Law implies notice of pdgt liens to realty and therefore limits that notice to the extent of the lien

Acts 1837 p 75 sects 69. Municipal Court jurisdiction co-ordinate ~~Rent~~ with Circuits Court of Cook - within the city of Chicago

Ibo sect 72 } Reads to show that court was purely local

" " 75 to 79 }

" " 80 all pdgts to have the same liens on realty as those of the circuits courts

" p 81 - jurisdiction given - concurrent with the circuits court in all matters arising in Cook county

2 Hunph R 576 Pdgts liens co-extensive with jurisdiction

Rev Stat 1845 - p An act to prevent secret liens, requires pdgts to be registered with Recorder - In pdgts & Execution Chapter

9 Bacon Abrid title Stat p 231 }

1 Kent Com 459 }

2 Ves R 472 } Distinction between public and private acts of Legislature

3 Bos & Pull 565 } Individuals not bound to notice private acts. Judicial power - under our Constitution can be conferred on public courts

consequently an act creating a court must be public and all must be presumed to know it & notice it

(12253-28)

11 Ills R 449 Comb remarks about pidgt heirs – that none can exist out of the County where pidg. land

1
1 Scam R 555 Law takes effect from passage – unless
2 " " 227 another day is fixed in it – or by law

Judge George Manniere for Defendant

15 John Reports 380.1 Such construction as will best answer the intention – should be put upon a Statute
3 Cow R 95 } Same
9 Do 507 }
12 Mass 383 }
2 Scam 223 Same case as above in 227

10 Peck 243 } As to implying powers from
13 Do 348.9 } provisions in acts of legislature
13 Ills R 565 } as to construction where meaning
4 How U.S 51 } is doubtful – will lean to such con-
3 Scam 157 } struction as will sustain the rights of parties

19 John R 83 } As to acts of legislature impairing
2 How U.S 608 62 } the obligation of contracts – &c
4 Gil R 274.57 } Case in Howard upon appraisement
& redemption law as it affects right of Mortgagee

John E. Cone in conclusion for Plaintiff

Smith's Com on Constitut Statutes 627-8 Where the language & meaning are plain - there is neither need or room for Construction - but the plain meaning must have effect - with many other remarks

Reviews the cases in

1 How U.S. 311
6 Do " 608
4 Gil 274-7

} These were upon a general law of the State - whereas this case is only a special act to transfer the jurisdiction and business from one court to another

The distinction is where the act of the Legislature is in itself a contract - or a right is vested under it - in these cases these rights cannot be destroyed by its repeal

Newkirk
v
Chapron

Brief

Supreme Court

Adamson B. Newkirk
v. (Pltf in error
Rosalia Chapron
(Deft in error

State of Illinois
Cook County } ss. Isaac N. Arnold being duly sworn says that he was of Counsel for Mrs Chapron in the above entitled cause and argued the case before the Hon John M. Wilson in the Court below. That he knows that his client and other parties deeply interested in the question involved relied on his making a full argument in said cause, that he is informed and believes that the decision of the case affects the title to property to the amount of several hundred thousand dollars. That before this cause was reached for argument on the docket and while this deponent was preparing to argue the case in July last this deponent received intelligence that his family, who were then in the State of New York, were ill, and so much so as to make it his duty to go to them immediately. This deponent therefore prepared a hasty, imperfect, and un-

satisfactory argument to be submitted in said cause, but this deponent feels and now feels that it fails properly to present the case on the part of his client and he verily believes that the interests of his client have been seriously prejudiced by his inability in consequence of such illness in his family fully and fairly to argue said cause. This deponent states that he was called away so suddenly that it was impossible to supply his place, so that his successor could thoroughly understand the case and prepare the argument. This deponent believes that the ends of justice will be promoted by granting a re-argument of this cause and he respectfully and earnestly requests the Court to grant the same in order that he may at least fully discharge that duty which he owes his client, and which they relied upon him to perform, and which he is conscious of having very imperfectly performed under the circumstances above stated.

Subscribed & Sworn to before me the undersigned this 16th day of November A.D. 1865. at Chicago in said County.

Isaac N. Arnold

Wallis Kimball Clerk of Cook County Court of Common Pleas.

Supreme Court
of the State of Illinois –

Adamson B. Kerkirk

vs.

Rosalia Chapron

A. B. Newkirk
vs
N. Chapron
} Appeal from Cook C. C. P. C.

The first section of the act does abolish the Municipal Court as agreed by all.

The second section transfers the all suits, matters, records, dockets & papers to the Circuit Court, with power to proceed there on as if such proceedings had been commenced & had in the Circuit Court. which records, papers, &c. the Clerk of the Municipal Court shall transfer and deliver over to the Clerk of the Circuit Court in a reasonable time: (not exceeding six weeks)

The High Constable is required to return all process to the Circuit Court (not to the defunct Court or Clerk) and the Circuit Court is invested with power to enforce the law in such cases, as if the proceedings had been had in his Court.

The 5th Section says the Clerk of the Municipal Court shall deliver over the records, dockets &c as provided for by the second section "within six weeks" from the passage of the act.

Provided, that nothing in this act contained shall be so construed as to prevent the Clerk of the Municipal Court from collecting his fees in the manner now "there" provided by law, and for that purpose" he "shall have free access to the records, dockets & papers and copies thereof" (from the Clerk of the Circuit Court) "free of costs or charges"

This is the true sense of that proviso.

In contemplation of law the Records &c were on file with the Clerk of the Circuit Court and as an inducement to Newkirk to deliver forthwith the Records and papers to the Clerk of the Circuit Court, a saving clause or proviso was made for his benefit to enforce the Collection of his fees by process & copies issuing

from the Circuit Court in the manner authorized by law — None but Circuit Clerks and Supreme Court Clerks could issue fee bills by the law then existing. That only by process duly issued under the seal of the Court then existing, running in the name of the People of the State of Illinois" which the Constitution requires all process to issue.

The Court abolished & with it the seal also — yet it is contended that the said Rucker could issue his process under the seal of an abolished Court — a court not existing by law. This is not a sensible construction. It is not in harmony with the act. But if Rucker conforms to the law abolishing his Court, then it was lawful for him on delivering over the Records &c to ask and demand of the Clerk of the Circuit Court, access to the Records &c and process under the seal of the Circuit Court attested by the Circuit Clerk with his fee book from his pen & fee of Costs or Charges, whether before or after the delivery of the Record &c to the Circuit Court Clerk. Then you have harmony and consistency of the Statute abolishing the Municipal Court.

The mere act of issuing process is unnecessary as contended for by the Defts Attys. But when the legal process is once issued, it is a judicial writ issuing out of and under the seal of a Court then legally existing, and a writ so issuing & existing when duly levied on real estate and sold, is a judicial sale, and not a ministerial sale as contended for by Defts Attys — a levy and sale under the latter is illegal and void — not warranted by law

Morris for Plff.

Suggestions.

The first Sec. of the act purports to repeal the law creating the court "and all matters connected therewith". If full effect were given to this Sec. it would nullify every act done in the Court past and all. That such was not the intent is manifest from the other provisions of the act. These show that the only intent of the law was to suspend and repeal the judicial functions of the Court, with leaving the records of the Court & the business of the Court in full force as standing, which would not have been the case if the whole act had been simply repealed.

It is apparent therefore that the act only abolishes the court sub modo. and not absolutely as contended for.

2nd. The reason why jurisdiction was given to the Cir. Ct. to enforce the return of process is very obvious:— the judicial power of the Municipal Court having been taken away, there was no Court to compel the performance of the duty. Hence this provision vesting power to compel. And it was necessary to require the return to that court for the purpose of conferring jurisdiction for this purpose.

3rd.

The 2d Sec. provides that the clerk shall debit the records; if that were all of the act, the duty would have to be performed instanter. Now if it had been the intention of the law to deprive the clerk of any ministerial power incident to his office, and to vest the same in the Clk of Cir. Ct, why are six weeks given to him within which to perform the act of debiting? In other words Where was the necessity of extending the time—

(12253-33)

and for what purpose was it necessary for him to have the custody of the records? Certainly the legislature must have intended the custody to continue for some ministerial purpose, — and if so, must it not be intended that so long as that custody cont^d under the act that it was official — and if official for one purpose must not the court intend that it was for every purpose connected with the ministerial duties of the office? The clk. being authorised to continue in the custody during six weeks, — and he not being required to perform the act of delivering except at his option before the expiring of that time, — then there was no power to compel him to deliver before that time. If the delivery could not have been compelled by any process, then his custody must not only have been legal but absolutely exclusive.

Now, is the court in such a case as this ~~not~~ bound to presume that the legislature while vesting such power in the clerk over the record, did not intend that he should perform any ministerial act incident to their custody? Or will not the court intend that the legislature meant to authorise him to perform such duties while he continued officially to control the records and while no other officer was in a position to perform them? Especially where no principle ~~purpose~~ of justice ~~is opposed~~ is opposed to such construction.

This court is not required to say that the legislature intended to vest the custody of the records in one officer and the power to issue writs in another — especially where the power to issue writs under the seal of the court, even after the transfer was made, is expressly reserved "to the clerk of the Court."

For an answer to the residue of Judge Morris suggestions reference is made to the oral and written arguments of counsel in the cause.

Geo. Manierre

A. B. Robbins &c
vs
R. Chapman

B. Morris views of the
law of the case.

Newhall v. Chapron. / By agt with Judge Maniere

In answer to the first suggestion of Mr Maniere endorsed upon the remarks of Judge Harris in this case - I beg leave to reply as follows: That the idea of the suggestion simply is that if the agent or cause is removed you must necessarially remove all the effects produced by said agent or cause prior to removal. eg: A man by deed conveys his estate to another and then dies - the estate revests - Again a man builds a fine house then dies - the house falls to the ground. Again A. gives a power of attorney to B. to sell two farms under the power B. sells and conveys one farm - A. thereupon revokes the power to B: ~~this~~ to sell - (by these words - to wit - "the aforesaid power and all the matters therein contained is hereby revoked annulled - &c) this would necessarially avoid the deed executed under the power.

The aforesaid Examples are sufficient to show the absurdity of the suggestion. I think that the true legal effect of the Repeal was clearly set forth by me in the argument at bar.

In reply to the second point in the suggestion I reply. That the validity of any act depends upon the law existing at the time the act was done - and when the act is complete it stands independant of the continuing existance of law authorizing the same.

The second point suggests but little - but does not put the jurisdiction on correct grounds. I suggest that a court has jurisdiction over the Subject Matter by the Law and over the person - by its process.

[D2253-34]

In his 3ed point he suggests that the time was extended to six weeks in which the Clerk should deliver the records - and by the second section he would have been required to deliver instanter.

I reply that this is not true in fact. The 6th Section of the act is a restraining and not an extending Statute. its language is that the Clerk Shall deliver over the records &c as provided in the 2d Sec. "Within six weeks after the passage hereof." The legislature (if we are allowed to speculate on intentions) put in this provision to ensure a prompt compliance on the part of the Clerk - and we are led to this conclusion for the further reason that the legislature having at the same term made the Spring term of the Circuit Court to Commence a little more than six weeks after the passage of this act they meant to have the transfer Completed before the Commencement of the first term of said Circuit Court. The Court will take particular notice of this fact. That in neither of the Sections above referred to - is there a word authorizing the Clerk to do a single act upon, with, by virtue of, or in relation to these records, except to deliver them over. I beg leave to suggest that if the bare fact that the Clerk might keep the records is evidence of his power to act. Where was the Seal of the defunct Court, this he was not required to deliver over, indeed the Statute is silent in respect to the Seal. & inasmuch as he had not power allowed him to keep it. by the argument of deft he had no power to use it. and he could not authenticate a writ without a Seal.

$1225-35

The reasoning is defective – "for want of a seal" to support it.

I beg leave to suggest that although the Clerk of the Circuit Court might have exclusive possession of the records – yet this gave him no other power over them in an official capacity under the act: than to safely keep them: he being a bailee simply of (if you please) public property.

I beg leave to further suggest that the only act that a Clerk of the Court can perform as Custodian of the records is first to safely keep the same, and second – to furnish transcripts or certified copies thereof for the use of such as have an interest therein. and further that the Clerk of every Court of Record fills the double office of the hand of the Court to make out its proceedings and record its proceedings and while performing these duties he is the agent of the Court. also that of Custodian of the records – which are public records and kept as testimonium perpetuum of the proceedings of the Court &c. and when he is performing any duty as Custodian merely he is the agent of the law and not of the Court: nor can he in this matter be directed by: nor controlled by the Court.

We lay down therefore this position as impregnable to wit: That when the Court dies the power of the Clerk to act as the agent of the Court dies also. and when the law expires by limitation or otherwise the power of the Clerk to act as agent of the law also expires. As the two capacities of the Clerk are perfectly distinct in their sources of their authority it may well happen that the-

S12253-26

Court may die and the agency therefor die with it. ~~or~~ And Still the law making the Clerk simply the Custodian of the records Continue and the agency continue therewith; and more especially so where both depend upon Statutes.

And Such I apprehend is the true Solution of the case at bar.

A further Suggestion-

The records of a Court are only matters of evidence the highest and best but not the only evidence ~~Connected therewith~~ of the matters therein recorded. in case of loss or destruction secondary evidence will ever be admitted- and ~~Sworn~~ Copies are always evidence. Therefore I beg leave to suggest that the argument that the records must be in the Custody of the Court in order to authorize that Court to found a proceeding upon such evidence- is entirely unfounded and unsupported by any principle of law or authority.

One Suggestion more. It is that the Construction contended for by Counsel for defendant is Opposed to every principal of Justice, to the Whole System of our laws. to our own State Constitution (see bill of rights) to the laws of Construction, (to Common right and Common reason. in effect it is to create a power unknown to the Common law; and not clearly and expressly given by Statute; and all for the purpose of upholding a disseizen of the freehold- where there is no law to support it.

This Court will pause long, (I am confident from a carefull examination of former adjudications) before they will by Construction Create a Sovereign

1/2253-31

power in the hands of a private person, or dissieze a citizen of his freehold without his Consent.

In reply to the remarks of the Court-(by Ch J. Scates) on the argument; "That the law establishing the Municipal Court was absolutely repealed, and that from the second to the seventh Sections of the act was Creative or new law, and therefor these Sections are only to be considered in the Case." I beg leave to say that this view (which is most Emphatically Correct as we contend) disposes of the whole Case and leaves no room for argument; for the Court will perceive; that the defendants Counsel did not dare either in the printed argument argument at bar nor supplemental argument to place the question on these ~~grounds~~ Sections- and well they might fear to do so, for the Claim of power in the Clerk Can only be supported on the grounds of a Continuance of so much of the repealed law as was necessary to confer the power claimed. and the Court will perceive in reviewing the Case that the only use they make of the 6 Sections of the act is Simply to try to prove that it was not the intention of the legislature to abolish the Court only "Sub modo", nor to absolute-ly repeal the former law.

John E. Dane.

{12253-98}

124.

A B Newkirk
vs
R Chapron

Supplemental
Suggestions by
B. S. Morris -
Reply of Gen Manning
Rejoinder by L. E. Cook.

Supreme Court

Adamson B. Newkirk
Plff in error
vs
Rosalia Chapron
Deft in error

To John E. Cone Esqr
Atty for Adamson B. Newkirk

Sir, Please to take notice that on Wednesday the twenty first day of November instant at the present term of the Supreme Court of the State of Illinois now in session at Mt Vernon, or as soon thereafter as counsel can be heard, I shall apply to said Court for a re-hearing and re-argument of the above entitled cause

Respectfully Yours
Isaac N. Arnold
Atty for Rosalia Chapron

[12253-40]

I hereby acknowledge service of the within notice

J. E. Cone
by Yorkcone

Supreme Court of the State of Illinois

A. B. Merrick
vs
Rosalie Chapman

Mr Tice

Answer & Demurrer & Reply

State of Illinois }
Cook County. }

In Supreme Court.

Adamson B. Newkirk }
vs
Rosella B. Chapron. }

Cook County ss.

George Manierre being first duly sworn deposes says, that Isaac N. Arnold Esq^{r} was associated with this deponent as Counsel in the above entitled cause, and that this deponent was anxious to have his assistance in the argument thereof; that this deponent knows of his own personal knowledge that it was the intention of said Arnold to assist him in the oral argument; that he was present at the June term of this Court at Ottawa for that purpose and remained there several days in the expectation that said cause would come on to be heard; that before the cause could be heard the said Arnold received a letter from New York advising him of the sickness of his wife, and thereupon felt it his duty to leave Ottawa before the said cause came on.

And this deponent further says that the said Arnold thereupon made in great haste a brief of his points and au-

thorities, which this deponent was to submit on the argument. And this deponent verily felt at the time that the said Arnolds assistance was of great importance to the interests of their clients, and felt and expressed the greatest regret in being deprived thereof, and this deponent cannot but think that the argument in behalf of the defendant would have been presented with much greater force in connexion with an oral argument of said Arnold, than it was, and the strong point of the case (the legislative intent) brought more clearly and strikingly to the attention and mind of the Court.

And this deponent further says that in his own argument of the cause he felt the embarrassment occasioned by the loss of Mr Arnolds aid — owing in part to the unusual responsibility imposed on him by the magnitude of the interests involves in the cause, & the number of persons interested in the successful issue of his labors and further saith not.

Sworn to & subscribed

George Manierre.

before me, this 17th
day of Nov. 1855.
Chas B. Hosmer
Notary Public in
& for Cook County Ills

In the Supreme Court

Adamson B. Newkirk

vs

Rozella B. Chapman

Affidavit

A B Newkirk
R. Chapron
} appeal from Cook Co. Ct. Com. Pl.

The 1st section of the act "repealed the
"law that established the municipal court of the
"city of Chicago and all matters connected therewith".
There is no ambiguity or room for construction
on that section - The court was then abolished.

SS. 2. The second section transfers to the circuit court
"all suits & matters at law & Equity" then "pending and
"undetermined in said Municipal court", when
"they shall "be heard tried and prosecuted to final
"judgment", "execution" &c. "in the same manner as
"if said suits or matters had been originally
"made returnable or had in said circuit
"court; and all records, dockets, and papers
"of said Municipal court shall, by the clerk"
thereof "be transpend and delivered over to the
"clerk of the circuit court," (in a reasonable time
(of course) and as soon as he could do it)

SS 3 The 3d. section requires "the High Constable" to
"make returns of all process to the circuit
"court" (and not to Rucker the late Clerk) which circuit
court was "invested with power to enforce the
law" as if such "process had issued from it; and
all executions thereafter" (thereafter) "issued upon
any judgments rendered in said Municipal
court, shall be directed to the Sheriff" &c.

These executions could only be legally issued
out of the circuit court under its seal running
"in the name of the People of the State of Illinois"
as required by law and the constitution of
the State of Illinois & attested by the Clerk of said
circuit Ct to which Clerk and into whose keeping
by the law, the records were by
law, transpend & authorized to issue executions &
thereon.

41253-43

Can two clerks be authorised to issue & test
the process of the circuit court, at the same time which court
was alone authorised to wind up the proceedings and
business of the Municipal court so abolished
as aforesaid, if so, where do you find them such the law for it.

SS. 5. The 5 section says the clerk of the Municipal
court, shall deliver over the records &c. as provided
by the second section within six weeks" &c.

Provided, That nothing in this act contained
shall be so construed as to prevent the
clerk of the Municipal court from collecting
his fees in the manner now "(then)" "provided
by law", "and for that purpose" he "shall have
free access to the records, dockets & papers, and
copies thereof" (from the circuit court clerk) "free
costs or charges".

If Mr. Rucker was authorised by
this proviso to issue executions and fee-bills
in the name of the court then abolished, or in his
own name, why say he shall have these
executions & fee-bills free of costs or charges?
This proviso operates as well before as after
the six weeks.

The true construction of that proviso
is, that it is a mere limitation or rather a
saving of the right to Mr Rucker to have free
access to the records &c. for the purpose of collecting
his fees and to demand & have of & from the
clerk of the clerk of the circuit court such
process as the law authorises, free of costs or
charges, to enable him to enforce payment
of his fees. Now without this proviso the circuit
clerk might well require Mr Rucker to pay
for his fee-bill &c. to collect his fees and he
could have been excluded from having "free

recpt to the records &c. and could have been compelled to pay for copies of the fees in the fee-book &c.

Then, if we give that proviso this construction it will be in perfect harmony with all the other provisions of that act abolishing the municipal court - While on the other hand if you give it the construction contended for by the Defts. Attys. it will be found to at war with the other provisions of the act and not in harmony or common sense view of the law. Every provision ought be so construed as to be in harmony with all other parts of the same law. This obvious.

The Defts atty. yesterday insisted that Mr. Rucker's acts under the proviso was purely ministerial and the precp issued by him was ministerial precp authorized to be issued by him under that proviso.

Now I agree that so far as the mere act of issuing is concerned, it was ministerial ~~whether~~ whether of legal or illegal precp - But, no precp after it is issued can be legally called "ministerial precp". Precp issued upon a court legally ~~issued~~ existing at the time of its issue, is only known and called judicial precp - not "ministerial precp" which is unknown and unheard of till yesterday -

A levy & sale to be legal, must be by virtue of a judicial writ, issuing out of & upon a court legally existing at the time the precp was issued & levied - then the sale can be fairly known & called a judicial sale; and not a ministerial sale.

The absurdity of the Defts position is obvious to need further examination - it must strike every legal mind to be at war with all notions of a legal sa

(12253-42)

made under any legal process authorised by law - Therefore I submit my views of this matter to the consideration of the court -

B. S. Morris for
appellant -

A. B. Newkirk
vs
R. Thompson

B. S. Morris' views
Construction of the
act abolishing the
Municipal Court &c.

A. B. Newkirk
vs
R. Chapron
} Appeal from Cook C. C. P. Ct.

The first section of the act does abolish the Municipal Court - as agreed by all.

The second Section transfers the all suits, Matters, Records, Dockets and Papers to the Circuit Court, with power to proceed thereon as if such proceedings had been ~~had~~ commenced & had in the Circuit Court, which Records, papers &c. the Clerk of the Municipal Court shall transfer and deliver over to the Clerk of the Circuit Court in a reasonable time; (not exceeding six months)

The High Constable is required to return all process to the Circuit Court - (not to the Superior Court or Clerk) And the Circuit Court is invested with power to enforce the law in such cases, as if the proceedings had been had in his Court

The 5th Section says the Clerk of the Municipal Court shall deliver over the Records, Dockets &c. as provided for by the Second Section "within six months" from the passage of the act.

Provided, that nothing in this act Contained shall be so Construed as to prevent the Clerk of the Municipal Court from Collecting his fees in the manner now (then) "provided by Law, and for that purpose, he "shall have free access to the records, Dockets & papers and Copies thereof" (from the Clerk of the Circuit Court

[2253-45]

"free of Costs or Charges". This is the true sense of that proviso.

In Contemplation of law the Records &c were on file with the Circuit Court Clerk, and as an inducement to Rucker to deliver forthwith the Records & papers to the Clerk of the Circuit Court, a saving clause or proviso was made for his benefit to enforce the Collection of his fees by process & copies issuing from the Circuit Court in the Manner authorised by Law— None but Circuit Court Clerks and Supreme Court Clerks could issue fee-bills by the law then existing. That only by process duly issued under the Seal of the Court then existing running in the name of the People of the State of Illinois" which the Constitution required all process so to issue.

The Court abolished & with it the seal also. Yet it is contended that the said Rucker could issue his process under the seal of an abolished Court— a court existing by law. This is not sensible Construction. It is not in harmony with the act. But if Rucker conforms to the law abolishing the Court, then it was lawful for him on delivering over the Records &c to ask & demand of the Clerk of the Circuit Court, a process under the seal of the Circuit Court attested by the Circuit Clerk with copies of his fees from his fee book "free of Costs or charges", whether before or after the delivery of the Records &c to the Circuit Court Clerk. Then you see harmony & Consistency of the Statute abolishing the Municipal Court.

S1225 3-47

The mere Act of issuing process is ministerial as contended for by the Deft. attys. But when the legal process is once issued, it is a judicial writ issuing out of and under the seal of a Court then legally existing, and a writ so existing when duly levied on real estate & sold, is a judicial sale, and not a ministerial sale as contended for by Deft attys — a levy & sale under the latter is illegal and void — not warranted by law.

Morris for Plff.

A. B. Newkirk
vs
R. Chapman

B. J. Morris' views of the law abolishing the Court &c.

Supreme Court of the
State of Illinois

Rosella Chapron
Appellee
ads
Adamson B. Newkirk
Appellant

To the Honorable the Justices of the Supreme Court of the State of Illinois
The petition of Joseph N. Balestier of the City of New-York respectfully shows, that although he is not a party to the above entitled suit he is the owner of a large tract of land of the value as your petitioner believes of upwards of one hundred thousand dollars immediately adjoining the land in Controversy in said suit and so far as relates to the judicial sale in question before this Court his said land stands precisely in the same situation as that of the above appellee.

Your petitioner further shows that he is informed and believes that this Honorable Court has seen fit to allow further argument in this suit— That the question to be decided will very seriously affect the interests of your petitioner — That he is a man

[17253-4]

of family, and by very far the greater part of this property consists of the aforesaid tract of land.

That in the event of losing the said land your petitioner would be reduced from affluence to poverty and could hardly fail to be greatly embarassed in his affairs, his manner of life having for some years past been regulated by his estimate of his property.

That in consideration of his residence in a distant sister state, of his large interest in the result of this suit, and of the very serious consequences to himself and his family, of an adverse decision in this suit, your petitioner has ventured to hope that he may be allowed to be heard in this suit before this Honorable Court by his counsel.

Your petitioner further further states that he became the purchaser of the property to be affected about Eight years ago. That he bought it in good faith believing he was acquiring a good title. That since his purchase he has paid the taxes upon the same and has expended a large sum of money upon said land in paying taxes and assessments. That he has never doubted but his title was good; that he obtained from a lawyer in Chicago a

certificate of good title and was not aware of any adverse claims until since the institution of said suit. Your petitioner therefore prays that your Honors will be pleased to grant him a hearing in this cause by his counsel learned in the law.

J. M. Babcock

State of New York
City and County of New York ss: On this twenty ninth day of December One thousand Eight hundred and fifty five before the undersigned Commissioner for the State of Illinois

[12283-H]

residing in the City of New York personally appeared Joseph N. Balestier the petitioner above named who having been by me duly sworn did depose and say that he has read the foregoing petition and knows the contents thereof and that the same is true of his own knowledge except as to the matters therein stated to be on his information and belief and that as to those matters he believes the same to be true.

In Witness whereof I have hereunto set my hand & affixed my official seal the day and year first above written

Moses B. Maclay

Illegible

Supreme Court
of the State of Illinois

Rosella Chapron

adsm

Adamson B. Newkirk

Petition
I. A. Babcock
$100.000

(2253-47)

Supreme Court, State of Illinois.
January Term A.D. 1856.

Rosella Chapron
Appellee
vs.
Adamson B. Newkirk
Appellant

To John E. Cowe Esq
Atty for Adamson B.
Newkirk, Appellant.

Dear Sir.

Enclosed herewith is a copy of an argument which I propose to submit to the Supreme Court in the above entitled cause, on the third Monday of January Instant at Springfield. It is being printed, and as soon as published, I shall be happy to furnish you with a copy. I propose, on the third Monday, to ask permission of the court to hear counsel in behalf of other parties not before the court, but who are interested in the question involved; at which time and place you can appear if you think proper so to do.

Chicago Jany 8th 1856.

Respectfully Yours
Isaac. N. Arnold
of counsel for
Rosella Chapron.

Received Copy of above Letter enclosing Written argument of I. N. Arnold Esq in the Case this 3rd day of Jany 1856.
John E Cowe
Counsel for
all interested
in Original Title.

[2253-50]

Supreme Court.

Rosella Chaperon
appellee

vs.

Adamson B. Newkirk
appellant

Copy notice for argument

Supreme Court
A. B. Meekish
vs
Rosella Chapron
} Appeal &c.

I hereby Consent to the filing of the Supplementary argument of Mr Arnold in the above entitled Cause at any time during the present Term of the Court now in Session at Springfield.

John E Cone
Counsel for
Appellant.

Chicago Jany 18th 1876.

{12283-5}

Sup. Const.

Neukirch

—

Chiappa

5 Allegati —

Supreme Court of the State of Illinois

Rosetta Chapron Appellee
ads
Adamson B. Newkirk Appellant

Marcius R. Simons of the City County and State of New York being duly sworn doth depose and say that he has an interest in the decision to be made in the above entitled cause — that he is the owner of a portion of the land which was sold upon the alias execution issued upon the judgment obtained by Robert Gracie against Truman G. Wright in the Municipal Court of the City of Chicago — that he purchased said land in the year 1853 and that he purchased it in good faith, and in the belief that he was acquiring a good title to it. And deponent further saith that he has paid all the taxes and assessments which have been from time to time imposed upon said land since he purchased it, and that he has paid them in good faith and in the belief that he was justly and legally the owner of the said land. And deponent further saith that the value of said land is Five thousand dollars and upwards. —

This deponent therefore prays that before a decision is made in the above entitled cause he may have the privilege of being heard in this Honorable Court through his Counsel. —

M. R. Simons

Taken Subscribed & sworn to this 16th day of January AD 1856 before me in the City of New York
Moses B. Maclay
Illinois Commissioner in the [illegible] of [illegible] to take Affidavits &c

Supreme Court of
The State of Illinois

Roella Chapman
Appellee
adv.
Adamson B. Newkirk
Appellant

Deposition of
Marcius R. Simons

$5000

Supreme Court of the
State of Illinois
Rosella Chapron
Appellee
vs
Addison B Newkirk
Appellant

Peter Bajjeshop the City of Chicago, County of Cook and State of Illinois being duly sworn doth depose and say that he is interested in the decision to be made in the above entitled cause — that he is the owner of a portion of the land which was sold upon the alias execution that was issued upon the judgment obtained by Robert Gracie against Truman G Wright in the Municipal Court of the City of Chicago — that he purchased the portion of land mentioned above in the year A D 1847 and that he purchased it in good faith and in the belief that he was acquiring a good title to it.

And deponent further saith that believing the title which he had acquired to the land so purchased as above stated was undoubtedly good he has made valuable improvements upon the said land, to wit, a good dwelling house, barn, fence &c, and that he is now, and for several years past has been, living upon the said land and that it constitutes his homestead — And Deponent further saith that he has paid the assessments and taxes which have been to time to time imposed upon said land since he purchased it —

And Deponent further saith that the value of said land at this time, with the improvements which Deponent has made

[17253-55]

whom it is five thousand dollars and upwards.

This Deponent therefore prays that before a decision is made in the above entitled cause he may have the privilege of being heard in this Honorable Court through his Counsel

Peter Beyggeh

Subscribed Sworn to before
me by the above named
Peter Beyggeh & my hand
& Notarial affixed this 16th
day of January A.D.
1854 Geo. A Ingalls
Notary Public

Supreme Court
of the State of Illinois

Rosella Chapron
Appellee
ads.
Adamson B. Newkirk
Appellant

affidavit of
Peter Beyer

Homestead
$5000—

(12253-57)

Supreme Court of the
State of Illinois
Robert Chapron
Appellee
ads
Adamson B. Newkirk
Appellant

James Peck of the City of Chicago, County of Cook and State of Illinois being duly sworn doth deboze and say that he has an interest in the decision to be made in the above entitled cause — that he is the owner of a portion of the land which was sold upon the alias execution issued on the judgment obtained by Robert Gracie against Seeman G. Wright in the Municipal Court of the City of Chicago — that he purchased said land partly in the year 1848 and partly in the year 1849 and that he purchased it in good faith and in the belief that he was acquiring a good title to it. Deponent further saith that he has paid the taxes and assessments which have been from time to time imposed upon said land and that he has paid them in good faith believing that he was lawfully and legally the owner of the said land. And deponent further saith that the value of said land at the present time is about Ten Thousand Dollars.

This Deponent therefore prays that before a decision is made in the above entitled cause he may have the privilege of being heard in this Honorable Court through his Counsel.

James Peck

Sworn to and subscribed
before me this 12th day
of January 1856
L C Paine Clerk
Masterin Chancery
Cook Co
Illinois
Hiram Rodney
Notary Public

{12253-57}

Supreme Court
of the State of Illinois

Rosella Chapron
Appellee
vs
Adamson B. Newkirk
Appellant

Affidavit of
James Peck

$10.000

Supreme Court of the
State of Illinois
Rosella Chapron
Appellee
ads
Adamson B. Newkirk
Appellant

David S Lee of the City of Chicago, County of Cook and State of Illinois, being duly sworn doth depose and say that he has examined the tax books of the County of Cook and also of the City of Chicago, for the purpose of ascertaining the amount of taxes which were assessed for the year 1855 upon the lands which were sold upon the alias execution which was issued upon the judgment obtained by Robert Gracie against Truman G Wright in the Municipal Court of the City of Chicago: and Deponent saith that the aggregate amount of all the taxes which were assessed by the said City of Chicago and by the said County of Cook upon the said lands for the year 1855 (including State taxes) exceeded the sum of One thousand and seven hundred dollars: And deponent further saith that the above mentioned sum of seventeen hundred dollars was assessed upon the said lands for ordinary taxes only, and did not include any special assessment whatever.

And further deponent saith not.

David S Lee

Subscribed & sworn to before me by the above named David S. Lee and my hand & Notarial Seal affixed this 19th day of January A.D. 1856 Geo. A. Ingalls
Notary Public

[2223-59]

Supreme court of Illinois

Rosella Chapron
appellee
ads.

Newkirk appellant

affidavit of D. S. Lee.

$1700 - Jayes -

Supreme Court of the
State of Illinois
Rosetta Christian
Appellee
ads
Adgmson B. Brackett
Appellant

Rudolph Wehrli of the City of Chicago County of Cook and State of Illinois being duly sworn doth depose and say that he has an interest in the decision to be made in the above entitled cause — that he is the owner of a portion of the lands which were sold upon the alias execution which was issued upon the judgment obtained by Robert Gracie against Truman G Wright in the Municipal Court of the City of Chicago — that he purchased the portion of said land above mentioned in the year A.D. 1847 and that he purchased it in good faith and believing that he was acquiring a good title to it

And Deponent further saith that he has paid the taxes and assessments which have been from time to time imposed upon said land since he bought it and that he has paid them in good faith and in the belief that he was justly and legally the owner of the said land: And Deponent further saith that the value of said land at the present time is about Four Thousand Dollars. —

This Deponent therefore prays that before a decision is made in the above entitled cause he may the privilege of being heard in this Honorable Court through his Counsel. —

Subscribed & Sworn to before me by the above named Rudolph Wehrli & My hand & Notarial Seal affixed this 17th day of January A.D. 1856

Geo. A. Ingalls
Notary Public

Rudolph Wehrli.

51225360

Supreme Court
of the State of Illinois

Rosella Chapron
Appellee
vs.
Adamson B. Newkirk
Appellant

Affidavit
of Rudolph Wehrle

Rudolph Wehrle
$4000

[12253-62]

Supreme Court of the
State of Illinois
Rosetta Chapron
Appellee
vs
Adam Lonsdale Appellant

David S Lee of the City of Chicago, County of Cook and State of Illinois, being duly sworn, doth depose and say that he is interested in the decision to be made in the above entitled cause — that he has purchased at different times portions of the lands which were sold upon the alias execution which was issued on the judgment obtained by Robert Gracie against Truman G Wright in the Municipal Court of the City of Chicago, in the year A D 1838 — that the said purchases were made by him in the years A D 1845, A D 1847, and A D 1853, and that they were made in good faith, and in the belief that he was obtaining a good title to the said lands, excepting a contingent right of dower of the wife of said Truman G Wright in said lands. —

And deponent further saith that believing the title which he had acquired to the lands so purchased as above mentioned, to be good, he has made valuable improvements upon a portion of said lands, in draining, fencing, and setting out trees, and has expended large sums of money in the making of said improvements: And Deponent further saith that he has also expended very considerable sums of money in the payment of taxes and assessments which

[12253-63]

have from to time been imposed upon said lands since the dates of his several purchases, and that the aggregate amount of the sums so expended by him for taxes, assessments, and improvements, upon the lands purchased by him as above mentioned, exceeds the sum of Six thousand dollars.—

And deponent further saith that the improvements so made by him as above mentioned were made in good faith, and in the expectation that they would inure to his own benefit and advantage.—

And deponent further saith that the value of the lands so purchased by him as above mentioned, is, upon the ordinary terms of credit upon which lands are sold in and around Chicago, upwards of one hundred thousand dollars.—

This Deponent therefore prays that before a decision is made in the above entitled cause, he may have the privilege of being heard in this Honorable Court through his Counsel.—

Subscribed Sworn to before me
by the above named David S Lee and
my hand and Notarial Seal
affixed this 17th day of January
A.D. 1856

David S. Lee

Geo. A. Ingalls
Notary Public

Supreme Court
of the State of Illinois

Rosella Chatfield
Appellee
vs
Addison B. Newkirk
Appellant

Affidavit of
David S. Lee

Amount $6000
Value $100.000

Supreme Court of the
State of Illinois
Robert Chapron
Appellee
vs
Adamson B Newkirk
Appellant

James W. Cochrane of the City of Chicago County of Cook and State of Illinois being duly sworn doth depose and say that he has an interest in the decision to be made in the above entitled cause — that he is the owner of a portion of the land which was sold about the alias execution which was issued upon the judgment obtained by Robert Chapin against Truman P Wright in the Municipal Court of the City of Chicago — that he purchased said land partly in the year A.D. 1850 and partly in the year A.D. 1851 and that he purchased it in good faith and in the belief that he was acquiring a good title to it. And deponent further saith that he has paid the taxes and assessments which have from time to time been imposed upon said land since he bought it and that he has paid them in good faith believing himself to be justly and legally the owner of the said land.

And deponent further saith that the value of said land at the present time is about twenty thousand dollars.

This deponent therefore prays that before a decision is made in the above entitled cause he may have the privilege of being heard in this Honorable Court through his Counsel.

J W Cochran

[2253-65]

State of Illinois
Cook County
City of Chicago

I George A Ingalls a Notary Public in & for the City of Chicago in the County & State aforesaid do hereby Certify that the within affidavit was Subscribed & Sworn to by the above named James M Cochran before me & My hand and Notarial Seal affixed this Eighteenth day of January A D 1856

Geo. A. Ingalls
Notary Public

Supreme Court of Illinois

Rosella Chapron
appellee

vs

Newkirk appellant

Affidavit of S. N. Cochran.

$20.000

Illinois Supreme Court

Chapron, Appellee
and
Newkirk, Appellant

Dear Sir,

I have considered the new point made by Mr. Arnold, to which you have called my attention; and assuming that the Clerk of the Municipal Court had the right to issue execution for his fees, and not for the damages, issuing the process for too much, by including damages as well as fees, would not affect the title of a bona fide purchaser under the judgment and execution. In this view of the case the process was only irregular, and not void. The defendant might have moved to set it aside; but then it would have been amendable by striking out the damages, and I cannot doubt that the court would have allowed it to be amended. But no motion was made, and the Sheriff proceeded to sell under the execution. No principle is better settled in this State — and I presume it is the law wherever there is an enlightened administration of justice — that a

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mere irregularity in the proceß will not defeat the title of a bona fide purchaser under it. The party having a right to complain, should have taken his remedy, by motion or otherwise, before the sale.

Although in considering this new point I have assumed that the clerk was wrong in including the damages, I see no reason to doubt the correctneß of my opinion of the 3d. instant.

Respectfully Yours

Wm C. Bronson

New York Jan. 17. 1856.

J. N. Bolestier Esquire

STATE OF ILLINOIS—*ss.*

SUPREME COURT, JUNE TERM, A. D. 1855.

ADAMSON B. NEWKIRK, *vs* ROSELLA CHAPRON. } Appeal from Cook County Court of Common Pleas.

Argument of J. E. CONE, Counsel for Appellant.

The record of the Court below shows that this was an action of ejectment brought by the appellant against the appellee for the recovery of the possession of a part of the west half of the north-east quarter of section eighteen, in Township thirty-nine, north of Range fourteen, east of the third principal meridian.

The evidence as preserved in the bill of exceptions shows that the plaintiff below had a regularly deduced title from the United States.

The defendant admitted possession of the premises described in the declaration, and set up a title under a sheriff's deed, to support which a judgment of the municipal Court of the city of Chicago against the patentee of said land through whom plaintiff claimed rendered at the November term of said Court, A. D. 1837, was offered and read without objection.

The defendent then offered in evidence an alias execution upon said judgment issued out of and under the seal of said Municipal Court, dated the 20th day of February, A. D. 1839, by virtue of which the aforesaid land was levied upon and sold, to which evidence the counsel for plaintiff objected, on the ground that the law establishing said Court having been repealed prior to said writ having been issued, it was null and void. The Court below overruled the objection—counsel for plaintiff excepted to the ruling of the Court, and now assign as error the ruling of the Court thereon.

The parties agree that if the writ of execution is void, plaintiff has a perfect title; if it is valid, the defendants title is good.

The only question in the case being the validity of the writ of execution, it can be fully settled by applying a few well known principles of law to the facts as presented.

An execution is a judicial writ issuing out of a court in which there is a judgment unsatisfied and upon which it is founded; (Tidds pr. Saund. R. 27.)

It is called final process, and is the last stage of a suit—giving the suitor possession of what he has recovered by the judgment of the Court; see Wharton's law dic.; also the following cases in Ill. Reports, (where the character of the writ is more or less discussed); 1 Scam. 40, 517, 535; 2 Scam. 22, 49, 224, 442, 504, 3 Scam. 119, 206, 268, 452, 557; 1 Gilm. 131; 2 Gilm. 151; 3 Gilm. 477, 311; 12 Ill. R. 24, 141, 233, 387; 13 Ill. R. 20, 22, 398; 14 Ill. R. 26, 184, 373, 405, 410. The *legal existence* of *the Court* from whence any writ purports to be issued, is the most essential, and first requirement of law, in validating the writ. It is the source of its legal being; and we take it for a truism admitting no question, that an act done in the name, or under the assumed authority of a Court not in being, is null and void.

We come now to the question—was there a Municipal Court of the city of Chicago, at the date of the execution and levy under it? Upon the correct answer to this question, the validity of this writ depends.

The Municipal Court of the city of Chicago was created by the Legislature—by provisions for that purpose contained in the act incorporating said city, approved March 4th, 1837, and continued in existence until the law creating it was repealed.

The repealing act was duly passed and approved on the 15th day of Februar, A. D. 1839, and containing no provision as to when it should take effect, went into effect and was in full force on said 15th of February, 1839, and prior to the date of said pretended writ of execution. See Kents Comm. and cases there cited—also 1 Scam. 555, and 2 Scam. 227.

The effect of a repeal being an obliteration of the statute repealed, and except as to transactions closed and finished, the repealed law considered as if it had never existed; if the repealing clause is clear and explicit in its language, and there is no express saving, which would clearly and expressly continue the existence of the Court, there can be no question in the case, for the legal existence of the Court was at an end on the date of the act: and all subsequent acts in its name were mere nullities. See Dwarris on Stat. Title Repeal; also Smith Com. Title Repeal; also 14th Ill. R. 334.

The act tells its own story briefly, explicitly and well. Let it speak for itself.

The entire act is as follows:

"An Act to repeal part of 'an Act to incorporate the City of Chicago.'"

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That so much of an act, entitled, "An Act to incorporate the city of Chicago," approved March 4th, in the year of our Lord one thousand eight hundred and thirty-seven, as establishes a Municipal Court in the said city of Chicago, and all matters connected therewith, be, and the same is hereby repealed.

SEC. 2. That all suits or matters, both at law and in equity, now pending and undetermined in the said Municipal Court, shall be heard, tried, and prosecuted, to final judgment and execution in the Circuit Court of the county of Cook, in the same manner as they would be if the said suits or matters had been originally made returnable, or had in the Circuit Court for the said county of Cook; and all records, dockets and papers, belonging to, arising from, or connected with, the said Municipal Court, shall, by the Clerk of the said Municipal Court, be transferred and delivered over to the Clerk of the Circuit Court for the said county of Cook: *Provided*, That this section shall not be construed as a release of errors that might have been taken advantage of in said Municipal Court: *Provided further*, That it shall be no ground of error in or to any judgment heretofore rendered in the said Municipal Court,

that it does not appear by the record or proceedings that the defendant resided in the said county of Cook.

Sec. 3. It is hereby made the duty of the high Constable elected under the provisions of the said act, entitled "An act to incorporate the City of Chicago," hereby in part repealed, to make returns of all process of summons, executions, or of whatever nature, to the said Circuit Court of the county of Cook; which said Circuit Court is hereby invested with the same powers to enforce a compliance with the law in this behalf that it would have had if the process had been originally issued from the said Circuit Court; and all executions hereafter to be issued upon any judgment rendered in the said Municipal Court shall be directed to the Sheriff of Cook county.

Sec. 4. That the transcript of any record of the said Municipal Court of any judgment rendered therein, may and shall be furnished by the Clerk of the Circuit Court of the said county of Cook; and any such transcript shall have the same force and effect, to all intents and purposes, that the same would have had if the suit, process, or proceeding, whether in law or equity, had been originally commenced or instituted in the said Circuit Court.

Sec. 5. That the Clerk of the said Municipal Court shall deliver over the records, dockets, and papers, as provided in the second section of this act, within six weeks after the passage hereof; *Provided*, That nothing in this act contained, shall be so construed as to prevent the Clerk of the said Municipal Court from collecting his fees in the manner now provided by law; and the Clerk of the said Municspal Court shall, for that purpose, have free access to the said records, dockets, and papers, and copies thereof, without costs or charge.

Sec. 6. That the Sheriff of Cook county is hereby authorized to give deeds of conveyance for any real estate which may have been sold by the high Constable of the City of Chicago, as fully and effectually as he might or could do if the said real estate had been sold by the Sheriff of said county.

Sec. 7. That nothing in this act contained shall be construed to prevent the high Constable of said City of Chicago from proceeding to collect executions which have been levied.

Approved February 15, 1839. (See Incorp. Ls. 1838-9.)

The repealing clause of this act, is in such clear and explicit language as to admit of but one interpretation, and is too positive and absolute in its legal effect upon the law repealed to save any provision thereof—any inchoate rights created thereby, or power to proceed under it. (See 14th Ill. R. 334, and cases there cited.) The Municipal Court of the City of Chicago, therefore ceased to exist on the day of the date of the repealing act. Upon a view of the act taken altogether, we find neither positive enactments, exceptions, or provisoes, which continues the legal existence of the court, by express words or legal effect.

It is difficult to conceive how the Court below could make a question upon the legal effect of this act, as it is too clear to admit of interpretation, and too consistent and harmonious in its separate provisions to admit of construction; at least so far as the existence of the Municipal Court depends thereon. Which is the only question the repealing act is required in this case to answer? (See Smith's Comm. 600 to 628, and the authorities collected and commented on by him; also Bl. Comm. Title Sources of English Law — Kent's Comm. Title Municipal Law; also 7 Cranch, 52—21 Wendell—211, 1 Dwarris on Statutes, 702.) The error of *that* Court must have arisen in an erroneous view of what the true, and *only* legal question arising in the case really was; losing sight of,

or not perfectly apprehending that single question ; and seeing the provisoes contained in the 5th and 7th sections of the act, limited the repealing clause, not to the words of the provisoes, or to their legal effect only, but to subjects not contained in the provisoes, nor anywhere else either mentioned or alluded to by the most distant implication.

Giving such effect to provisoes, is contrary to every rule of law, and to common sense (See 1 Black. Comm. 89 ; 23 Maine R. 360. 19th Vermont R. 129 ; 1 Scam. 258)

By keeping distinctly in view the one, and only question in the case, to wit: was there a Municipal Court of the city of Chicago at the date of the execution and levy under it—all difficulty and question is solved at once by bare inspection of the repealing act.

There is no occasion in this case for an inquiry into the many rules for interpretation and construction of statutes which ambiguity and inconsistency have originated, for the direction is too plain to admit of dispute; and the only way in which the repealing clause could be affected, by subsequent provisions of the act, in its effect upon the life of the Court, would be by words expressly and clearly continuing its existence and powers. Such words cannot be found. On the contrary, the jurisdiction and powers of the Municipal Court are expressly confered upon the Circuit Court of Cook county ; and every positive enactment of the act is an affirmative one, and may well subsist and be carried into complete effect together, without limiting the repealing clause in any respect.

From a view of the whole act therefore, the correct answer to the question depending upon this statute, is too clearly and positively directed by the act itself, to admit of hesitation or doubt.

From and after the 15th day of February, A. D. 1839, there was no such Court in legal existence as the Municipal Court of the City of Chicago. This writ, therefore, is a mere nullity, and should have been excluded by the Court below, as well as all evidence built thereon. For this error, the judgment of the Court below should be reversed.

Having looked at one side of the case, I propose now an examination of the other, (as presented by the decision of the Court below, and by counsel,) for the purpose of ascertaining the legality of the grounds taken to support this writ.

The grounds taken by the Court below, and followed by counsel, were,— 1st. That it was not the intention of the Legislature to entirely abolish the Municipal Court, by the repealing act. 2d. If it was the intention so to do, the repealing act is unconstitutional and void. 3d. That it being *not* the intent of the law to abolish the Court, the act should be so construed as not to have that effect; and lastly, If to abolish the Court is unconstitutional, the law should be so construed as not to bring it within the constitutional objection.

Admitting the correctness of the first and second positions taken by the Court below as above stated, the correctness of the third and fourth position is indisputably established. But if the first and second position are untenable the others cannot be maintained of course; and for the purpose of fully exposing the utter rottenness of the whole argument made by the Court below to sustain its most extraordinary decision, I shall briefly inquire. 1st. How are we to ascertain the intention of the Legislature, in enacting this statute? (i. e., what does it mean ?)

2d. Is the repealing act unconstitutional in its repealing effects ?

To the first inquiry I reply, that we are to ascertain the intention of the Le-

gislature in this, as in all other cases, "by signs the most natural and probable," and these signs are either the words, the context, the subject matter, the effects and consequences, or the spirit and reason of the law. 1 Bl. 59.

"When a law is plain and unambiguous, the Legislature must be intended to mean what it has plainly expressed, and consequently no room is left for construction." 7 Cranch 52, 21 Wendell 211. When the words are not explicit, the intention is to be collected from the context, from the occasion and necessity of the law, from the mischief felt and the objects and remedy in view. 1 Kent 511. In this case the words used being clear and explicit, we ascertain the intention by the words alone, independent of other and extraneous evidence—the question upon this statute being: what does it say? and not, what does it mean.

Smith remarks on the subject as follows:

"When the words of an act are in clear and precise terms, when its meaning is evident, and leads to no absurd conclusions, there can be no reason for refusing to admit the meaning which the words naturally present; to go elsewhere in search of conjecture, in order to restrict or extend the act, would be but an attempt to elude it. Such a method, if once admitted, would be exceedingly dangerous, for there would be no law however definite and precise in its language which might not by interpretation be rendered useless." But there is no dispute on the meaning of the words in the first section of the act, nor on their legal effect, but the whole dispute is on the weight of evidence of the general intent. In case of inconsistent or repugnant provisions, it frequently becomes a nice question to know which of the several provisions must give way far enough to avoid repugnancy—but if the several provisions of a statute are not clearly inconsistent with each other, each separate provision will take effect according to the language used, and each speaks for itself the intention of the law, if the words used are clear; it being a rule, that no word, phrase, or separate provision of a statute shall be deemed superfluous, but that all shall have full and complete effect, according to the language used. 1 Bl. Comm.

Then does the act repealing the law establishing the Municipal Court, furnish clear and indisputable evidence that such was not the intention of the same—as to the existence of the Court? Can there be found in the whole act an affirmative or negative enactment which cannot have full force and effect, if the Court went out of existence on the day of its approval? Not one.

The language of the repealing clause is positive and absolute, and no subsequent provision by express words, nor legal effect, continues the existence of the court for a moment, but on the contrary, the subsequent provisions, one and all, confirm the evidence of the intention to abolish the court, by providing that another court should do all that might or could have been done by the defunct court.

But with all the investigation the court below was able to make, no *direct* or *positive* evidence could be found to sustain its position, therefore they placed reliance upon evidence extrinsic of the law by which to prove it.

The fact that the clerk had time allowed him in which to comply with the provisions of this act, in delivering the records to the clerk of the Circuit Court, was relied upon as furnishing the most certain and conclusive evidence that the legislature intended that he, the said clerk of the Municipal Court, should be the Municipal Court in his own right and proper person, for and during the period of six weeks after the passage of the act, and that this writ being issued during the time in which this novel and most extraordinary one

man Court of Record thus singularly constituted, did really exist, was properly issued, and was good and legal process of a Court; yet singular to relate, the legislature most unaccountably forgot to either describe or define the power or duties of this Court extraordinary, or even in the most distant manner refer to them, although it did very clearly and expressly confer the power upon the Circuit Court of the county of Cook, which this one man Court assumed to exercise.

The whole argument of the Court below is so grossly absurd, as to merit no consideration whatever. A simple reading of the statute is a complete refutation of all that can be said in favor of the validity of the writ issued after the date of the repealing act.

The Court below continually either mistook or lost sight of the question before it, and indulged in very wise reveries on legislative policy, and went gravely to work to legislate upon the whole matter—apparently unconscious of the distinction between legislation and adjudication, the duty of the legislator and the judge.

That Court thought the legislature *might* pass a law by which a Court *might* be abolished, and the Clerk of the defunct Court still have some power left to him. Without going into that proposition now, we can well afford to wait until the legislature shall pass such an act, and then, if necessary, we can examine it at our leisure. But it is enough to say here that the legislature of the State of Illinois, in repealing the law establishing the Municipal Court of the city of Chicago, and transfering its power and jurisdiction to the Circuit Court, left no power whatever in the clerk of the Municipal Court to do a single act as clerk of said Court, or of any other Court; and his only remaining duty was to safely deliver to the clerk of the Circuit Court the records, dockets and papers of the Municipal Court as required by the act.

It was said by the Court below, "that great inconvenience would arise if the clerk of the Municipal Court could not after the repeal issue papers, as the Circuit Court could not do it until it had possession of said records—and therefore the statute should be construed to avoid such inconvenience." On this point, I will only say in the language of one of the cases cited below, that "where the construction of a particular statute is doubtful, an argument from inconvenience will have some weight; but when it is plain, the consequences are not to be regarded, for that would be to assume legislative authority; (3 Mass. R. 221, 539; 2 Wendell, 277; 7 Mass. R. 306;) 11 Pick. 490; see also remark of Ch. J. Marshall in 2 Cranch, 386. On this point, see 3 Scam. 160. It is singular indeed that any man in his senses should for a moment suppose that it was allowable to overrule and set aside a positive enactment of law on such foolish and whimsical pretences put forth by the Court below; but it only shows to what straits a man is driven for a show of argument, when he once takes leave of truth and reason.

Counsel place great stress upon what they are pleased to term contemporary exposition of the statute by said clerk, who, for some time after the repeal of the law, continued to issue papers in blissful ignorance thereof, and may have issued some more in defiance of the repealing law with a full knowledge thereof; and which construction they tell us was acquiesed in by the whole community at the time, and has never, until recently, been questioned. Without going into a very elaborate discussion of the nature and legal effect of such construction, in cases of doubt, I will simply ask, if the unsupported act of one man, (and he a third-rate lawyer now, saying nothing about his legal knowledge then,) was ever before presented as evidence of contemporaneous construction, or the acquiesence, in ignorance of the facts, by the only persons having an

interest in this assumed construction, can amount to such an acquiesence as will prove any construction was ever even attempted to be made by any one?

I close this part of the case by citing a few cases to show when resort *may* be had to contemporaneous construction.

"The doctrine can only apply to cases of doubtful construction," (2 Gilm. 1,) "or where the words are obscure;" (Smith on Cons.;) 4 Gill. & John. 6.

As this doctrine can only apply to cases of *doubtful construction*—and as there is *no doubt* as to the effect of the repealing statute, as shown in the first section of the act; and as the provision, saving the power of the Court, must be at least equally clear with the one abolishing it, or the weight of evidence of general intent is in favor of the abolition of the Court; if then, *this statute* is one in which the doctrine can be applied, *it is a certainty* that the *general intent* is fully and correctly set forth in the *first section* of *the act*, which will have full effect, and govern and control each subsequent provision of the act. From this conclusion, it is impossible to escape; for it is a rule founded in reason, and supported by all authorities, "that a positive provision of a statute, when expressed in clear and unequivocal language, is the highest evidence of the general intent, and will ever govern and control those provisions which are less clear or equivocal in their expressions." (See Smith. 633; also opinion of Mr. Justice Coleridge, in Rex. V. P. L. Comm. E. C. L. R. Vol. 33.) I now leave the consideration of the question of intention, and proceed to examine the question of constitutionality.

As it would be impossible to even guess what the particular prohibition of the constitution which this law is said to violate is, I will say, that the Court below and counsel allege that the repealing act impairs the obligation of contracts.

To do this, I apprehend that it must be shown to affect the obligation; that is, the legally binding force of a contract upon the parties thereto; or in other words, that the law repealed was in itself an executed contract. (See Story on the Const. sec. 1374; Smith on Const. sec. 251.)

The effect of the repealing law, as we have seen, being only to blot out the law repealed, we have only to examine the repealed law to ascertain whether it was in itself a contract, or whether contracts or rights of property could be acquired thereby, and then the legal effect of the repeal thereon.

The repealed law created a tribunal for the administration of justice, and so long as it was in being, all persons having causes of action cognizable thereby, might proceed therein for redress of any injury they might have received.

It was not a law granting any property or right of property—or changing, in any manner the law relating to, or regulating subsisting or future contracts, or changing the law of evidence, or of procedure.

Its only effect being to create an inchoate right to prosecute a remedy given by the laws, in *that particular* tribunal; no other right was created, and the existence, or non-existence of that tribunal, could not of course affect contracts present or future.

"Inchoate rights derived under a statute are lost by its repeal unless saved by express words in the repealing statute." (Smith Comm. 880.) It is otherwise, however, in regard to such rights as have become perfected far enough to stand independent of the statute. 1 Hill R. 324.

By the above authorities, it will be seen, that if any right had really accrued, by virtue of proceeding in said court, and had become so far vested as to stand independent of the statute, then it was not affected by the repeal. And such was the condition of all final judgments of said court, so far as they vested rights in the judgment creditor, as judgments of a court of record, and not of this particular court; or as far as being judgment of a competent court,

the defendants might plead them in bar to another suit upon the same subject matter, for to this extent, and this only, they stood independent of the continuing existence of the court. But for the purpose of sueing out execution upon these judgments, in the said Municipal Court, they depended entirely upon the statute—upon the familiar principle, that execution can only issue from the court in which the judgment is upon which it is founded. (See 1 Gilm. 131, 2 Gilm. 111.)

And no right under the repealed law remained to take a single step in said court after the repeal. (Smith on Const. Title repeals; also 14th Ill. 334.

Can it be said then, that the repeal of a law creating a merely *inchoate political right*, impairs the obligation of a contract.

By keeping clearly and constantly in view the true nature of the only right created by the law establishing said municipal court, and the legal effect of the repeal thereon, the absurdity of the constitutional objection to the repealing law is too obvious to admit of discussion.

The question on the intention and constitutional objection to the repealing statute being dispcsed of—and the positions taken by the Court below, and the counsel, shown to be unfounded, all question as to the force of terms, or a particular construction, is superseded. (See Crocker v. Crane, 21; Wendell, 211.)

One other position taken by the Court below, and urged by counsel with all the eloquence of despair, to support the validity of the writ of execution issued from a Court not in being, was, that VESTED RIGHTS should be preserved. The Court and counsel, in their zeal to sustain a supposed right, became entirely oblivious to the fact, that the only question in dispute between the parties, was, whether *any right* had been acquired under the writ. Had they settled that question first, they would have found no occasion for their elaborate researches into the doctrine of vested rights.

And in conclusion, I may, in view of the whole case, remark, that had the Court below, or counsel, tak n the same pains to truly ascertain the legal effect of the repealing statute upon the only question in the case, that they have to avoid it, this case would never have been brought to the notice of this Court.

It is now here, and from a view of the case as presented, we deduce the following reasons for the reversal of the judgment of the Court below.

1st. The validity of this writ depends upon the legal existence of the court from whence it purports to have been issued. (Tidds pr. Wharton's Law dic. Saund. R. 27 and note; also the following case in Ill. R., where the doctrine of executions have been discussed in various ways. 1 Scam. 40,517, 535; 2 Scam. 22, 49, 224, 442, 504; 3 Scam. 119, 206, 208, 452, 557; 4 Scam. 371, 404; 1 Gil. 131; 2 Gil. 151; 3 Gil. 477, 311; 12 Ill. 24, 141, 233, 387; 13 Ill. 20, 22, 398; 14 Ill. 26, 184, 373, 405, 410.

2d. At the date of the writ and levy under it, there was no Municipal Court of the city of Chicago. See act of repeal Incor. Laws 1838–9, 63, 4 Kent's Comm. and cases there cited. 1 Scam. 555; 2 Scam. 227. As to the effect of the repeal, see Cokes Institute title statutes. Bl. Com. 1 book. Kent's Com. and 14th of Ill. R. 334 and cases there cited. Also Smith on Con. title repeal.

3d. The writ being a mere nullity, no proceeding could be justified under it, no title acquired thereby—it should have been rejected by the court below as well as all evidence built thereon. (See cases above cited, and particularly Hinman vs. Pope. 1 Gil. 131, and Bybee vs. Ashby, 2 Gil. 151.

4th. The judgment should have been for plaintiff in the court below. (See evidence as shown in bill of exceptions.) Therefor the judgment of the court below should be reversed.

1. *He is still Clerk*, even after delivering of papers he has some power left.

2. He is still to collect his fees in way provided by law, &c.

3. He is to have free access, &c., as Clerk, to papers, even after the expiration of the six weeks.

The High Constable also is continued in office after passage of the repealing act, for certain purposes, viz:

1. To collect executions already levied, &c. (By sec. 7.)

2. To return all papers to the Clerk of the Circuit Court. (Sec. 3.)

These are official acts.

If the attention was to be confined exclusively to first section of the repealing act, and a strict, blind, literal construction were to be given to it, without reference to the qualifications contained in other sections, neither *Clerk* nor *High Constable* could do any official act whatever. But we have clearly established that no such effect is to be given to the first section; on the contrary, the officers of said Court, and particularly the Clerk, was continued in office, for certain purposes, and recognized as such.

The continued legal existence of Clerk of Municipal Court, after passage of repealing act, being established, we come to our second enquiry, viz:

What was the extent of the power of the Clerk of the Municipal Court after passage of said act? Had he authority while he had the legal custody of the records, to issue executions on judgments?

It is quite clear that the power to issue execution existed somewhere. Because no one will suppose the legislature intended to do an act of such gross injustice, as to take away the right of a party to have execution upon his judgment.

Here were, in this Municipal Court, a large number of judgments, amounting to millions of dollars; to take away all power of enforcing them by execution, would lead to palpable wrong. Any fair construction of the repealing act which will relieve the Legislature of any such intention, will be looked for and adopted by the Judiciary.

But we are not left to inference alone on this subject. It is expressly provided in section two of the act, "That all executions hereafter to be issued on any judgment rendered in said Municipal Court, shall be directed to Sheriff of Cook county."

The act itself, then, provides that executions *are to be issued*, and that they shall be directed to *Sheriff* of Cook county. It is a matter of surprise, if the construction claimed on the other side be correct, that by the first section both *Clerk* and High Constable were repealed

out of office, that the Legislature should have deemed it necessary to provide that executions should issue to Sheriff. It would seem that if there was no Constable, it would hardly be necessary to make express provision that executions should issue to Sheriff, as there would be no other officer to whom execution could issue. But we assume that both Clerk and Constable are continued in office by repealing act, for certain purposes. Both being continued in office, and the act expressly providing that executions shall issue to Sheriff, and being silent as to Clerk, we rightfully assume, that the Legislature intended the existing Municipal Clerk to continue to issue execution, so long as he was the legal custodian of the judgment records, &c. If the Legislature had intended to take away this power, when speaking of the officer to *execute*, they would also have designated the officer to *issue* process.

But to return, we have seen, that the repealing law provides for, and contemplates, the issuing of executions on Municipal Court judgments. It designates the officer who shall execute the process, but is silent as to what officer or which Clerk should issue these executions.

Who, then, could legally issue these executions?

I answer, necessarily, that officer who has the *legal custody* of the dockets, judgments, records, &c., and who, alone, has the ability to execute this power.

The power of Clerk of Municipal Court to issue executions is not taken away by the repealing act. He is made the legal custodian of records, &c., for six weeks. The act contemplates that executions shall be issued, and shall be collected by Sheriff. Is it not manifest that Legislature intended Clerk of Municipal Court to issue these executions?

There is no express authority given by repealing act, to the Clerk of the Circuit Court to issue executions on these judgments, yet his right to do so, after the docket, papers, and *judgment records* have been transferred to him, has never been questioned.

It is derived from *construction*. But if you vest the power to issue execution on these judgments in Clerk of the Circuit Court by *construction*, because you *presume* Legislature intended that parties should have execution, why not assume and construe the existence of this power in Municipal Court Clerk while he continued in legal custody of records? He had this power, it has never been expressly taken away.

Assuming that there is no language in the act expressly conferring the power on the Clerk of either Court to issue execution during the six weeks in which the Clerk of Municipal Court was authorized to

keep the records, &c., and assuming, also, that executions were to be issued by some officer, which of these Clerks did the Legislature intend should issue those executions?

Plaintiff says *Clerk of Circuit Court* is to issue executions *after* records are transferred to him, and they establish his right to do this on these two propositions:

1. Executions are to be issued.
2. Clerk of Circuit Court has custody of records, and
3. Therefore he must issue the executions.

The same train of reasoning will much more clearly establish the right of the Municipal Court Clerk to issue executions while records are in his custody.

1. Executions are to issue from some source.
2. The Clerk of Municipal Court has legal and exclusive custody of records.
3. This power belonged to him as clerk, and it has not, by any express words, been taken away.
4. To issue executions was a power incident to his office as clerk, and so long as he continues *clerk*, this power remains, unless he has been expressly deprived of it.
5. His *official character* as *clerk*, is expressly recognized by Sections No. 2 and 5 of the repealing act.
6. And *express* power is given him to issue execution for costs, &c., as will be hereafter shewn.

It would seem that the arguments by which you establish the right in the Clerk of the Municipal Court to issue executions during the six weeks in which he was continued in office, and continued the legal custodian of the records, is very much stronger than that by which you establish the right in the Circuit Court Clerk to issue executions after that time.

There is another view of this question, which seems perfectly conclusive. The argument of the plaintiff below, is based mainly on these propositions, viz:

1. The first section absolutely and instantly repeals the Municipal Court out of existence.
2. There being no court, there could be no officer of the court authorized to issue process; no officer who had power to use seal of the court, &c.
3. Therefore execution void.

In the printed argument submitted by the counsel for plaintiff, it is said:

"The language of the repealing clause (first section,) is positive "and absolute, and no subsequent provision, by express word nor legal "effect, continues the existence of the court for one moment, &c."

It will not be controverted that the Legislature had the power to repeal the court so far that no new business should be done in it, and also to provide that the clerk should be continued in office to close up the business by issuing executions, &c. It was clearly competent for Legislature to do this.

Now, if I can establish by the language of the repealing act,

1. That the clerk was continued in office for a period of time extending beyond the date of the issuing of the execution in question;

2. That during said time he had a right to use the *seal of the court*, and

3. To issue executions under such seal for any purpose,

Then the argument on part of plaintiff is answered, and the right of clerk of Municipal Court to issue this execution is demonstrated.

Because, it surely will not be denied that if he had a right to issue executions *at all*, he had a right to issue the execution in question.

Let us see if I can establish these propositions.

Section 5 of said Act is as follows:

"That the *clerk* of the said *Municipal Court* shall deliver over the records, dockets and papers, as provided in the second section of this Act, within six weeks after the passage hereof: *Provided*, That nothing in this act contained, shall be so construed as to prevent the clerk of the said Municipal Court from *collecting his fees in the manner now provided by law*, and the clerk of the Municipal Court shall, for that purpose, have free access to records and copies thereof, without costs."

The clerk, then, was authorized by the repealing act to continue to collect his fees in the manner then prescribed by law.

This brings us to the inquiry, how was the clerk *then* authorized by law to collect his fees? If by fee bill and execution under the seal of the court, it follows, that for these purposes his official character was continued, with the right to use the seal and issue executions.

The laws on the subject of fees, and providing the manner of collecting them will be found in *Rev. Laws*, page 186, sec. 192,

" " " 249, " 28,
" " " 418, " 40,
" " " 262, " 7,
" " " 311, " 19,

These laws were in existence at the time of passage of repealing act.

The act is regard to "costs," embodied in Revised Laws, was origi-

nally passed January 10, 1827, and will be found in Gale's Statutes, page 196. It authorizes the clerk to collect his fees by execution or fee bill.

Section 23 authorizes fee bill under seal of court, and gives it effect of execution. *Gale's Statutes, pp.* 197-8-9.

Act of February 26, 1833, (*Gale's Statutes*, 233,) Section 181 provides for costs of prosecution in criminal cases.

Section 182 creates a *lien* on property of defendant, from his arrest, and makes it duty of clerk to issue execution "for all costs of conviction in criminal cases."

Section 184 provides that execution may issue to any County in the State.

See a great variety of cases where clerk's and other costs are to be collected by fee bill and execution.

Act of February 9, 1827, (Gale's Statutes,) page 246, section 6.
" January 6, " " " " 320, " 6.
" January 23, " " " " 333, " 6.

See also Act in regard to "*Practice*," passed January 29, 1827, (Gale's Statutes, p. 534.)

Sections 25 and 26 provide that clerks shall keep fee book, and *costs* shall go into judgment, and "clerk shall send out fee bill with execution," and costs of failing party shall be collected in manner now provided by law.

See also Act in regard to *fees*, of February 19, 1827. (Gale's Statutes, p. 300.

Section 8, &c., provides for making up fee bill, and authorizes the collection of fees by *fee bill* or execution. "The costs of the prevailing party shall be included in the judgment."

A fee bill is *process*, and *writ* is to be issued under seal.—*Reddick* v. *Cloud's Administrators*, 2 Gil. R. 670 and 678.

It cannot be controverted but that at date of Repealing Act, the clerk was authorized to collect his fees,

1. By fee bill under seal of court.
2. By execution for fees.
3. By issuing execution for the judgment, including damages and costs.

These then, were the modes then authorized by law, by which the clerk could collect his fees. It is expressly declared that the Repealing Act shall not be so construed as to take any of them away. Then the clerk has the right to *use the seal*, to issue *execution* for his fees, and to collect his fees by issuing execution for *damages and costs*, because all

these *modes* of collecting his fees are expressly reserved to him by the Repealing Act.

This fifth section gives the right to the clerk of the Municipal Court to issue execution, and collect his fees, *after* the records have been transferred to office of clerk of Circuit Court.

If he had the right after, had he not before such transfer?

If the Legislature were so careful to guard and protect rights of clerks to *fees*, &c., is it to be supposed that they forgot the rights of *judgment creditors?* Did they forget the *substance* to pursue the *shadow?*

Again, When can clerk of Circuit Court issue execution on these judgments? Obviously not until he gets the dockets and judgment records. To do so before, would be a physical impossibility. If the clerk of Municipal Court could not issue the execution while he held the records, no one could, and the remedy is destroyed.

But this Municipal Clerk could issue execution for so much of the judgment as his fees amounted to. The judgment was made up of *damages and costs;* did Legislature intend to split up judgments, and authorize one clerk to issue execution for one part, and another clerk for another part of judgment?

The power of the Legislature to continue the right to issue executions in the clerk of the Municipal Court, is as clear as their power to transfer this right to clerk of Circuit Court. No view of this statute can be taken, except striking in the bark of the first section, and closing the eyes to the other sections, and to the object and scope of the law, which will enable a person to come to the conclusion, that the Legislature intended the solecism, while it continued the existence of the Municipal Clerk—while it provided for the issuing of execution without limitation as to time, or intimation that this right was to be suspended—while they expressly give him power to use the seal, to issue executions for fees,—while they authorize him to retain the judgment records, &c., yet deprive him of the power to include the damages in his execution, and confer such power on no other person or officer.

Yet is this illogical conclusion sought to be deduced against all contemporaneous construction, all right and justice, solely to enable the prowling speculator to defeat the title of the *bona fide* holder and occupant, after years of uninterrupted enjoyment of the property.

From the foregoing observations, I come to the following conclusions:

1. It was the clear duty of the Legislature to preserve the rights of judgment creditors to execution.

2. The intention to protect the rights of judgment creditors, is manifested throughout the whole act.

3. The Clerk of the Municipal Court was continued in existence after the passage of repealing act, and the power to issue execution is not taken away, and it was an incident to his office.

4. For six weeks after the passage of the act, he is continued the legal custodian of records, &c., and during these six weeks if he cannot issue execution, no one can.

5. The repealing law expressly provides that the Clerk shall continue to possess the same powers to collect fees, as he had before. He had the power to collect them prior to that time, by issuing execution for the judgment and costs, and this power is expressly recognized in him.

But it is said that the Municipal Court is repealed, and that the seal of the Court could not be used to authenticate the execution. This is begging the question. If the power to issue execution is continued in the Clerk, this carries with it everything necessary to the exercise of this power; and when the law provides that he may issue execution for fees, and as a seal is necessary, the right to use it, is implied. It will not be doubted but that Legislature may take away judicial functions of Court, and preserve ministerial duties of Clerk and High Constable, as they have done in this case.

The argument, thus far, has been based on the words of the Statute. I now propose to cite some authorities supporting the foregoing conclusions.

That the whole statute is to be taken together, and that the intention is to govern, is laid down in *Mason* v. *Fitch*, 2 *Scam. Rep.* 223, 225. *Davis* v. *Hayden*, 3 *Scam. Rep.* 35, 37.

Courts will always look at consequences in construing statutes, and will never infer an intention to do wrong, when the law is capable of any other construction. *People* v. *Marshall*, 1 *Gil. Rep.* 687, 688.

The provisions of a statute should receive such a construction, if the words will admit of it, as that the existing rights of parties should not be impaired. *Bruce* v. *Schyler*, 4 *Gil. R.* 221, 272.

The construction we contend for, carefully preserves the rights of the judgment creditors of the Municipal Court. That which plaintiffs contend for annihilates them.

See the very able opinion of Supreme Court in 13 *Ills. Rep.* 560, 565, in case *People* v. *Thurbur*, where the whole question is discussed, and the true rules, and those for which we contend, are laid down.

See, also, 15 *Ills. Rep.* 20.

There is another view of this subject, which, if the case was doubtful, would be conclusive in favor of the defendant.

The construction of the repealing act contended for by us, was adopted at the time of its passage, by the Clerk and officers of the Court, by the bar of Chicago, by all parties having interest in the records, papers, &c., of said Municipal Court.

This appears from the bill of exceptions. It appears that a number of executions, issued under the hand and seal of the Clerk of the Municipal Court after the passage of the repealing act, and that the Clerk continued to issue them even as late as 26th of March, 1839, six weeks after the passage of said act.

This presents a very strong case of contemporaneous construction—a construction adopted at time of passage of law, never questioned for some fourteen years, and under which property to the amount of many hundreds of thousands of dollars has been acquired, and is now held.

See upon this subject, *Bruce* v. *Schuyler*, 4 Gilman R., 266, 4 Howard Rep.

"A long established construction of a statute by the officers to whom its execution is entrusted, ought to have the force of a judicial determination," especially when rights of property have grown up under that construction. 8 *Vermont R.* 286 and 487; 17 *Mass. R.* 143.

See *Smith* on construction of Statutes, p. 739, sec. 620, and p. 742, sec. 624.

The true interpretation of the law, the intent of the Legislature, the contemporaneous construction, all concurring in establishing this right in the clerk of the Municipal Court to issue execution, I submit the case with confidence that the Court will find no difficulty in affirming the judgment of the Common Pleas, and quieting the titles of many citizens who are threatened with similar prosecutions.

ISAAC N. ARNOLD,
Of Counsel for Appellee.

COOK COUNTY COURT OF COMMON PLEAS.

ADAMSON NEWKIRK,
v.
ROSELLA CHAPRON,
} Ejectment.

OPINION DELIVERED by HON. JOHN M. WILSON.

This is an action of ejectment. The plaintiff and defendant both claim title under one Truman G. Wright. The defendant, under a deed from the Sheriff of Cook County, dated June nineteenth, 1841, reciting a sale of the property in controversy upon an execution purporting to be issued from the Municipal Court of Chicago, dated February twentieth, 1839, and issued upon a judgment rendered said Wright, in said Court at the March term, 1838.

The plaintiff under a deed, executed by said Wright subsequent to the execution of said Sheriff's deed.

It is insisted by the plaintiff, that the execution issued from the Municipal Court was void, and that the sale under it, and the Deed of the Sheriff under the sale, conveyed no title to the land. If the first proposition can be maintained, it is clear that the sale and deed conveyed no title.

It becomes necessary, therefore, to give construction to an act entitled An act to repeal, in part, an Act to Incorporate the City of Chicago, in force February 15th, 1839.—Incorporation Laws, 1839, p 63–4.

The 1st section of said act provides that so much of the act of March 4th, 1837, incorporating the City of Chicago as established a Municipal Court, and all matters connected therewith be and the same is hereby repealed.

If the provisions of this section are alone to be regarded, there is no room for construction, the language being direct and unequivocal. But to adopt such a rule of construction, would be in violation of the rules of construction, which are as old as the common law itself, and which have been recognized and acted upon by all the courts down to the present time. In the construction of an act, the intention of the legislature is to govern. To ascertain the intention of Legislation, every provision of the act is to be considered, and effect is to be given

to every sentence and word if it can be done, and all the provisions of the act made harmonious and consistent.—6 Bacon's Abt. 380; 12 Mass. 384; 3 Cowen, 95; 1 Peters Cond. 421* p 422.

It is also a rule of construction that general words and phrases are to be restrained and limited by specific provisions in a subsequent clause of the same statute. 6 Bacon's Abt. 381.

It is also a rule of construction equally well established, that the purview and scope of the act, is to be considered in order to ascertain the object proposed to be effected by the Legislature, and thus ascertain the intention.

This is necessarily a preliminary consideration.

The objects proposed to be effected by the act under consideration, are very apparent.

The general object of the act was to abolish the Municipal Court, so far as relates to any future exercise of judicial power, as appears from the 1. Sec.

2d. To transfer the business and records of said Court, to the Cook County Circuit Court, as apparent from the 2nd and 4th Sec's.

3d. To preserve the rights of judgment creditors and parties litigant in Municipal Court. The proviso of the 2nd section guards against the release of errors, on account of the transfer of the records to the Circuit Court. The 7th section provides that the High Constable, who was executive officer of the Municipal Court, may proceed to collect executions that had been levied—and by the proviso to the fifth section, the Clerk of the Municipal Court was authorized to collect his fees, in the manner there provided by law, even after the records should be removed into the Circuit Court. This is evident from the fact, that it is provided that he shall have free access to the records, Dockets and papers &c., without costs or charge.

These three objects are clearly within the purview and scope of the act, and are the leading objects proposed to be effected, as appears by language unambiguous and easy to be understood.

That the legislature intended to abolish the Municipal Court, and transfer its records to the Circuit Court, is conceded. But it is in effect insisted that the rights of judgment creditors to have executions as there provided by law, was suspended, so long as the records remained in the legal custody of the Clerk of the Municipal Court.

That the legislature had the power to abolish the Court, and preserve the ministerial functions of the Clerk, so as to maintain the rights of judgment creditors, will not be denied, and that one of the objects of the act, was to preserve the rights of parties interested in the Rec-

ords of the Court has been shown, and no rule of construction is better settled, than that a statute shall be so construed, as to effectuate the intention of the legislature, if it can be done consistently with the rules of interpretation.

Under the law existing at the time the act under consideration was passed, the judgment creditor who sued out the execution, upon which the sale was made, under which the defendant claims title, was entitled to execution. There is no objection to the form of the execution.

It was directed to and executed by the Sheriff of Cook County, as required by the 3d section of the act under consideration.

And it is in evidence that the clerk of the Municipal Court, retained the possession and custody of the records for six weeks after the passage of the act as provided, and that he issued during that time a large number of executions, upon some of which property was sold, which by the advance of real estate is now valued at hundreds of thousands of dollars.

The legality of sales under these executions has been acquiesced in for more than fourteen years before any objections were made to the titles thus acquired, or any suit brought, so far as it appears. Though this might not, perhaps, constitute an authoritative contemporaneous exposition binding upon the Court, it shows the view taken of the statute by the Clerks of both Courts, and the Attorneys of the Court immediately after its passage, most of whom appear to have had more or less writs issued during the ensuing six weeks. And the fact that authority was expressly given to the Clerk to issue execution and fee-bills for cost after the records were transferred to the Circuit Court, shows that the Legislature intended to preserve the rights of those interested in the records of that Court, and when granting this power to issue execution and providing for access to the records after they were transferred, it is to be presumed the Legislature would have given him express power to collect his fees in the manner provided by law while the records were continued in his possession, unless they had understood that he had such power as incident to the general power to issue execution by virtue of other provisions of the act, while his legal custody continued; otherwise the right of the Clerk to collect his costs was suspended while the records remained in his custody, though special provision was inserted to confer and preserve the right after the records were transferred. It is also apparent, from this provision, that the Legislature intended the Court should have an existence for some purposes, because the executions issued for costs in the manner provided by law, must be under the seal of the Court. Now if the

Court was in existence so as to enable its Clerk to issue executions under its seal, after the records were transferred, it is certainly not against the spirit of the act, but in accordance with it, to imply when a general authority is given to issue execution, that the Legislature intended to continue the same power in relation to issuing executions, in the same Clerk, while the records remained in his legal custody. Any other conclusion would violate the express provisions of the law. And this Court cannot intend that the legislature meant to suspend the right of judgment creditors to execution, or of the Clerk to collect his fees, during the period of six weeks, while declaring that executions should issue, unless there is something in the act absolutely requiring such a construction.

In relation to issuing executions generally upon the judgments of the Municipal Court, the only provision in the act is found in the last clause of 3d Sec., and is as follows:

"All executions hereafter to be issued upon any judgment rendered in the said Municipal Court, shall be directed to the Sheriff of Cook County."

It becomes necessary to ascertain who, at the time of issuing the execution in question, was in a condition to perform this act.

It is conceded that the Clerk of the Circuit Court, after the records were transferred, had power to issue valid executions upon the judgments of the Municipal Court, and this is doubtless a correct view of the statute in this particular. (2 *Scam.* 224.) Where does he obtain the power? He is not made the Clerk of the Municipal Court or invested with the power of the Clerk of that Court in express terms, nor is any express power given him to issue execution. The power then arises from the evident intention of the Legislature in providing that executions should issue and that the records of the Municipal Court should be placed in his custody. This is the fair and legal implication from these two provisions.

If, then, the custody of the records confers the power of issuing executions by implication upon the Clerk of another Court, (the issuing of an execution being a ministerial and not a judicial act,) by parity of reasoning, much more would the legal and exclusive custody of the records by the Clerk of the Court rendering the judgment, authorize him to exercise its legitimate functions.

When does the Clerk of the Circuit Court become the proper officer to issue executions on the judgments of the Municipal Court? Not till he obtains the legal custody of the records under the act.

The Clerk of the Circuit Court had neither authority nor the records

under his control necessary to enable him to issue the execution under consideration. But the Clerk of the Municipal Court was in the legal custody of the records, and it was his duty, as Clerk, to issue executions.

It is clear, then, that if the Clerk of the Municipal Court could not issue executions, no one could, so long as he had the legal custody of the records.

Is it then to be inferred that the legislalature intended to suspend the right of the judgment creditors against the express declaration of the legislature that executions were to be issued without any limitation of time, or intimation that the right was to be suspended? Clearly not. The legislature was as fully competent to continue the ministerial functions of issuing executions in the Clerk of the Municipal Court, as to impose upon the Clerk of the Circuit Court that duty, and it being their duty to preserve the rights of judgment creditors, a court will never intend that the legislature has failed to perform its duty, and will never so decide unless compelled to do so by the express terms of the act.

As they have provided that executions should issue upon the Judgments of that Court, and as the Clerk of the Municipal Court had the sole custody of the records until he delivered them to the Clerk of the Circuit Court, and as no other person had power to issue them, or the control of the records necessary to issue them, it must be implied that the legislature intended that the Clerk of the Municipal Court should continue to perform the duty imposed upon him by law while he continued in the sole custody of the records, and that the Clerk of the Circuit Court should issue them after he had obtained their custody.

The implication is certainly as strong in the favor of the authority of the Clerk of the Municipal Court, as of the Clerk of the Circuit Court, it being only by implication in either case; and if the implication in favor of the Municipal Clerk is not legitimate, I am unable to perceive how it can be maintained in relation to the Circuit Court; in which case it would follow that all the executions issued by the Clerk of the Circuit Court upon the judgments of the Municipal Court since the passage of the act, and all sales made under them, are void.

The question is whether by legal construction of the act, the Clerk of the Municipal Court, was authorized by the act, to issue execution upon its judgments, while the records continued in his sole custody by virtue of the act. For it is to be remembered that the records remained in his custody, and his functions as clerk were continued, not by virtue of his appointment as Clerk under the original act. For his authority under that act, if the act contained only the first section, would have

ceased the moment the repealing act was passed, if it was competent for the legislature to take away his power, without providing for the performance of his ministerial functions, so far as was necessary to preserve the rights of judgment creditors. But he had custody of the records for the six weeks designated in the act, by virtue of the repealing act in the same manner, that the Clerk of the Circuit Court had after they came into his custody. As both Clerks have custody of the records by the same act, and obtain the power of issuingexecution, (if they have any,) under the same identical words, and that power is conferred only by implication, I confess I am unable to appreciate the reasoning, which from the same language in relation to persons in a similar position, can make an implication giving power to one and taking it from the other.

It is said that as the Municipal Court was abolished, the seal of the Court could not be used to authenticate the execution. This is begging the question. For if by the language of the act it is clear that the legislature only intended to divest the Court immediately of its Judicial power, and to authorize the Clerk to continue to exercise his ministerial duties, until the records were transferred, then by preserving this power in the Clerk, the law implies everything necessary to the exercise of that power. And as the seal of the Court is essential to the validity of the execution, the right to use it is necessarily implied. No one will doubt the power of the legislature to abolish the judicial functions of the Court, and preserve the power of its ministerial officers for the purpose of maintaining the rights of parties. If they may do it by transferring the records to another Clerk, they may do it in any other manner which in their judgment will best subserve the purposes contemplated. But if the objection is good as against the Clerk of the Municipal Court, it is equally good against the Clerk of the Circuit Court, for there is no language in the act, expressly authorizing the Clerk of the Circuit Court, to use the seal of that Court or any other to authenticate the executions issued upon judgments of the Municipal Court. This power is implied from the language before quoted, authorizing the issue of executions. So that the use of the seal in both cases is implied from the same language, which is equally applicable to the Clerks, while they respectively were legal custodians of the records. The whole question therefore depends upon the construction of the language, authorizing the issue of executions which I have before considered.

If the conclusion to which I have arrived be correct, to wit: That the Legislature intended to grant the power of issuing executions to the Clerks respectively while they had custody of the records, then it

follows that the Clerks possessed the power to affix the seals of the respective Courts, since without a seal no valid execution could issue, and for this purpose the Municipal Court had an existence so long as by authority of law the records were in custody of its Clerk. And the seal of the Circuit Court was a legal authentication of executions issued after the records were transferred. Surely if the seal of another Court is a good authentication of a record by implication, from the fact that the records were transferred to that Court, and that the Clerk is authorized by implication to issue execution, the implication is much stronger that the Clerk of the proper Court may use its seal for the same purpose, when he is authorized to issue execution.

The construction which I have thus given to the statutes, gives force and effect to all the language of the act, makes all its provisions harmonious, and preserves the rights of persons interested in the records and judgments of the Municipal Court, quiets title under numerous sales upon execution long since acquired and unquestioned for more than fourteen years, and effectuates the evident intention of the Legislature.

The conclusion to which I have arrived, makes it unnecessary for me to enter into a full discussion on the question of unconstitutionality made in the argument of the case. Yet I have felt compelled to give to the act the construction contended for by the plaintiff's counsel. I should have had no hesitation in declaring the act unconstitutional, inasmuch as a judgment creditor would then have been deprived of a right secured to him by the law at the time his judgment was rendered, upon which the execution was issued, and also at the time the contract was made upon which judgment was rendered.

It is no answer to say the right was only suspended for a short time, it is not a question of time, but of strict right.

If the Legislature may deprive a party of vested legal rights at all, for a day even, they may suspend it indefinitely.

In the case of *McCracken* v. *Hayward*, 2 How. 613, the Supreme Court of the United States, in discussing the provisions of the constitution in relation to impairing the obligation of contracts, say, "the same power in a State Legislature may be carried to any extent if it exists at all," "for if the power can be exercised to any extent, its exercise must be a matter of uncontrollable discretion." That the rights of a judgment creditor are within the meaning of the provision of the Constitution, and protected by it, is expressly decided in the same case.

The Court say (*Id. p.* 612,) "When a contract becomes consum-

mated the law defines the duty and the right, compels one party to perform the thing contracted for, and gives the other the right to enforce the performance by the remedies then in force. Any law which, in its operation, amounts to a denial or obstruction of the rights accruing by a contract, though professing to act on the remedy, is directly obnoxious to the prohibition of the constitution." (p. 613.) "The right of the plaintiff was to damages for the breach of the contract, to bring suit and obtain judgment, to take out and prosecute an execution against the defendant till judgment was satisfied, pursuant to the existing laws of Illinois."

In this case it was decided that the Legislature could not change the mode of selling under an execution, if thereby the plaintiff was deprived of any right which he was entitled to by law when the contract was made upon which judgment was obtained. Much less can they deprive a party of execution, to which he is entitled when he recovers judgment.

As before shown, if the Legislature may deprive a party of execution to which he is by law entitled, they may do so in their discretion and take it away entirely.

It is hardly necessary to combat a doctrine so monstrous. The same doctrine, substantially, as those contained in the case of McCracken v. Hayward, are contained in the able decision of our own Supreme Court in the case of Bruce v. Schuyler; 4 Gill. 221; in which it was decided that the legislature could not, by the repeal of an act conferring power upon an auditor to execute a deed, take away the power and thus deprive the purchaser of the evidence of title which by law he was entitled to when he made his purchase.

But, as I choose to rest my decision upon the construction of the statute, it is unnecessary for me to enter into a more full discussion of a question which is never to be resorted to except where the language used by the legislature will not, by the recognized rules of legal interpretation, allow a construction in harmony with the provisions of the Constitution.

BLACKWELL & CONE,
Plaintiff's Attorneys.

ARNOLD & MANIERRE,
Defendant's Attorneys.

COOK COUNTY COURT OF COMMON PLEAS.

ADAMSON NEWKIRK,
v.
ROSELLA CHAPRON,
} Ejectment.

OPINION DELIVERED by HON. JOHN M. WILSON.

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The plaintiff under a deed, executed by said Wright subsequent to the execution of said Sheriff's deed.

It is insisted by the plaintiff, that the execution issued from the Municipal Court was void, and that the sale under it, and the Deed of the Sheriff under the sale, conveyed no title to the land. If the first proposition can be maintained, it is clear that the sale and deed conveyed no title.

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The 1st section of said act provides that so much of the act of March 4th, 1837, incorporating the City of Chicago as established a Municipal Court, and all matters connected therewith be and the same is hereby repealed.

If the provisions of this section are alone to be regarded, there is no room for construction, the language being direct and unequivocal. But to adopt such a rule of construction, would be in violation of the rules of construction, which are as old as the common law itself, and which have been recognized and acted upon by all the courts down to the present time. In the construction of an act, the intention of the legislature is to govern. To ascertain the intention of Legislation, every provision of the act is to be considered, and effect is to be given

to every sentence and word if it can be done, and all the provisions of the act made harmonious and consistent.—6 Bacon's Abt. 380; 12 Mass. 384; 3 Cowen, 95; 1 Peters Cond. 421* p 422.

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2d. To transfer the business and records of said Court, to the Cook County Circuit Court, as apparent from the 2nd and 4th Sec's.

3d. To preserve the rights of judgment creditors and parties litigant in Municipal Court. The proviso of the 2nd section guards against the release of errors, on account of the transfer of the records to the Circuit Court. The 7th section provides that the High Constable, who was executive officer of the Municipal Court, may proceed to collect executions that had been levied—and by the proviso to the fifth section, the Clerk of the Municipal Court was authorized to collect his fees, in the manner there provided by law, even after the records should be removed into the Circuit Court. This is evident from the fact, that it is provided that he shall have free access to the records, Dockets and papers &c., without costs or charge.

These three objects are clearly within the purview and scope of the act, and are the leading objects proposed to be effected, as appears by language unambiguous and easy to be understood.

That the legislature intended to abolish the Municipal Court, and transfer its records to the Circuit Court, is conceded. But it is in effect insisted that the rights of judgment creditors to have executions as there provided by law, was suspended, so long as the records remained in the legal custody of the Clerk of the Municipal Court.

That the legislature had the power to abolish the Court, and preserve the ministerial functions of the Clerk, so as to maintain the rights of judgment creditors, will not be denied, and that one of the objects of the act, was to preserve the rights of parties interested in the Rec-

ords of the Court has been shown, and no rule of construction is better settled, than that a statute shall be so construed, as to effectuate the intention of the legislature, if it can be done consistently with the rules of interpretation.

Under the law existing at the time the act under consideration was passed, the judgment creditor who sued out the execution, upon which the sale was made, under which the defendant claims title, was entitled to execution. There is no objection to the form of the execution.

It was directed to and executed by the Sheriff of Cook County, as required by the 3d section of the act under consideration.

And it is in evidence that the clerk of the Municipal Court, retained the possession and custody of the records for six weeks after the passage of the act as provided, and that he issued during that time a large number of executions, upon some of which property was sold, which by the advance of real estate is now valued at hundreds of thousands of dollars.

The legality of sales under these executions has been acquiesced in for more than fourteen years before any objections were made to the titles thus acquired, or any suit brought, so far as it appears. Though this might not, perhaps, constitute an authoritative contemporaneous exposition binding upon the Court, it shows the view taken of the statute by the Clerks of both Courts, and the Attorneys of the Court immediately after its passage, most of whom appear to have had more or less writs issued during the ensuing six weeks. And the fact that authority was expressly given to the Clerk to issue execution and fee-bills for cost after the records were transferred to the Circuit Court, shows that the Legislature intended to preserve the rights of those interested in the records of that Court, and when granting this power to issue execution and providing for access to the records after they were transferred, it is to be presumed the Legislature would have given him express power to collect his fees in the manner provided by law while the records were continued in his possession, unless they had understood that he had such power as incident to the general power to issue execution by virtue of other provisions of the act, while his legal custody continued; otherwise the right of the Clerk to collect his costs was suspended while the records remained in his custody, though special provision was inserted to confer and preserve the right after the records were transferred. It is also apparent, from this provision, that the Legislature intended the Court should have an existence for some purposes, because the executions issued for costs in the manner provided by law, must be under the seal of the Court. Now if the

Court was in existence so as to enable its Clerk to issue executions under its seal, after the records were transferred, it is certainly not against the spirit of the act, but in accordance with it, to imply when a general authority is given to issue execution, that the Legislature intended to continue the same power in relation to issuing executions, in the same Clerk, while the records remained in his legal custody. Any other conclusion would violate the express provisions of the law. And this Court cannot intend that the legislature meant to suspend the right of judgment creditors to execution, or of the Clerk to collect his fees, during the period of six weeks, while declaring that executions should issue, unless there is something in the act absolutely requiring such a construction.

In relation to issuing executions generally upon the judgments of the Municipal Court, the only provision in the act is found in the last clause of 3d Sec., and is as follows:

"All executions hereafter to be issued upon any judgment rendered in the said Municipal Court, shall be directed to the Sheriff of Cook County."

It becomes necessary to ascertain who, at the time of issuing the execution in question, was in a condition to perform this act.

It is conceded that the Clerk of the Circuit Court, after the records were transferred, had power to issue valid executions upon the judgments of the Municipal Court, and this is doubtless a correct view of the statute in this particular. (2 *Scam.* 224.) Where does he obtain the power? He is not made the Clerk of the Municipal Court or invested with the power of the Clerk of that Court in express terms, nor is any express power given him to issue execution. The power then arises from the evident intention of the Legislature in providing that executions should issue and that the records of the Municipal Court should be placed in his custody. This is the fair and legal implication from these two provisions.

If, then, the custody of the records confers the power of issuing executions by implication upon the Clerk of another Court, (the issuing of an execution being a ministerial and not a judicial act,) by parity of reasoning, much more would the legal and exclusive custody of the records by the Clerk of the Court rendering the judgment, authorize him to exercise its legitimate functions.

When does the Clerk of the Circuit Court become the proper officer to issue executions on the judgments of the Municipal Court? Not till he obtains the legal custody of the records under the act.

The Clerk of the Circuit Court had neither authority nor the records

under his control necessary to enable him to issue the execution under consideration. But the Clerk of the Municipal Court was in the legal custody of the records, and it was his duty, as Clerk, to issue executions.

It is clear, then, that if the Clerk of the Municipal Court could not issue executions, no one could, so long as he had the legal custody of the records.

Is it then to be inferred that the legislalature intended to suspend the right of the judgment creditors against the express declaration of the legislature that executions were to be issued without any limitation of time, or intimation that the right was to be suspended? Clearly not. The legislature was as fully competent to continue the ministerial functions of issuing executions in the Clerk of the Municipal Court, as to impose upon the Clerk of the Circuit Court that duty, and it being their duty to preserve the rights of judgment creditors, a court will never intend that the legislature has failed to perform its duty, and will never so decide unless compelled to do so by the express terms of the act.

As they have provided that executions should issue upon the Judgments of that Court, and as the Clerk of the Municipal Court had the sole custody of the records until he delivered them to the Clerk of the Circuit Court, and as no other person had power to issue them, or the control of the records necessary to issue them, it must be implied that the legislature intended that the Clerk of the Municipal Court should continue to perform the duty imposed upon him by law while he continued in the sole custody of the records, and that the Clerk of the Circuit Court should issue them after he had obtained their custody.

The implication is certainly as strong in the favor of the authority of the Clerk of the Municipal Court, as of the Clerk of the Circuit Court, it being only by implication in either case; and if the implication in favor of the Municipal Clerk is not legitimate, I am unable to perceive how it can be maintained in relation to the Circuit Court; in which case it would follow that all the executions issued by the Clerk of the Circuit Court upon the judgments of the Municipal Court since the passage of the act, and all sales made under them, are void.

The question is whether by legal construction of the act, the Clerk of the Municipal Court, was authorized by the act, to issue execution upon its judgments, while the records continued in his sole custody by virtue of the act. For it is to be remembered that the records remained in his custody, and his functions as clerk were continued, not by virtue of his appointment as Clerk under the original act. For his authority under that act, if the act contained only the first section, would have

ceased the moment the repealing act was passed, if it was competent for the legislature to take away his power, without providing for the performance of his ministerial functions, so far as was necessary to preserve the rights of judgment creditors. But he had custody of the records for the six weeks designated in the act, by virtue of the repealing act in the same manner, that the Clerk of the Circuit Court had after they came into his custody. As both Clerks have custody of the records by the same act, and obtain the power of issuingexecution, (if they have any,) under the same identical words, and that power is conferred only by implication, I confess I am unable to appreciate the reasoning, which from the same language in relation to persons in a similar position, can make an implication giving power to one and taking it from the other.

It is said that as the Municipal Court was abolished, the seal of the Court could not be used to authenticate the execution. This is begging the question. For if by the language of the act it is clear that the legislature only intended to divest the Court immediately of its Judicial power, and to authorize the Clerk to continue to exercise his ministerial duties, until the records were transferred, then by preserving this power in the Clerk, the law implies everything necessary to the exercise of that power. And as the seal of the Court is essential to the validity of the execution, the right to use it is necessarily implied. No one will doubt the power of the legislature to abolish the judicial functions of the Court, and preserve the power of its ministerial officers for the purpose of maintaining the rights of parties. If they may do it by transferring the records to another Clerk, they may do it in any other manner which in their judgment will best subserve the purposes contemplated. But if the objection is good as against the Clerk of the Municipal Court, it is equally good against the Clerk of the Circuit Court, for there is no language in the act, expressly authorizing the Clerk of the Circuit Court, to use the seal of that Court or any other to authenticate the executions issued upon judgments of the Municipal Court. This power is implied from the language before quoted, authorizing the issue of executions. So that the use of the seal in both cases is implied from the same language, which is equally applicable to the Clerks, while they respectively were legal custodians of the records. The whole question therefore depends upon the construction of the language, authorizing the issue of executions which I have before considered.

If the conclusion to which I have arrived be correct, to wit: That the Legislature intended to grant the power of issuing executions to the Clerks respectively while they had custody of the records, then it

follows that the Clerks possessed the power to affix the seals of the respective Courts, since without a seal no valid execution could issue, and for this purpose the Municipal Court had an existence so long as by authority of law the records were in custody of its Clerk. And the seal of the Circuit Court was a legal authentication of executions issued after the records were transferred. Surely if the seal of another Court is a good authentication of a record by implication, from the fact that the records were transferred to that Court, and that the Clerk is authorized by implication to issue execution, the implication is much stronger that the Clerk of the proper Court may use its seal for the same purpose, when he is authorized to issue execution.

The construction which I have thus given to the statutes, gives force and effect to all the language of the act, makes all its provisions harmonious, and preserves the rights of persons interested in the records and judgments of the Municipal Court, quiets title under numerous sales upon execution long since acquired and unquestioned for more than fourteen years, and effectuates the evident intention of the Legislature.

The conclusion to which I have arrived, makes it unnecessary for me to enter into a full discussion on the question of unconstitutionality made in the argument of the case. Yet I have felt compelled to give to the act the construction contended for by the plaintiff's counsel. I should have had no hesitation in declaring the act unconstitutional, inasmuch as a judgment creditor would then have been deprived of a right secured to him by the law at the time his judgment was rendered, upon which the execution was issued, and also at the time the contract was made upon which judgment was rendered.

It is no answer to say the right was only suspended for a short time, it is not a question of time, but of strict right.

If the Legislature may deprive a party of vested legal rights at all, for a day even, they may suspend it indefinitely.

In the case of *McCracken* v. *Hayward*, 2 How. 613, the Supreme Court of the United States, in discussing the provisions of the constitution in relation to impairing the obligation of contracts, say, "the same power in a State Legislature may be carried to any extent if it exists at all," "for if the power can be exercised to any extent, its exercise must be a matter of uncontrollable discretion." That the rights of a judgment creditor are within the meaning of the provision of the Constitution, and protected by it, is expressly decided in the same case.

The Court say (*Id. p.* 612,) "When a contract becomes consum-

mated the law defines the duty and the right, compels one party to perform the thing contracted for, and gives the other the right to enforce the performance by the remedies then in force. Any law which, in its operation, amounts to a denial or obstruction of the rights accruing by a contract, though professing to act on the remedy, is directly obnoxious to the prohibition of the constitution." (p. 613.) "The right of the plaintiff was to damages for the breach of the contract, to bring suit and obtain judgment, to take out and prosecute an execution against the defendant till judgment was satisfied, pursuant to the existing laws of Illinois."

In this case it was decided that the Legislature could not change the mode of selling under an execution, if thereby the plaintiff was deprived of any right which he was entitled to by law when the contract was made upon which judgment was obtained. Much less can they deprive a party of execution, to which he is entitled when he recovers judgment.

As before shown, if the Legislature may deprive a party of execution to which he is by law entitled, they may do so in their discretion and take it away entirely.

It is hardly necessary to combat a doctrine so monstrous. The same doctrine, substantially, as those contained in the case of McCracken v. Hayward, are contained in the able decision of our own Supreme Court in the case of Bruce v. Schuyler; 4 Gill. 221; in which it was decided that the legislature could not, by the repeal of an act conferring power upon an auditor to execute a deed, take away the power and thus deprive the purchaser of the evidence of title which by law he was entitled to when he made his purchase.

But, as I choose to rest my decision upon the construction of the statute, it is unnecessary for me to enter into a more full discussion of a question which is never to be resorted to except where the language used by the legislature will not, by the recognized rules of legal interpretation, allow a construction in harmony with the provisions of the Constitution.

BLACKWELL & CONE,
Plaintiff's Attorneys.

ARNOLD & MANIERRE,
Defendant's Attorneys.

SUPREME COURT, JUNE TERM, A. D., 1855.

ROSELLA CHAPRON, Appellee,
ads.
ADAMSON B. NEWKIRK, Appellant,

Appeal from Cook County Court of Common Pleas.

This was an action of ejectment brought by Newkirk *vs.* Mrs. Chapron, in the Cook County Court of Common Pleas, and tried before the Hon. *Jno. M. Wilson,* who rendered judgment in favor of defendant.

The title to the land in controversy, in March, 1838, was in Truman G. Wright. At that term a judgment was rendered against him in the Municipal Court of the City of Chicago. The plaintiff claimed as the grantee of parties who held under deed from Wright.

The defendant was in possession under title derived from a sale and Sheriff's deed, under the judgment against Wright.

If the execution was valid, defendant's title is good; if execution void, she cannot defend successfully under such sale. In this both parties agree. The proper decision of the question involves the construction of the act repealing the Municipal Court of Chicago, and approved February 15, 1839.

Few questions have arisen in this court involving larger pecuniary interests. Not only the title to the land now in dispute is involved, but a decision adverse to the validity of the execution would affect titles to an unknown and indefinite extent, and which parties have held, in the utmost good faith and confidence, for the last fifteen years.

These titles have passed the scrutiny of the best conveyancers and counsellors of Chicago, and for more than fifteen years after the sale, neither the defendant in the execution, nor any one, suspected the titles under the sale to be invalid. Lately, owing to the great rise of property in Chicago, a set of keen speculators have made it a business to search out defects in their neighbor's titles, and this suit is one of their experiments.

The execution was dated Febuary 20, 1839, and the Act, which it is claimed left the judgment with no power to enforce it by execution, was passed February 15, 1839—five days before execution was issued.

The following is a copy of the act.

"An Act to repeal part of 'an Act to Incorporate the City of Chicago.'"

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That so much of an act, entitled "An Act to incorporate the City of Chicago," approved March 4th, in the year of our Lord one thousand eight hundred and thirty-seven, as establishes a Municipal Court in the said City of Chicago, and all matters connected therewith, be, and the same is hereby repealed.

SEC. 2. That all suits or matters, both at law and in equity, now pending and undetermined in the said Municipal Court, shall be heard, tried and prosecuted to final judgment and execution, in the Circuit Court of the County of Cook, in the same manner as they would be if the said suits or matters had been originally made returnable, or had in the Circuit Court for the said County of Cook; and all records, dockets and papers belonging to, arising from, or connected with the said Municipal Court, shall, by the Clerk of the said Municipal Court, be transferred and delivered over to the Clerk of the Circuit Court for the said County of Cook: *Provided*, That this section shall not be construed as a release of errors that might have been taken advantage of in said Municipal Court: *Provided further*, That it shall be no ground of error in or to any judgment heretofore rendered in the said Municipal Court, that it does not appear by the record or proceedings that the defendant resided in the said county of Cook.

SEC. 3. It is hereby made the duty of the high Constable, elected under the provisions of the said act, entitled "An Act to incorporate the City of Chicago," hereby in part repealed, to make returns of all process of summons, executions, or of whatever nature, to the said Circuit Court of the County of Cook; which said Circuit Court is hereby invested with the same powers to enforce a compliance with the law in this behalf, that it would have had if the process had been originally issued from the said Circuit Court; and all executions hereafter to be issued upon any judgment rendered in the said Municipal Court, shall be directed to the Sheriff of Cook County.

SEC. 4. That the transcript of any record of the said Municipal Court, of any judgment rendered therein, may and shall be furnished by the Clerk of the Circuit Court of the said County of Cook; and any such transcript shall have the same force and effect, to all intents and purposes, that the same would have had, if the suit, process or proceeding, whether in law or equity, had been originally commenced or instituted in the said Circuit Court.

SEC. 5. That the Clerk of the said Municipal Court shall deliver over the records, dockets and papers, as provided in the second section of this act, within six weeks after the passage hereof; *Provided*, That nothing in this act contained, shall be so construed as to prevent the Clerk of the said Municipal Court from collecting his fees in the manner now provided by law; and the Clerk of the said Municipal Court shall, for that purpose, have free access to the said records, dockets and papers, and copies thereof, without costs or charge.

SEC. 6. That the Sheriff of Cook County is hereby authorized to give deeds of conveyance for any real estate which may have been sold by the high Constable of the City of Chicago, as fully and effectually

as he might or could do, if the said real estate had been sold by the Sheriff of said County.

SEC. 7. That nothing in this act contained shall be construed to prevent the high Constable of said City of Chicago from proceeding to collect executions which have been levied.

Approved February 15, 1839. (See Incorp. Ls. 1838-9.

What was the object of the repealing statute? It was,

1. To repeal out of existence the Court so far as related to the future exercise of judicial power. (Sec. 1.)

2. To transfer its records, &c., to Circuit Court, close up its business, &c. (Sections 2, 5, 3.)

3. Carefully to preserve the rights of all parties in said Court. (Sections 2, 4, 5, 6.)

Analysis of Statute.

Sec. 1 contains the general repealing clause.

Sec. 2 transfers all unfinished business to the Circuit Court.

In this section no time is fixed for this transfer, and 5th section read in connection with 2d section, shows how and when this transfer was to be made.

Sec. 3 makes it duty of High Constable to return process, &c., to *Circuit Court*.

Sec. 7 provides that High Constable shall complete collection of executions already issued, and "all executions hereafter to be issued on any judgment, &c., shall be directed to Sheriff of *Cook County*."

Sec. 4. Transcripts made by Circuit Court *Clerk* legalized.

The act recognizes the power to certify transcripts in Clerk Municipal Court, while papers in his custody.

Sec. 5. Six week's time is given for delivering of papers, &c., by Clerk of Municipal Court, to Clerk of Circuit Court, and the Clerk of Municipal Court shall have same right to collect his fees, as theretofore. That is "*in manner now (then) provided by law.*"

Sec. 6. *Sheriff* to give deeds, &c.

Sec 7. High Constable may collect executions levied.

Rules of Construction in Construing Statutes.

1. The intention of the Legislature is the pole star to guide us in construing statutes.

2. The whole is to be taken together, and effect must be given to all, if possible. Duarris p. 24. "The intention of the Legislature is be deduced to from the whole and every part of the statute taken and compared together."

3. The statute must be construed, if possible, so that existing rights of parties shall be preserved. 4 Gil. R. 221.

What was the intention of the Legislature in this case?

[illegible]

1. Was it to repeal the Municipal Courts, and during the six weeks in which the records were to remain with Municipal Clerk, to create an *inter-regnum* a *hiatus* in which there was no remedy on judgments? Or was it their intention to repeal the same, so that no new business could be done by Court.

2. To provide for and transfer, within a convenient time, the papers and records to Circuit Court.

3. To close up the unfinished business by High Constable and Clerk.

4. To protect the existing rights of *parties*.

Were the Clerk and High Constable, and more particularly the Clerk, continued in office for any purpose? and if so, what was the extent of the power of the Clerk, after the passage of the repealing act? To determine these questions, the whole act and all its provisions must be considered.

The fallacy of the argument on the other side, is based on wilfully fixing the attention on the *first section*, and shutting the eyes to and ignoring all which follows.

1. Was the Clerk of the Municipal Court *eo instanti*, the act was passed, absolutely repealed out of office?

If he was, and the act was constitutional, his subsequent acts would of course be void.

But it can be demonstrated, that he was not *repealed out of office*, but *expressly* continued in office and his official character for certain purposes, after passage of act *expressly* recognized.

1. The official character of Clerk of Municipal Court is recognized in this, viz:

In *section* 2, it is provided that papers, records, &c., *shall* be transferred, &c., by the *Clerk of the Municipal Courts*, to the clerk of Circuit Courts, &c.

2. Section 5, provides that "*the Clerk of the Municipal Court*, shall deliver over records, &c., within six weeks after *passage of act.*"

1. During all these six weeks, he is called "*the Clerk of the Municipal Court*" and he has, as such Clerk, the right to these papers, records, &c.

2. By that *name* he is required to do an official act, pertaining to that office.

3. He is continued the legal custodian of the records, &c., during that period.

4. Section 5 further provides "*that nothing in this act contained shall prevent the Clerk of the Municipal Court from collecting his fees in manner now provided by law.*"

1. *He is still Clerk*, even after delivering of papers he has some power left.

2. He is still to collect his fees in way provided by law, &c.

3. He is to have free access, &c., as Clerk, to papers, even after the expiration of the six weeks.

The High Constable also is continued in office after passage of the repealing act, for certain purposes, viz:

1. To collect executions already levied, &c. (By sec. 7.)

2. To return all papers to the Clerk of the Circuit Court. (Sec. 3.)

These are official acts.

If the attention was to be confined exclusively to first section of the repealing act, and a strict, blind, literal construction were to be given to it, without reference to the qualifications contained in other sections, neither *Clerk* nor *High Constable* could do any official act whatever. But we have clearly established that no such effect is to be given to the first section; on the contrary, the officers of said Court, and particularly the Clerk, was continued in office, for certain purposes, and recognized as such.

The continued legal existence of Clerk of Municipal Court, after passage of repealing act, being established, we come to our second enquiry, viz:

What was the extent of the power of the Clerk of the Municipal Court after passage of said act? Had he authority while he had the legal custody of the records, to issue executions on judgments?

It is quite clear that the power to issue execution existed somewhere. Because no one will suppose the legislature intended to do an act of such gross injustice, as to take away the right of a party to have execution upon his judgment.

Here were, in this Municipal Court, a large number of judgments, amounting to millions of dollars; to take away all power of enforcing them by execution, would lead to palpable wrong. Any fair construction of the repealing act which will relieve the Legislature of any such intention, will be looked for and adopted by the Judiciary.

But we are not left to inference alone on this subject. It is expressly provided in section two of the act, "That all executions hereafter to be issued on any judgment rendered in said Municipal Court, shall be directed to Sheriff of Cook county."

The act itself, then, provides that executions *are to be issued*, and that they shall be directed to *Sheriff* of Cook county. It is a matter of surprise, if the construction claimed on the other side be correct, that by the first section both *Clerk* and High Constable were repealed

out of office, that the Legislature should have deemed it necessary to provide that executions should issue to Sheriff. It would seem that if there was no Constable, it would hardly be necessary to make express provision that executions should issue to Sheriff, as there would be no other officer to whom execution could issue. But we assume that both Clerk and Constable are continued in office by repealing act, for certain purposes. Both being continued in office, and the act expressly providing that executions shall issue to Sheriff, and being silent as to Clerk, we rightfully assume, that the Legislature intended the existing Municipal Clerk to continue to issue execution, so long as he was the legal custodian of the judgment records, &c. If the Legislature had intended to take away this power, when speaking of the officer to *execute*, they would also have designated the officer to *issue* process.

But to return, we have seen, that the repealing law provides for, and contemplates, the issuing of executions on Municipal Court judgments. It designates the officer who shall execute the process, but is silent as to what officer or which Clerk should issue these executions.

Who, then, could legally issue these executions?

I answer, necessarily, that officer who has the *legal custody* of the dockets, judgments, records, &c., and who, alone, has the ability to execute this power.

The power of Clerk of Municipal Court to issue executions is not taken away by the repealing act. He is made the legal custodian of records, &c., for six weeks. The act contemplates that executions shall be issued, and shall be collected by Sheriff. Is it not manifest that Legislature intended Clerk of Municipal Court to issue these executions?

There is no express authority given by repealing act, to the Clerk of the Circuit Court to issue executions on these judgments, yet his right to do so, after the docket, papers, and *judgment records* have been transferred to him, has never been questioned.

It is derived from *construction*. But if you vest the power to issue execution on these judgments in Clerk of the Circuit Court by *construction*, because you *presume* Legislature intended that parties should have execution, why not assume and construe the existence of this power in Municipal Court Clerk while he continued in legal custody of records? He had this power, it has never been expressly taken away.

Assuming that there is no language in the act expressly conferring the power on the Clerk of either Court to issue execution during the six weeks in which the Clerk of Municipal Court was authorized to

keep the records, &c., and assuming, also, that executions were to be issued by some officer, which of these Clerks did the Legislature intend should issue those executions?

Plaintiff says *Clerk of Circuit Court* is to issue executions *after* records are transferred to him, and they establish his right to do this on these two propositions:

1. Executions are to be issued.
2. Clerk of Circuit Court has custody of records, and
3. Therefore he must issue the executions.

The same train of reasoning will much more clearly establish the right of the Municipal Court Clerk to issue executions while records are in his custody.

1. Executions are to issue from some source.
2. The Clerk of Municipal Court has legal and exclusive custody of records.
3. This power belonged to him as clerk, and it has not, by any express words, been taken away.
4. To issue executions was a power incident to his office as clerk, and so long as he continues *clerk*, this power remains, unless he has been expressly deprived of it.
5. His *official character* as *clerk*, is expressly recognized by Sections No. 2 and 5 of the repealing act.
6. And *express* power is given him to issue execution for costs, &c., as will be hereafter shewn.

It would seem that the arguments by which you establish the right in the Clerk of the Municipal Court to issue executions during the six weeks in which he was continued in office, and continued the legal custodian of the records, is very much stronger than that by which you establish the right in the Circuit Court Clerk to issue executions after that time.

There is another view of this question, which seems perfectly conclusive. The argument of the plaintiff below, is based mainly on these propositions, viz:

1. The first section absolutely and instantly repeals the Municipal Court out of existence.
2. There being no court, there could be no officer of the court authorized to issue process; no officer who had power to use seal of the court, &c.
3. Therefore execution void.

In the printed argument submitted by the counsel for plaintiff, it is said:

"The language of the repealing clause (first section,) is positive "and absolute, and no subsequent provision, by express word nor legal "effect, continues the existence of the court for one moment, &c."

It will not be controverted that the Legislature had the power to repeal the court so far that no new business should be done in it, and also to provide that the clerk should be continued in office to close up the business by issuing executions, &c. It was clearly competent for Legislature to do this.

Now, if I can establish by the language of the repealing act,

1. That the clerk was continued in office for a period of time extending beyond the date of the issuing of the execution in question;

2. That during said time he had a right to use the *seal of the court*, and

3. To issue executions under such seal for any purpose,

Then the argument on part of plaintiff is answered, and the right of clerk of Municipal Court to issue this execution is demonstrated.

Because, it surely will not be denied that if he had a right to issue executions *at all*, he had a right to issue the execution in question.

Let us see if I can establish these propositions.

Section 5 of said Act is as follows:

"That the *clerk* of the said *Municipal Court* shall deliver over the records, dockets and papers, as provided in the second section of this Act, within six weeks after the passage hereof: *Provided*, That nothing in this act contained, shall be so construed as to prevent the clerk of the said Municipal Court from *collecting his fees in the manner now provided by law*, and the clerk of the Municipal Court shall, for that purpose, have free access to records and copies thereof, without costs."

The clerk, then, was authorized by the repealing act to continue to collect his fees in the manner then prescribed by law.

This brings us to the inquiry, how was the clerk *then* authorized by law to collect his fees? If by fee bill and execution under the seal of the court, it follows, that for these purposes his official character was continued, with the right to use the seal and issue executions.

The laws on the subject of fees, and providing the manner of collecting them will be found in *Rev. Laws*, page 186, sec. 192,

" " " 249, " 28,
" " " 418, " 40,
" " " 262, " 7,
" " " 311, " 19,

These laws were in existence at the time of passage of repealing act.

The act is regard to "costs," embodied in Revised Laws, was origi-

nally passed January 10, 1827, and will be found in Gale's Statutes, page 196. It authorizes the clerk to collect his fees by execution or fee bill.

Section 23 authorizes fee bill under seal of court, and gives it effect of execution. *Gale's Statutes, pp.* 197-8-9.

Act of February 26, 1833, (*Gale's Statutes*, 233,) Section 181 provides for costs of prosecution in criminal cases.

Section 182 creates a *lien* on property of defendant, from his arrest, and makes it duty of clerk to issue execution "for all costs of conviction in criminal cases."

Section 184 provides that execution may issue to any County in the State.

See a great variety of cases where clerk's and other costs are to be collected by fee bill and execution.

Act of February 9, 1827, (Gale's Statutes,) page 246, section 6.
" January 6, " " " " 320, " 6.
" January 23, " " " " 333, " 6.

See also Act in regard to "*Practice*," passed January 29, 1827, (Gale's Statutes, p. 534.)

Sections 25 and 26 provide that clerks shall keep fee book, and *costs* shall go into judgment, and "clerk shall send out fee bill with execution," aud costs of failing party shall be collected in manner now provided by law.

See also Act in regard to *fees*, of February 19, 1827. (Gale's Statutes, p. 300.

Section 8, &c., provides for making up fee bill, and authorizes the collection of fees by *fee bill* or execution. "The costs of the prevailing party shall be included in the judgment."

A fee bill is *process*, and *writ* is to be issued under seal.—*Reddick* v. *Cloud's Administrators*, 2 Gil. R. 670 and 678.

It cannot be controverted but that at date of Repealing Act, the clerk was authorized to collect his fees,

1. By fee bill under seal of court.
2. By execution for fees.
3. By issuing execution for the judgment, including damages and costs.

These then, were the modes then authorized by law, by which the clerk could collect his fees. It is expressly declared that the Repealing Act shall not be so construed as to take any of them away. Then the clerk has the right to *use the seal*, to issue *execution* for his fees, and to collect his fees by issuing execution for *damages and costs*, because all

these *modes* of collecting his fees are expressly reserved to him by the Repealing Act.

This fifth section gives the right to the clerk of the Municipal Court to issue execution, and collect his fees, *after* the records have been transferred to office of clerk of Circuit Court.

If he had the right after, had he not before such transfer?

If the Legislature were so careful to guard and protect rights of clerks to *fees*, &c., is it to be supposed that they forgot the rights of *judgment creditors?* Did they forget the *substance* to pursue the *shadow?*

Again, When can clerk of Circuit Court issue execution on these judgments? Obviously not until he gets the dockets and judgment records. To do so before, would be a physical impossibility. If the clerk of Municipal Court could not issue the execution while he held the records, no one could, and the remedy is destroyed.

But this Municipal Clerk could issue execution for so much of the judgment as his fees amounted to. The judgment was made up of *damages and costs;* did Legislature intend to split up judgments, and authorize one clerk to issue execution for one part, and another clerk for another part of judgment?

The power of the Legislature to continue the right to issue executions in the clerk of the Municipal Court, is as clear as their power to transfer this right to clerk of Circuit Court. No view of this statute can be taken, except striking in the bark of the first section, and closing the eyes to the other sections, and to the object and scope of the law, which will enable a person to come to the conclusion, that the Legislature intended the solecism, while it continued the existence of the Municipal Clerk—while it provided for the issuing of execution without limitation as to time, or intimation that this right was to be suspended—while they expressly give him power to use the seal, to issue executions for fees,—while they authorize him to retain the judgment records, &c., yet deprive him of the power to include the damages in his execution, and confer such power on no other person or officer.

Yet is this illogical conclusion sought to be deduced against all contemporaneous construction, all right and justice, solely to enable the prowling speculator to defeat the title of the *bona fide* holder and occupant, after years of uninterrupted enjoyment of the property.

From the foregoing observations, I come to the following conclusions:

1. It was the clear duty of the Legislature to preserve the rights of judgment creditors to execution.

2. The intention to protect the rights of judgment creditors, is manifested throughout the whole act.

3. The Clerk of the Municipal Court was continued in existence after the passage of repealing act, and the power to issue execution is not taken away, and it was an incident to his office.

4. For six weeks after the passage of the act, he is continued the legal custodian of records, &c., and during these six weeks if he cannot issue execution, no one can.

5. The repealing law expressly provides that the Clerk shall continue to possess the same powers to collect fees, as he had before. He had the power to collect them prior to that time, by issuing execution for the judgment and costs, and this power is expressly recognized in him.

But it is said that the Municipal Court is repealed, and that the seal of the Court could not be used to authenticate the execution. This is begging the question. If the power to issue execution is continued in the Clerk, this carries with it everything necessary to the exercise of this power; and when the law provides that he may issue execution for fees, and as a seal is necessary, the right to use it, is implied. It will not be doubted but that Legislature may take away judicial functions of Court, and preserve ministerial duties of Clerk and High Constable, as they have done in this case.

The argument, thus far, has been based on the words of the Statute. I now propose to cite some authorities supporting the foregoing conclusions.

That the whole statute is to be taken together, and that the intention is to govern, is laid down in *Mason* v. *Fitch*, 2 *Scam. Rep.* 223, 225. *Davis* v. *Hayden*, 3 *Scam. Rep.* 35, 37.

Courts will always look at consequences in construing statutes, and will never infer an intention to do wrong, when the law is capable of any other construction. *People* v. *Marshall*, 1 *Gil. Rep.* 687, 688.

The provisions of a statute should receive such a construction, if the words will admit of it, as that the existing rights of parties should not be impaired. *Bruce* v. *Schyler*, 4 *Gil. R.* 221, 272.

The construction we contend for, carefully preserves the rights of the judgment creditors of the Municipal Court. That which plaintiffs contend for annihilates them.

See the very able opinion of Supreme Court in 13 *Ills. Rep.* 560, 565, in case *People* v. *Thurbur*, where the whole question is discussed, and the true rules, and those for which we contend, are laid down.

See, also, 15 *Ills. Rep.* 20.

There is another view of this subject, which, if the case was doubtful, would be conclusive in favor of the defendant.

The construction of the repealing act contended for by us, was adopted at the time of its passage, by the Clerk and officers of the Court, by the bar of Chicago, by all parties having interest in the records, papers, &c., of said Municipal Court.

This appears from the bill of exceptions. It appears that a number of executions, issued under the hand and seal of the Clerk of the Municipal Court after the passage of the repealing act, and that the Clerk continued to issue them even as late as 26th of March, 1839, six weeks after the passage of said act.

This presents a very strong case of contemporaneous construction—a construction adopted at time of passage of law, never questioned for some fourteen years, and under which property to the amount of many hundreds of thousands of dollars has been acquired, and is now held.

See upon this subject, *Bruce* v. *Schuyler*, 4 Gilman R., 266, 4 Howard Rep.

"A long established construction of a statute by the officers to whom its execution is entrusted, ought to have the force of a judicial determination," especially when rights of property have grown up under that construction. 8 *Vermont R.* 286 and 487; 17 *Mass. R.* 143.

See *Smith* on construction of Statutes, p. 739, sec. 620, and p. 742, sec. 624.

The true interpretation of the law, the intent of the Legislature, the contemporaneous construction, all concurring in establishing this right in the clerk of the Municipal Court to issue execution, I submit the case with confidence that the Court will find no difficulty in affirming the judgment of the Common Pleas, and quieting the titles of many citizens who are threatened with similar prosecutions.

ISAAC N. ARNOLD,
Of Counsel for Appellee.

STATE OF ILLINOIS—*ss.*

SUPREME COURT, JUNE TERM, A. D. 1855.

ADAMSON B. NEWKIRK, *vs.* ROSELLA CHAPRON, } Appeal from Cook County Court of Common Pleas.

Statement of the Case, and points made by Counsel for the appellant, and authorities cited in support thereof.

This was an action of ejectment, brought by the appellant against the appellee, to recover the possession of a part of the west half of the north-east quarter of section eighteen in township thirty-nine, north range fourteen, east of the third principal meridian

The declaration was in the usual form under the Statute of ejectments, particularly describing the premises, and claiming the same in fee,. Plea of general issue pleaded, and joinder by plaintiff.

Upon the trial of the issue so made, the evidence produced by the plaintiff showed a connected title, from the United States down to himself, of the whole of said west half of the north-east quarter of section eighteen aforesaid.

Upon said trial the defendant admitted possession at the time the declaration was served, and set up a title under a Sheriff's deed, giving in evidence a judgment of the Municipal Court of the City of Chicago, rendered at the November term of said Court, A. D. 1837, against the patentee of said Land, in favor of one Robert Gracia.

The defendant then offered in evidence a paper purporting to be an alias execution upon said judgment, issued out of and under the seal of the "Municipal Court of the City of Chicago," tested the 20th day of February, 1839; (five days after the Court was abolished,) and directed to the Sheriff of Cook County, who, (as appears by endorsements thereon,) by his deputy levied upon the said above described land, by virtue of said paper, on the 21st day of February, 1839, and on the 25th day of March following sold the same to the plaintiff in the said judgment.

The defendant further offered in evidence a deed, executed by the Sheriff of Cook County, purporting to convey to the purchaser aforesaid, the above described land, in consideration of the sale aforesaid; also deeds purporting to convey to said defendant the title of the grantee in said Sheriff's deed

The defendant further offered in evidence a number of papers purporting to be process of "the Municipal Court of the City of Chicago," dated after the 15th day of February, A. D. 1839, and in no way connected with, nor having any relation to the title set up by said defendant, nor any other title to the said land:—To the admission of which said paper, purporting to be an alias execution as aforesaid, and said Sheriff's deed purporting to convey the land as aforesaid, and all the deeds purporting to convey to said defendant the title of the grantee in said Sheriff's deed as aforesaid,and to the papers purporting to be process of the Municipal Court of the City of Chicago, as aforesaid in evidence on the trial of the issue aforesaid, the plaintiff by his counsel objected. The

Court below overruled the said several objections, and the plaintiff excepted to the several decisions of the Court thereon.

The issue being found for the defendant, the plaintiff by his counsel moved for a new trial, on the grounds that the Court erred in admitting in evidence the paper purporting to be an alias execution, and the deeds so offered by the defendant, and that the finding of the Court was against the law and the evidence, and that it should have been for plaintiff; which motion was overruled by the Court, and the plaintiff excepted.

Judgment having been entered for said defendant, the plaintiff prayed an appeal to this Court, and now makes the following points, upon which he relies for a reversal of the judgment of the Court below.

1st. That the said Cook County Court of Common Pleas, on the trial, improperly and erroneously admitted in evidence the said paper purporting to be an alias execution as aforesaid, in this, that at the date of issuing of said paper the aforesaid land was legally held by a bona fide purchaser from said patentee without notice, and that the aforesaid judgment was not a lien upon the same—nor was the land subject to an' 'excution upon said judgment—and further, that there was no such Court as the Municipal Court of the City of Chicago," and that, therefore, the said paper was a nullity, and should have been rejected. (See act to incorporate the City of Chicago, Laws of 1836–37, p. 75–77; Incorporation Laws, 1838–9, page 73. Also Coke 2 Inst. Title, Statute. Bacon's Abridgment, Title Statute. Blackstone's Com., Title, Sources of English Law. Kent's Com., Title, Municipal Law. Dwarris on Statutes, Title, Repeal. Smith on Construction of Statutes, 600, 628, 880, Title, Repeal, &c. 1 Scam., R. 555; 2 Scam., 227. 14th Ill. R. 334, and cases there cited. 7 Cranch, 52. 21 Wendell, 211. 23 Maine, R., 360, 19th Vt. R., 129. 1 Scam., 258. 3 Mass. R., 221, 539. 2 Wendel 277, 7 Mass. 306. 11 Pick., 490. 2 Cranch, 386. 3 Scam., 160. 2 Gilm., 1. 4 Gill & John, 6. Rex. vs. P. L. Comm. E. C. L. R., vol. 33. Tidds pr., Title, Executions. Whartons' Law Dic., Title, Court, executions and process. Bouviere's Law Dic., Title, Courts' executions, process, &c. Saunder's Reports, 27, and Note, and the following Illinois Reports. 1 Scam., 40, 517, 535. 2 Scam., 22, 49, 224, 442, 504. 3 Scam., 119, 206, 208, 452, 557, 4 Scam., 371, 404. 1 *Gilm.*, 131. 2 *Gilm.*, 151. 4 Gilm., 477, 311. 12 Ill.. 24, 141, 233, 387. 13 Ill., 20 22, 398,. 14 Ill., 26, 184, 373, 495, 410 [illegible]

2d. That the said Court, on said trial, improperly and erroneously admitted in evidence the deeds under which the defendant claimed title. As no title to said land passed by said deeds, they should have been rejected. See 1 Gilm., 131. 2 Gilm., 151.

3d. That the said Court, on said trial, improperly and erroneously admitted in evidence the papers purporting to be process of the "Municipal Court" as aforesaid. All of said papers being null and void, and not pertinent to the issue aforesaid, they should have been rejected. See Starkie, Philips, and Greenleaf on Evidence: and cases cited by Greenleaf on admissibility of evidence in particular; also cases above cited.

4th. That the finding of the Court was contrary to law and against the legal evidence in this cause. See cases above cited, and the evidence as preserved in the bill of exceptions.

5th. That the said Court erred in overruling the motion for a new trial which ought to have been granted by said Court upon the grounds taken by the said plaintiff. See cases above cited; also bill of exceptions in this case.

6th. That upon the whole case the plaintiff was entitled to a judgment for the recovery of possession against said defendant. See bill of exceptions and cases above cited.

JOHN E. CONE, of Counsel for Appellant.

124.

Newkirk

vs

Chapron

Filed July 9. 1855

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124

A. B. Chesnick

R. Chapman

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