No. 14763

Supreme Court of Illinois

Baker

---

vs.

Johnson

71641 

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 98

J. W. Middleton & Co., Stationers, 196 Lake St.

Page 1.

State of Illinois } Henry County Circuit Court
Henry County } March Term AD 1864

Pleas before the Honorable Ira O Wilkinson Judge of the 6th judicial Distrct of the State of Illinois At a regular term of the circuit court begun and holden at the court house in Cambridge in the county of Henry and State of Illinois on the first Monday in the month of March in the year one thousand eight hundred and sixty four it being the seventh day of said month

Present Honorable Ira O Wilkinson Judge
Ames Gould clerk
John B Vaughn Sheriff
Hiram Bigelow States atty

Know ye that on the 13th day of Feby 1864 Olof Johnson for and on behalf of himself and Samuel Remington made complaint before W H Hoyt a justice of the Peace in and for said county, which complaint is in the words and figures following to wit.

State of Illinois } In justices court before
Henry County } ss W H Hoyt J.P

Olof Johnson
Samuel Remington
vs
Jonathan H Baker

Forcible Detainer

The complaint of Olof Johnson (for and on behalf of himself and said Samuel Remington) of the Town of Galva in the county of Henry and State of Illinois who being first duly sworn upon his oath says William H Hoyt Esq a justice of the Peace in and for said county of Henry to understand and be informed that One Ezekiel Hewlett on the 21st day of December AD 1857 before Charles A Shurtleff Esq a justice of the Peace in and for said county of Henry recovered a

R. 2.

judgment against one John J Hall for the sum of Fifty four dollars and sixty eight cents ($54.68) and costs of suit taxed at ninety cents ($0.90) upon which judgment an execution was issued on the 12th day of January A.D. 1838 and afterwards delivered to one J B Nixon an acting Constable of said county to serve & execute who on the 20th day of January returned said Execution "no property found in my county subject to execution" that said Hewlett on the 21st day of January A.D. 1838 filed a transcript of said judgment for record with the clerk of the circuit court of said Henry county in pursuance of the statute in such case made and provided which on the date last aforesaid became a lien upon the Real Estate of said Hall that on the 22d day of January A.D. 1838 said Hewlett sued out his writ of Fieri Facias upon said Transcript judgment and on the 23d day of January A.D. 1838 placed the same in the hands of the Sheriff of said county to execute who on the 6th day of April A.D. 1838 levied the same upon the E½ of the N E ¼ of Sec 29 Township 14 N R 4 E 4th P M who advertised said land and on the 15th day of May 1838 sold twenty acres off the North end of the East half N E ¼ of Section (29) twenty nine Township fourteen (14) North range 4 East of the 4th P M to Hiram Bigelow Esq attorney for said Hewlett for the sum of sixty seven dollars and fifty two cents that being the highest and best bid for the same that said Sheriff then & there executed to said Bigelow a certificate of purchase for said land in pursuance of the statute providing that said Bigelow would be entitled to a deed for said land unless redeemed before the 15th day of August A.D. 1839 a copy of which certificate of purchase was filed for record as required by law on the 25th day

R. 3. 23

of May A.D. 1838 That said Hall did not redeem said land from said sale within the time allowed by law And the same remaining unredeemed either by said Hall or any judgment creditor of said Hall was on the 19th day of May A.D. 1839 redeemed by said Olof Johnson & Samuel Remington judgment Creditors of said Hall that said Johnson and Remington recovered a judgment at Law against said Hall in the Circuit Court of said Henry county on the 20th day of April A.D. 1838 for the sum of Two hundred and fourteen dollars and fifteen cents ($214,15) at the April Term of said court A.D. 1838 that on said 19th day of May A.D. 1839 they sued out their alias writ of Fieri Facias upon said judgment directed to the Sheriff of Henry county and on the same day placed ~~the~~ the same in the hands of P.H. Smith Sheriff of said county and at the same time placed in the hands of said Sheriff the sum of Seventy six dollars and fifty five cents ($76.55) in good and lawful money of the United States in full redemption of the said sale of said lands to H.C. Bigelow Esq on the 15 day of May A.D. 1838 and received from said P.H. Smith as aforesaid a certificate of redemption from said sale. That said Sheriff on said 19th day of May 1839 levied said execution so issued on said last mentioned judgment upon said land hereinbefore described as having been sold to said Bigelow that afterwards and on the 28th day of June A.D. 1839 said Sheriff offered said lands for sale upon said last mentioned execution and there being no bid made by any person the same was struck off to said Olof Johnson and Samuel Remington plaintiffs in the last mentioned execution for the amount of said redemption money and no more they being bidders at that sum as redeeming creditors of the said John I. Hall in pursuance of the

R. H. 4

Statute in such case made and provided That they having sold
deed to a Sheriffs deed to said lands by virtue of the Statute
and the premises aforesaid and on the 22d day of July A.D
1859 said Sheriff executed and on the 24th day of July A.D 1859
acknowledged and delivered to the said Johnson & Remington
a Sheriffs deed to said land in pursuance of said sale
which on the same day was duly recorded in the Recorders
office of said county at page 48 of Book 44 of the
Records of said county that on the 15th day of May A.D 1858
and continuously thereafter until about the 11th day of June
A.D 1860 said John J Hall was and continued to be in
possession of said land either by himself or tenant that
on the 11th day of June A.D 1860 and after all right and equity
of redemption on the part of him the said Hall had expired
the said Hall privily and collusively with J H Baker &
co of Macomb Illinois and without the knowledge or con
sent of said Johnson & Remington made a quit claim deed
of said land to said J H Baker & co and the said
Jonathan H Baker for and on behalf J H Baker & co
~~privately~~ privily and by collusion with said Hall
and without the consent or knowledge of said Johnson
and Remington were by said Hall fraudulently
suffered and permitted to obtain possession of said
premises under said Hall that the said J H Baker
who for and on behalf of the said J H Baker & co now
holds possession thereof that said Olof Johnson and
Samuel Remington made a demand in writing of the
said Jonathan H Baker to surrender possession of said
land prior to the institution of the commencement of this suit
and yet the said Jonathan H Baker refuses to deliver
up said premises to said Olof Johnson and Samuel
Remington although the same has been demanded

R. S. 5.

as aforesaid said Johnson & Remington therefor pray that the said Jonathan H. Baker may be summoned to answer the said complaint according to law

Subscribed & sworn to before me this
18th day of Feb AD 1864

I J Bennett N.P. } Olof Johnson

(writ from justices court missing from files)

And afterwards to wit and on the 11th day of March 1864 the an agreement was filed in said cause in words and figures following

State of Illinois } ss
Henry County }

Henry Circuit Court March Term AD 1864

Olof Johnson &
Samuel Remington
vs
Jonathan H Baker } Appeal

It is agreed by the parties to the above entitled cause that the following statement of proceedings had in the court below by agreement of parties be considered in lieu of the transcript & the matters therein contained of William H Hoyt Esq justice of the peace before whom said cause was tried below which transcript is in some manner lost from the files and this agreement is made to avoid the necessity & delay of obtaining another transcript that is to say That Olof Johnson for & on behalf of himself & Samuel Remington on the 13th day of February AD 1864 filed in the office of William H Hoyt a Justice of the Peace of the town of Galva said county of Henry the original of which complaint it is agreed is still on file herein That on said 13th day of February AD 1864 said justice issued his summons upon said complaint against said Jonathan H

Baker returnable on the 20th day of February A.D 1864 at the office of the said William H. Hoyt at Galva said county at ten O Clock A.M which summons was served on said defendant Jonathan H. Baker by a constable of said county personally by reading the same to the said Jonathan H. Baker on the 14th day of February A.D 1864 That on February 20th A.D 1864 at 10 O clock a.m a jury having been summoned and appearing before the said justice of the peace at his office in said Galva both said parties Plaintiff & defendant were present and the jury having been empannelled and sworn a trial was had before said Jury & Justice and the said jury having retired to consider of its verdict returned a verdict for the Plaintiffs and thereupon the said Justice rendered a judgment upon said verdict in favor of said Plaintiffs And that on the same day the said defendant filed his appeal Bond with good & sufficient security and in due form of law and perfected an appeal to the circuit court the said justice on the 21st day of February A.D 1864 transmitted the original papers together with a transcript for his docket to the clerk of the circuit court of said county which transcript has been lost from the files and the foregoing is agreed to be considered in lieu thereof It is further agreed that the said Johnson & Remington appellees on the 25th day of February A.D 1864 entered his appearance herein in pursuance of the notice and that the respective parties are in court

It is further agreed that at the time of the commencement of this suit the said Jonathan H. Baker was in the actual and exclusive possession of said premises and that a demand was made upon him by said Johnson & Remington to quit & deliver possession of said land and that

P. T. 7.

These two last mentioned facts are admitted for the purpose of the trial of this cause and can not hereafter be controverted by proof

Indiana March 9th 1864

I I Bennett
atty for Plffs
J. G Frost
atty for Defts

(Appeal bond from justices court ~~and~~ ~~from~~ missing from the files)

and afterwards to wit and at the term aforesaid on the 12th day of March 1864 the following proceedings were had in said cause to wit

Olof Johnson
Samuel Remington
vs
Jonathan H. Baker } Appeal

At this day comes the said plaintiffs by Bennett their atty and the said defendant by Frost and Shallenberger his attys and this cause now coming on to be heard and issues joined by the parties it is ordered by the court that a jury be called to hear and decide the issues between the parties and thereupon come the jurors of a jury of good and lawful men who were duly elected chosen and sworn to try this cause and a true verdict render according to the evidence And the said plaintiffs being unable to proceed with the trial of this cause by reason of the loss of a deed necessary for their evidence On pltffs motion it is ordered by the court that the jury be discharged

and cause continued at Plffs cost Whereupon it is ordered and adjudged by the court that the plaintiffs pay the costs of this continuance and that execution issue therefor

And afterwards to wit and at October Term AD 1864 of said circuit court and on the 18th day of October the following proceedings were had in said cause to wit

Olof Johnsen
Samuel Remington } Appeal
vs
Jonathan H. Baker } At this day came the parties hereto by their attys as aforesaid and this cause being again called and issues joined it is ordered by the court that a jury be called to hear and decide the issues and thereupon came the jurors of a jury of good and lawful men to wit Richard Linehan J. G. Sherrard Charles Duncan Wm Hayden J. L. Sibley Kirk Vincent J. R. Newman M. J. Manville Isa M. Davis Norman Muleden H. C. Patterson Stephen L. Barrett who were duly elected chosen and sworn to try the cause and a true verdict render according to the evidence and the jury having heard the evidence return into court their verdict in words following to wit We the jury find for the defendant which is received by the court and ordered to be entered of record in this case And thereupon comes the said plaintiffs by their atty and move the court for a new trial Motion overruled by the court and judgment entered on the verdict Whereupon it is considered and adjudged by the court that the defendant have and recover of the plaintiffs the costs in this behalf expended and that execution issue therefor And afterwards on the day and year aforesaid comes the said plaintiffs by their atty and pray an

R. 9.

appeal from the judgment of the court to the Supreme court of the State of Illinois which prayer is granted by the court and plaintiffs allowed until 1st day of Dec next in which to file bond on appeal with said pltffs or either of them as principal with security to be approved by the clerk of this court in the sum of five hundred dollars

And afterwards to wit and on the 18th day of October 1844 the said plaintiffs by their atty filed in said cause their bill of exceptions in the words and figures following to wit

State of Illinois } Henry Circuit Court
Henry County } October Term A.D. 1844

Olof Johnson &
Samuel Remington
vs
Jonathan H. Baker } Forcible Entry & Detainer

Be it known that on this day the above cause coming on to be heard and tried and a jury being empannelled & sworn the said plaintiffs to maintain & prove the issues on their part offered and introduced in evidence the record of a judgment rendered in the Henry circuit court on the 20th April 1838 in favor of Plaintiffs against one John I Hall for the sum of $214.45 in the words & figures following to wit;

Olof Johnson
Samuel Remington
vs
John I Hall } Assumpsit

April 20, 1838

This day came the said plaintiffs by H. W. Wells their attorney and the said defendant

P. 10

being three times solemnly called come not nor comes any one for them but they make default herein It is therefor considered and ordered by the court that the said plaintiffs have judgment by default against the said defendant for their damages herein And it appearing to the court that this suit is brought upon an instrument of writing for the payment of money only and that the damages of said plaintiffs in this suit rest in computation it is therefor ordered by the court that the clerk assess compute and report the said damages Whereupon the clerk proceed to make the assessment and computation aforesaid and reported to the court the sum of $214.45/100 dollars as the amount of the plaintiffs damages herein which assessment and computation upon examination by the court appearing to be just and correct is by the court approved and allowed It is therefore considered and ordered by the court that the said plaintiffs have and recover of the said defendant the said sum of ($214.45/100) ~~dollars~~ Two hundred and fourteen and 45/100 dollars being the amount of the damages assessed and computed as aforesaid together with their costs and charges herein expended and that they have execution therefor against the said defendant

The said plaintiffs further to maintain their issues on their part offered & read in evidence the original Summons issued served & returned in said cause, which summons & return is in the words & figures following to wit.

Plaintiffs further to maintain the issues on their part introduced & read in evidence a Fi. Fa. issued on said Judgt May 20/38 & the return thereon in the words & figures following to wit

"The People of the State of Illinois

To the Sheriff of Kenny county Greeting;

We command you that of the goods and chattels lands and tenements of John I Hall in your county you cause to be made the sum of $214 45/100 dollars which on the 20 day of April A.D. 1838 Johnson & Remington recovered in the circuit court of said county against the said John I Hall with legal interest thereon from said date and all and also the further sum of $5 20/100 dollars which were adjudged to the said Johnson & Remington by said court in that behalf expended whereof the said John I Hall stands convicted as appears to us of record and that you have the said sums of money with interest and costs at our clerks office within sixty days of the date hereof together with the cost Witness J. Riley Jr clerk of our said court and the seal thereof at Cambridge this 20 day of May A.D. 1838

Seal

J. Riley Jr clerk

by H. L. Dalrymple D.C. "

Upon which execution there appears the following endorsement

"Received this execution this 22 day of May at 9 Oclock P.M.

J. H. Dresser Sheriff

by P. H. Duff Deputy Sheriff

P. 12.

I cannot on my county find any property belonging to the within named John I Hall as herein commanded & therefore return the writ not satisfied I have also made a personal demand of John I Hall & he refuses to pay or to turn out property to satisfy the same therefore I return the as being served and not satisfied

J H Dresser Sheriff
by P H Smith Dep"

Plaintiffs thereupon introduced & read in evidence an alias Fi Fa issued on said judgment May 19. 1837 & the levy & return thereon which Alias Fi Fa is in the words and figures following to wit;

"The People of the State of Illinois.

To the Sheriff of Henry county Greeting

We command you that of the goods and chattels lands and tenements of John I Hall in your county you cause to be made the sum of two hundred & 45/100 dollars which on the 20th day of April A.D 1838 Olof Johnson & Saml Remington recovered in the circuit court of said county against the said John I Hall with legal interest thereon from said date until paid and also the further sum of Eight & 25/100 dollars which were adjudged to the said Johnson & Remington by said court for costs in that behalf expended whereof the said John I Hall stands convicted as appears of record and that you have the said Sums of money with interest and costs at our clerks office within ninety days of the date hereof together with the writ. Witness Thomas Wiley Jr clerk of our said court and the seal thereof at Cambridge this 19 day of May A.D 1837

Thomas Wiley Jr Clk
by D L Dalrymple Dep"

Upon which execution appears the following endorsement

"By virtue of the within writ I have this day levied on the

P. 13.

following Real Estate to wit 20 acres off the North end of the east half of the North East quarter of Section twenty nine Township fourteen North Range four East of the 4 P M this 19th day of may 1859 P He Sniff Sheriff

I have sold the above described land to Olof Johnson & Samuel Remington they being the highest & best bidder according to law the same being sold to satisfy redemption money paid by Olof Johnson & Samuel Remington the amount paid being 76 47/100 dollars there being no other bidder this 28th day of June 1859 (Deed given July 22 1859)

P He Sniff Sheriff Henry co Ill

Plaintiffs next read in evidence a Sheriffs deed to them of the land in controversy made in pursuance of a sale on said last mentioned Alias Fi Fa July 22 1859 by P He Sniff Sheriff of Henry county which said Sheriffs deed is in the words & fegures following to wit; Whereas Olof Johnson & Samuel Remington did at the April Term of the circuit Court for the county of Henry and state of Illinois recover a judgment against John D Hall for the sum of Two hundred & fourteen 45/100 dollars and costs of suit upon which judgment an execution was issued dated on the 19th day of May AD One thousand eight hundred and fifty nine directed to the Sheriff of Henry county to execute and by vertue of said execution the said Sheriff levied upon the lands hereinafter described and the same were struck off and sold to Olof Johnson and Samuel Remington he being the highest and best bidder thereof and the time and place of sale thereof having been duly advertised according to law Now therefore know all by this deed that I Pierrel He Sniff Sheriff

of said county of Henry in consideration of the premises have granted bargained and sold and do hereby convey to the said Olof Johnson and Samuel Remington their heirs and assigns the following tract of land 20 acres off the North end of the East half of the North East quarter of Section Twenty nine (29) Township Fourteen North range four east of the 4th P M the above described land being the same that was sold to Harvey Bigelow on execution in favor of Ezekiel Hurlbut & was redeemed by the said Olof Johnson and Samuel Remington judgment creditors of John D Hall that amount of redemption was Seventy five 47/100 dollars & I have advertised and offered the same this 28th day of June 1859 and there being no other bidders except Johnson & Remington the premises was struck off to them at the amount of redemption and the said Olof Johnson & Samuel Remington to have and to hold said premises with all the appurtenances thereunto belonging to the said Olof Johnson & Samuel Remington their heirs and assigns forever Witness my hand and seal this 22d day of July in the year of our Lord one thousand eight hundred and fifty nine

Purnel H Smith
Sheriff Henry county Illinois

State of Illinois
Henry County } I D Bonar clerk of the county court of the county of Henry aforesaid do certify that on the 27 day of July in the year of our Lord Eighteen hundred and fifty nine personally appeared before me P H Smith Sheriff of the county of Henry aforesaid who is personally known to me the said clerk to be the identical person whose name is subscribed to the foregoing deed as having executed the same and acknowledged that he had executed the same

R 15

for the uses and purposes therein mentioned In testimony whereof I have hereunto subscribed my name and affixed the seal of said court this day above written

Seal

D Bonar Clerk

Plaintiffs thereupon further to maintain the issues on their part offered in evidence the record of a certificate of redemption of said land by plaintiff May 19th 1859 which said record is in the words & figures following to wit " I hereby certify that Olof Johnson and Samuel Remington has this day deposited with me seventy six dollars and fifty five cents in full for the redemption of 20 acres of land off the north end of the East half of the North East quarter of Section Twenty nine in Township fourteen north range four East of the 4th P M as judgment credits the same being paid on the 15th day of May A D 1858 to satisfy an execution in favor of Ezekiel Rowley and against John I Hall said execution was issued out of the circuit clerks office dated January the 22d 1858 and to me directed to make a certain amount of judgment & costs & by virtue of said command I did levy upon & sell 20 acres off the North end of the East half of the North East quarter of Section Twenty nine in Township fourteen north range four East of the 4th P M and did sell on the 15th day of May 1858 said described land to Hiram Bigelow plaintiff in said execution he being the highest and best bidder all the above being endorsed by Olof Johnson & Samuel Remington as judgment credits this 19th day of May A D 1859

Purnell McDuff

Sheriff Henry county Illinois

P. 17.

whereupon defendant by counsel objected on the ground that no judgment had been read in evidence upon which the sale redemption from had been made and the court sustained the objection & excluded the record of said certificate of redemption from the consideration of the jury and the plaintiffs then & there by their counsel excepted to the said ruling of the court The Plaintiffs thereupon further to maintain the issues on their part offered in evidence & to read to the jury an original execution issued from the clerks office of Henry circuit court Jan 22 1838 upon a transcript judgment rendered in said court Jan 21 1838 for $56.02 & costs in favor of Ezekiel Hunsicker and against John I Hull & the levy & return thereon which said Fi Fa & levy & return and in the words & figures following to wit

"The People of the State of Illinois

To the Sheriff of Henry county Greeting

We command you that of the goods and chattels lands and tenements of John I Hall in your county you make or cause to be made the sum of fifty six dollars and 2 cents which on the 21 day of Jany A D 1838 Ezekiel Hunsicker obtained in the circuit court of Henry county against the said John I Hull with legal interest thereon from said date until paid and also the further sum of three dollars and 65 cents which were adjudged to the said Ezekiel Hunsicker by said court for his costs and charges in that behalf expended whereof the said John I Hall stands convicted as appears to us of record and that you have the said sum of money interest and costs at the clerks office of our said court at Cambridge within ninety days of the date hereof to render unto the said Ezekiel Hunsicker or such other person as shall be entitled thereto

P. 18

and have you then and there this writ Witness J. Wiley Jr clerk of our said circuit court and the seal thereof at Lawrenceburgh this 22 day of January AD 1838

J Wiley Jr clerk
by W. L. Dalrymple Deputy "

Upon which execution there appears the following endorsement "Received this execution for collection Jan 23d AD 1838 at 6 O clock PM

J. F. Dresser Sheriff
by J. B. Nixon Deputy

Levied on 8¼ N.S. qr Sec 29 Town 4 = 4 advertised to be sold on the 6th day of April 1838

Satisfied in full by sale of 20 acres off the North end of the East half North East ¼ of Section twenty nine Township fourteen North range four East the same being laid off by Mr Bagelow plaintiffs attorney for the full sum of sixty one dollars fifty two cents this 15th day of May 1838

J. F. Dresser Sheriff
by P. H. Duff Dept "

but said defendant by his counsel objected on the ground that no judgment before the justice of the peace had been shown and the court sustained the objection and excluded the said Fi. Fa. from the consideration of the jury & the said plaintiffs by their counsel then & there excepted to the said ruling of the court in excluding the said Fi. Fa. from the consideration of the jury

The Plaintiffs thereupon further to maintain the issues on their part offered in evidence & to read to the jury the record of a transcript of proceedings and judgment had & rendered Jan 21 1838 for $36.02 & costs taxed at $3.65 in favor of Ezekiel Hurlbut and against John I Hall which record of said transcript of proceedings & judgment is in the words & figures following to wit

P. 19.

"Transcript of proceedings lately had before Charles A Shurtleff a justice of the Peace in and for the county of Henry in the state of Illinois between Ezekiel Rouse plaintiff and John S Hall defendant

1837 December 15th Summons issued returnable 21st day of December at 10 Oclock Am and delivered to constable N Pierce to serve, Dec 19 Summons returned by constable N Pierce properly served by reading to the said defendant Court fees 50 cts ~~Dec~~

Dec 21st at 10 Oclock Am Dem'd of the plaintiff being upon promissory note for collection for fifty five dollars and thirteen cents date Sept 22 A.D 1837 and due the first day of December 1837 with interest, Deft being called comes not but fails to appear and shew cause why judgment should not be rendered Whereupon it is considered by the court that the said plaintiff have and recover of the said defendant the sum of fifty five dollars and sixty eight cents for his demand against the said defendant and costs of suit herein laid out at sundry costs

January 12th 1838 execution issued and delivered to constable J B Nixon to serve. January 20th Execution returned by J B Nixon endorsed "no property found in my county subject to execution J B Nixon constable fees 50 cts

State of Illinois }
Henry county } ss I Charles A Shurtleff a justice of the Peace in and for said county do certify that the foregoing transcript is truly copied from the files and books of my office in witness thereof I have hereunto set my hand and seal this 20th day of January A.D 1838

Charles A Shurtleff J.P. Seal

(Copy of Summons)

State of Illinois } The People of the State of Illinois
Henry County } To any constable of said county Greeting
You are hereby commanded to summons John I Neall to appear
before me at my office in Galva on the 21st day of December
A D 1837 at 10 O clock A M to answer the complaint
of Ezekiel Hunted for a failure to pay him a certain
demand not exceeding one hundred dollars and here of
make due return as the law directs Given under my
hand and seal this 15th day of December A D 1837
Charles A Shurtleff Esq.
Justice Peace

(Endorsed) Served the within by reading to the said John
I Neall Dec 19 1837 fees 50 A Pierce constable

(Copy of Execution)

State of Illinois. } ss The People of the State of Illinois to any constable
Henry County } in said county Greeting We command you that of the goods
and chattels of John I Neall in your county you make
the sum of fifty five dollars and 68 cents debt and one
dollar and 15 cents cost which Ezekiel Hunted lately
recovered before me in a certain plea against the said
John I Neall (together with interest from the 21 day of
December) on which judgment was rendered and hereof
make return to me within seventy days from this date
Given under my hand and seal this 12th day of
January 1838 Charles A Shurtleff Justice Peace Esq
(Endorsed) Returned no property found in my county
subject to execution January 20, 1838
J B Pierce constable "

To the introduction of which said record of transcript
of proceedings and judgment before the justice of the

Peace the defendant by his counsel objected And the plaintiffs counsel having here stated that he had no other or further documentary evidence to introduce or offer the court upon consideration thereof and of the other documentary evidence introduced subject to exceptions which ought to be taken thereto excluded from the consideration of the jury as evidence the said Transcript of proceedings and judgment before the justice of the Peace and also the Sheriffs deed above mentioned on the ground that by the return endorsed on the Summons set forth in said transcript it appeared that the said summons was served on defendant thereon only two days prior to the return day thereof on which said judgment was rendered and that for that cause the said judgment was void to which said last mentioned ruling and decision of the court the plaintiffs by their counsel then & there excepted at the time of said ruling & decision Plaintiffs thereupon asked & moved the court to allow the complaint to be amended instanter by striking out so much of the complaint as related to said transcript judgment but the court refused to allow said motion & thereupon the plaintiffs then & there at the time excepted Thereupon the said plaintiffs offered & read in evidence an agreement between the parties that defendant was in possession of the premises & a proper demand had been made before the commencement of suit which agreement is in the words & figures following to wit. It is further agreed that at the time of the commencement of this suit the said Jonathan H Baker was in the actual and exclusive possession of said premises and that a demand was made upon him by said Johnson & Remington to quit & deliver

possession of said land and that these two last mentioned facts are admitted for the purposes of the trial of this cause and cannot hereafter be controverted by proof.

J J Bennett atty for Plffs
J G Frost atty for Deft.

Galveston Mch 9 1864

Thereupon said plaintiffs further to maintain the issues on their part called as witness on the part of the plaintiffs George De Bell and John J Neall who being duly sworn, Plaintiffs proposed to prove by said witnesses that John J Neall the defendant in said judgments had been in possession of said land from 1835 to the 11th day of June A D 1860 claiming title in fee that on the last mentioned day said defendant Baker by collusion with said Neall & without the knowledge or consent of plaintiffs and for the purpose of defrauding plaintiffs and preventing them from obtaining the possession of said land formerly entered into the possession thereof & had continued in possession thereof until the present time but the court refused to hear said witnesses or allow them to state to the jury the facts aforesaid but excluded the said evidence from the consideration of the jury on the ground that the plaintiffs had not introduced or offered to introduce the proper preliminary and documentary evidence to authorize the introduction of the testimony proposed to be given by the said witnesses to which ruling of the court in not allowing said witnesses to state that said Neall had been in actual possession of said land as aforesaid and that said defendant had fraudulently & collusively as aforesaid and for the purpose aforesaid entered into & remained in possession of said land, Plaintiffs then & there at the time excepted. Thereupon the

P. 23.

said cause was submitted to the jury who returned a verdict in the words & figures following to wit "We the jury in the above entitled cause find the defendant not guilty" And thereupon said plaintiffs entered a motion in arrest of judgment & for a new trial which motion is in the words & figures following to wit

(motion missing from the files)

but the court thereupon overruled the said motion in arrest & for a new trial and entered judgment upon the verdict to which ruling in refusing a new trial & in rendering a judgment upon said verdict plaintiffs then & there at the time excepted. The above and foregoing is all of the evidence adduced on the trial and in as much as the foregoing does not appear of record it is prayed that the plaintiffs Bill of exceptions be signed and sealed by the court which is accordingly done Lawrenceville Oct 13. 1864

Jno O'Wilkinson Judge &c

State of Illinois }
Henry County } ss I Amos Gould clerk of the circuit court of said county hereby certify that the foregoing is a true full and complete transcript of the record & proceedings in the above entitled cause as appears from the record and files in my office Given under my hand and official seal at Lawrenceville this 25th day of February A.D. 1865

Amos Gould clk
by W.L. Dalrymple Dep

And Now Come the Said Plaintiffs in Error, by John L. Bennett, their attorney and Say, that in the foregoing Record and the matters & things therein Contained and in said acting and doings of the said Circuit Court there is Manifest Error; and assign for Error the following:—

1.

The Court Erred in excluding from the Consideration of the Jury evidence offered on behalf of Plaintiffs. It should have been admitted.

2.

The Court Erred in rendering judgment for the defendant. Judgment should have been for Plaintiffs.

3.

The Court Erred, in excluding from the Consideration of the Jury - the Record of the Transcript Judgment.

4.

The Court Erred in not rendering Judgment for the Plaintiffs.

John L. Bennett
atty for Plffs. in Error.

Error

Wid Laird Respondent in Error & Says. That there
is no Error in the Record & proceedings aforesaid
or in the giving judgment aforesaid in manner & form
as the same stands, & the Pltf prays that said
judgment may be affirmed & his costs aforesaid to
him be

F. G. Frost
Atty for Defts in Error

Supreme Court
Error to Pulaski Circuit

Jno. Baker
vs
Wm. Laird

Filed June 1st 1859

96 27

Olof Johnson &
Daniel Remington

vs

Jonathan H Baker

Appeal from Henry

Filed March 20. 1865
L. Leland
Clerk

SUPREME COURT.

April Term, A. D., 1865.

Jonathan H. Baker, Def't in Error, ads Olof Johnson, Samuel Remington, Plaintiffs in Error.	}	Brief and Points of Def't in Error. T. G. Frost, Att'y for Defendant in Error.

The action in the suit below having been an action under the amendment of 1861, to the Statute of Forcible Entry and Detainer, by which the remedy was extended to the purchaser and grantee, under a Sheriff's sale, on a judgment and decree, it became necessary for the plaintiff to prove at the trial a valid judgment, sale and deed thereunder to the plaintiff or his grantor, in accordance with the allegations of his complaint. To do this, the plaintiff introduced the transcript of the Justice's judgment, on which the land was first sold, and from which the plaintiff redeemed, as well as the junior judgment on which the land was finally sold. This transcript of the Justice's judgment, as well as the certificate of redemption therefrom, and all the subsequent proceedings were properly excluded on the ground that this judgment was utterly void, as the judgment which was rendered by default was wholly unauthorized, and there was no jurisdiction acquired over the person of the defendant, the summons having been served only *two* days, when the Statute requires three, prior to its return day.

This insufficient and illegal service of process issued by a Court of limited jurisdiction, by the decision of this Court, renders the judgment of the Justice utterly null and void, and this, too, whenever it comes even collaterally in question. *Two* days notice when the Statute requires *three*, is exactly equivalent to no notice at all.

1 Scam. Rep. 174, 175. Wilson vs Greathouse.
23 Ill. 572. Pardon vs Dwire.
3 Scam. Rep. 575.
18 Ill. 299.
17 Ill. 277. Cost vs Rose.
24 Ill. 228.

In the case of Wilson vs Greathouse, 1 Scam. 175, the Court say, "The return should have shown distinctly the *time* of service, so that the Justice could have determined whether the service was regular, and within the time prescribed by law." "It is essential to the exercise of all jurisdictions rendering judgment or decrees affecting the person or property of individuals, where the proceeding is by summons directed to the defendants, that they should have indisputable evidence before them that the party to be affected by their judgment or decree is regularly before them, otherwise the proceedings are *coram non judice*, consequently illegal and void."

In the case of Pardon vs Dwire, 23 Ill. 572, which was an ejectment suit, where the question arose collaterally on the validity of a Sheriff's deed given under a sale by virtue of a transcript of a Justice's judgment, in a case where the language of the return of the summons was "duly served by reading, July 16th, 1848," which the Court held insufficient to authorize the judgment, the Court say, "For want of jurisdiction of the defendant, the judgment was utterly void, and as such could be objected to at any time, and in any proceeding direct or collateral. No title could be divested or transferred under it."

This settles the question, and shows conclusively that this judgment, on which the land was sold, was a nullity, and no right could be acquired under it. The redemption therefrom was also a nullity, nor did the Sheriff's deed given July 22d, A. D., 1859, help the plaintiff, as the sale on that judgment was on the 28th of June, A. D. 1859, less than a month prior to the giving of the deed, and which was given of course before the time of redemption had expired, and which deed could of course only be valid in case the Justice's judgment was valid, and the redemption from the sale thereunder was also regular and valid, so as to authorize the giving of the deed immediately after the decree of sale on execution.—This entire sale and redemption proceedings founded on the void judgment fell with it, and were of no legal effect or validity whatever.

The objections to the plaintiff's position, that no deed was

necessary to enable the plaintiffs to maintain the action in the suit below, will be found fully stated in the brief and points in the next case of Johnson vs Bantock, No. 99 on the docket, to which reference is here made, in order to save a repetition of the argument.

The act of 1861 confers no *new right*, but simply provides *new remedies*. A purchaser without a deed, having only a certificate of purchase, has no more right to the possession of the land sold on execution now, than he ever had. Even in an ejectment suit he could not recover: how can he recover then in an action of Forcible Entry and Detainer?

Again, if a purchaser without a deed could recover in this form of action, there was still a fatal objection in the way of a recovery by the plaintiffs below. *That* was not the case made by the complaint, nor the ground on which he rested his right, of action.

That right he claimed by virtue of his redemption proceedings, and deed given within a month after the sale. He cannot now shift his ground, and claim the right to recover as a purchaser without a deed.

The exclusion of the other evidence was proper, on the ground that this judgment being illegal and the foundation of the plaintiffs title having failed, all the other facts proper to be proved became immaterial.

No 98 - 27

Jonathan H Baker
Deft in Error

and
Olof Johnson &
Wm.
Pfft in Error

Brief of Deft in Error.

F. G. Bork
atty for Deft in Error

Filed April 17. 1865
L Leland Clk

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1865, AT OTTAWA.

OLOF JOHNSON and SAMUEL REMINGTON *vs.* JONATHAN H. BAKER. } *Forcible Detainer.* *Error to Henry.*

J. I. BENNETT'S BRIEF AND POINTS FOR PLAINTIFF IN ERROR.

I.

The proceeding by forcible entry and detainer, and forcible detainer, is a summary one, designed to furnish a speedy, cheap and simple remedy, free from technicality, to recover possession of real estate in each of the five cases embraced in the statutes of 1845 and 1861. In *no case* has the legislature intended to require *proof of title.*

Scates' Compend. 521.
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Brooks vs. Bruyn, 18 Ill. 543.
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II.

To hold otherwise, as to the act of 1861, would render that statute practically nugatory. Forcible detainer, under that act,

would be the same remedy, except in *name*, as ejectment. Courts should so construe statutes as to give them effect.

People vs. Marshall et al., 689.
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III.

The act of 1861 must have a liberal and remedial, and not a limited and crippling construction.

Purchasers at Sheriff's sale, bringing suit, will not be required to show that *title* has been divested by showing that all the steps have been regular and valid. The statute entitles the purchasers to possession after the expiration of time of redemption. Before the defendant in judgment can question the title of the purchasers, he must surrender the possession. He may then assail the title. In this respect the defendant in execution and those holding under him are in a relation similar to that of tenancy. He ought not to be allowed to question the *title* of his purchasers until that relation ceases. This possessory right under the act of 1861 *must* pass to the purchasers, however irregular the proceedings, else the operation of the statute would not be remedial. Technicality would succeed simplicity, and that, too, in courts having no knowledge of *titles*.

IV.

Where judgment creditors, upon the basis of a valid judgment and execution, in good faith pay their money to redeem from a prior sale of real estate, supposing proceedings to be regular, and cause real estate to be sold on this execution and become the purchasers of the same, they are entitled to maintain this action, although proceedings on the former sale were irregular and did not divest *title*. They aught not to be prejudiced.

V.

In this case, *title was* divested. A valid judgment was recovered in favor of plaintiffs in error, against Hall; a valid execu-

tion was issued; a valid levy and a valid sale to plaintiff in error, and the money by them paid into the hands of the Sheriff; and fifteen months elapsed before this suit was commenced.

If there were any irregularities in proceedings prior to sale to plaintiffs in error, or at that time, it was the duty of Hall to have redeemed from that sale, either by bill or otherwise; and failing to do so, cannot be heard to complain in this action. Plaintiffs in error are not bound to see to the proper application of the purchase money. If *Husted* or Bigelow has Hall's money, (the presumption is that the Justice's judgment was just and the indebtedness *bona fide*, and the money properly applied in payment,) Hall has his remedy.

VI.

The court erred in in excluding the evidence offered on the alleged ground of an invalid judgment before the Justice. A proper foundation was laid for the evidence of *Sweet*, *Hall*, and *De Bell*, by proving the judgment, execution, levy, and sale, in behalf of and to plaintiffs in error, and the expiration of the time of redemption. The court should have allowed plaintiffs in error to have stricken out of the complaint all that portion relating to the Justice's judgment; but failing to do so did not injure the plaintiffs in error. That portion was surplusage, and did not vitiate.

VII.

Hall had persoral service before the rendition of judgment by Justice Shurtliff, was personally served with the fi. fa. issued by the Justice, with the fi. fa. issued upon the transcript judgment; his debt was paid by the sale and redemption. He has acquiesced since 1857, with a full knowledge of all these facts. He ought not to be now heard to object in defence to this summary and merely possessory action, and against parties who are not in fault. He must be turned over to his remedy by trial of *title*.

Baker, the defendant in error, must stand in Hall's shoes.

Jackson vs. Warren, 32 Ill.—Rec. Sup. Ct. Op., Vol. 10, p. 763 et seq.

J. I. BENNETT,
Attorney for Plaintiffs in Error.

98 — 27

Col Johnson et al

v.

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Brief & Points of Plffs in Error

Filed Apl 7. 1865

L Leland Clk

Supreme Court
of
THE STATE OF ILLINOIS.

OLOF JOHNSON, and SAMUEL REMINGTON.	*Plff. in Error.*	Forcible
vs JONATHAN H. BAKER.	*Dft. in Error.*	Detainer.

Error to Henry.

ABSTRACT OF RECORD.

JOHN I. BENNETT, *Atty. for Plff. in Error.*

FROST & SHALLENBERGER, *Attys for Dft. in Error.*

This was an action of Forcible Detainer, under act of February 20th, 1861, commenced before William H. Hoyt, Esq. a Justice of the peace, on the 13th day of February A. D. 1864 and taken by appeal to the Circuit Court on the 21st day of February A. D. 1864, and tried before the Hon. Ira O. Wilkinson, and a jury at the October Term A. D. 1864.

1, 2 & 3 & 4 — The Original Complaint filed &c.

5, 6 & 7 — Transcript of the Justice, per agreement.

7, 8 & 9 — Trial, Judgement, and motion in arrest.

9, 10, 11, 12, 13, 14, 15 — *Bill of exceptions.*

16, 17, 18, 19, 20, 21, 22, & 23

A.

9, 10 — Record of Judgement in Henry Circuit Court, April 20th A. D. 1858, for $214.45, favor of Plaintiff and against one John I. Hall.

B.

11 & 12 — *Fieri facias* issued on said Judgement and returned of *nulla bona.*

C.

12 & 13 — Alias *fieri facias* issued on said Judgement, May 19th 1859. Indorsement of Levy on twenty acres off North end, East half North East of section twenty nine, Township 14—4. E. 4th P. M., the land in question, same day and return of sale to Plaintiff in Error June 28th A. D. 1859.

D.

13 & 14 Sheriff's Deed to Plaintiffs in Error, of land in question, 22d of July A. D., 1859.

E.

15 Certificate of redemption from former sale, Excluded :—EXCEPTION.

F.

19 & 20 Record of Judgement before C. A. Shurtleff J. P., December 21st 1857, for $55.68 favor Ezekiel Husted, against John I. Hall. Orig inal summons, Fieri Facias on Judgement, January 12th 1858, and returned *nulla bona* ;—Excluded.—Exception taken.

G.

17 Transcript from said Justices Judgement filed in Circuit Court, January 21st, 1858. Excluded. Exception.

H.

17 & 18 Fieri Facias issued on Transcript Judgement, January 22d, 1858, levied on land in question, 6th day of April, A. D. 1858, satisfied by sale of land in question, May 15th A. D. 1858 ; Excluded, Exception taken.

I.

21 & 22 Agreement, that Defendant was in possession of the premises at the time of the commencement of suit and that Pltffs. in error had served a demand in writing before the commencement of suit, as required by law, and that the above facts were not to be controverted

J.

22 "Pltffs. in error proposed to prove by George DeBell and John I. Hall that John I. Hall, the defendant in said Judgement, had been in possession of said land, from 1855 to the 11th day of June, A. D. 1860, claiming title in fee, that on the last mentioned day, said defendant, Baker, by collusion with said Hall, and without the knowledge or consent of Plaintiffs and for the purpose of defrauding Plaintiffs and preventing them from obtaining the possession of said land, privily entered into the possession thereof and had continued in possession thereof, until the present time, but the Court refused to hear said witnesses or allow them to state to the Jury the facts aforesaid ; but excluded the said evidence from the consideration of the Jury, &c. To which ruling of the Court, in not allowing said witnesses to state that said Hall had been in actual possession of said land as aforesaid ; and that said defendant had fraudlently and collusiveley, as aforesaid, and for the purpose aforesaid, entered into and remained in possession of said land, Pltffs, then and there, at the time, excepted."

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23 Verdict of the Jury, motion in arrest, &c.

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23 Certificate of the clerk.

M.

24 Assignment of Errors.

98-27

Olof Johnson et al

v.

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Abstract of Record.

Filed April 5. 1865

S Leland C/R

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98 27

Baker
vs
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Defts. Brief

Filed Aug 17 1865—
L Leland Clk

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11 & 12 *Fieri facias* issued on said Judgement and returned of *nulla bona.*

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Alf Johnson et al

-v-

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Abstract of Record

Filed 4/6 5. 1865

L Leland Clk

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J. I. BENNETT,
Attorney for Plaintiffs in Error.

98

Olof Johnson

v.

S. K. Baker

Brief & Points of

Plff. in Error.

Filed Oct 7. 1865

C. Delamater Clk

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17 Transcript from said Justices Judgement filed in Circuit Court, January 21st, 1858. Excluded. Exception.

H.

17 & 18 Fieri Facias issued on Transcript Judgement, January 22d, 1858, levied on land in question, 6th day of April, A. D. 1858, satisfied by sale of land in question, May 15th A. D. 1858 ; Excluded, Exception taken.

I.

21 & 22 Agreement, that Defendant was in possession of the premises at the time of the commencement of suit and that Pltffs. in error had served a demand in writing before the commencement of suit, as required by law, and that the above facts were not to be controverted

J.

22 "Pltffs. in error proposed to prove by George DeBell and John I. Hall that John I. Hall, the defendant in said Judgement, had been in possession of said land, from 1855 to the 11th day of June, A. D. 1860, claiming title in fee, that on the last mentioned day, said defendant, Baker, by collusion with said Hall, and without the knowledge or consent of Plaintiffs and for the purpose of defrauding Plaintiffs and preventing them from obtaining the possession of said land, privily entered into the possession thereof and had continued in possession thereof, until the present time, but the Court refused to hear said witnesses or allow them to state to the Jury the facts aforesaid ; but excluded the said evidence from the consideration of the Jury, &c. To which ruling of the Court, in not allowing said witnesses to state that said Hall had been in actual possession of said land as aforesaid ; and that said defendant had fraudlently and collusiveley, as aforesaid, and for the purpose aforesaid, entered into and remained in possession of said land, Pltffs, then and there, at the time, excepted."

K.

23 Verdict of the Jury, motion in arrest, &c.

L.

23 Certificate of the clerk.

M.

24 Assignment of Errors.

98

Olof Johnson et al

v.

Jonathan H. Baker

Abstract of Record

Filed April 5, 1865

L. Leland Clk