No. 14838 A

Supreme Court of Illinois

Gilcreest

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vs.

Magill.

71641

Gilcrest
v.
Magill

Lawrence J.

One Robt Wade
mortgaged a mortgage upon certain real
estate, and at the sale under the
decree, one Cleare became the purchaser.
He afterwards assigned the certificate
of purchase to Magill, the appellee. The
latter filed an affidavit showing Gil-
crest, the appellant, to be in possession
of the mortgaged premises and that
he refused to surrender possession
and praying for a rule upon him
to show cause. The rule was granted,
and Gilcrest appeared and proved
that he had taken possession of the
premises under a ~~lease~~ five years lease
from Wade, before the commencement
of the suit to foreclose, and had re-
mained in possession from that time
to the present. He was not a party
to the bill of foreclosure. Thereupon
the court made an order that he
deliver the possession to Magill, from
which order Gilcrest appealed.

The order was er-

viously made. This same point was before this court at the Ottawa Term 1864 in the case of Burch vs Fowler. It was there held that a writ of assistance could not issue against a ~~for~~ person in possession of premises sold under a decree ~~to~~ rendered in a suit to which he was not a party. If his possession began before the commencement of the suit, not being a party nor coming in pendente lite, his rights are in no way affected by the suit, and can not be adjudicated ~~xxxxx~~ in this summary manner. The order for the delivery of possession will be set aside

Reversed & remanded.

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v

Magill

Opinion.

Lawrence J.

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O. K

Recorded B. 12. P. 556