

14192

No. \_\_\_\_\_

# Supreme Court of Illinois

Ellis et al.

---

vs.

Huff.

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71641  7

In Supreme Court of the State of Illinois,  
FIRST GRAND DIVISION, AT MT. VERNON.

NOVEMBER TERM, A. D. 1862.

ABNER T. ELLIS AND JOSEPH G.  
BOWMAN, *Plaintiffs in Error,*

vs.

WILLIAM HUFF, *Defendant in Error.*

Error to Lawrence.

ABSTRACT.

1] Ellis and Bowman brought ejectment claiming title in fee simple for the E $\frac{1}{2}$  N. W. Sec. 32, T. 5, N. R. 10 W.

3] Defendant pleaded not guilty.

4] At September Term, 1862, trial by Jury and verdict for the Defendant.

5] Plaintiffs introduced in evidence a judgment in favor of William D. Gallaher and against Samuel V. Allison and Thomas H. Mills, for \$229 37 and costs of suit, rendered on the 30th day of Oct., 1840.

6] Edward Thorn, Jr., testified that he was Deputy Clerk of said Court, that he had examined thoroughly in the place in said office where the execution No. 1353, and issued on said judgment aforesaid should be if in the office. That the executions returned are kept in boxes and packages of 100 each. The execution 1353 belongs to the package running from 1300 to 1399, that he did not find it in said package, that he also examined several packages preceeding 1300 and succeeding 1399, and failed to find it, that the book offered in evidence was the execution docket.

7] Silas J. Stiles, testified that he was Clerk of the said Court, and that he had made thorough search in the office for the execution purporting to have issued on said judgment aforesaid, and numbered on execution docket 1353, and had no hesitation in saying that it was not in the office. He also testified that the entry in said docket on a piece of paper posted to the page of said book is the manner in which the entries of the returns of executions are sometimes made, for the reason that the space allotted on the docket for the return is not sufficiently large.

E. Z. Ryan testified that he was Clerk of said Court at the time said execution 1353 was issued, and continued Clerk until the summer or autumn of 1848. That the entry on the docket of the issuing of said execution 1353 was in the hand writing of J. Morris, who was then Deputy Clerk. That the entry of what purports to be the Sheriff's return, is in the hand writing of F. A. Thomas, who succeeded the witness Ryan in said office in 1848, and remained in said office till 1850, when he died and was succeeded by J. Young, who is also dead.

8] Samuel Thorn testified that he was Sheriff in 1847 and 1848, and that Jacob Young was his Deputy and now dead. That he, witness, knows

nothing of said execution 1353, or whether it was ever returned or not.

9] The Plaintiffs then offered to introduce in evidence the following entries in said execution docket, viz :

No. 1352—date of issuing, Aug. 7, 1847.

G. V. Russell administrator of Vanderburgh, }  
vs. } Judg't 471 79, costs 31 53.  
Allison and Mills. }

1353—Aug. 7, 1847.

W. D. Gallagher }  
vs. } Judg't 229 37, costs 31 53.  
Same. }

The following entry made opposite the entry of the issue of said execution 1352:—"Levied this execution 4 Sept., 1847, on E.  $\frac{1}{2}$  N. W., Sec. 32, T. 5, N. R. 10 W., (also other lands) as the land of Samuel V. Allison. S. Thorn, Sheriff, by J. Young, deputy. Made \$652 41 by sale of land described in levy to A. T. Ellis, 20th of October, 1847. Applied \$357 45 to this execution, and balance, \$294 96, to an execution in favor of W. D. Gallagher vs. Samuel V. Allison and Thomas Mills. S. Thorn, Sh'ff, by J. Young, deputy."

Entry on said docket opposite the entry of the issue of execution 1353: "Levied this execution 4th September, 1847, on E.  $\frac{1}{2}$  N. W. sec. 32, T. 5, N. R. 10 W. \* \* \* as the land of Samuel V. Allison. S. Thorn, Sheriff, by J. Young, Deputy. Made \$652 41 by sale of lands described in levy on this execution to Abner T. Ellis, Oct. 20, 1847, and applied \$294 96 on this execution, and \$357 45 on execution in favor of G. V. Russell, adm'r of Fred. Vanderburgh, dec'd, and against Samuel V. Allison and Thomas Mills. Samuel Thorn, Sheriff, by J. Young, Deputy."

To the introduction of which Defendant objected. Objection sustained, 14] and Plaintiffs excepted. Plaintiffs also offered in evidence deed from the Sheriff to Abner Ellis for E.  $\frac{1}{2}$  N. W. Sec. 32, T. 5, N. R. 10 W., and deed from Ellis to Bowman for undivided half of said land, dated May, 1856. Objected to, and objection sustained by Court.

13] The Plaintiff then introduced execution issued on judgment of Gallagher vs. Allison & Mills, dated 14th December, 1840. And this was all the evidence in the case. Plaintiffs moved for a new trial. Motion overruled.

#### ERRORS ASSIGNED.

Court erred in excluding from the jury the entries on the execution docket of the issuing of the executions Nos. 1352 and 1353, and the returns on the same.

The Court erred in overruling the motion for a new trial.

J. G. BOWMAN,

*For Plaintiffs in Error.*

BRIEF OF PLAINTIFF IN ERROR.

If a record is lost, after proof of the loss its contents may be proved like any other document by any secondary evidence when the case from its nature, does not disclose the existence of other and better evidence. 1 Greenl. Ev. 509. Where an execution is lost, the execution docket kept by the Clerk, and the entries therein of the date and amount of the execution are admissable, in evidence of the facts therein stated. Dunlap vs. Berry, 4 Scam. 330.

Cooke's Ill. Stat. 267, Sec. 45, requires the Clerk to keep a book in which he shall enter the return of the Sheriff or Coroner of all executions, and, of course, when the original is lost, the record of the return is the next best evidence.

J. G. BOWMAN,

*For Plaintiff's in Error.*

Ellis & Bowman

vs.

Mr Huff.

Abstract, and  
Brief of Pleff.

Abner T. Ellis & Joseph G. Bowman } Supreme Court of Illinois  
vs } 1<sup>st</sup> grand division Nov  
William Huff } June 1862.

The defendant presents in argument the following points -

1<sup>st</sup> As to the first error assigned there was no error in excluding the evidence offered because as to execution No 1352, there was no pretense that it was lost, nor was there any judgment offered in evidence on which such a question could issue, and as to execution No 1353 there was no evidence offered to prove the contents of the execution as a lost instrument

2<sup>d</sup> The evidence of ~~perjury~~ was wholly irrelevant and immaterial because there is no evidence in the record showing that either Allison or Mello ever had or pretended to have any title or claim whatever to the lands in controversy

3<sup>d</sup> The supposed return of the Sheriff offered to be read by plaintiffs shows that there were five tracts of land levied on and sold successively - by No 1. 2. 3. 4. 5. The land in controversy was No 5 and the four tracts sold before it produced more money than was sufficient to satisfy the execution. That Ellis became the purchaser who was also the attorney for Gallagher the Execution plaintiff

4<sup>th</sup> As to the 2<sup>d</sup> Error assigned it is perhaps sufficient

erint to say that if there was a valid sale of  
the land made by the Sheriff, sufficient  
to divest any title which Allison or Mills  
may have had in the lands in controversy  
as between the purchaser and execution Sep-  
endants. But there is nothing showing that  
the execution Sependants ever claimed to have  
or did have any title whatever to the same  
Hence if the evidence offered had been ad-  
mitted still it would have shown no title  
in the plaintiffs -

John Baker Atty  
for plaintiff

No 29

Ellis & Bowman

by Points presented

as by in argument

by Sependants

William Huff

State of Illinois, }  
SUPREME COURT, } SS  
First Grand Division.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Lawrence Greeting:

**Because,** In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Lawrence county, before the Judge thereof between

Abner T. Ellis & Joseph G. Brown  
plaintiffs and

William Huff defendants it is said manifest error hath intervened to the injury of the aforesaid Abner T. Ellis and Joseph G. Brown as we are informed by their complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay send to our Justices of our Supreme Court the record and proceedings of the plaintiffs aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at **Mount Vernon**, in the County of Jefferson, on the 1<sup>st</sup> Tuesday after the 1<sup>st</sup> Monday of November next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

WITNESS, the Hon. John D. Catron Chief Justice of the Supreme Court and the seal thereof, at **MOUNT VERNON**, this twenty second day of October in the year of our Lord one thousand eight hundred and sixty two.

Noah Johnston  
Clerk of the Supreme Court.

SUPREME COURT.

First Grand Division.

*Abner T. Ellis &  
Joseph G. Bowman*

*Plaintiffs in Error,*

VS.

*William Huff*

*Defendant in Error.*

WRIT OF ERROR.

*Issued & FILED: 22<sup>d</sup> of  
October 1862.*

*A. Johnston C.M.*



State of Illinois,  
SUPREME COURT,  
First Grand Division.

} SS

The People of the State of Illinois,  
To the Sheriff of Lawrence County.

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Lawrence county, before the Judge thereof between

Abner T. Ellis & Joseph G. Bowman  
plaintiffs and

William Huff defendants it is said that manifest error hath intervened to the injury of said Abner T. Ellis and Joseph G. Bowman as we are informed by this complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Mount Vernon, before the justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said William Huff

that he be and appear before the justices of our said Supreme Court, at the next term of said Court, to be holden at **Mount Vernon**, in said State, on the first Tuesday after the second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if he shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said William Huff notice together with this writ.

WITNESS, the Hon. John D. Catron Chief Justice of the Supreme Court and the seal thereof, at MOUNT VERNON, this twenty second day of October in the year of our Lord one thousand eight hundred and sixty two.

Noah Johnston  
Clerk of the Supreme Court.

I have served the within writ by reading  
the same to the within named  
William Huff on the 28<sup>th</sup> October  
1862  
G. In Whitcomb Huff  
Lawrence  
Dec

SUPREME COURT.  
First Grand Division.

Abner J. Ellis &  
Joseph S. Brown

Plaintiffs in Error,

VS.

William Huff

Defendant in Error.

SCIRE FACIAS.

FILED.

To Henry 50  
16 Miles Travel 80  
Ret 10  
140

Supreme Court of Illinois  
First Grand Division

Abner J. Ellis &  
Joseph G. Bowman }  
vs } Lawrence Circuit Court  
William Hoff }

In this cause judgment was  
rendered in the Circuit Court <sup>against</sup> ~~in favor of~~  
the Plaintiffs & against the Defts and is  
brought to this Court by the Plffs

Abner J. Ellis & }  
Joseph G. Bowman } Plffs in Error  
vs } Error to Lawrence Co  
William Hoff } Deft in Error

The Clerk will issue *scire facias*  
to Lawrence County &  
J. G. Bowman

Abner F. Ellis &  
Joseph G. Bowman  
vs  $\frac{2}{3}$  Principals  
William Hoff

Filed Oct. 22. 1862.  
A. Johnston Ck

In Supreme Court of the State of Illinois,  
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NOVEMBER TERM, A. D. 1862.

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A B S T R A C T.

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6] Edward Thorn, Jr., testified that he was Deputy Clerk of said Court, that he had examined thoroughly in the place in said office where the execution No. 1353, and issued on said judgment aforesaid should be if in the office. That the executions returned are kept in boxes and packages of 100 each. The execution 1353 belongs to the package running from 1300 to 1399, that he did not find it in said package, that he also examined several packages preceeding 1300 and succeeding 1399, and failed to find it, that the book offered in evidence was the execution docket.

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29-23  
Ellis & Bowman

vs.  
William Huff

Abstract, and  
Brief of Pleff.

Filed Nov. 11-1862.  
St. Louis Mo

**In Supreme Court of the State of Illinois,**

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29  
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Abstract, and  
Brief of Ptlff.

Filed Nov. 11 - 1862.  
A. Schuster Clerk

1862

29-23

29

Ellis J. Brown

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14192