

11980

No. _____

Supreme Court of Illinois

Flanders, et al.

vs.

Whittaker.

Jesse H Landers &
 Elizabeth H Landers
 vs
 Franklin Whittaker

Error To
 Wm Henry Co

Now comes the ~~defendant~~ plaintiff in the
 above entitled cause & says there
 is manifest error in the proceedings
 had in said cause and assign
 the following as causes of error
 therein

First The court erred in rendering ^{final} judgment
 for the plaintiff while there
~~there~~ remained a demurrer on file
 in the cause undisposed of

Second The Court Erred in rendering
 final judgment for ten percent interest
 when the law only allows six
 percentum per annum to be taken
 (Chas McClure
 & T. Murphy)
 for pffs in error

And the said Defendant in error says
 L. S. Church his atty comes and says
 there is no error in sense
 or law

L. S. Church
 atty for Defn in error

Wanders &
Wanders
N
F. Whittier
Errors

Filed June 30th 1852.
S. Liland Clk.
By J. H. Liland Dep.

United States of America

State of Illinois } of. Pleas before the Honorable Hugh
McHenry County } Henderson Judge of the Eleventh
Judicial Circuit of the State of
Illinois and Presiding Judge of the McHenry County Circuit
Court, began and held at the Court house in Woodstock in
said County on the fourteenth day of April in the year of
our Lord one thousand Eight hundred and fifty one
and of the Independence of the United States the Seventy fifth.
Present the Hon Hugh Henderson
Judge

J. W. Platt

Attorney at Law
John H. Schuster
John Brink
States Attorney
Clark
Sheriff

Be it remembered that heretofore to-wit: on the Twentieth day
of March in the year of our Lord one thousand Eight hun-
dred and fifty one at the office of the Clerk of the Circuit Court
of said County of McHenry and State of Illinois At Woodstock
in said County a certain process of Exceise Facias was issued
out of said office in the words and figures following that is
to say:

State of Illinois } of The People of the State of Illinois to the
McHenry County } Sheriff of said County greeting:

Whereas
it appears that Jesse Flanders and Elizabeth his wife of
McHenry County Illinois the defendants in this writ died on
the Eighth day of August in the year of our Lord one thousand
Eight hundred and forty eight make Exceute seal acknowledge

and deliver unto Franklin Whittaker the plaintiff in this
suit a certain Indenture of Mortgage of and upon certain
real Estate which is therein described situated and being in
the County of McKenry and State of Illinois aforesaid to secure
the payment of the sum of Eleven hundred and seventy five
dollars payable as hereinafter mentioned and which said mortgage
is in the words and figures following that is to say:

This Indenture
made the eighth day of August in the year of our Lord one
thousand Eight hundred and forty Eight Between Jesse
Slanders and Elizabeth Slanders his wife of the County of Rock
& State of Wisconsin parties of the first part and Franklin Whit-
taker of the County and State aforesaid party of the second part
Witnesseth that the said parties of the first part for and in Consi-
deration of the sum of Eleven hundred and seventy five
dollars to them in hand paid the receipt whereof is hereby
acknowledged have granted bargained and sold and by these
presents do grant bargain ^{and} sell release release unto the said
party of the second part and to his heirs and assigns forever
a certain tract of land known and described as follows viz:
The North West quarter of Section Eighteen (18) and the West half of the
South East quarter of Section nine (9) in Township forty four North
Range Eight East of the third Principal Meridian Situated
in the County of McKenry and State of Illinois and containing
two hundred and forty acres according to Government Survey.
I have come to hold the above bargained premises unto the said party
of the second part his heirs and assigns forever Provided always
and these presents are upon this Express condition that if the said
Slanders the party of the first part his heirs Executors adminis-
trators or assigns shall well and truly pay or cause to be
paid to the said party of the second part his heirs Executors
administrators or assigns the sum of Eleven hundred

and Seventy five dollars with annual interest at the rate of ten per cent per annum as follows viz: Two hundred dollars in one year, two hundred dollars in two years, two hundred dollars in three years, two hundred dollars in four years, two hundred dollars in five years, and one hundred and seventy five dollars in six years from the first day of October next with annual interest upon the whole sum at the rate of ten per cent per annum according to the condition of certain notes bearing even date herewith Executed by said Plaintiff the said party of the first part to the said party of the second part as collateral security, then these presents and the said note shall cease and be null and void.

And the said party of the first part do further covenant and agree that he will pay all taxes and assessments of every nature that may be assessed on said premises previous to the day appointed in pursuance of any law of the State for the sale of lands for town or County taxes, And in case of non payment of said sum or any part thereof at the time or times above limited for the payment thereof or in case of the non payment of any taxes that may be assessed on said premises in manner aforesaid then the whole sum shall be regarded as due and it shall or may be lawful for the said party of the second part his heirs Executors administrators or assigns and the said party of the first part do hereby covenant and agree and by these presents empower and authorize the said party of the second part his heirs Executors administrators to grant bargain sell release and convey the said premises with the appurtenances thereunto belonging at public auction or vendue, And on such sale to make ^{and} execute to the purchaser or purchasers his her or their heirs or assigns forever good ample and sufficient deeds of conveyance in the law pursuant to the Statute in such case made and provided rendering the overplus money if any there be to the said party of the first part his heirs Executors administrators or assigns after deducting the cost of such vendue as aforesaid.

In Witness whereof the said party of the first part has hereunto set their hands and seals the day and year first above written.

Signed Sealed & Delivered

In Presence of
Hiram Taylor

Lucy S. Curtis

James Flanders Seal

Elizabeth Flanders Seal

That said Mortgage was duly acknowledged by the grantors therein will appear by the following Endorsement thereon:

State of Wisconsin 3^d p.
Rock County 3

Be it remembered that on the Eighth day of August A.D. 1848, personally appeared before me James and Elizabeth Flanders the above named mortgagors and acknowledged the Execution of the foregoing Mortgage freely and voluntarily for the uses and purposes therein set forth mentioned.

Hiram Taylor Notary Public

State of Wisconsin 3^d p.
Rock County 3

I Daniel F. Kimball Clerk of the District Court in and for the said Rock County do hereby certify that Hiram Taylor is a Notary Public duly appointed and qualified as such to act and is by law authorized to take the acknowledgment of deeds and that the within deed is Executed according to the Laws of this State Witness my hand and the Seal of our said Court at Janesville in said Rock County this 8th day of August A.D. 1848.

D. F. Kimball Clerk
Dist Ct.

Which said Mortgage was duly recorded in the Records Office of McHenry County August 28th 1848. as will appear by reference to said records.

That all of the money intended to be

secured by said Mortgage to the said Plaintiff by the said defendants has become due and still remains due and unpaid. Now therefore we being willing that what is just in this behalf should be done do command you that you summon Jesse Flanders and Elizabeth Flanders, if to be found in your County personally to be and appear before the Circuit Court of said County on the first day of the next term thereof to be holden at the Court house in Woodstock in said County on the second Monday of April next to answer unto Franklin Mattaker and show cause if any they have or can why judgment of the Court should not be rendered against them for such sum of money as shall then and there be found due by virtue of said mortgage. And have you then and there this writ with an Endorsement thereon as to the manner you execute the same. Witness our

Seal

W. Johnson Clerk of our said Court and the Seal thereof at Woodstock this 25th day of March A.D. 1851.

J. W. Johnson Clerk

Which said writ has endorsed thereon.

Personally served this Seignior by reading to and in the hearing of the within named Jesse Flanders & Elizabeth Flanders.

March 25th 1851.

John Brink Sheriff

By Robert Green Deputy

Filed April 8th 1851

W. Johnson

And thereafter to wit: on the 11th day of April in the year last aforesaid said Circuit Court being then in session the following order was entered of record, which said order is in the words and figures following that is to say,

Franklin Whittaker

Scifa

Jesse Planders

And now come the plaintiff
by Church his attorney and on
his motion it is ordered that the defendant plead herein
by tomorrow morning at Eight O'clock

And thereafter to wit on the 21st day of April in the year last
aforesaid the said defendant filed in the office of the Clerk
of the Circuit Court of said County his demurrer in writing
which said demurrer is in the words and figures following
that is to say.

Franklin Whittaker

McHenry County Cir Court

Ad

April Term 1851

Jesse Planders

And the

said defendant by McClure &

Murphy his attorneys comes and the wrong and injury wherein
and that the said Scirifacius mentioned and the matters
therein contained in manner and form as the same are
above stated and set forth are not sufficient in law for the said
plaintiff to have or maintain his aforesaid action
thereof against the said defendant and that he the said
defendant is not bound by law to answer the same. And this
he is ready to verify whereupon by reason of the insufficiency of
the Scirifacius in this behalf the said defendant prays judgment
and the said Plaintiff may be barred from having or maintaining
his aforesaid action thereof against him or

McClure & Murphy for dist

Which said demurrer has endorsed thereon

Dated April 21st 1851

J. H. Johnson Clerk

And thereafter to wit on the 25th day of April in the year of
our Lord one thousand Eight hundred and fifty one said
Circuit Court being then in session the following order
was entered of record to wit.

Franklin Whittaker

as } Sci fa Mortgage

James Flanders

Elizabeth Flanders

And now

come the plaintiff by Church
his attorney and the defendants

being solemnly called come not nor anyone one for
them but fail and make default herein which is ordered
to be entered of record. It is therefore ordered by the Court
that the plaintiff have judgment for the sum of Eleven
hundred and seventy five dollars his debt it being the amount
due upon and by virtue of said mortgage as principal
and his damages for the detention thereof but because these
damages were uncertain and unknown to the Court this suit
being brought upon an instrument of writing for the payment
of money only it is therefore ordered that the Clerk assess the
same and he having assessed and reported to the Court
the sum of one hundred ninety one dollars and ninety cents
his damages which is ordered to stand confirmed and
approved by the Court. It is therefore ordered and considered
by the Court that the said plaintiff have judgment for
the sum of Eleven hundred and seventy five dollars
his debt due as principal as aforesaid and the sum of
one hundred and ninety one dollars and ninety cents
his damages for the detention to amounting in the whole
to the sum of thirteen hundred and sixty six dollars and
ninety cents his debt and damages as also his costs
and charges herein expended and that a special writ
of fieri facias issue herein commanding the Sheriff to sell

the mortgaged premises which are described as follows to-wit:
The North West quarter of section Sixteen (16) and the west half of the
North East quarter of section nine (9) in Township forty four (44) Range
Eight (8) East of the third principal meridian Situate in the County
of McHenry and State of Illinois and containing two hundred
and fifty acres according to Government Survey, to satisfy
the same.

State of Illinois } of the undersigned Clerk of the
McHenry County } Circuit Court in and for the said
County and State aforesaid do
certify that the foregoing is a true and perfect copy of
the record and proceedings in the above entitled cause
in this office. Witness Joel H. Johnson Clerk of our said
Court and the Seal thereof Woodstock in
said County this third day of June A.D. 1852
Joel H. Johnson
Clerk

(11802)

Clk Henry
Supreme Ct
June Term AK 1854

Glenn	{	In
Whitaker		Error

Filed June 19. 1854.
A. Seland Clk.

Dues	3 00
Cut	25
	3. 25
	Paid

In circuit Court

Wm. Flanders and Elisabeth Flanders

vs
Franklin Whitaker

I do hereby Enter myself security for costs in this
cause and acknowledge myself bound to pay or
cause to be paid all costs which may accrue in
this action either to the opposite party or to any
of the officers of this court in pursuance of the Laws
of this State Dated this 13th day of June 1831

William M. Holcombe

Chas Henry

Josep Henders et al.

Franklin Whitaker

Bond for costs

Filed June 19. 1854.
L. Selam Clerk.

State of Illinois, set.

WRIT OF ERROR—FREE TRADER PRINT.

The People of the State of Illinois,
To the Clerk of the Circuit Court for the County of *McHenry* 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 *McHenry* county, before the Judge thereof, between _____

Franklin Whittaker plaintiff — and *Jepe Flanders & Elizabeth Flanders* _____

defendants, it is said manifest error hath intervened, to the injury of the aforesaid *defendants* 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 the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our justices aforesaid at Ottawa, in the county of La Salle, on the *2^d Monday in June* — 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. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Ottawa, this *19th* _____ day of *June* — in the year of our Lord one thousand eight hundred and fifty *one* —

L. Leland Clerk of the Supreme Court.

McClellan
Jesse Flanders del,
y
Franklin Whitaker

Writ of error

Filed June 19, 1854.
L. deland CLK.

McHenry
Jesse Flanders et al.
vs
Franklin Whittaker

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Prepared