No. 14788

Supreme Court of Illinois

Daniels

vs.

Shields

71641

14788

To 1865

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 136

J. W. Middleton & Co., Stationers, 100 Lake St.

1865

Daniels

Vs

Shields

SUPREME COURT,

Third Grand Division.

JOHN H. DANIELS,
Plaintiff in Error,
vs.
MICHAEL SHIELDS,
Defendant in Error.

Appeal from Will.

Argument for Plaintiff in Error.

By the ~~agreed case~~ record it appears that on the 25th day of May, A. D., 1858, the plaintiff in error (who was the plaintiff in the court below) obtained a judgment in the Will Circuit Court against the defendant in error and another; that an execution was issued upon this judgment; that such execution was levied upon the real estate in question; that it was struck off to the plaintiff, and that he received a Sheriff's deed therefor.

The real estate in question is described as block number four, (4,) in the Canal Trustee's subdivision of the west half of section nine, town thirty-five, N. R. 10 E., on which the defendant's dwelling house was situated, containing about three 57-100ths acres; also block number three in the same subdivision, containing about eight 10-100ths acres, on which his barn was located, as seen on diagram marked "A." The two blocks were divided from each other by a street called "North Wilcox Street."

The claim of the plaintiff is confined to block three.

1. The principal question in the case is this: Was block three (3) a part of the homestead lot of defendant, Shields? Both blocks were sold and deeded to plaintiff; but it is conceded that block four, although exceeding one thousand dollars in value, being the parcel of ground on which the defendant's dwelling house was situated, was exempt from sale.

Waller v Harris
20 Wend. 562.

It will not be disputed, that the policy of the homestead law contemplates but one lot or parcel of land, and that its provisions are expressly confined and limited to one. The simple question here is, then: is B. 3, on the opposite side of the street from B. 4, to be considered as an integral part of the homestead lot? The humane and liberal spirit in which this Court has administered the homestead law, is sufficiently manifest from repeated decisions, and this appeal has been taken with no expectation or wish that that spirit should be changed. No narrow technical interpretation of the terms of the statute is sought for; only this, that if for any reason, or without any reason, the Legislature has seen fit to confine the exemption to *one* lot, the Court will not, from any considerations either of policy or convenience, however cogent, expand it so as to cover *two*.

Cases may easily be supposed, and indeed cases of this description have already come under the notice of the Court—where it so happens that the territory composing the entire homestead establishment, instead of being contiguous is in detached parcels. The case of Walters vs. the People, 18 Ill., 194, was such a case. In cities and villages, it frequently occurs that a citizen may have his dwelling in one part of the town, and his barn or his garden, for the use of his household, in another and remote quarter. In an enlarged, perhaps I may say, in the popular sense of the term, the whole might be denominated his homestead, which is generally taken to mean the mansion house and its offices and appendages.

But does this connexion, in the practical use of two or more parcels of property, serve to make them one parcel of property? The law might have made other and more comprehensive provisions; but is not the question, after all, what provisions *has* it made? Is not the benefit of this exemption expressly and absolutely confined to one lot?

Ane what is the true test of unity? Whether a subject proposed to

the attention of a Judge is one thing or two—a unit or not—would really seem to be rather a question of common sense, than of law.

Proximity of the several parts to each other, does not serve to make those parts an unit. If separate, the distance of separation can have no logical significance—whether a rod, a mile, or a thousand miles.

Community of practical use does not serve to create unity, as above shown. 18 Ill., 194.

Identity of ownership serves no better purpose in reversing the stubborn decrees of arithmetic.

In short, as already expressed by this Court, the territory must be "contiguous or adjoining" to constitute one lot, in the sense of the homestead law.

II. Were the two blocks in question in this case contiguous or adjoining, being separated from each other by North Wilcox street?

The plaintiff in error boldly encounters all the difficulties in the case. The two blocks were opposite to each other, the street only intervening. The street, dedicated to the public use in the laying out of the town, was in the outskirts of the city, was of little use, and had been for several years embraced by Shields in his enclosure, which contained both blocks, without any complaint or objection from the public authorities.

Facing this state of facts, my proposition is, that the severance of the two blocks, by a legally existing public street, the fee of which was not in Shields as the owner of the adjacent lands, operated to sever the unity of the property in question. The importance, usefulness or use of the street can, as it seems to me, have no bearing on the discussion. All that concerns us is the *fact* of its existence as a street in the city of Joliet, which had never been legally vacated.

The Court will observe the distinction between this case, and a case where a common highway passes through a farm. In such a case, the fee of the highway is in the owner of the adjoining land, and the entire territory, tested by the idea of title, is in fact contiguous.

But "North Wilcox" street, in the city of Joliet, was a street laid out by the Canal Trustees under the statutes in relation to the laying out of towns.

R. St. Ch. 25, Secs. 17 to 21.

Shields had no legal interest in the soil of the street. His fee was sharply bounded by the lines of his blocks.

II. Ill. 556. Canal Trustees vs. Havens *et al.*

13 Ill. 54 Hunter v. Middleton.

The logical consequences, resulting from the intervention of the street, are precisely the same as if the land of a neighbor had intervened, or as if the two parcels had been on opposite sides of a public square.

Shields had the right of passage over and along the street in common with the public. But this right is not a link in the chain of contiguous ownership. For if lands could be deemed contiguous, which are connected by street or highway communications, scarce any two parcels of land, in any town or city, but might be considered one. Whether this bond of connexion runs in a transverse, diagonal or longitudinal direction, between the two parcels of property supposed, can make no logical, and I should hope, no *legal* difference. Suppose, (referring for illustration to diagram marked "A,") block No. 3, instead of being directly opposite to the homestead lot on the east, had been located where block No. 8, is seen. The tie of unity would have been essentially the same, although Shields, in passing from one to the other, would have been compelled to travel at a different angle of direction, and a few rods further. In short, I believe these two lots, as objects of judicial contemplation, can by no ingenuity be blended into one. The reasoning on the subject can only be answered by saying, that this Court will not be prevented from carrying out the substantial objects of so wholesome and benevolent a law by hypercritical distinctions; and that when the General Assembly said one lot, they really meant two or more, if the householder saw fit to locate them within the same neighborhood, and use them together for domestic purposes. If this were adopted as the proper mode of construing statutes, often hastily, and still more often imperfectly penned, there would appear to be little occa-

See Rec. fo. 17.

sion for amendatory acts. The work of amendment would be assumed by the Judiciary.

III. But it is contended by the defendant in error, that although a street intervenes, which has never been vacated, yet it was a street of no importance;—Shields was suffered to enclose and occupy it as a part of his homestead premises; such enclosure and occupation in course of years created a right of possession;—and under the decisions of this Court, this slender estate was sufficient to bind his two severed fee simples together, and make the whole one to all *homestead* intents and purposes.

This Court has indeed decided, 25 Ill., 610, *Deere* vs. *Chapman*, that the word "Owner," in the homestead law, does not mean simply him who holds the fee simple title, but, in furtherance of the ends and objects of the policy upon which the law was framed, will be held to mean any one who holds "the immediate freehold" of the premises on which the dwelling house stands. Any interest, less than the fee simple, sufficiently substantial in its nature to be seen and seized by a Sheriff with an execution, it is there held, will satisfy the demands of the law. But in fairly considering the intentions of the Court in that decision, counsel should remember the case in which it was rendered. The estate there was an estate of freehold. The Court, in illustrating its views, speaks of estates "intail,"—"for one's own "life or the life of another—by the courtesy—or in dower." Moreover, they are speaking only of the quality of the estate of the claimant in the soil *on which his homestead stands.*

The Court will be somewhat amazed to see what use the counsel for the defendant in error propose to make of that opinion in this case.

Were this an action of trespass or ejectment touching the soil occupied by the street, the doctrine of possessory right might have some application. We have had no occasion to question or attack Shields' occupation of N. Wilcox St. That is a matter between him and the public. The presumption of a right of possession which is founded on actual possession cannot arise. The case is simply this: He seeks to make his two blocks contiguous by showing some species of estate in the intervening soil. To do this, he first frankly confesses on the record that it is a public street, never vacated, and then says that without right or consent of the city authorities he has for a series of years appropriated the soil of this street to his own

private and exclusive use. He undertakes thus *collaterally* to set up this admitted trespass as a source of title. Two answers can be made :

9 Wheat. 737.
U. S. vs. Kirkpatrick.
4 Wend. 575.
Robie v. Sedgwick
35 Barber 319.

1. ~~Laches~~ Laches is not imputable to the government or the public. The exceptions to this rule do not embrace the present case. The non-user of a street, the fee of which is vested in the municipal corporation for the use of the public, neither works a vacation of the street, (as in the case of a common highway,) nor a forfeiture of the estate, nor an abandonment of any of the rights of ownership. The city works by and through its charter, and cannot waive, except in prescribed modes, its rights and powers. The enclosure by Shields was simply a nuisance, that any one concerned could have abated at will.

13 Ill., 198–9.
Davis vs. Easly *et. al.*
Am. Law Reg., New Series, Vol. 1, Nos. 11, 12. Sept. & Oct. 1862. No. 11, p. 652.
3 Gil. 533.

2. But independent of all considerations growing out of the fact that the ground belonged to the city, and supposing that it had belonged to a private individual, the right of possession predicated on mere possession in fact, without any claim of legal ownership otherwise, would not serve the defendant's purpose here. *The possession was taken and held without any claim or pretence of legal right.* Such a possession could never ripen into a legal right. It would never serve to bridge over the chasm between his two properties. If he had been suffered to build his house in the street, and the question was whether he should not be supposed to hold an interest in the soil sufficient to support the idea of a homestead, perhaps even such a naked right by possession might be enough in that case. But here the defendant, in order to establish a legal proposition, assumes the burthen of showing—not actual possession and the right which in certain predicaments attach thereto—but that he is the "owner" of a *street* in the city of Joliet. The same evidence which informs the Court of his possession, also informs it that such possession was but a continued trespass. The doctrine of possession might be suffered, perhaps, to operate *vertically* from the dwelling house down to the soil on which it stood ; but it cannot work *horizontally* across the street.

To conclude, it seems to the plaintiff in error, that the defendant's counsel will find it impossible to get over the difficulty. The naked fact emerges at every step in the argument, that here were two lots separated by a street, and the defendant's homestead was confined to that lot on which his dwelling house stood.

IV. Both blocks were sold, and are embraced in the Sheriff's deed. The

suit was brought for both. It is conceded that block four (4) was Shields' homestead at the time, and was exempt. It was ~~agreed~~ argued in the Court below, that suit being brought for both, we could not recover unless for both. There can be no force in the position. The deed was a nullity as to B. 4, and was effectual as to B. 3. We showed title as to one of two distinct parcels of land, and failed to show title as to the other. The statute provides for just such a case.

R. St. Ch. 36, 624, sub. 5th.

Pardee v. Eiverley 31 Ill 187.

V. The plaintiff's title to B. 3, Canal Trustees' subdivision of W. ½ Sec. 9, T. 35, N. R. 10, is perfect.

1. The judgment is valid. The objections made would be untenable in any case, but here it comes into view *collaterally*.

Practice act 627, 3d Scam. 105. 4 Scam. 373. 10 Peters' U. S., p. 474. The Court had jurisdiction of the person and the subject matter, as appears by the recitals in the judgment itself.

28 Ill. 270
Dunham v. Heaton, ~~4 Scam. p. 380~~
Jackson v. Anderson 4 Wend 479.

2. The execution and levy are in due form.

3. *The deed is valid.* The error of *fifty cents* in describing the judgment, the identity of which is otherwise sufficiently demonstrated, is unimportant.

17 Ill., 156. 24 Ill., 307.

G. D. A. PARKS,
Attorney for Plaintiff in Error.

136 70

SUPREME COURT.

JOHN H. DANIELS,
Plaintiff in Error,
vs.
MICHAEL SHIELDS,
Defendant in Error.

Argument for Plaintiff in Error.

Filed Apl. 12. 1865
S. Sleeper Clk

SUPREME COURT--STATE OF ILLINOIS

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1865.

JOHN H. DANIELS,
vs.
MICHAEL SHIELDS.
} Defendant s Points and Brief.

This is an action of Ejectment brought by Daniels against Shields for Blocks 3 and 4, Canal Trustees Subdivision of the W½ Sec. 9, T. 35, N. R. 10 E 3d p. m. Daniels had obtained judgment against Shields and one Callaghan, and had caused this property to be sold on execution and had bid it in himself, and had received a Sheriff's deed therefor. Shields had had the two Blocks inclosed in one inclosure for thirteen years, and had resided on the premises during the same length of time. A street had been laid out between these two Blocks, but it had never been opened or used by the public. His dwelling, barn, out-houses, garden and orchard were in this inclosure, part on one Block, part on the other, and part in the supposed street. The dwelling was partly on Block 4 and partly in this street. The barn and nearly all his other out-buildings, the garden, well and part of the orchard are on Block 3 The orchard extends across the street, and covers part of both Blocks. Shields was the head of a family, surrounded with all the requisites to entitle him to a homestead exemption, and owned the two Blocks in fee. The sale under the execution was of the whole property *en masse*.

I.

1. The words "lot of ground" used in the statute, have reference to the premises actually occupied and used as the homestead in point fact, considered as an unit, without regard to the number of subdivisions, or lots the land may have been divided into, or the different sources from which the several parts may have been acquired. In other words, the term "lot of ground" refers to the territory occupied as a homestead as a matter of fact, and not to any survey or subdivision on any plot or record.

This Court say in Walters vs. The People, 18 Ills. 198, "It is doubtless a question of fact whether particular adjoining and contiguous tracts joining one compact body is or not parcel of the homestead." See Thorton vs. Boyden, 31 Ills. 211.

In the case at bar there is no question about *the fact*, that the premises are all inclosed in one inclosure and all occupied as, and all indispensable parts of the home establishment—of one single, contiguous and compact homestead.

2. But it is urged that Shields does not "own" the whole property. That he has no ownership in the unused street—that the two Blocks are consequently disconnected—are, in fact, two "lots of ground"—and that the one on which the dwelling does not stand was subject to plaintiff's execution. And that consequently he obtained a good title to Block 3. This is the only point relied on by the pliantiff.

The facts are that there is a street laid out *on paper*, which would run through these premises between the house and barn, taking a portion of the house, a part of the orchard and some of the out-houses—though it was never opened, or worked, or used by the public—and that Shields has been in the actual possession and occupancy of it, together with the improvements thereon, for 13 years.

Now, what do the words "owned by the debtor" mean?—Must he be the absolute owner of the property, with no title

paramount to his? Or do they mean that he must have such an interest or title as may be taken on execution against him as a "debtor"? In other words, such a property in the premises as would by law be liable to execution unless exempted by the homestead act? The object of the act was to exempt the *home* from execution. Is it possible that one may have a *home* that is liable to execution, that this law does not protect because of some defect in the title to the whole, or a part of it? If such be the case, this humane law would prove a snare rather than a protection. But this Court have already decided that it will not bear such a construction. They say in Deere vs. Chapman, 25 Ills., R. 610, that "the law recognizes more than "one description of ownership, both in real and personal prop- "erty. There may be an absolute ownership, and a qualified "ownership of both descriptions of property and the one is as "fully recognized as the other. It is true, a fee-simple estate is "the highest estate in land known to the law, yet he who owns it "is no more favored in the law than he who owns a freehold of "less extent, as an estate in tail—for one's own life or the life of "another—by the courtesy—or in dower. The owner of a life "estate in land, if in possession, has as complete dominion over "it as the absolute owner of the fee has over his estate in pos- "session He is the lord and master during the continuance of "his term, and can and must sue for all injuries to it, or tres- "passes upon it, he, in reversion, or the owner of the fee, hav- "ing no right of such action, and being himself subject to the "owner of the life estate, if he trespasses upon him. Such an "estate can be sold on execution, under our general execution "law, it being a tenement and real estate, and we would say "that a fair construction of the homestead act with reference to "the objects and purposes to be accomplished by it, would em- "brace within it the estate which the debtor might own in the "lot and buildings thereon and occupied as a residence, and "which could be sold on executions. The object of the law, "most clearly, is, to secure the head of the family in the pos- "session and enjoyment of the lot and buildings, for the main- "tenance and shelter of himself and family as a home, without "any special regard to the extent of the estate, or title by which "he owned it. Owning an estate for his own life, in the prem-

"ses, the home of his family, we do no violence to the language "of the act by considering him the owner for all the purposes of "the act, and the property vesting in him as owner, according "to the nature and extent of his estate."

Certainly Shields has such a property in that portion of these premises covered by this unused street as would be liable to execution. In Switzer vs. Skiles, 3 Gil. R. 532, this Court say: "the interest of a defendant in real estate of which he is in ac- "tual possession, may be sold on execution." See also Thomas vs. Bowman, 29 Ills. R. 426, S. C. 30 Ills. R. 91–2.

There being no question as to the ownership of the balance of the property, we think it conclusive that Shields was the "owner" of the whole premises in contemplation of the homestead law—that the homestead covered and embraced the whole property, and that it was not therefore liable to execution without an appraisement as provided by the law.

3. Again, if these premises were really two separate, distinct and detached parcels of property—one of which is the homestead of Shields, and the other constituting no part of it, by what right did Daniels cause it to be put up for sale in one mass, and have it struck off to himself as one indivisible property? [See stipulation attached to the Record.] If it was in fact two distinct parcels, it should have been sold separately—Shields should have had the right to redeem in parcels. Perhaps it was to prevent *such* redemption that Daniels chose to treat it *at the sale* as one premises; perhaps again he hoped to prevent competition and thus be the more likely to get the property himself, if sold all together; at any rate he must have been willing that the bidders at the sale should understand that the property was of such a character that it could not be sold in parcels without detriment. Now we insist that Daniels being the party for whom the sale was made, the manager of it, and the purchaser under it, is estopped from now saying in effect that it was unfairly and illegally made. If it is not all included in the homestead he has, by causing the sale to be made *en masse*, deprived Shields of rights which he was justly entitled to, and he cannot now say that he is not bound by

those acts while he attempts to reap the fruits of them.—Welland Canal Co. vs Hathaway, 8 Wend. 483. Dezell vs. Odell, 3 Hill 221–2.

Thus much in answer to plaintiff's argument.

II.

But we have another suggestion to make whi h seems to us fatal to plaintiff without going into the question of homestead at all.

1. There is only one way that an exception to the decision of the Circuit Court can be taken; that is the one provided by the 21st Section of the Practice Act, (People's Statute, p. 824, § 21) viz: by a bill of exceptions reduced to writing, signed and sealed by the judge. Such also was the common law. See Dunlap's Practice, 641, *et seq.* Tidd Practice, 862–3. See also Boyle vs. Livings, 28, Ill. R. 316. Dickhut vs. Durrell, 11 Ills. R. 83.

There being no bill of exceptions in this case, there was no valid exception to the ruling of the Court in overruling the motion for a new trial. The memorandum of the Clerk amounts to no hing.

2. The paper purporting to be an agreed case, which the Circuit Clerk has copied into the transcript is no part of the record, and is not before this Court. It, together with the proceedings therein referred to, was merely intended for, and used as evidence on the trial in the Court below. This stipulation and the record of the original judgment and execution under which Daniels claims, could only be brought into this Court by bill of exceptions.

Reeve vs. Mitchell, 15 Ills R. 297.
Petty vs. Scott, 5 Gil. R. 209.
Moss vs. Flint, 13 Ills. R. 570.
Magher vs. Howe, 12 Ills. 379.

GOODSPEED & SNAPP,
ATT'YS FOR APPELLANT.

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John H Daniels
vs
Michael Shields

Defts Points & Brief

Filed April 22 1875
L Leland
Clerk

STATE OF ILLINOIS---SUPREME COURT.

THIRD GRAND DIVISION.

JOHN H. DANIELS,
appellant ~~Plff. in Error~~,
vs.
MICHAEL SHIELDS,
appellee ~~Deft. in Error~~,
} Appeal from Will.

ABSTRACT.

This was an action of ejectment brought by appellant *vs.* appellee, in Will Circuit Court, for the recovery of certain real estate situated in the city of Joliet, described as Block three, (3) and Block four, (4,) in the Canal Trustees sub-division of the West half of Section nine, (9) Township thirty-five, (35) Range ten, (10) E.

Pages 1 & 2 The declaration contains but one count; describing the premises accurately and claiming an estate in fee simple

3 Notice attached to ~~ran~~ran. in usual form, for the May term of the Will Circuit Court, 1860.

4 Proof of service of ~~ran~~ran. and notice on Defendant.

4 Rule to plead.

5 Plea in usual form by Randall & Fuller, att'ys for Defendant.

5 & 6 Divers orders for continuance.

7 At December Term, 1861, jury waived and case submitted to the Court for trial.

Judgment for Defendant, and motion for new trial, and new
8 trial granted.

9 At Dec. Term 1862, jury again waived and case submitted to the Court for trial.

At Dec. Term 1864, case tried by Court upon an agreement
11 as to facts, and judgment for defendant.

11&12 Motion for new trial overruled, exception—and appeal from judgment prayed, appeal bond waived by agreement.

AGREEMENT AS TO FACTS.

13 Plaintiff claims by deed from Sheriff of Will County to him, a copy of which is attached.

Entire record of which judgment and execution are to be parts of the case, and subject to all legal exceptions.

13 Makes the two Diagrams, "A" & "B" evidence of localities.

Agreed that North Wilcox Street at the time of the Sheriff's sale was not worked, and never had been used as a public highway; that it terminated at the North line of said blocks; that in 1852, Shields erected a continuous enclosure of said blocks, together with the street, and has since without objection from the public authorities maintained the same, and used and occupied the territory as a part of his premises.

Defendant's dwelling, the main or upright part stands on
14 block four (4) the addition extending a few feet into the street. Defts. barn stands on Block three, (3) as also most of his outhouses, garden and part of his orchard.

Block four contains 3 57.100 acres. Block three contains 8 10.100 acres.

14 At the time of sale and before, and at the time of suit brought, Shields used the whole as one domestic establishment.

Agreed, that the street in question dividing the two blocks,
15 was a regularly laid out street, and has never been vacated, and that Shields had never received from any legal authority any license to enclose or occupy the street.

Shields at the time of sale occupying the premises as a
15 homestead, &c.

17 Diagram marked "A," showing localities in question.

Diagram marked "B," designed to indicate the mode of occupation by Shields.

Record of judgment on which execution issued, in favor of
19&20 Plaintiff *vs.* Defendant, and one Barney Callaghan, at May term of said Court, 1858, for three hundred and eighty-seven dollars.

21 Copy of execution and fee bill.

Copy of Sheriffs' deed referred to in the agreement as to facts.

G. D. A. Parks
Attorney for Appellants.

See Stipulation attached to record

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Supreme Court.
Third Grand Division

John H. Daniels
appellant
vs.
Michael Shields
appellee.

Abstract.

Filed Sept. 4. 1865
Stuckard
Clk.

The People of the State of Illinois by the Grace of God free and Independent:

To all to whom these presents shall come Greeting:

Know Ye that we having caused to be inspected the Records of proceedings now remaining in the office of the Clerk of Our Circuit Court in and for our County of Will in the State of Illinois do there find certain Records in the words and figures following to wit:

United States of America
State of Illinois } ss.
County of Will

Pleas before the Honorable Jesse O. Norton Judge of the Eleventh Judicial Circuit of the State of Illinois and sole presiding Judge of the Circuit Court of Will County in the State aforesaid and at a term thereof began and held at the Court House in the City of Joliet in said County on the twenty first day of May (being the third Monday) in the year of our Lord One thousand Eight hundred and Sixty and of the Independence of the United States the Eighty fourth

Present, Honorable Jesse O. Norton Judge of the Eleventh Judicial Circuit of the State of Ills.
Frederick A. Bartleson States Attorney " " " " " " "
Alonzo Leach Sheriff of Will County State of Illinois
Attest Alexander McIntosh Clerk

2)

A.D. 1860

Be it remembered that on the 31st day of May there was filed in said Court a certain Declaration of a plea in Ejectment in the Words and figures following to Wit

United States of America
State of Illinois } ss.
Will County }

Will County Circuit Court
May Term A.D. 1860

John H Daniels who is a citizen of the State of Illinois by S W Munn Attorney complains of Michael Shields who is a citizen of the State of Illinois in a plea of trespass and Ejectment; for that whereas heretofore to wit, on the first day of February in the year Eighteen hundred and Sixty (A.D. 1860) at and within the County of Will and said State of Illinois the said Plaintiff was possessed as of his own ~~demise~~ demesne, in fee Simple, of two certain tracts or parcels of land with the appurtenances situate in the County of Will in the said State of Illinois and described as follows to wit:

Block Three (3) and Block four (4) in Canal Trustees Subdivision of the West half of Section Nine (9) Township Thirty five (35) Range ten (10) East in the County of Will aforesaid —

which said premises the said Plaintiff claims in fee Simple

And the said Plaintiff being so possessed thereof, the said Defendant afterwards to wit, on the same day and

3

year last aforesaid, entered into the said premises and ejected the said Plaintiff therefrom, and from the time last aforesaid has unlawfully withheld and does now unlawfully withhold from the said Plaintiff the possession thereof, to the damage of the said Plaintiff ~~not~~ of the sum of Five Hundred Dollars and therefore he brings suit etc

S W Munn Atty for Plaintiff

To which Declaration above recited appears ~~the~~ a certain Notice ~~in the~~ attached in the words and figures following to wit

To Michael Shields

the above named Defendant

You are hereby notified that the Declaration, with a copy of which you are now herewith served, and to which this notice is attached will be filed in the Circuit Court of Will County & State of Illinois on the 30th day of the May instant AD 1860 and that upon the filing the same a rule will be entered requiring you to appear and plead to the said declaration within twenty days after the entry of said Rule; and that if you neglect so to appear and plead, a judgment by default will be entered against you and the Plaintiff will recover possession of the premises specified in said declaration

Dated this Twenty fourth Day of May AD 1860

S W Munn Atty for

Plaintiff

4 And the following Affidavit &c wit

State of Illinois Will County ss

Oliver Simmons being duly sworn on oath says that he personally served a copy of the within declaration and note on the within named defendant by delivering it to said defendant in person who was then in possession of said premises this 30th day of May A.D. 1860

Oliver Simmons

Subscribed and Sworn to before me this 30th day of May A.D. 1860

A.M. Dutcher Clerk
Will Co Cir Court

And afterwards to wit on the 30th day of May A.D. 1860 the said Court being then duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by said Court in the words and figures following to wit

2398 John M Daniels vs Michael Shields } Ejectment

On Motion of said Plaintiff by W.H. Munn his Attorney it is ordered by the Court that the defendant herein be and is hereby ruled to plead in twenty days from this date

And afterwards to wit on the 16th day of June A.D. 1860 there was filed in said cause in said Court a certain plea which is in

5 the words and figures following to Wit:

Hill County Circuit Court

Of the May Term A.D. 1860

John N Daniels
vs
Michael Shields } Ejectment

And the said Michael Shields by Randall & Fuller his Attorneys comes and defends the force and injury when &c, and says that he is not guilty of the said supposed trespass and ejectment above laid to his charge or of any part thereof, in manner and form as the said John N Daniels hath above thereof complained against him, and of this he the said Michael Shields puts himself upon the country &c

Randall & Fuller Defts Atty

And afterwards to Wit on the 16th day of January A.D. 1861 the same day being one of the regular days of the said December Term of said Court for the Year A.D. 1860 and the said Court being duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by said Court in the words and figures following to wit

2398 John N Daniels
vs
Michael Shields } Ejectment
(with others)

And now on this day comes said Plaintiffs in the above entitled causes by their respective Attorneys on whose motion it is ordered by the Court

6 that they each of them be and hereby are continued

And afterwards to Wit on the 8th day of October in the year AD 1861 the same day being one of the regular days of the October term of said Court for said year AD 1861 & the said Court being then duly organized and sitting in Open Court for the transaction of business the following proceedings were had and entered of Record by said Court in the words and figures following to wit

John H Daniels
vs
2398 Michael Shields } Ejectment (with others)

And now at this day comes the several defendants by their respective Attorneys in the above entitled suits and enter their motion for a continuance

And afterwards to Wit on the 14th day of January AD 1862 the same day being one of the regular days of the December Term of said Court for the year AD 1861 and the said Court being then duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by said Court in the words and figures following to wit

John H Daniels
vs
2398 Michael Shields } Ejectment

Now at this day comes the said Plaintiff by G & A Parks his Attorney and the said Defendant also

comes by Randall Fuller & Ed Mackley his Attorneys and by the agreement of the said parties and on their motion it is ordered by the Court that the intervention of a jury herein be and the same is hereby waived and further that the issues in this cause be and they hereby are submitted to the Court for trial

And afterwards to wit on the 20th day of January A.D. 1862 the same day being one of the regular days of the December term of said Court for the year A.D. 1861 and the said Court being then duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by said Court in the words and figures as follows to wit:

2398 John M. Daniels (vs) Michael Shields } Ejectment

Now at this day come the parties to this suit by their respective Attorneys and on motion this cause is by order of the Court now taken up for hearing and trial by the Court And after hearing the evidence adduced by the parties - by the agreement of said parties it is ordered by the Court that briefs be presented to the Court during the vacation of this Court and that this cause be decided as of the March Term next

And afterwards to wit on the 21st day of March A.D. 1862 the same day being one of the regular days of the March term of said Court

for the year A.D. 1862 and the said Court being then duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by said Court in the words and figures as follows to wit:-

2398 John H. Daniels (2) Michael Shields } Ejectment

Now at this day comes the said Plaintiff by G.D.H. Parks his Attorney and said Defendant also comes by Randal Fuller Wildebrant & Hackley his Attorneys And the Court having at a previous term hereof heard the evidence adduced by the parties to this suit and briefs having been furnished during the last vacation and the Court being now fully advised in the premises finds the issues between the parties to this suit for the Defendant

It is therefore considered by the Court that said Defendant do have and recover of said plaintiff his costs and charges by him about his suit in this behalf expended and that he have execution therefor

Thereupon comes said Plaintiff by G.D.H. Parks and enters his motion for a new trial in this cause and the Court being now fully advised in the premises it is Ordered by the Court that a new trial be and it is hereby granted in this cause upon said plaintiffs payment of the costs of this suit by the first day of the next term of this Court

And afterwards to Wit on

9 the 9th day of December A.D. 1862 the same day being one of the regular days of the December term of said Court for the year A.D. 1862 and the said Court being then duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by said Court in the words and figures as follows to Wit,

2398 John N. Daniels vs Michael Shields } Ejectment

Now on this day come the said parties by their Attorneys respectively by whose agreement and on whose motion it is ordered by the Court that the intervention of a jury herein be and the same is hereby waived and further that this cause be and the same hereby is submitted to the Court for trial

And afterwards to Wit, on 6th day of January A.D. 1864. the same day being one of the regular days of the December term of said Court for the year A.D. 1863 and the said Court being then duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by said Court in the words and figures as follows to Wit

2398 John N. Daniels vs Michael Shields } Ejectment

Now on this day come the said parties by their respective Attorneys by whose agreement

and on motion it is ordered by the Court that this cause be and the same is hereby submitted to the Court and the intervention of a jury waived in the trial thereof

And afterwards to wit on the 30th day of March A.D. 1864 the same day being one of the regular days of the March term of said Court and the said Court being there duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by said Court in the words and figures as follows to wit:

2398 John M. Daniels vs Michael Shields } Ejectment

Now on this day comes the said Plaintiff by Munn and Parks his Attorneys and the said defendant also comes by Randall & Fuller his Attorneys and by the agreement of the parties and on their motion it is ordered by the Court that the intervention of a jury herein be and the same hereby is waived and that this cause be and it hereby is submitted to the Court for trial

And afterwards to wit on the 24th day of February A.D. 1865 the same day being one of the regular days of the December term of said Court for the year A.D. 1864 and the said Court being there duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by said Court in the words and figures as

11

2398

follows to Wit:

John H Daniels
vs
Michael Shields
} Ejectment

And now on this day comes the said Plaintiff by Parks and Mann his Attorney and the said defendant also comes by Randall and Fuller his Attorneys and the intervention of a jury herein being waived and this cause having been submitted to the Court for trial it is on motion of Plaintiffs Attorneys Ordered that this cause be now taken up for trial

And the Court having heard the evidence, being an agreement as to facts pleaded herein adduced by the parties and being now fully advised in the premises finds the issues Tried herein for the said defendant and that the said defendant is not guilty as charged in Plaintiffs declaration

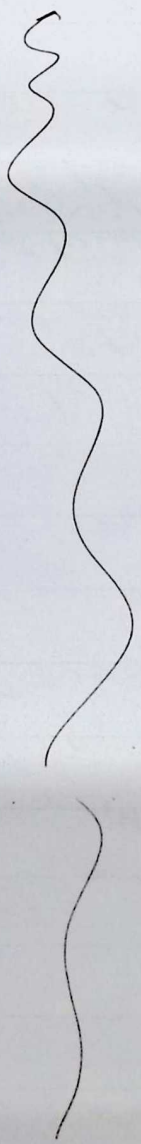
It is therefore considered by the Court that the said Plaintiff take nothing by his suit in this behalf and that said defendant do have leave to go hereof without day and that he do have and recover of the said Plaintiff his costs and charges by him about his suit in this behalf expended and that he have execution therefor

Thereupon the said Plaintiff by Parks his Attorney enters his motion for a new trial herein which motion is overruled by the Court and to which ruling of the Court in overruling his said Motion for a new trial and the judgment of the Court aforesaid the said Plaintiff by his said

Attorney then and there excepts and prays an appeal to the Supreme Court which ~~appeal~~ said prayer it is ordered by the Court be granted

Thereupon the said Defendant by Randall & Fuller his Attorneys and the said Plaintiff by Parks his Attorney in open Court agree that no appeal bond to the Supreme Court need be filed herein by the said Plaintiff

The agreed case filed in this case and upon which trial was had in this cause is in the words and figures following to wit:



13

Will County Circuit Court

John M Daniels
vs
Michael Shields
} Ejectment

Agreed Case

It is agreed by and between the parties in the above entitled case plaintiff and defendant that the following is and shall be taken to be a true Statement of facts

This is an action of Ejectment brought for Block* three (3) and block four (4) in the Canal Trustees Subdivision of the West half of Section Nine (9) Town thirty five (35) North of Range ten (10) East of the third (3rd) principal Meredian

The Plff claims title to the premises by virtue of a deed Executed by the Sheriff of Will County. The entire record of which judgment and execution to be part of this case and subject to all legal exceptions

It is agreed that the paper hereto annexed marked "A" is a true diagram of the shape and relative location of the two Blocks and the Streets touching them; as laid out and denoted on the map of the subdivision in question and the plat marked "B" shows the same premises as they are enclosed and improved

It is further agreed that at the time of said Sheriffs sale said North Wilcox Street was not marked and never had been opened

as a public highway; that it terminated at the North line of said blocks; that in or about the year 1852 said Shields erected a continuous enclosure of said blocks, together with the Street, and has since without objection from the public Authorities, maintained the same and used and occupied the territory of said Street as a part of his premises

It is further agreed that the defendants dwelling house, the main or upright part, stands on Block four, with a portion of the addition extending a few feet into said North Wilcox Street, and that the defendants only Barn, and the larger part of his outhouses are located on block three (3) and also his garden and a part of his orchard

It is further agreed that block four (4) on which the dwelling house stands contains about $3\frac{57}{100}$ acres; and that block three (3) contains about $8\frac{16}{100}$ acres

It is further agreed that at the time of the sale, and for several years before, and at the time of bringing of this suit, Shields used the entire premises in question as one domestic establishment and has it also enclosed together, including the Street

It is further agreed that Block four (4) where the house stands was worth at the time of the sale One thousand dollars.

15

It is further agreed that the Street in question dividing the two blocks was a regularly laid out Street, and has never been vacated and that Shields had never recieved from any legal authority any licence to enclose or occupy the Street.

It is further agreed that said Shields at the time of the Entering up of said judgment and the making of said Sale, was residing on the said inclosure and had been so residing for many years before said time; that he owned the said blocks three (3) and four (4) and occupied the whole inclosure claiming the same as his homestead; and that he was during the said time residing with and the head of a family and still remains so. That the debt for which the Plff. obtained judgment against said Deft and for the satisfaction of which the said premises were Sold, was contracted after July 4th 1867. and was not for the purchase money of said premises

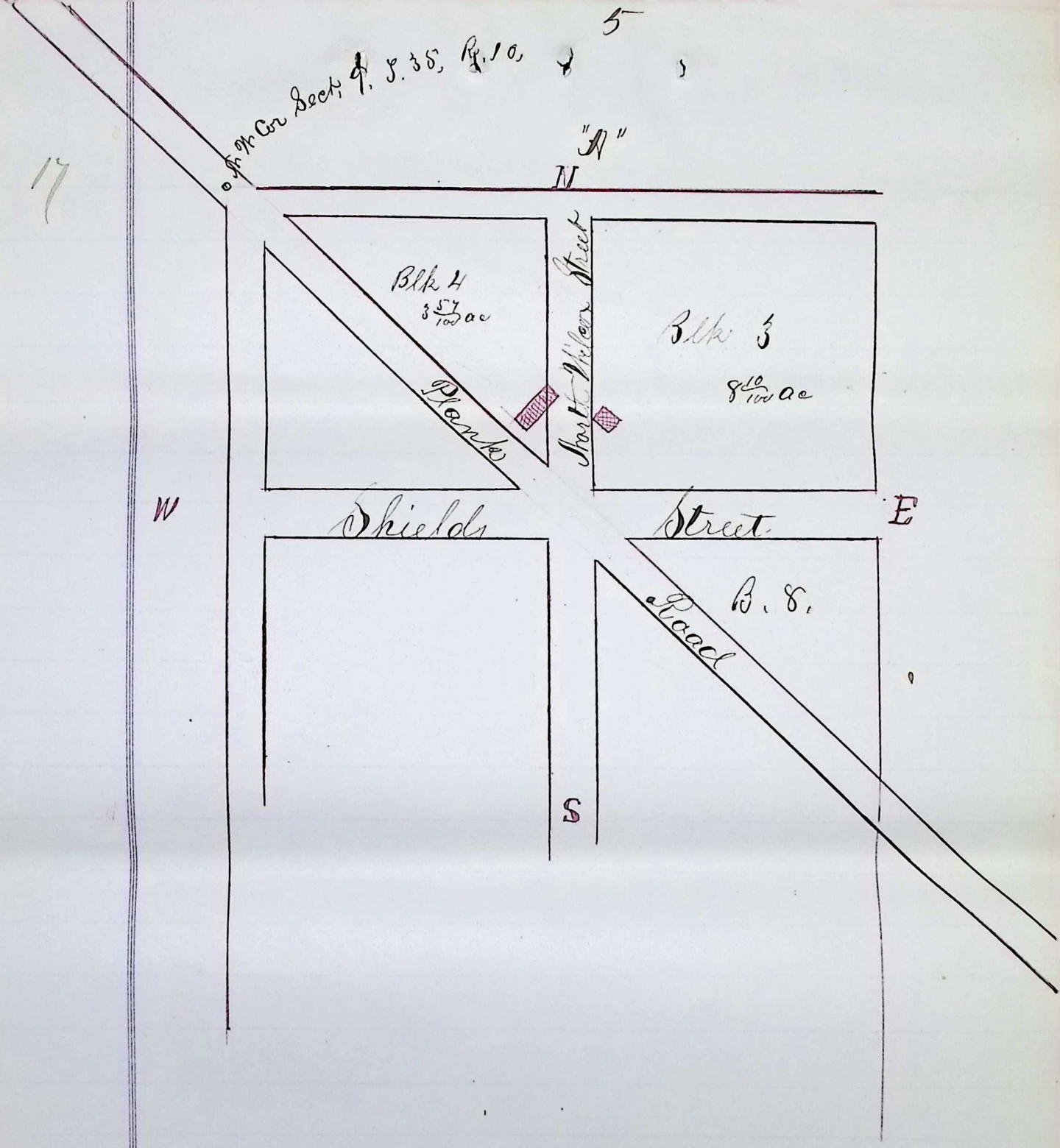
It is also agreed that the said case has been once tried on the above Stated facts and the Court found for the defendant and the plaintiff paid the costs and obtained a new trial under the Statute.

If the Court shall be of opinion on the above Stated facts that the plaintiff ought to recover then judgment is to be rendered for the plaintiff for block three (3) If the Court shall be of opinion

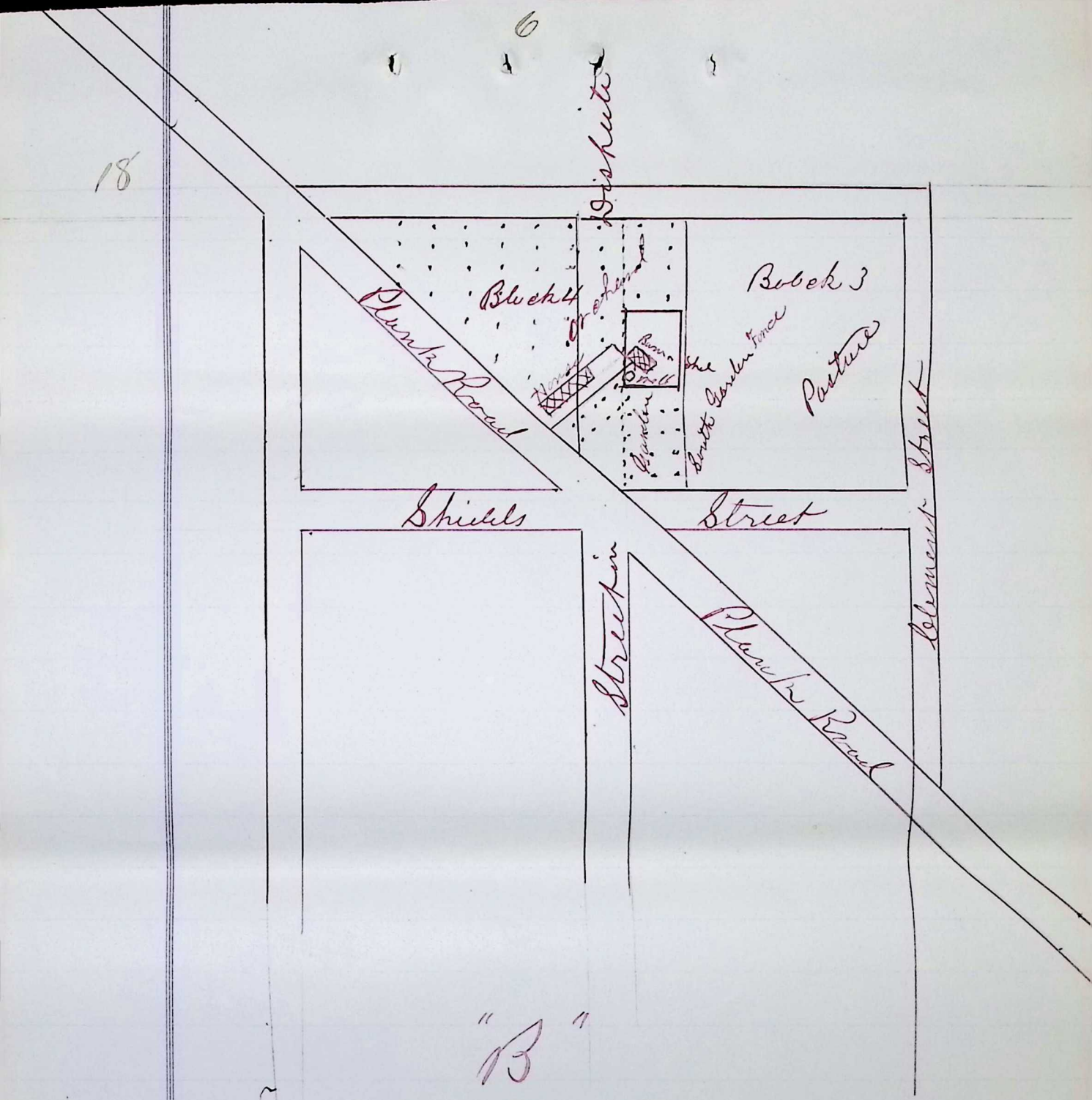
16 that the defendant ought to recover, then judgment to be entered for defendant for costs. Either party to have the right to take appeal or writ of Error as if the case had been tried in the ordinary way

G. D. A. Parks
Pltffs Atty

Randall & Fuller
Defts Attys


5
S.E. Cor Sect 4, T. 35, R. 10,
"A"
N
17
Blk 4
3 57/100 ac
Blk 3
8 10/100 ac
Florida
Fort Wilson Street
W
Shields
Street
E
B. S.
Road
S

18


Block 4
Block 3
Pasture
Plank Road
Shields
Street
Plank Road
Coleman Street

"B"

19 The Agreed Record of the judgment referred to in the said Agreed Case is in the words and figures following to Wit:

United States of America } May 25 A.D. 1858
State of Illinois } ss.
County of Will }

At a regular term of the Circuit Court of said County, begun and holden at the Court House in Joliet in said County of Will, on Monday, the Seventeenth day of May in the year of our Lord one thousand Eight hundred and Fifty Eight being the third Monday of said Month

Present the Honorable Jesse O Norton Judge
Fred A Bartleson States Atty
Alexander McIntosh Clerk
" George R Dyer Sheriff

Attest Alexander McIntosh Clerk

No 1342 In the Matter of
John W Daniels
vs
Barney Callaghan & Michael Shields } on Cognovit

And now on this day came the said Plaintiff in his own proper person and files his Declaration in an action of trespass on the case on promises against the said defendant and files also a Warrant of Attorney signed and sealed by the said defendants the execution of which is duly proven to the satisfaction of the Court (by affidavit on file) authorizing any Attorney of any Court

of Record, to appear in this Court waive service of process, and confess a judgment in favor of the said Plaintiff and against the said Defendants for the amount due upon a certain promissory Note annexed to said Warrant of Attorney; also for the sum of Fifty dollars, Attorneys fee besides the costs of this suit Thereupon came also J. M. Richardson Esquire an Attorney of this Court, in behalf of the said Defendants and files his cognovit by which he waives service of process, and confesses and consents That judgment may be entered in favor of the said Plaintiff, and against the said Defendants for the sum of Three Hundred and Eighty Seven dollars and — cents it being the amount due upon said Note, including Attorneys fee And the said Attorney releases all Errors in entering up this judgment (either in law or Equity) or in issuing Execution thereon and consents to the issuing of immediate Execution on the same

It is therefore considered and ordered by the Court that the said Plaintiff have and recover of the said defendants his damages for the said sum of Three hundred and Eighty seven dollars and — cents so as aforesaid confessed, together with his costs and charges by him about his suit in this behalf expended and that he have immediate execution therefor

The Execution referred to in said Agreed case is in the words and figures following to wit:

21

State of Illinois }
Will County } ss

The People of the State of Illinois
to the sheriff of said Will County Greeting;-
We Command you as we have
heretofore commanded the Sheriff of Kankakee
County That of the Goods and Chattels, Lands and
tenements of Barney Callaghan and Michael
Shields Defendants in your County you cause
to be made the sum of Three Hundred and
Eighty Seven Dollars and Thirteen cents which
John H Daniels Plaintiff lately in the Circuit Court
of said Will County, at a Term thereof begun and
held at the Court House in Joliet in said Will
County, on the third Monday of May A D 1888
recovered against the said Defendants and which
by the said Court was adjudged to the said Plaintiff
for his damages also the further sum of Seven
dollars and Eighty cents which were adjudged to
the said Plaintiff for costs and charges in that
behalf expended, whereof the said Defendants do
stand convicted as appears to us of Record;
And have you these moneys ready to render to the
said Plaintiff for his damages and costs aforesaid
and make return of this Writ with an Endorsement
thereon in what manner you shall have Executed
the same, in ninety days from the date hereof
Witness Alexander McEwen Clerk of
said Court and the seal thereof at Joliet

Seal

office in the city of Joliet in said County this 18th day of July AD 1858

A McEntosh Clerk

State of Illinois Will County

In the Matter of May Term 1858

Whole No 1542

John McDaniels

Barney Callaghan and Michael Shields

1858 May 7.	Ent Aff 5c Doc 10c fil Aff Note Beg 15c Aff fil 10c Rul Cld 20c	60
	Ord fnl 20c Ent fnl 25c Doc 20c No Issue Ex 20c on d Ex	85
	20c fil Prec 5c Iss fil Ex 45c do c on Ret 20c Mil 6 c 18 30c	1,20
	Copy 20c Cert & Seal 35c Ent Sat 15c	85
" July 15	fil Prec 5c Iss fil Alx 45 do c on Ret 20 Mil 6 c 18 30 Copy 20 Cert & Seal 35 Ent Sat 15	1,70
	Shffs fees J Seymour Shff Kankakee Co on Ex Service 50c Mileage 200c Ret 10c	1,60
		7 80

I Alexander McEntosh Clerk of the Will Circuit Court, do hereby certify that the above and foregoing is a true copy from my fee Book of Plaintiffs costs in the above entitled suit

Witness my hand and the Seal of said Court

Seal

A McEntosh Clerk

And the Sheriffs deed referred to in the said "agreed case" is in the words and figures as follows to wit

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So all to whom these presents shall come Whereas John H Daniels did at the May term of the Circuit Court, for the County of Will in the State of Illinois in the year of Our Lord One thousand Eight hundred and Fifty Eight recover a judgment against Barney Callahan and Michael Shields for the sum of Three hundred and Eighty Seven 63/100 dollars and costs of suit upon which judgment an Execution was issued dated on the fifteenth day of July in the year of our Lord one thousand Eight hundred and fifty Eight directed to the Sheriff of Will County aforesaid to Execute and by virtue of said Execution George R Dyer then Sheff of Will County did on the day of in the year of Our Lord One thousand Eight hundred and fifty Eight levied upon the land hereinafter described and the same were struck off and sold to John H Daniels on the 30th day of October in the year of our Lord One thousand Eight hundred and fifty Eight for the sum of four hundred twenty six dollars 00/100 he being the highest and best bidder therefor, and the time and place of the sale thereof having been duly advertised according to Law —

Now therefore know all by these and that I Alonzo Leach Sheriff of the County of Will in the State of Illinois and Successor in Office to the said George R Dyer late Sheriff as aforesaid in consideration of the premises have granted bargained and

Sold and do hereby convey to the said John N. Daniels his heirs and assigns the following described tract piece or parcel of Land Situate lying and being in the County of Will and State of Illinois to Wit:-

Block Three (3) of Block four (4) in Canal Trustees Subdivision of the West half of Section Nine (9) Town Thirty five (35) Range Ten (10) East in the County of Will & State of Illinois for four hundred & twenty six dollars & 60/100 To have and to hold the said described premises with all the appurtenances thereto belonging to the said John N Daniels his heirs and assigns forever

Witness my hand and seal this 31st day of January in the year of our Lord One Thousand Eight hundred and Sixty

Alonzo Leach [Seal]
Sheriff of the County of
Will in the State of Illinois

Signed Sealed & delivered in
the presence of —

State of Illinois }
Will County }

I Alexander W. Entrekin Clerk of the Circuit Court in the said County in the State aforesaid do hereby certify that Alonzo Leach Sheriff of the County of Will who is personally known to me, to be the real person whose name is subscribed

25

to the annexed deed appeared before me this day in person and acknowledged that he executed and delivered the said deed as such Sheriff of said County freely and voluntarily for the uses and purposes therein set forth

Seal

Given under my hand and the Seal of said Court at my office in the City of Joliet in said County this Seventh day of February in the year of Our Lord One Thousand Eight hundred and Sixty

A McEntosh Clerk

Which said Deed is duly Recorded in the office of the Recorder of said Will County as appears by Certificate thereon as follows Viz

State of Illinois }
Will County }

This Instrument was filed for Record the 7th day of February A.D. 1861 and duly Recorded in Book 65 on Page 25

A McEntosh Recorder

State of Illinois }
Will County } ss

I Benjamin F Russell Clerk of the Circuit Court in and for the said County in the State aforesaid do hereby certify that the above and foregoing is a full true and correct

Copy of the Record of the Proceedings of the said Court in the said cause therein entitled and also of the Declaration Notice and proof of Service and plea of said Defendant therein and also of a certain Agreed case filed in said cause and of the Record of the judgment Execution and Sheriffs deed therein referred to the same all appear from the Records and files of said Court now remaining in my said Office

Witness my hand and the Seal of said Court hereunto attached at my office in the City of Joliet in said County this 28th day of March AD 1865



R. J. Russell
Clerk

Supreme Court. Third Grand Division

John A. Daniels, appellant
v.
Michael Shields, appellee.

of April Term AD. 1865.

Afterwards to wit at the April Term AD 1865 of the Supreme Court of the State of Illinois for the Third Grand Division before the Justices

thereof, comes the said John H. Daniels by G. D. A. Parks his attorny and say, that in the record and proceedings aforesaid and also in giving the judgment aforesaid there is manifest Error in this to wit, that the judgment of the said Circuit Court was rendered in favor of the said defendant Michael Shields as to both the lots or parcels of land in said declaration described, to wit Block three (3) in the Canal Trustees Subdivision of the West half of Section nine (9) Township thirty five (35) South of Range ten (10) East of the third principal meridian, being a part of the city of Joliet in said county of Will, and Block four (4) in the same subdivision; whereas said judgment should have been in favor of said plaintiff for Block three (3) thereof, as claimed in said declaration:

2.nd That there is Error in this, that the said Circuit Court overruled the said plaintiffs motion for a new trial:

And the said John H. Daniels prays that for these and other errors, the said judgment may be annulled and reversed as to block three (3) in the subdivision aforesaid.

John H. Daniels

G. D. A. Parks.

Attorny for John H. Daniels

Appellant.

Supreme Court
April Term A.D. 1865

State of Illinois
Third Grand Division

John H Daniels
Appellant
~~Plaintiff in Error~~

vs

Michael Shields
Appellee
~~Defendant in Error~~

For the purpose of saving cost in obtaining a more perfect Record, it is hereby stipulated & agreed by & between the parties to this suit, that it is true in point of fact & so appears of record that said Blocks Three & four, composing the premises in question, were at said Sheriffs Sale under which said plaintiff claims title, struck off & sold to him en masse. And further that this Stipulation shall be attached to the record in this cause & be considered as a part thereof by the Supreme Court on the trial.

G. D. A. Parks.
atty for appellant
& John H. Daniels.

Goodspeed & Knapp
attys for appellee
Michael Shields

State of Illinois
Third Grand Division

In Supreme Court
To April Term A.D. 1865

Michael Shields
ats
John H Daniels

And the said
Michael Shields appellee now
Comes & says that there is no error
either in the record & proceedings
aforesaid or in giving judgement
aforesaid in manner & form
as above assigned and therefore
he prays that the said judgement
may be affirmed - and that his
Costs may be adjudged to him &c

By Woodward & Snapp
Attys for appellee

136

Read Shirley
at
A Daniels

Evans + Evans

Appl. 4. 1865.
Leland
Clk.

136 - 70

Supreme Court.
Third Grand Division.

John H. Daniels
Appellant
vs
Michael Shields
Appellee.

Record.

Filed April 4 1865
L. Leland
Clerk