No. 12957

Supreme Court of Illinois

Turney et al

vs.

Young

71641

42

1859

1295

IN THE

Supreme Court, State of Illinois.

THIRD GRAND DIVISION.

OF THE APRIL TERM, A. D. 1858.

NANCY J. TURNEY ET AL.

vs.

ALEXANDER YOUNG.

APPEAL from Jo Daviess.

This is an action of ejectment by the appellants against the appellee, for the east or upper half, of lot No. 5, between Main and Diagonal streets, commenced in the Jo Daviess Circuit Court on March 9, 1854.

The second trial resulted in a judgment for the defendant. From this judgment the plaintiffs below appeal to this Court.

The bill of exceptions contains an agreed statement of facts, as follows:

1. That John Turney, the ancestor of the plaintiffs, was, on March 29, 1842, and for several years prior thereto, the owner in fee of an undivided half of the lot aforesaid. Andrew Maurer being his co-tenant.

2. The plaintiffs are the only heirs of the said John Turney.

3. That the defendant Young was, at the time of the commencement of the suit, and for six years prior thereto, in possession of the east or upper half of said lot.

4. The said Young has paid the taxes thereon.

5. November 19, 1842, Stewart & Brown recovered a judgment against the said John Turney for the sum of $128.47 in the Circuit Court of Jo Daviess County, which said judgment was in all respects regular.

6. On December 23, 1842, a regular execution was issued upon said judgment, and returned by order of plaintiffs unsatisfied, March 23, 1843. The said defendant being then Sheriff of said County of Jo Daviess.

7. March 9, 1844, the said John Turney died intestate, and on March 18, 1844, administration was granted upon his estate to his widow, Nancy J. Turney, which administration remains unrevoked.

8. On March 29, 1845, the following notice was served upon the said Nancy J. Turney:—

To Mrs. Nancy J. Turney, administratrix of John Turney, deceased:

You are hereby notified that in the life time of the said John Turney, William S. Stewart and Peter L. Brown recovered a judgment against him for one hundred and sixty dollars debt, to be satisfied, with $128.47, damages and costs, at the October term, A. D. 1842, of the Jo Daviess Circuit Court, Illinois. Execution was issued thereon within one year thereafter, and returned unsatisfied, and the plaintiffs will apply for an execution thereon at the expiration of three months from the service of this notice, according to the statute in such cases made and provided.

A. L. HOLMES,

Galena, March 18, 1845. *Attorney for Stewart and Brown.*

9. On June 30th, 1845, an execution issued upon the judgment aforesaid against the land and tenements of the said John Turney, deceased, which said execution was, on July 25, 1845, levied upon the real estate in question, subject to the said widow's right of dower.

10. On August 20th, 1845, the said property was sold under said execution to Henry Clymo, and certificates of purchase issued to him in due form.

11. Clymo assigned his certificates of purchase to Orin Smith.

12. On March 29, 1842, A. P. Gates recovered a judgment against said John Turney, for the sum of one hundred and sixty-one dollars and sixty-five cents. No execution issued upon this judgment within a year from its rendition. On September 7, 1846, a *scire facias* issued, and was served upon the said Nancy J. Turney, administrator, &c., reciting the amount of the original judgment as one hundred and eighty dollars and forty-six cents. Mr. Bradley, the Clerk, swears that this was a mistake and points out how it occurred, and states at the same time that the judgment on March 29, 1842, was the only judgment rendered in said court in favor of said Gates, against the said Turney. On October 27, 1846, judgment of revivor was entered for the sum of one hundred and eighty dollars and forty-six cents. An execution issued on said revived judgment on October 27, 1846, which was levied upon the premises in controversy. Under this judgment and execution a redemption from the sale under the Stewart & Brown judgment, and the redemption money was received by Orin Smith, the assignee of the certificates of purchase as aforesaid. Duplicates of certificates of redemption were executed and delivered to Alexander Young, purchaser under the redemption sale.

13. On January 28, 1847, the sheriff of Jo Daviess county executed and delivered to Alexander Young, the defendant, a sheriff deed for the premises in controversy.

14. At the July term, 1846, a partition was had of the whole lot in question at the suit of Nancy J. Turney, and against Andrew Maurer and others, assigning to the heirs of the said Turney, the east or upper half of said lot No. 5, as herein before described.

15. At the December term, 1850, of the Supreme Court, the said judgment in the case of Gates against Turney, Administratrix, was reversed and remanded for further proceedings. 12 Ill. R. Pages 141, 142.

This is all the evidence in the cause.

The Court found the issue for the defendant.

The plaintiffs moved for a new trial which was overruled, and an exception taken.

ERRORS ASSIGNED.

1. The Court erred in finding the issue for the defendant.

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

3. The Court erred in rendering a judgment for the said defendant, when by the laws of the land such judgment ought to have been for the said plaintiffs.

R. S. BLACKWELL,

For Appellants.

~~204~~ 42-150

Turney vs. Gorney

abstract

Filed May 5. 1859

L. Leland

Clerk

SUPREME COURT OF ILLINOIS.

Third Division—April Term, 1859.

NANCY J. TURNEY, *et al.*,
vs.
ALEXANDER YOUNG. } *Appeal from Jo Daviess.*

APPELLEES' BRIEF.

The first question is, was the sale of the premises to Clyme upon the execution issued upon the Stewart and Brown judgment, a valid sale.

It is contended that no execution could issue on this judgment, after the death of Turney, and that this case is not within sec. 2 of the act of 1825, R. E. Stat., page 329, because execution had been issued and returned upon this Judgment before the death of Turney, and that this sec. only applies to cases where no execution had been issued.

That this instruction is erroneous, we think is manifest, from the following considerations :

1st. If the construction contended for, is correct, the section means nothing; for, after the year had expired, the lien of a judgment upon which no execution had been issued, would be lost and the judgment dormant.

The lien referred to in the statute, is the stautory lien *elegit*, issued on common law lien, commenced 1st day of the term.

2d. Is this dormant judgment preferred to one which has a lien.

Sec. 1st declares that a lien shall exist, provided execution in one year, that is this case. Sec. 2 provides that when judgment shall become a lien as aforesaid, to wit: by the issuing of an execution within a year, and the defendant die, the remedy of the party shall not be delayed or suspended. How can it be contended, then, that this judgment is placed behind judgments which have no execution lien, not having been issued upon them within one year; the act itself declares that no previous law of this State shall be so construed as to impair the effect of the lien given in the first statute.

Welch vs. Walker, 3 Gilman, 491.

The law of 1825 covers only one class of cases, to wit: when a lien had been created by the issuing of an execution.

When no execution had issued, there was no lien, and for the purpose of issuing execution upon a judgment not a lien, the law of 1843, was passed R. E. Stat., 348.

Why was that law passed?

We submit that the execution was valid under the last quoted act.

It is contended that execution could not issue at all at common law

after death of defendant, because *no state of case* authorized it. But here the clerk is clothed with power to issue execution within one year.

Blanchard vs. Goss, 2 N H, 194, and cases there cited.
3 Caines Rep. 267.
Allen vs. Portland Stage Company, 8 Maine, 207.

The certificate of sale was properly the property of Smith by assignment. Rev. Stat. page 303, sec 18.

II.

But it is contended that we had no right to redeem under the Gates judgment, because there was a variance between the scire facias and the original judgment, so that the scire facias described a different judgment.

To this position we answer.

1st. The scire facias was only a notice of the existance of the judgment, and was only necessary, in order that payment might be shown, and its sufficiency is to be tested by the same rules which apply to other notices, and the notice is sufficient, unless it appears that it conveyed no sufficient notice of the claim sought to be enforced, if it does in fact mislead, if it conveys to the party the real fact, is sufficient.

B K of Alexandria vs Swann, 9 Peters 33.
11 Wheaton, 437; 1 Caines R 249; 12 Mo. 260.

2. If there was a variance, still the scire facias is a judicial process, and may be amended any time.

Holmes vs. Williams, 3 Caines R 98.
Jackson vs. Anderson, 4 Wendell 480.
Bank vs. Merrithorne, 19 John R, 244.
Brown vs. Betts, 13 Wendell, 29.
Morse vs. Dewey, 3 N H 538 in point.
Johnson vs. Day, 17 Pick., 108.
Whittier vs. Varney, 10 N H 298.
16 John Reports, 572, 3, 4, 5, 6 and 7.
Heister vs. Fortner, 2 Binney, 47.

A scire facias to revise a judgment which is irregularly issued, is voidable only, and not void, and cannot be called in question in an action of ejectment to recover land sold upon such judgment.

Jackson vs. Livingstone, 13 John R 215.
Campbell vs. Stiles, 9 Massachusetts Reports, 216.
Young vs. Hosmer, 11 Mass. Rep. 89.

So, also, a variance between a judgment and execution issued thereon is amendable at any time, as well before as after sale, and cannot be taken advantage of on a trial for the recovery of land sold by virtue of the execution.

Swan vs. Saddlemire, 8 Wend. 680, 2 Term R 727.
5 Johns R 100.
Jackson ex dem, Ten Eyck vs. Walker 4 Wend 463.
Jackson ex dem, Hill vs. Streeter, 5 Cowen, 529, which is a case directly in point.
Russell vs. Kipp, 5 John R 99.
Doe ex. dem. Rue 4 Blackford 263.

Whenever a process is amendable, it will be considered as done, whenever and wherever the objection is taken.

If this scire facias was amendable, it was not void, and if voidable only, it cannot be attacked in a collateral action.

Seargant vs. Hensler, 4 Scammon 364.
Day vs. Graham, 1 Gilman 436.

Upon another principle, the scire facias can be sustained, for the clerk swears that the variance was caused by a mistake of his own, and it was well settled that whatever is misprison of the clerk, may be set right by another part of the record.

Atkins vs. Sawyer, 1 Pick 353.
Anonymous Case, 16 Eng. C. L. R. 292.

If there was a scire facias which was not void, was there a legal redemption.

R. E. Stat. 303, sec. 14, 16, 22.

A statute providing for redemption is a remedied statute and should be liberally construed.

Van Rensalaer vs. Sheriff, 1 Cowen, 510.
People vs. Fleming, 4 Denio, 144.

The object of the legislature in allowing judgment creditors to redeem, was to prevent a sacrifice of the debtor's estate, and to make it pay as many of his debts as possible.

Sweezy vs. Chandler, 11 Illinois 449.
People ex. rel. vs. Cotton, 14 Illinois 413.

Judgment need not be a lien to enable judgment creditor to redeem.

People vs. Cotton, 14 Ill. 413; Sweezy vs Chandler, 11 Ill. 449.

Smith, the assignee of the certificate of purchase under the judgment of Stewart & Brown, had the power and right to waive all objections to the regularity of the redemption, and he did so by receiving the redemption money.

Bank of Vergennes vs. Warran, 7 Hill 93.
Merry vs. Bostwick, 13 Illinois, 411.
1 Greenleaf on ev., Sec. 207; 3 Hill 218.

The twelve months having expired, Turney's heirs had no interest in the property at the time of the redemption, under the Gates judgment, and no right to complain of the redemption.

McLayen vs. Brown, 11 Illinois, 522.

The owner of the Gates judgment had a right to have a scire facias directed to the administratrix of Turney's estate. 2 Gilm., 216.

And when it was so revived, Gates was a judgment creditor, and had a right to redeem. If his judgment, as revived, was not a lien upon these premises, because the heirs were not parties to the scire facias, still he had a right to redeem whether it was a lien or not.

14 Illinois, 414; 11 Illinois, 449.

The rights of the heirs are not effected, they having no interest in the premises at that time. 11 Illinois, 552.

It was decided by this court last term, in Mt. Vernon, in a case not reported that the administratrix, of a mortgagor was properly made sole defendant in a scire facias to foreclose the mortgage.

B. C. COOK,
For Appelle.

42-150

Turney et al

42

vs

Alex Young

Appellees Brief

Filed May 11. 1859

L. Leland

Clerk

IN THE

Supreme Court, State of Illinois.

THIRD GRAND DIVISION.

OF THE APRIL TERM, A. D. 1858.

NANCY J. TURNEY ET AL.

vs.

ALEXANDER YOUNG.

APPEAL from Jo Daviess.

This is an action of ejectment by the appellants against the appellee, for the east or upper half, of lot No. 5, between Main and Diagonal streets, commenced in the Jo Daviess Circuit Court on March 9, 1854.

The second trial resulted in a judgment for the defendant. From this judgment the plaintiffs below appeal to this Court.

The bill of exceptions contains an agreed statement of facts, as follows:

1. That John Turney, the ancestor of the plaintiffs, was, on March 29, 1842, and for several years prior thereto, the owner in fee of an undivided half of the lot aforesaid. Andrew Maurer being his co-tenant.

2. The plaintiffs are the only heirs of the said John Turney.

3. That the defendant Young was, at the time of the commencement of the suit, and for six years prior thereto, in possession of the east or upper half of said lot.

4. The said Young has paid the taxes thereon.

5. November 19, 1842, Stewart & Brown recovered a judgment against the said John Turney for the sum of $128.47 in the Circuit Court of Jo Daviess County, which said judgment was in all respects regular.

6. On December 23, 1842, a regular execution was issued upon said judgment, and returned by order of plaintiffs unsatisfied, March 23, 1843. The said defendant being then Sheriff of said County of Jo Daviess.

7. March 9, 1844, the said John Turney died intestate, and on March 18, 1844, administration was granted upon his estate to his widow, Nancy J. Turney, which administration remains unrevoked.

8. On March 29, 1845, the following notice was served upon the said Nancy J. Turney:—

To Mrs. Nancy J. Turney, administratrix of John Turney, deceased:

You are hereby notified that in the life time of the said John Turney, William S. Stewart and Peter L. Brown recovered a judgment against him for one hundred and sixty dollars debt, to be satisfied, with $128.47, damages and costs, at the October term, A. D. 1842, of the Jo Daviess Circuit Court, Illinois. Execution was issued thereon within one year thereafter, and returned unsatisfied, and the plaintiffs will apply for an execution thereon at the expiration of three months from the service of this notice, according to the statute in such cases made and provided.

A. L. HOLMES,
Attorney for Stewart and Brown.

Galena, March 18, 1845.

9. On June 30th, 1845, an execution issued upon the judgment aforesaid against the land and tenements of the said John Turney, deceased, which said execution was, on July 25, 1845, levied upon the real estate in question, subject to the said widow's right of dower.

10. On August 20th, 1845, the said property was sold under said execution to Henry Clymo, and certificates of purchase issued to him in due form.

11. Clymo assigned his certificates of purchase to Orin Smith.

12. On March 29, 1842, A. P. Gates recovered a judgment against said John Turney, for the sum of one hundred and sixty-one dollars and sixty-five cents. No execution issued upon this judgment within a year from its rendition. On September 7, 1846, a *scire facias* issued, and was served upon the said Nancy J. Turney, administrator, &c., reciting the amount of the original judgment as one hundred and eighty dollars and forty-six cents. Mr. Bradley, the Clerk, swears that this was a mistake and points out how it occurred, and states at the same time that the judgment on March 29, 1842, was the only judgment rendered in said court in favor of said Gates, against the said Turney. On October 27, 1846, judgment of revivor was entered for the sum of one hundred and eighty dollars and forty-six cents. An execution issued on said revived judgment on October 27, 1846, which was levied upon the premises in controversy. Under this judgment and execution a redemption from the sale under the Stewart & Brown judgment, and the redemption money was received by Orin Smith, the assignee of the certificates of purchase as aforesaid. Duplicates of certificates of redemption were executed and delivered to Alexander Young, purchaser under the redemption sale.

13. On January 28, 1847, the sheriff of Jo Daviess county executed and delivered to Alexander Young, the defendant, a sheriff deed for the premises in controversy.

14. At the July term, 1846, a partition was had of the whole lot in question at the suit of Nancy J. Turney, and against Andrew Maurer and others, assigning to the heirs of the said Turney, the east or upper half of said lot No. 5, as herein before described.

15. At the December term, 1850, of the Supreme Court, the said judgment in the case of Gates against Turney, Administratrix, was reversed and remanded for further proceedings. 12 Ill. R. Pages 141, 142.

This is all the evidence in the cause.

The Court found the issue for the defendant.

The plaintiffs moved for a new trial which was overruled, and an exception taken.

ERRORS ASSIGNED.

1. The Court erred in finding the issue for the defendant.

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

3. The Court erred in rendering a judgment for the said defendant, when by the laws of the land such judgment ought to have been for the said plaintiffs.

R. S. BLACKWELL,

For Appellants.

42

~~204~~

Turney vs Young

abstract

Filed May 5. 1859

L. Leland

Clerk

Turney vs Young

42 – 150

IN THE

Supreme Court, State of Illinois.

THIRD GRAND DIVISION.

OF THE APRIL TERM, A. D. 1858.

NANCY J. TURNEY ET AL.

vs.

ALEXANDER YOUNG.

APPEAL from Jo Daviess.

This is an action of ejectment by the appellants against the appellee, for the east or upper half, of lot No. 5, between Main and Diagonal streets, commenced in the Jo Daviess Circuit Court on March 9, 1854.

The second trial resulted in a judgment for the defendant. From this judgment the plaintiffs below appeal to this Court.

The bill of exceptions contains an agreed statement of facts, as follows:

1. That John Turney, the ancestor of the plaintiffs, was, on March 29, 1842, and for several years prior thereto, the owner in fee of an undivided half of the lot aforesaid. Andrew Maurer being his co-tenant.

2. The plaintiffs are the only heirs of the said John Turney.

3. That the defendant Young was, at the time of the commencement of the suit, and for six years prior thereto, in possession of the east or upper half of said lot.

4. The said Young has paid the taxes thereon.

5. November 19, 1842, Stewart & Brown recovered a judgment against the said John Turney for the sum of $128.47 in the Circuit Court of Jo Daviess County, which said judgment was in all respects regular.

6. On December 23, 1842, a regular execution was issued upon said judgment, and returned by order of plaintiffs unsatisfied, March 23, 1843. The said defendant being then Sheriff of said County of Jo Daviess.

7. March 9, 1844, the said John Turney died intestate, and on March 18, 1844, administration was granted upon his estate to his widow, Nancy J. Turney, which administration remains unrevoked.

8. On March 29, 1845, the following notice was served upon the said Nancy J. Turney:—

To Mrs. Nancy J. Turney, administratrix of John Turney, deceased:

You are hereby notified that in the life time of the said John Turney, William S. Stewart and Peter L. Brown recovered a judgment against him for one hundred and sixty dollars debt, to be satisfied, with $128.47, damages and costs, at the October term, A. D. 1842, of the Jo Daviess Circuit Court, Illinois. Execution was issued thereon within one year thereafter, and returned unsatisfied, and the plaintiffs will apply for an execution thereon at the expiration of three months from the service of this notice, according to the statute in such cases made and provided.

A. L. HOLMES,
Attorney for Stewart and Brown.

Galena, March 18, 1845.

9. On June 30th, 1845, an execution issued upon the judgment aforesaid against the land and tenements of the said John Turney, deceased, which said execution was, on July 25, 1845, levied upon the real estate in question, subject to the said widow's right of dower.

10. On August 20th, 1845, the said property was sold under said execution to Henry Clymo, and certificates of purchase issued to him in due form.

11. Clymo assigned his certificates of purchase to Orin Smith.

12. On March 29, 1842, A. P. Gates recovered a judgment against said John Turney, for the sum of one hundred and sixty-one dollars and sixty-five cents. No execution issued upon this judgment within a year from its rendition. On September 7, 1846, a *scire facias* issued, and was served upon the said Nancy J. Turney, administrator, &c., reciting the amount of the original judgment as one hundred and eighty dollars and forty-six cents. Mr. Bradley, the Clerk, swears that this was a mistake and points out how it occurred, and states at the same time that the judgment on March 29, 1842, was the only judgment rendered in said court in favor of said Gates, against the said Turney. On October 27, 1846, judgment of revivor was entered for the sum of one hundred and eighty dollars and forty-six cents. An execution issued on said revived judgment on October 27, 1846, which was levied upon the premises in controversy. Under this judgment and execution a redemption from the sale under the Stewart & Brown judgment, and the redemption money was received by Orin Smith, the assignee of the certificates of purchase as aforesaid. Duplicates of certificates of redemption were executed and delivered to Alexander Young, purchaser under the redemption sale.

13. On January 28, 1847, the sheriff of Jo Daviess county executed and delivered to Alexander Young, the defendant, a sheriff deed for the premises in controversy.

14. At the July term, 1846, a partition was had of the whole lot in question at the suit of Nancy J. Turney, and against Andrew Maurer and others, assigning to the heirs of the said Turney, the east or upper half of said lot No. 5, as herein before described.

15. At the December term, 1850, of the Supreme Court, the said judgment in the case of Gates against Turney, Administratrix, was reversed and remanded for further proceedings. 12 Ill. R. Pages 141, 142.

This is all the evidence in the cause.

The Court found the issue for the defendant.

The plaintiffs moved for a new trial which was overruled, and an exception taken.

ERRORS ASSIGNED.

1. The Court erred in finding the issue for the defendant.

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

3. The Court erred in rendering a judgment for the said defendant, when by the laws of the land such judgment ought to have been for the said plaintiffs.

R. S. BLACKWELL,

For Appellants.

~~204~~ 42-150

Turney Deal

to

Bonny

Abstract

Filed May 4. 1858

L. Leland

Clerk

SUPREME COURT OF ILLINOIS.

Third Division—April Term, 1859.

NANCY J. TURNEY, *et al.*,
vs.
ALEXANDER YOUNG.
} *Appeal from Jo Daviess.*

APPELLEES' BRIEF.

The first question is, was the sale of the premises to Clyme upon the execution issued upon the Stewart and Brown judgment, a valid sale.

It is contended that no execution could issue on this judgment, after the death of Turney, and that this case is not within sec. 2 of the act of 1825, R. E. Stat., page 329, because execution had been issued and returned upon this Judgment before the death of Turney, and that this sec. only applies to cases where no execution had been issued.

That this instruction is erroneous, we think is manifest, from the following considerations :

1st. If the construction contended for, is correct, the section means nothing; for, after the year had expired, the lien of a judgment upon which no execution had been issued, would be lost and the judgment dormant.

The lien referred to in the statute, is the stautory lien *elegit*, issued on common law lien, commenced 1st day of the term.

2d. Is this dormant judgment preferred to one which has a lien.

Sec. 1st declares that a lien shall exist, provided execution in one year, that is this case. Sec. 2 provides that when judgment shall become a lien as aforesaid, to wit: by the issuing of an execution within a year, and the defendant die, the remedy of the party shall not be delayed or suspended. How can it be contended, then, that this judgment is placed behind judgments which have no execution lien, not having been issued upon them within one year; the act itself declares that no previous law of this State shall be so construed as to impair the effect of the lien given in the first statute.

Welch vs. Walker, 3 Gilman, 491.

The law of 1825 covers only one class of cases, to wit: when a lien had been created by the issuing of an execution.

When no execution had issued, there was no lien, and for the purpose of issuing execution upon a judgment not a lien, the law of 1843, was passed R. E. Stat., 348.

Why was that law passed ?

We submit that the execution was valid under the last quoted act.

It is contended that execution could not issue at all at common law

after death of defendant, because *no state of case* authorized it. But here the clerk is clothed with power to issue execution within one year.

Blanchard vs. Goss, 2 N H, 194, and cases there cited.
3 Caines Rep. 267.
Allen vs. Portland Stage Company, 8 Maine, 207.

The certificate of sale was properly the property of Smith by assignment. Rev. Stat. page 303, sec 18.

II.

But it is contended that we had no right to redeem under the Gates judgment, because there was a variance between the scire facias and the original judgment, so that the scire facias described a different judgment.

To this position we answer.

1st. The scire facias was only a notice of the existance of the judgment, and was only necessary, in order that payment might be shown, and its sufficiency is to be tested by the same rules which apply to other notices, and the notice is sufficient, unless it appears that it conveyed no sufficient notice of the claim sought to be enforced, if it does in fact mislead, if it conveys to the party the real fact, is sufficient.

B K of Alexandria vs Swann, 9 Peters 33.
11 Wheaton, 437; 1 Caines R 249; 12 Mo. 260.

2. If there was a variance, still the scire facias is a judicial process, and may be amended any time.

Holmes vs. Williams, 3 Caines R 98.
Jackson vs. Anderson, 4 Wendell 480.
Bank vs. Merrithorne, 19 John R, 244.
Brown vs. Betts, 13 Wendell, 29.
Morse vs. Dewey, 3 N H 538 in point.
Johnson vs. Day, 17 Pick., 108.
Whittier vs. Varney, 10 N H 298.
16 John Reports, 572, 3, 4, 5, 6 and 7.
Heister vs. Fortner, 2 Binney, 47.

A scire facias to revise a judgment which is irregularly issued, is voidable only, and not void, and cannot be called in question in an action of ejectment to recover land sold upon such judgment.

Jackson vs. Livingstone, 13 John R 215.
Campbell vs. Stiles, 9 Massachusetts Reports, 216.
Young vs. Hosmer, 11 Mass. Rep. 89.

So, also, a variance between a judgment and execution issued thereon is amendable at any time, as well before as after sale, and cannot be taken advantage of on a trial for the recovery of land sold by virtue of the execution.

Swan vs. Saddlemire, 8 Wend. 680, 2 Term R 727.
5 Johns R 100.
Jackson ex dem, Ten Eyck vs. Walker 4 Wend 463.
Jackson ex dem, Hill vs. Streeter, 5 Cowen, 529, which is a case directly in point.
Russell vs. Kipp, 5 John R 99.
Doe ex. dem. Rue 4 Blackford 263.

Whenever a process is amendable, it will be considered as done, whenever and wherever the objection is taken.

If this scire facias was amendable, it was not void, and if voidable only, it cannot be attacked in a collateral action.

Seargant vs. Hensler, 4 Scammon 364.
Day vs. Graham, 1 Gilman 436.

Upon another principle, the scire facias can be sustained, for the clerk swears that the variance was caused by a mistake of his own, and it was well settled that whatever is misprison of the clerk, may be set right by another part of the record.

Atkins vs. Sawyer, 1 Pick 353.
Anonymous Case, 16 Eng. C. L. R. 292.

If there was a scire facias which was not void, was there a legal redemption.

R. E. Stat. 303, sec. 14, 16, 22.

A statute providing for redemption is a remedied statute and should be liberally construed.

Van Rensalaer vs. Sheriff, 1 Cowen, 510.
People vs. Fleming, 4 Denio, 144.

The object of the legislature in allowing judgment creditors to redeem, was to prevent a sacrifice of the debtor's estate, and to make it pay as many of his debts as possible.

Sweezy vs. Chandler, 11 Illinois 449.
People ex. rel. vs. Cotton, 14 Illinois 413.

Judgment need not be a lien to enable judgment creditor to redeem.

People vs. Cotton, 14 Ill. 413; Sweezy vs Chandler, 11 Ill. 449.

Smith, the assignee of the certificate of purchase under the judgment of Stewart & Brown, had the power and right to waive all objections to the regularity of the redemption, and he did so by receiving the redemption money.

Bank of Vergennes vs. Warran, 7 Hill 93.
Merry vs. Bostwick, 13 Illinois, 411.
1 Greenleaf on ev., Sec. 207; 3 Hill 218.

The twelve months having expired, Turney's heirs had no interest in the property at the time of the redemption, under the Gates judgment, and no right to complain of the redemption.

McLayen vs. Brown, 11 Illinois, 522.

The owner of the Gates judgment had a right to have a scire facias directed to the administratrix of Turney's estate. 2 Gilm., 216.

And when it was so revived, Gates was a judgment creditor, and had a right to redeem. If his judgment, as revived, was not a lien upon these premises, because the heirs were not parties to the scire facias, still he had a right to redeem whether it was a lien or not.

14 Illinois, 414; 11 Illinois, 449.

The rights of the heirs are not effected, they having no interest in the premises at that time. 11 Illinois, 552.

It was decided by this court last term, in Mt. Vernon, in a case not reported that the administratrix, of a mortgagor was properly made sole defendant in a scire facias to foreclose the mortgage.

B. C. COOK,
For Appelle.

42-150

Turney

v 42

Young

---

appellees Brief

Filed May 11. 1859

L. Leland

Clerk

SUPREME COURT OF ILLINOIS.

Third Division—April Term, 1859.

NANCY J. TURNEY, *et al.*,
vs.
ALEXANDER YOUNG. } *Appeal from Jo Daviess.*

APPELLEES' BRIEF.

The first question is, was the sale of the premises to Clyme upon the execution issued upon the Stewart and Brown judgment, a valid sale.

It is contended that no execution could issue on this judgment, after the death of Turney, and that this case is not within sec. 2 of the act of 1825, R. E. Stat., page 329, because execution had been issued and returned upon this Judgment before the death of Turney, and that this sec. only applies to cases where no execution had been issued.

That this construction is erroneous, we think is manifest, from the following considerations:

1st. If the construction contended for, is correct, the section means nothing; for, after the year had expired, the lien of a judgment upon which no execution had been issued, would be lost and the judgment dormant.

The lien referred to in the statute, is the stautory lien *elegit*, issued on common law lien, commenced 1st day of the term.

2d. Is this dormant judgment preferred to one which has a lien.

Sec. 1st declares that a lien shall exist, provided execution in one year, that is this case. Sec. 2 provides that when judgment shall become a lien as aforesaid, to wit: by the issuing of an execution within a year, and the defendant die, the remedy of the party shall not be delayed or suspended. How can it be contended, then, that this judgment is placed behind judgments which have no ~~execution~~ lien, not having been issued upon them within one year; the act itself declares that no previous law of this State shall be so construed as to impair the effect of the lien given in the first statute.

Welch vs. Walker, 3 Gilman, 491.

The law of 1825 covers only one class of cases, to wit: when a lien had been created by the issuing of an execution.

When no execution had issued, there was no lien, and for the purpose of issuing execution upon a judgment not a lien, the law of 1843, was passed R. E. Stat., 348.

Why was that law passed?

We submit that the execution was valid under the last quoted act.

It is contended that execution could not issue at all at common law

after death of defendant, because *no state of case* authorized it. But here the clerk is clothed with power to issue execution within one year.

Blanchard vs. Goss, 2 N H, 194, and cases there cited.
3 Caines Rep. 267.
Allen vs. Portland Stage Company, 8 Maine, 207.

The certificate of sale was properly the property of Smith by assignment. Rev. Stat. page 303, sec 18.

II.

But it is contended that we had no right to redeem under the Gates judgment, because there was a variance between the scire facias and the original judgment, so that the scire facias described a different judgment.

To this position we answer.

1st. The scire facias was only a notice of the existance of the judgment, and was only necessary, in order that payment might be shown, and its sufficiency is to be tested by the same rules which apply to other notices, and the notice is sufficient, unless it appears that it conveyed no sufficient notice of the claim sought to be enforced, if it does in fact mislead, if it conveys to the party the real fact, is sufficient.

B K of Alexandria vs Swann, 9 Peters 33.
11 Wheaton, 437; 1 Caines R 249; 12 Mo. 260.

2. If there was a variance, still the scire facias is a judicial process, and may be amended any time.

Holmes vs. Williams, 3 Caines R 98.
Jackson vs. Anderson, 4 Wendell 480.
Bank vs. Merrithorne, 19 John R, 244.
Brown vs. Betts, 13 Wendell, 29.
Morse vs. Dewey, 3 N H 538 in point.
Johnson vs. Day, 17 Pick., 108.
Whittier vs. Varney, 10 N H 298.
16 John Reports, 572, 3, 4, 5, 6 and 7.
Heister vs. Fortner, 2 Binney, 47.

A scire facias to revise a judgment which is irregularly issued, is voidable only, and not void, and cannot be called in question in an action of ejectment to recover land sold upon such judgment.

Jackson vs. Livingstone, 13 John R 215.
Campbell vs. Stiles, 9 Massachusetts Reports, 216.
Young vs. Hosmer, 11 Mass. Rep. 89.

So, also, a variance between a judgment and execution issued thereon is amendable at any time, as well before as after sale, and cannot be taken advantage of on a trial for the recovery of land sold by virtue of the execution.

Swan vs. Saddlemire, 8 Wend. 680, 2 Term R 727.
5 Johns R 100.
Jackson ex dem, Ten Eyck vs. Walker 4 Wend 463.
Jackson ex dem, Hill vs. Streeter, 5 Cowen, 529, which is a case directly in point.
Russell vs. Kipp, 5 John R 99.
Doe ex. dem. Rue 4 Blackford 263.

Whenever a process is amendable, it will be considered as done, whenever and wherever the objection is taken.

If this scire facias was amendable, it was not void, and if voidable only, it cannot be attacked in a collateral action.

Seargant vs. Hensler, 4 Scammon 364.
Day vs. Graham, 1 Gilman 436.

Upon another principle, the scire facias can be sustained, for the clerk swears that the variance was caused by a mistake of his own, and it was well settled that whatever is misprison of the clerk, may be set right by another part of the record.

Atkins vs. Sawyer, 1 Pick 353.
Anonymous Case, 16 Eng. C. L. R. 292.

If there was a scire facias which was not void, was there a legal redemption.

R. E. Stat. 303, sec. 14, 16, 22.

A statute providing for redemption is a remedied statute and should be liberally construed.

Van Rensalaer vs. Sheriff, 1 Cowen, 510.
People vs. Fleming, 4 Denio, 144.

The object of the legislature in allowing judgment creditors to redeem, was to prevent a sacrifice of the debtor's estate, and to make it pay as many of his debts as possible.

Sweezy vs. Chandler, 11 Illinois 449.
People ex. rel. vs. Cotton, 14 Illinois 413.

Judgment need not be a lien to enable judgment creditor to redeem.
People vs. Cotton, 14 Ill. 413; Sweezy vs Chandler, 11 Ill. 449.

Smith, the assignee of the certificate of purchase under the judgment of Stewart & Brown, had the power and right to waive all objections to the regularity of the redemption, and he did so by receiving the redemption money.

Bank of Vergennes vs. Warran, 7 Hill 93.
Merry vs. Bostwick, 13 Illinois, 411.
1 Greenleaf on ev., Sec. 207; 3 Hill 218.

The twelve months having expired, Turney's heirs had no interest in the property at the time of the redemption, under the Gates judgment, and no right to complain of the redemption.

McLayen vs. Brown, 11 Illinois, 522.

The owner of the Gates judgment had a right to have a scire facias directed to the administratrix of Turney's estate. 2 Gilm., 216.

And when it was so revived, Gates was a judgment creditor, and had a right to redeem. If his judgment, as revived, was not a lien upon these premises, because the heirs were not parties to the scire facias, still he had a right to redeem whether it was a lien or not.

14 Illinois, 414; 11 Illinois, 449.

The rights of the heirs are not effected, they having no interest in the premises at that time. 11 Illinois, 552.

It was decided by this court last term, in Mt. Vernon, in a case not reported that the administratrix, of a mortgagor was properly made sole defendant in a scire facias to foreclose the mortgage.

B. C. COOK,
For Appelle.

42 - 150

Jumey vs Young

Filed May 28. 1859
L. Leland
Clerk

Jumey vs Young

42 - 150

SUPREME COURT OF ILLINOIS,

Third Division—April Term, 1859.

NANCY J. TURNEY, *et al.*,
vs.
ALEXANDER YOUNG.
} *Appeal from Jo Daviess.*

APPELLEES' BRIEF.

The first question is, was the sale of the premises to Clyme upon the execution issued upon the Stewart and Brown judgment, a valid sale.

It is contended that no execution could issue on this judgment, after the death of Turney, and that this case is not within sec. 2 of the act of 1825, R. E. Stat., page 329; because execution had been issued and returned upon this Judgment before the death of Turney; and that this sec. only applies to cases where no execution had been issued.

That this instruction is erroneous, we think is manifest, from the following considerations:

1st. If the construction contended for, is correct, the section means nothing; for, after the year had expired, the lien of a judgment upon which no execution had been issued, would be lost and the judgment dormant.

The lien referred to in the statute, is the stautory lien *elegit*, issued on common law lien, commenced 1st day of the term.

2d. Is this dormant judgment preferred to one which has a lien.

Sec. 1st declares that a lien shall exist, provided execution in one year, that is this case. Sec. 2 provides that when judgment shall become a lien as aforesaid, to wit: by the issuing of an execution within a year, and the defendant die, the remedy of the party shall not be delayed or suspended. How can it be contended, then, that this judgment is placed behind judgments which have no execution lien, not having been issued upon them within one year; the act itself declares that no previous law of this State shall be so construed as to impair the effect of the lien given in the first statute.

Welch vs. Walker, 3 Gilman, 491.

The law of 1825 covers only one class of cases, to wit: when a lien had been created by the issuing of an execution.

When no execution had issued, there was no lien, and for the purpose of issuing execution upon a judgment not a lien, the law of 1843, was passed R. E. Stat., 348.

Why was that law passed?

We submit that the execution was valid under the last quoted act.

It is contended that execution could not issue at all at common law.

after death of defendant, because *no state of case* authorized it. But here the clerk is clothed with power to issue execution within one year.

Blanchard vs. Goss, 2 N H, 194, and cases there cited.
3 Caines Rep. 267.
Allen vs. Portland Stage Company, 8 Maine, 207.

The certificate of sale was properly the property of Smith by assignment. Rev. Stat. page 303, sec 18.

II.

But it is contended that we had no right to redeem under the Gates judgment, because there was a variance between the scire facias and the original judgment, so that the scire facias described a different judgment.

To this position we answer.

1st. The scire facias was only a notice of the existance of the judgment, and was only necessary, in order that payment might be shown, and its sufficiency is to be tested by the same rules which apply to other notices, and the notice is sufficient, unless it appears that it conveyed no sufficient notice of the claim sought to be enforced, if it does in fact mislead, if it conveys to the party the real fact, is sufficient.

B K of Alexandria vs Swann, 9 Peters 33.
11 Wheaton, 437; 1 Caines R 249; 12 Mo. 260.

2. If there was a variance, still the scire facias is a judicial process, and may be amended any time.

Holmes vs. Williams, 3 Caines R 98.
Jackson vs. Anderson, 4 Wendell 480.
Bank vs. Merrithorne, 19 John R, 244.
Brown vs. Betts, 13 Wendell, 29.
Morse vs. Dewey, 3 N H 538 in point.
Johnson vs. Day, 17 Pick., 108.
Whittier vs. Varney, 10 N H 298.
16 John Reports, 572, 3, 4, 5, 6 and 7.
Heister vs. Fortner, 2 Binney, 47.

A scire facias to revise a judgment which is irregularly issued, is voidable only, and not void, and cannot be called in question in an action of ejectment to recover land sold upon such judgment.

Jackson vs. Livingstone, 13 John R 215.
Campbell vs. Stiles, 9 Massachusetts Reports, 216.
Young vs. Hosmer, 11 Mass. Rep. 89.

So, also, a variance between a judgment and execution issued thereon is amendable at any time, as well before as after sale, and cannot be taken advantage of on a trial for the recovery of land sold by virtue of the execution.

Swan vs. Saddlemire, 8 Wend. 680, 2 Term R 727.
5 Johns R 100.
Jackson ex dem, Ten Eyck vs. Walker 4 Wend 463.
Jackson ex dem, Hill vs. Streeter, 5 Cowen, 529, which is a case directly in point.
Russell vs. Kipp, 5 John R 99.
Doe ex. dem. Rue 4 Blackford 263.

Whenever a process is amendable, it will be considered as done, whenever and wherever the objection is taken.

If this scire facias was amendable, it was not void, and if voidable only, it cannot be attacked in a collateral action.

Seargant vs. Hensler, 4 Scammon 364.
Day vs. Graham, 1 Gilman 436.

Upon another principle, the scire facias can be sustained, for the clerk swears that the variance was caused by a mistake of his own, and it was well settled that whatever is misprison of the clerk, may be set right by another part of the record.

Atkins vs. Sawyer, 1 Pick 353.
Anonymous Case, 16 Eng. C. L. R. 292.

If there was a scire facias which was not void, was there a legal redemption.

R. E. Stat. 303, sec. 14, 16, 22.

A statute providing for redemption is a remedied statute and should be liberally construed.

Van Rensalaer vs. Sheriff, 1 Cowen, 510.
People vs. Fleming, 4 Denio, 144.

The object of the legislature in allowing judgment creditors to redeem, was to prevent a sacrifice of the debtor's estate, and to make it pay as many of his debts as possible.

Sweezy vs. Chandler, 11 Illinois 449.
People ex. rel. vs. Cotton, 14 Illinois 413.

Judgment need not be a lien to enable judgment creditor to redeem.

People vs. Cotton, 14 Ill. 413; Sweezy vs Chandler, 11 Ill. 449.

Smith, the assignee of the certificate of purchase under the judgment of Stewart & Brown, had the power and right to waive all objections to the regularity of the redemption, and he did so by receiving the redemption money.

Bank of Vergennes vs. Warran, 7 Hill 93.
Merry vs. Bostwick, 13 Illinois, 411.
1 Greenleaf on ev., Sec. 207; 3 Hill 218.

The twelve months having expired, Turney's heirs had no interest in the property at the time of the redemption, under the Gates judgment, and no right to complain of the redemption.

McLayen vs. Brown, 11 Illinois, 522.

The owner of the Gates judgment had a right to have a scire facias directed to the administratrix of Turney's estate. 2 Gilm., 216.

And when it was so revived, Gates was a judgment creditor, and had a right to redeem. If his judgment, as revived, was not a lien upon these premises, because the heirs were not parties to the scire facias, still he had a right to redeem whether it was a lien or not.

14 Illinois, 414; 11 Illinois, 449.

The rights of the heirs are not effected, they having no interest in the premises at that time. 11 Illinois, 552.

It was decided by this court last term, in Mt. Vernon, in a case not reported that the administratrix, of a mortgagor was properly made sole defendant in a scire facias to foreclose the mortgage.

B. C. COOK,
For Appelle.

Jurny
v 42-150
Young

Filed May 28. 1859
L. Leland
Clerk

051 -24

Turney tal
vs
Alex Young

It is contended by appellant that upon judgment when no execution had issued at the time of defendants death execution might be issued & land sold by giving three months notice to administrator & but upon judgment on which execution had issued before death of defendant and which had thereby become a lien upon the land this same land can not be sold without first bringing in the heirs by scire facias and making them parties to the judgment.

Why this startling discrimination between the two classes of judgments.

Is it because in the one case the lien has been fixed upon the land by an exercise of diligence

The law rewards diligence-

But upon this construction the law requires the man who has exercised no diligence & has no lien only to give the administrator notice but the judgment upon which a lien has fixed itself must resort to scire facias & make heirs parties to his revived judgment-

It is contended that the heirs must be made parties to the judgment-

They are not made parties to the judgment in cases where no execution has issued upon death of defendant, and where no lien has been fixed upon the land- Execution issues by giving notice to Executor & sale is made without any notice to heirs-

At common law when defendant died after judgment and before issuing execution

judgment had to be issued by scire facias to bring.

But when death happens after issuing execution a judgment need not be revived but execution proceeded to sale the same as if death of defendant had not intervened between the issuing of execution and its satisfaction.

The ~~2d sect~~ section of the law of Jan 17 – 1823 – provides that judgments shall become liens provided execution issues within year &c

And the second section provides that when any judgment shall have become a lien as aforesaid (that is by issuing execution) and the defendant happen to die before execution shall have been issued thereon the remedy &c shall not be delayed &c –

And again the same

provision in substantially the same language in the law of Feb 25, 1843.

What does this mean? Certainly in the law of 1825 it does not mean to refer to cases where no executions had ever issued for it provides only for judgments which have become liens as aforesaid and how? By issuing executions as provided in the first section of the law.

See second & See first sections of the law of 1825.

It means to provide for a class of cases when judgments had been rendered, executions issued, and liens thereby perfected and yet no execution issued and in life at the time of death of defendant which could be under the common law prosecuted to sale and satisfaction

as would be the case if an execution had been issued and were in life at the time of defendants death for then under the common law the plaintiff might proceed to satisfaction without the aid of any statute—

The law of 1825 has the same phraseology as the law of 1843— And let us examine it and see if by any possibility it can reper and be limited to judgments upon which no execution had issued ever—

First— Judgment under that law must be "a lien as aforesaid," and it could only be a lien because an execution had issued within one year from rendition of judgment—

"And it is further provided that no execution shall issue within one year

from time of defendants death—

Let us see how this operates practically—

You have a judgt & no execution— The defend=ant dies— Under the law of 1823— You can have no execution for one year and when the year has expired You have a judgment; the defendant has died, one year has elapsed, and You have no lien

Can You claim the benefit of the second section of the law of 1823— Certainly not— Your judgment is not a lien— What law provides only for judgments which have become a lien— If You hold then that the law of 1823— provided only for judgts upon which execution had not been issued You make the law entirely inoperative— as nullity

inoperative — a nullity

as to all classes of judg=ments for it certainly does not provide for judgments which had not become already liens at the time of death of defendant —

And yet the language of the law of 1825 is "Defendant happen to die before execution shall nevertheless ~~happen to~~ issued thereon which is same phraseology as in the law of 1843 —

And which means the same as in the law of 1843 to wit where defendant happen die before execution which could legally be satisfied after his death — The laws both of 1825 and 1843 were providing for cases then unprovided for by the common law —

Is it contended that the provisions of law of 1825 can be made operative

by the construction placed upon it by the appellants' Counsel?

Unless the law of 1825 bears the construction we contend for, the only way to collect a Judgt. upon which execution has been issued and returned & deft dies is to issue ~~execution against~~ a scire facias & revive the Judgt. which leaves it in much worse fix than another Judgt

At common law the execution never run out till it was satisfied our statute was copied from some english statute,

The court will see precise by the same phraseology used in Bacons ab. 8 vol. page 612. title Sci fa by & against heirs, where the words must bear the construction we contend for

42 — 150
Cook for appellee

42 — 150
Tinney vs Young

Filed May 28. 1839
L. Leland
Clerk

a Legal opinion in the case of

Joel Ruve vs Alexander Young } Ejectment in the Jo Davis circuit Co^t

Both parties claim this ½ lot situated in the city of Gallena under John Turney deceased who it is admitted died seized in fee thereof

The plaintiff claims title by virtue of the following proceedings and conveyance of said lot

At the november term of the Jo Davis circuit court Stuart and Brown obtained a Judgement against John Turney, and on the 23^d day of December 1842 Execution issued on said Judgement and was returned not satisfied on the 23^d of March 1843. Thus the lien of this Judgement upon the real estate of John Turney this lot in controversy being part of said Estate for the term of seven years from the last day of the said term of said Court

On the 9th day of March 1844. John Turney died and on the 18th of the same Month Letters of administration were Granted to Nancy J Turney his widow who took upon herself said trust and was duly qualified as administratrix

Stuart and Brown the plaintiffs in said Judgement after haveing given to said administratrix three months notice as provided in the act in relation to Judgements and Executions passed the 25th of February 1843 (which was the act then in force) on the 30th of June 1845 (the revised Statute was not in force until Sept 1845) sued out an alias execution on their Judgement against the lands and tenements that were of John Turney deceased at the day the lien of said Judgement attached and at his death

This execution was levied upon the undivided half of said lot and on the 20th day of August 1845 said undivided half was sold subject to the widows Dower therein, and Henry Clemo became the purchaseor for $170.00

Two certificates of purchase were made by the Sherriff one of which was given to Clemo and the other was filed in the recorders office as required by law

On the 15th of November 1848, the then Sherriff of Jo Davis County and successor of the Sherriff that sold the land was presented with said certificate by Orrin Smith to whom it had been regularly assigned by Clemo as provided by the

18th Section of the 47th Chapter of the revised code which was then in force, being an exact copy of the 5th Section of the act of the 10th of February 1844. upon the subject of Judgments and Executions. and on that day the Sheriff deeded said lot to said Orrin Smith. and on the 5th of may 1851. Orrin Smith said and by deed conveyed said lot to the plaintiff Reed

This title is perfect in Reed in every particular except this. The 97th Section of the Statute of 1845. now in force in relation to Judgments and Executions did not take effect until the first of September 1845. consequently the seizing out of said alias execution in favor of Stuart and Brown must be governed by the act in relation to Judgments and Executions approved the 25th of February 1843. which provides. That when a Judgment has or "may hereafter be obtained in any court of record of this "State, against any person or persons who has or shall after the rendition of said Judgment "and before execution issues thereon, die, it shall be lawful "for execution to issue against the lands and tenements "of said deceased person or persons without first receiving "the Judgement against their heirs or legal representatives "any thing in any law to the contrary not withstanding

When this act was reprinted in the revised code of 1845 the words "and before execution issued thereon, was left out. thus materially changing the law

I have shown that upon the Judgement against Turney in favor of Stuart and Brown an execution did issue in the life time of Turney and was returned by order of the plaintiffs not satisfied. thus we see that this was not one of the Judgements upon which an execution could issue after the death of the defendant ~~of the defendant~~ because said defendant died not die before an execution issued thereon

It is one of the established rules of the common law that an execution (or what is the same thing at common law a writ of Extent) issued against a dead man is void and no title can be acquired under it. See Hildreth vs Thompson 16 Massachusetts reports 190 and many other authorities not necessary to recite here

It follows then as a matter of course to make an execution issued against a dead person effectual to give a right to property of which he died seized and which at his death descended to his heirs. there must be authority found in the Statute authorizing said Execution to issue, and to be levied upon said property and to sell the same, and such a Statute being in derogation of the common law and against the vested right of the heirs must be strictly pursued, or the whole proceedings will be void

This Statute clearly does not authorize the issuing of an alias execution against a deceased defendant It evidently was the intention of the Legislature to give to a plaintiff who had obtained a Judgement, and thereby acquired a lien upon the property of the defendant in his life time, but because of the death of said defendant had been prevented from enforcing said lien upon said property (to pursue his right by issuing an execution after the defendants death) If no execution issues upon a Judgement within one year after its rendition, the lien of said Judgement expires (See the 1st & 2d Sect of the 47th Chapter of the Revised Code 1845, and See the case of Feeney vs Gates 12th Ill 141) Now Suppose the defendant dies after the lien of the Judgement attaches, and before execution issues, then if he could not issue his execution before the end of the year (which he could not without this Statute) his lien would be gone and he would be solely a defendant upon the assets in the hands of the administrator to be administered, and would have to take his Pro ratta distribution among other Creditors, when if he had not been deprived of his lien by the death of the defendant he might have saved his whole debt out of the real estate of said defendant upon which his Judgement had a lien

But evidently the Legislature did not intend to extend this favor to a plaintiff, who had issued his execution in the life time of the defendant, and neglected to have it Levied, for by this, he has had his opportunity to make his debt out of the lands, which opportunity the plaintiff whose debtor died after Judgement and before execution issued never had

of 1843
There is another reason why the Legislature did not extend this remedy to a Judgement upon which an execution had issued within the year, and in the lifetime of the defendant. The Plaintiff who had not issued his execution must loose his lien in one year; but the plaintiff who had issued his within the year, and before the death of the defendant, has perpetuated his lien for seven years; and he may at any time within that period have the benefit of said lien against the heirs of the deceased and all the world besides, by issuing a Scire facias and reviving his Judgement against the heirs or legal representatives of the deceased and his lien is in full force and enables him under his revived Judgement to sell the land and make his debt

Thus we see in this case of Stuart and Brown vs Turney; they issued their execution within the year and in the life time of Turney and preserved their lien on this very property which did not expire until the 19th of November 1849. Thus they have had every opportunity to make their debt out of this property in the usual way without the aid of this Statute

If these views be correct then the execution in favor of Stuart and Brown against Mr Turney, issued after his death and under a Judgement upon which the Statute did not authorize it to issue, is Stands like any other execution issued against a dead man without legal authority, totally and clearly void; and as it is the foundation of Reeves title to this property, being the property that descended to the heirs of Turney from their ancestor, his said title is most clearly no title whatever but a mere nullity

The result is that Reese can never recover in this suit against Young, for in an action of Ejectment. the plaintiff must recover upon the strength of his own title and not upon the weakness of his adversary, and altho Young may have no title whatever except a naked tortious possession, yet he can hold that possession as against Reese and all other Strangers to the title seeking possession

upon [illegible]

I will now proceed to investigate Alexander Youngs title to said lot, and see if he stands in any better situation w

On the 29th of March 1842 at the march term of the Jo Davis circuit court for that year, Avery B Gates obtained a Judgement against John Furney for $157.65 cts & cost, upon which Furney paid $40.00

Upon this Judgement no execution ever issued, and of course on the 29th of March 1843 the lien of said Judgement as against the real estate of Furney expired Furney being alive

Furney died as we have seen on the 9th day of March 1844 near a year after the termination of the lien of the Gates Judgement. Letters of administration were taken out as before stated. Stuart and Brown took out Execution and sold the undivided half of this lot as above shown, and on the 7th of September 1846 Gates sues out a scire facias upon his said Judgement against the administratrix of said Estate, and at the October term of the Jo Davis circuit court, to wit on the 27th of October 1846, said Judgement was revived against said administratrix, but the court improperly and without authority ordered that execution issue and be levied upon the lands and tenements of John Furney deceased

On the same 27th of October 1846, an execution issued by order of the court, and commanding improperly as directed by said Judgement of revival, ~~against A J Furney admr. but~~ directed the Sheriff to levy upon the real estate that belonged to Furney on the day ~~he died~~ of his death

This Execution was by the Sheriff levied upon the East or upper half of this lot, being the one half of the equal and undivided half sold by the Sheriff under the Stuart and Brown Judgement as above stated

Immediately upon making this Levy, the attorney for Gates paid to said Sheriff $19.00 and released said one half of the whole of said lot from the sale made by the Sheriff to Elmo on the 20th of August 1845 under the Stuart & Brown Judgment. The certificate of purchase issued to Elmo had been by him assigned to Orrin Smith as above stated, and the Sheriff to whom this redemption money was paid, handed it over to Smith and took his receipt therefor on the back of the said certificate of purchase

The Sheriff then proceed under his levy to sell the
being only one half of the property sold to claimo and redeemed by Gates
East or upper half of said lot and this Alexander Young
thus purchasing the undivided half of the east half only
became the purchaser on the 17th of November 1846, and
after the expiration of 60 days; to wit, on the 28th day of
January 1847. said Sheriff deeded said upper half of said
lot to said Young, and immediately after this said Young
thus giving him the undivided half only of said upper or east half
broke open the doors of the building upon said upper half
of said lot and took forcible possession of the whole upper half
~~house~~, and
still retains said possession. and this is Youngs title
original

It cannot be pretended that the Judgement in favor of Gates
against Furney rendered on the 29th of Nov 1842 ~~and~~ the lien
of which as against real estate expired during the life time
of Furney. makes any figure in the investigation of Youngs title
except as a basis for the revived Judgement against the
administratrix, see the case of Furney vs Gates 12th Illinois Rep
above cited, where the court decides that the lien of this
original Judgement was entirely gone years before this attempt
at a rival, and Gates by virtue thereof had no claim whatever
against the land, and consequently that Judgement as ~~a~~ nothing to Youngs right

Let us then enquire what rights Gates acquired by virtue
of his revived Judgement against the administratrix of the 27th
thereon
of October 1846. As a general rule a Judgement after it is revived, has no wider
range or greater power than it had before, except only to have execution
In said case of Furney against Gates, 12th Illinois the Supreme court decide
that Gates was not entitled to have an execution at all on this revived
Judgement; that his original Judgement had lost its lien upon the Estate
of Furney, and when it was revived no execution could issue thereon, but it
stood on the same footing with simple contract creditors (see the
case of Welsh vs. Wallace 3d Gillman 490, and Paschal vs Hamilton 2 Gilman
4th Gillman 285) If then no execution could issue thereon as the Supreme court
has decided, ~~then~~ the execution that did issue upon said Judgement
was irregular and void and Young could acquire no title under it

It is contended however that while this Judgement remained
unreversed, any sale made under an execution issued thereon
was sufficient to justify a redemption under the sale to
claimo upon the Stuart and Brown Judgement, and to sell said
property so redeemed; and the subsequent reversal of this revived

Judgement would not effect said redemption and sale made while the Judgement was in full force
and particularly as the sale was made to Gorey, not a party to said Judgement, and could not be presumed to be conizant of the errors upon which the reversal was based

In the case of McLean ex Brown 11th Illinois 523.44 The Supreme Court decide, that the reversal of a Judgement under which a redemption and sale was had, would not nessesarily defeat the title of the purchaser who had bought the land under the second redemption and sale

It is not contended here that the reversal of the Judgement of Gates ex the administratrix of Furney, at all effects Gorys title, said Judgement was as much a nullity as to this property on the day the execution issued, as it was the day after it was reversed, This was a Judgement against the administratrix, and could only reach the assets in her hands to be administered, and that not by execution, For the Court decided that no Execution could issue thereon The order of the Court of Jo Davis County directing an execution to issue at all was a nullity (See the cases above cited) But most certainly was the order of the Court directing said Execution to issue against the land of which Furney died seized a mere nullity and void

Those lands, so ordered to be sold on this execution belonged to the heirs of Furney, and those heirs were not parties to this suit, and said Judgement and Execution was not against them but against Nancy I Furney as adm'x of said Estate They never had an opportunity to be heard in that case, and to shew cause why their land should not be taken to pay this debt, This was not a proceding in rem against the land, but a proceding in personem against the administratrix in her fiduciary character, and She did not own this land, and as adm't had no possession of, or intrest in it, consequently this Judgement and Execution as against those heirs, and their land was a perfect nullity, whether it was reversed or not. It certainly can not be contended that the Court had power or Jurisdiction to order an execution to be issued upon a Judgement against one man, and levied upon the property of a Stranger

It is contended however that this land had been sold to Clemo upon a valid Judgement and Execution against those lands as the property of Furney, and as such this, reversed Judgement and Execution gave Gates a right to redeem from their sale, and then to resell the lot for said redemption money, and if posible something more to apply upon this Judgement

There are several answers to this proposition & Conclusive answers

First the court had no Jurisdiction over this property or its owners in the case of Gates against the administratrix and consequently could not subject the same to pay this debt, whether the owners held only the right of redemption under the sale to Climo, or an absolute unincumbered right

Second this Judgement when revived could not extend to the sale of this land on execution, unless a lien existed upon the land by virtue of the original Judgement which the court decided did not exist

Third. Altho it may be true that a Judgement creditor whose Judgement has no lien upon land sold ~~on execution~~ under a ~~senior~~ Judgement and execution may redeem from said sale by virtue of our most extensive redemption law, as decided by the supreme court in the case of Sweeney vs Chandler 11th Ill. page 445. Yet the redeeming creditor must have a Judgement and Execution against the same parties with the original Judgement creditor who made the sale and he must have an that ~~and~~ the same property he could levy upon sought to be redeemed

In this case the Judgement and Execution under which the original sale was had (which is now sought to be redeemed from) was in fact against John Turney. claiming to sell said property by virtue of a lien created before Turneys death, and which property when it decended to the heirs, decended with this lien upon it, which lien was older and superior to their right, and at the death of their ancestor they succeeded to all his rights to this land which included the right of redemption but no new liens could after the land decended to them, be created upon said property. Thus those heirs held the right of redemption from Climos sale, in the same right as a purchaseor from John Turney in his lifetime made after the Stuart & Brown lien had attached would have had ~~a right to redeem~~. and by virtue of this right of redemption in the heirs, it is claimed that Gates can levy his Execution which is not against either the heirs or John Turney If this lot had never been sold on the Stuart and Brown Judgement, but stood as it did the ~~and by virtue of that levy take away the right of said heirs~~ day Turney died this execution on the Gates Judgement could not be levied upon it, and the right to

He could as well take away the right of a purchaseor from Turney who bought of Turney the day before his death subject to the Cleno sale only, for the heirs occupy precisely the same position

The Judgement of revival in favor of Gates, and the said Execution issued thereon, as to this lot and its legal owner, being a nutity and void could not confer any right whatever to this property either by redemption or sale. and consequently

Levy on the property to be redeemed is an indispensable requisite in the right to redeem

except the lien of the Stuart & Brown
Judgement. No legal proceedings had ever been addopted to subject
this property in the hands of the heirs to the payment of that Judgement
, and on the day Gates revived his Judgement and took out execution and
levied it on the property. the title of said property stood in the same
position that it would have stood, if no proceedings had ever been had
under the Stuart and Brown Judgement. all said proceedings being void
Then when Gates paid his money to redeem from the Stuart and Brown
sale, he threw his money away, for that sale and every thing about
it being void. Gates obtained no additional rights by his redemption
and so far as his right to sell said property on his execution depe-
=nded on said redemption his said right was a total failure, and
if Gates would not have had right to levy his execution upon this
lot and sell it independant of said redemption, then he would
have no right to sell it at all. and the question whether this revived
Judgement, or the original Judgement before it was revived, gave Gates a
right to redeem makes no differance in this investigation. and consequently
Gates was thrown back upon the rights growing out of his own Judgement unaided
by the Stuart and Brown sale and his subsequent redemption

Could Gates levy his execution issued upon his revived Judgement upon this
lot then belonging to other persons not parties to this Judgement and execution
We have shown most conclusively that he could not. and the Supreme Court
has decided that he could not have had an execution at all on this revi-
=ved Judgement. and this being the case the whole proceedings against this
this property (the sale to young and all) was void and Young got no title thereby

any more than he would have had if he had bought the property of any other stranger to said Judgement and Execution that might have been sold Pierson

Young got no right by his purchase under the Gates Execution and he has not now any title to said lot but is a trespasser and wrong doer by retaining possession

There is another view of this subject so far as the title of Young is concerned

It has been shown that the sale under the Stuart & Brown Judgement under which Gates redeemed, and which is the foundation of ~~his title~~ Gateses right to sell on his execution was totaly void the Execution having issued against a dead man without authority

When Turney died in 1844. This land decended immediately to his heirs who became the absolute owners thereof freed from all liens and Encumberance except the lien of the Stuart & Brown Judgement. No legal proceedings had ever been addopted to subject this property in the hands of the heirs to the payment of that Judgement, and on the day Gates revived his Judgement and took out execution and levied it on the property. the title of said property stood in the same position that it would have stood, if no proceedings had ever been had under the Stuart and Brown Judgement. all said proceedings being void Thus when Gates paid his money to redeem from the Stuart and Brown sale, he threw his money away, for that sale and everything about it being void. Gates obtained no additional rights by his redemption and so far as his right to sell said property on his execution depended on said redemption his said right was a total failure, and if Gates would not have had a right to levy his execution upon this lot and sell it independant of said redemption, then he would have no right to sell it at all. and the question whether this revived Judgement, or the original Judgement before it was revived, gave Gates a right to redeem makes no differance in this investigation. and consequently Gates was thrown back upon the rights growing out of his own Judgement unaided by the Stuart and Brown sale and his subsequent redemption

Could Gates levy his execution issued upon his revived Judgement upon this lot then belonging to other persons not parties to this Judgement and Execution we have shown most conclusively that he could not. and the Supreme Court has decided that he could not have had an execution at all on this revived Judgement. and this being the case. the whole proceedings against this this property (the sale to young and all) was void and Young got no title thereby

from her son John who died since his father, she inheriting childs part for herself and one for her deceased husband and there being 5 children with John which gave John this 1/5 and there being four surviving Children ~~which added to the shares of~~ each taking one share while

42-150

Joel Reeve
vs } Ejectment
Do Davis Co Cir Co
Allexander Young

Opinion by
Murray McConnel

Filed May 28. 1859
L. Leland
Clerk

the mother takes two shares
of the two parents, divides John's intrust into six parts
and his mother takes two and each of the children one
of said parts, each of said children has 1/6 of 1/5 of the whole
lot and the mother has 2/6 of 1/5 of the whole lot
McMcConnel

Nancy J Turney Et al
vs
Alexander Young

Appeal from Jo Daviess.

The first question in this case is, was the sale of the premises to Elsing upon the execution issued on the Stuart & Brown judgement a valid sale. I call the attention of the Court first to Section 2 of the Act of 1825 Real Estate Statutes 329

What is the construction to be given to this ~~act~~ Section. I say it means that when a judgment has become a lein and has not been satisfied by execution that the remedy to the plaintiff in such judgment shall not be delayed by reason of the non age of the Heirs If by this Section the Legislature ment to give priority to a judgment upon which no execution had been issued over one in which an execution had been issued there must be some reason for it

Take two judgments rendered on the same ~~day~~ day against the same man for illustration. One takes an execution but fails to find property to satisfy it and it is returned. The other fails to take an execution. Now the first judgement has become a lien for seven years upon all the Real Estate. The other has not become a lien at all. The defendant dies. Now will it be contended that the Legislature intended to postpone the judgment of the man who had been actively seeking to collect his judgement and

had made it a lien upon the Real Estate of defendant to the judgment of the man who had slept upon his rights and whose judgment was no lien at all

To give the construction to this section contended for by appellant would be to nullify and destroy the section because 1st the lein specified in the section is the lien specified in the first section of the act "When any judgment has become a lien as aforesaid" says the act Besides there was no common law lien of a judgment simply. The lien attached upon law upon the issuing of the elegit and related back to the commencement of the term at which the judgment was rendered. This lien then was the lien given by the first section of the act. That section makes judgments a lien only upon the issuing of an execution within a year "The Statute says judgments shall be a lien "Provided that execution be issued within one year on such judgment If execution be not issued within one year the judgment is no lien. The 2nd Section provides that in case of the death of defendant execution shall not issue within one year and consequently there can be no lien under the first section of the act and the law becomes wholly inoperative— The only judgment which can have a lien under such circumstances is the one upon the one upon which execution has been issued and returned and this judgment has a lien for seven years. Will the Court postpone this lien for the claim of a dormant

judgment which has no lien. Plaintiffs Counsil answer in effect this. that the man who has issued his execution and had one chance to make his money should be postponed to the man who has had no chance by execution to make his money

This may be ingenious but not sound - Suppose judgments are rendered in favor of A & B. at the same term against the same defendant A issues an execution B does not. A's execution is returned unsatisfied because the defendant has no property subsequently and within the year defendant acquires property and dies shall the Judgment of A be placed in a worse condition on account of his diligence than the judgment of B If it be said that B is only to be allowed to perfect the lien to be equal with A. I answer. He could only perfect the lien by issuing his judgment within a year and this the law expressly says he shall not do -

The obvious meaning of the law therefore is That he who has a judgment lien created by the issuing of an execution in accordance with section one shall not be delayed &c

If the construction contended for by Appellant be correct what was the object of the act of Feby 25th. 1843 Real Estate Statutes 348.

And was it intended by the act of 43 to place judgments upon which no executions had been

issued in a far better position than judgments which had become a lien by the issuing of an execution within one year.

II That the judgment rendered upon the Scire Facias issued upon the Gates judgment was not wholly void on account of variance and that it cannot be attacked in this collateral action is so fully sustained in the authorities cited in my printed brief that I shall not discuss it here

III The only remaining question is was this judgment which was revived by the Scire Facias such a judgment that the premises in question could be redeemed under it.

It is insisted that it is not for two reasons

1st The Heirs not being served with a Scire Facias. The judgment when revived did not become a lien upon the premises

2nd That the rights of the Heirs cannot be effected by a proceeding to which they were not parties

To this I answer- 1st The Statute providing for redemption is a remedial Statute and should be construed with the utmost liberality

Van Rensellar vs Sheriff 12 Cowan 510

People vs Fleming 4 Denio 144

2nd This court has decided that a judgment may be revived

by a ~~judgment~~ Scire facias against the Administrators
2nd Gilman 216

This then was a judgment and the owner thereof was a judgment creditor and clearly within the words of the Statute which authorizes redemptions

Purples Statutes 644 Sec 14

But it is said it would be wrong to give that construction to the Statute because the judgment is not a lien and the rights of the Heirs might be injuriously affected

But there is this plain answer the judgment need not be a lien to authorize a redemption. This has been repeatedly and distinctly decided by this court

People vs Cotton 14th Ills 413
Sweezy vs Chandler 11th Ills 449

Nor does the redemption effect the rights of the Heirs of Turney in any possible manner because at the time of the redemption they had no interest in the premises. If the sale under the Stuart & Brown judgment was a valid sale, the twelve months having elapsed from the day of sale Turneys Heirs had no interest whatever in the premises and therefore are in no manner injured by the redemption

McLagen vs Brown 11th Ills 522

If the the Redemption affected Turneys Heirs at all it was

by satisfying a judgment out of Real Estate in which they had no interest which must else have been satisfied out of personal property in which they had an interest for the judgment having been properly revived against the Administrator might properly have been satisfied out of the personal estate

IV Smith who was the owner of the certificate of sale at the time the redemption was made had become possessed by virtue of the sale and the assignment of the certificate to him of all the rights which Turneys Heirs had in those premises prior to the sale and prior to the expiration of the twelve months thereafter.

Among these powers which once were in the Heirs of Turney and which were transfered to Smith by the sale and certificate was the right to waive all objections to the regularity of the redemption. This was a right which ran with the land.

Smith did waive all objection to the regularity of the redemption by receiving and retaining the redemption money

Bank of Virgenes vs Warren 7th Hill 93
Merry vs Bostwick 13th Dlls 411
1st Greenleaf on Ev. Sec 211
3rd Hill 218

Turneys Heirs were divested of ale right to the premises and the precise right which they had was vested in

Smith, would they not have had the right before the expiration of the twelve months to have waived all objections to the regularity of the redemption. This right Smith who stood in their place after the twelve months had expired has exercised

B. Co. Cook
For Appellee

42-150

Nancy J. Turney Et al
vs
Alexander Young

42 150

Argument for Appellee

Filed May 28. 1859
L. Leland
Clerk

The Heirs of John Turney, dec.d
vs
Alexander Young

It is admitted in this case that the title to the land in controversy is in the plaintiffs, through their ancestor, John Turney, unless the facts agreed upon takes said title from said Heirs - Which facts are in substance as follows —

John Turney died in March, 1844, In the same month, Letters of Administration were granted to his widow.

Stewart & Brown had an unsatisfied judgment in the Jo Daviess Circuit Court, against Turney, upon which an execution had been issued within a year after the judgment was rendered, which judgment it is admitted had a lien upon this lot in controversy, commencing in October, 1842.

This judgment was never revived either against the Admr. or Heirs of Turney, but the plaintiffs, Stewart & Brown, in March 1845, served a notice upon the Admr. of John Turney, dec.d, and on such proceeding had an execution issued against the lands and tenements of John Turney, who was then dead, and sold said lot to one Clymo, who paid the amount of said judgment.

At the time of the death of John Turney, there was another judgment in the same Circuit Court against him, in favor of one A.B. Gates rendered on the 29th of March 1842; upon which no execution had ever been issued, and, consequently, was no lien upon said lot — See Turney vs Gates, 12th Illinois 141.

This Gates' judgment on the 27th of October, 1846 was revived by Scire facias, against the Administratrix, and, consequently, against the assets in her hands to be administered. The Heirs of Turney were not made parties to this proceeding, and thus this judgment was not revived against them or against the real estate of Turney, although the Court without jurisdiction or authority of law made an order that execution be issued against the Administratrix, and be levied upon the lands of Turney, deceased.

Execution was issued upon this judgment rendered against the Administratrix, and levied on the lot in controversy, and under this proceeding this lot was redeemed from Clymo, the purchaser under the Stewart & Brown Execution, and the lot again sold under the Gates execution which was issued against the Administratrix, and a deed made by the Sheriff, which is the title here set up by the defendant, Young, against the admitted legal title of the Heirs of John Turney, dec'd.

The first question presented is — Was the Stewart & Brown Execution and sale valid, or was the proceeding a nullity, and void, as well against the Heirs of Turney, as every body else? It will not be asserted that Stewart & Brown had a right to sue out an execution against a dead man, and sell the lands of his Heirs — This has been decided by this Court — See brief —

It will be remembered by this Court that the Revised Code of 1845 did not go into effect until the 10th day of September 1845, (See Chap 90 — Sec. 37. page 473 of said Code) Consequently any Statute therein incorporated which was not in force prior to the revision, was not a law of this State until on and after the said 10th day of September, 1845.

The only Statute in force at the time the notice was served by Stewart & Brown upon the Administratrix of John Turney — Court on the 29th day of March, 1845 — authorizing notice to be served in any case, was a Statute passed and approved in 1843 (See session laws of 1843), and that Statute did <u>not</u> apply to a case of this kind — The language of that Statute is as follows "Whenever a "judgment has been, or may hereafter be obtained in "any Court of record of this State, against any person, or "persons, who has, or shall after the rendition of said judgment "<u>and before</u> execution has issued thereon, die", &c

The judgment of Stewart & Brown was entered against John Turney in November, 1842. On 23d December, 1842 a regular

execution was issued on the said judgment. This was all done before the death of John Turney. This proceeding by notice could not have been had without the existence of a statute law authorizing it. It is a proceeding giving a new remedy, and not contemplated by the common law, and must therefore be construed strictly. It must be construed literally, as it reads, and no latitude or inference should be indulged. The meaning of this law of 1843 is not ambiguous, the reading of it is plain. It was intended to apply to a case where a person against whom a judgment had been rendered, died before execution had been issued, so that the creditor might not lose his lien by the death. The law of 1843 mentions no other case, and no other kind of case is intended by it, except the kind mentioned. In the case of Stewart & Brown against Turney, execution was issued before the death of Turney. The plaintiffs' lien was perfect, and was in no danger of being lost by the death of Turney. The statute of 1843 did not include judgments upon which execution had been issued within the year — as in Stewart & Brown's case — for such needed no legislation to enable the party to perfect his lien, for, after the issuing of the execution within the year, his lien would continue for seven years, which would afford ample time to revive the judgment against the Heirs and Legatees.

It is quite clear that this proceeding by notice could

not be had without a statute expressly authorizing it; it is equally clear that there was no such a statute in existence to authorize the proceeding in such a case as that of Stewart & Brown. Their case is not one embraced in the Statute, and their proceeding was wholly unauthorized by it, consequently, the Execution issued by them against a dead man's estate was absolutely void.

We have nothing to do with any law in the Revised Code of 1845, not in force prior to that revision. That revision went into force in September 1845. The proceedings above mentioned all took place prior thereto, so that the Revised Code can effect them in no way. It is not the province of this Court to inquire why the compiler of that Code, or a different legislature, saw proper to alter the terms of the law of 1843 respecting notice. The law of 1843 is the one that governs in this case, if any, and that law clearly contemplated no such a case as that of Stewart & Brown's.

It can be easily imagined how the attorney of Stewart & Brown was misled. Immediately after the Revised Code was approved by the Legislature & Executive, towit on the 3rd. of March 1845, Mr. Brayman the compiler of that code scattered the sheets of the volume all over the State for sale, of course every lawyer obtained them as speedily as possible. It is very probable that the attorney of Stewart & Brown having before him this Revised Code

proceeded under the 37th section of the chapter of "Judgments & Executions", without supposing that said code would not go into operation until September following; he could not, certainly, have attempted to proceed under the law of 1843 for the very notice itself, shows plainly that such could not have been the case. The notice itself shows that his case was not embraced by the Statute of 1843, for he sets out in the notice that "Execution was issued thereon within one year" &c when the Statute applies only to a case where no execution had been issued. ✳

We say, therefore, that the proceeding under this notice by Stewart & Brown, the Execution and sale, were without any authority of law, and being against the estate of a dead man were absolutely null and void, and ~~this~~ the validity of these proceedings being absolutely necessary to sustain the title of the Defendant herein, his title must fall with them; but this leads us to the examination of the question — Supposing the Stewart & Brown Execution, levy and sale never existed (which, in law, is the fact) can Young's title be sustained without them? Could Gates by virtue of his judgment of revival against the personalty in the hands of the Administratrix, sue out Execution thereon and levy upon, and sell the land of the estate, and bind the Heirs of Surney thereby? It is clear he could not.

✳ That the attorney of Stewart & Brown was acting, or rather attempting to act, under the 37th section mentioned of the Revised Code of 1845 is unquestionably the case; and it is equally certain that said law was not in force at the time he so attempted to use it.

This judgment of Gates was not a lien upon the land. It had no preference over any other simple contract debt, and could only be paid out of the assets in the hands of the Administratrix, in due course of administration. This question in this very case was decided by this Court and judgment reversed— See Turney v Gates 12 Illinois 141— The court there decided that Gates was not only not entitled to an execution against the real estate, because he had no lien thereon, but that he was not entitled to an execution at all on said revived judgment against the administratrix of Turney; consequently his execution was a nullity and void. It was not such a judgment upon which an execution could issue; it was nothing more than the record of the proof in a Court that said Gates' judgment was due and unpaid, and had the same force— and nothing more— as the filing and proof of a claim against an estate before a Court of Probate, upon which no execution, of course, could ever issue.

This execution being void, and issued without the authority of law, could not be used to Enable Gates to redeem from the Stewart & Brown sale if said sale had been legal, and not void.

It may be contended that, although this Gates' judgment had no lien upon the land, yet it was a judgment sufficient to authorize a redemption. It is not contended that to authorize a judgment creditor to redeem under our Statute that his judgment must have, in all cases, a lien upon the land. That is not the point contended for in this case. Here the judgment of Gates was against a deceased debtor

without lien on land, and by the law of this State Gates was remitted to the assets in the hands of the administrator to take his dividends with other creditors, and he cannot be permitted to use his judgment that had no lien, to redeem under a judgment that had a lien, and attach thereto his simple contract debt, and thus recover of an estate totally insolvent, the whole of his debt to the exclusion of all other creditors standing in the same degree — See 3d Gilman 490 — 4th Gilman 285 —

Another objection to this proposed redemption is, that to enable a judgment creditor to redeem he must have an execution levied upon the land to be redeemed (Rev. Stat. 1.14. p 302) Now here was a judgment upon which no execution could be issued, and if one did issue upon it, the same would be void. Thus it is clear that Gates was not such a judgment creditor as was contemplated by said section 14 of Rev. Stat. page 302. He could not have a legal execution.

It may be contended that this execution in favor of Gates against the lands and tenements of John Turney, deceased, upon a judgment against Nancy J. Turney, although wrongfully and illegally issued is a good Judicial writ, and was justified by the order of the Court, and both the judgment and the order, and the writ, are voidable only, and not void, and until avoided are good and binding. To answer this it is only necessary to refer to the judgment of revival of Gates vs Turney, and see what jurisdiction the Court had in that case.

The proceedings were to revive the judgment against

the Administratrix — nothing more. This was all that was before the Court, or over which it had jurisdiction; all the Court had power to do was to order the judgment to be revived against the Administratrix. That was all the Defendant was notified would be demanded. The Court had no power or jurisdiction to adjudge what should be the effect of that judgment of revival, or whether an execution should be issued at all, or, if issued, to order what it should be levied upon. It is no part of the judgment of any Court to order an execution to be levied upon any particular property. All that, is the act of the officers under the law. The judgment in the above case reads — "Revival on scire facias "of the above judgment of Gates vs Turney — ordered execution "against the goods and chattels, lands and tenements of "said John Turney deceased". Now, the only part of that judgment which is valid is the order of revival. The balance was about a subject matter not before the Court and over which said Court had no jurisdiction, and therefore said order for execution, and upon what it should be levied, was null and void — not voidable only, but void for want of jurisdiction in the Court over the land subject matter of said order, and over the owners of said land, none of whom were parties to that proceeding; and they are no more bound by it than any other Strangers would be, if the Court had ordered the execution to levied on any of their land.

Another fatal objection exists to this claim for redemption - It is this - The party claiming the right to redeem must have a judgment rendered against the same defendant, as was the judgment in the former sale under which he seeks to redeem.

The redeeming judgment, and the former or first judgment must be against the same parties, and that party must be the owner of the land to be redeemed.

In this case the first judgment under which the land was sold was against John Turney, the owner of the land. The second judgment under which Yates claimed the right to redeem was not against John Turney, but was against Nancy J. Turney, who had no interest whatever in the land. It is true Yates had a judgment against John Turney, but upon this judgment he did not, and could not get an execution, consequently he could not use that to redeem the land from the sale of Stewart & Brown.

From this examination no other conclusion can be arrived at than that the Yates' execution, & levy and sale under it like Stewart & Brown's sale, were totally void. It is also clear that whatever may be the condition of the Yates judgment and execution, inasmuch as the levy and sale under it was entirely based upon the validity of the execution and sale of Stewart & Brown, and that being shown to be void, of course, as it falls, the Yates superstructure must necessarily fall with it; and if either fails the title of the defendant fails also.

There is another question upon this record to which the attention of this Court is especially called.

The judgment offered in evidence in this case in favor of Gates, and relied upon by the defendant appears to be for $161. 65 - The scire facias was issued to revive a judgment for $180. 46. The judgment of revivor was upon and for this last judgment, and no judgment of revival was ever made for the real judgment of $161. 65. No appearance was entered in this last case, and the judgment was rendered by default. It is now pretended that this was a mistake of the Clerk; that he recited the wrong judgment and a wrong sum; and all this the Court below permitted the defendants to prove orally in Court upon the trial, and thereby admitted this false record as evidence of the record relied upon. Now suppose it was a mistake of the Clerk was it not such a mistake as vitiates the whole proceeding.

There is no principle of law better settled than that a scire facias to revive a judgment must strictly pursue the terms of the judgment to be revived — see 6 Term R. 1.

There is a gross error in admitting this judgment of revival. It appears to be a different judgment than the one originally rendered against Turney. But the Clerk is admitted to testify as to his inferences how the mistake occurred, and thus supply the record. What is the record of a Court? Is it the inferences and recollections of a Clerk? If so, then when the Clerk dies or forgets, the record is lost. It is said that this is a mistake of the Clerk which the Court may amend

at any time. How did the Court know that the record did not tell the truth, and that it was a mistake? It was only known by admitting this illegal evidence, collaterally, which made a new and different record. How did the plaintiffs get the information, to which they had a right before they sued in this case, that there record judgment, and Scire facias for $180.46, against nobody knows who, was, really, a revival of a judgment of $161.65 against Cheney. It is said the record could be amended. It cannot be amended on this trial; and before it can be amended, the proper proceeding must be instituted, and all parties interested notified, and until it is so amended, this false record is not admissible as evidence in any case. Its falsity appears upon its face, and the Court was bound to have rejected it.

It is further contended that Young, the Defendant herein, is a stranger to all these defects, and is an innocent purchaser, and, as such, is entitled to the protection of the Court. To not this assumption at once it is only necessary to refer to well settled principles, and to the facts of this case. The principle is this— If I claim title to a tract of land, which is claimed by another, and I can trace my title through a chain of conveyances, or evidences of title without finding or being notified by anything, in any part of my chain of title of the existence of the right of my adversary,

I may claim as an innocent purchaser, without notice, and the onus of proving notice to me will rest upon my adversary.

Let us now see if there is anything in the chain of title through which Young claims giving him notice of the defects in his title here insisted upon. Young claims through the redemption of the sale under the Stewart & Brown judgment. He was therefore bound to take notice of the total want of authority to issue an Execution against John Turney, after he was dead — the notice of his death appearing upon the record itself of said Execution and sale.

Again, Young claims through the Execution and sale upon the Gates judgment against Nancy & Turney. He had therefore full notice of the facts — First — That said judgment of Gates had no lien upon said land. Second — That Turney, the defendant, was dead. Third — That the judgment and Executions under which he claimed was against Nancy D. Turney, and not against the Heirs of John Turney, who owned the land. Fourth — That the Heirs of Turney were not parties or privies to any of those proceedings, and not bound thereby.

The case of Gilman vs Hamilton & others, decided by this Court a few years ago, about the Blackburn lands is full and conclusive authority upon this subject. There Coffin set up that he was an innocent purchaser and the Court decided that he was bound to know

and take notice of all the defects that appeared in the original Chancery proceedings, through which the Illinois College (from which Coffin purchased) got the lands— that said defects appeared in his chain of title, and therefore he had notice thereof.

I will suggest another point in this case and close.

Suppose the proceedings in this judgment and execution in favor of Yates against the estate of John Turney were regular. Was it possible to sell the lands, and bind the Heirs of Turney by the sale without either reviving, or obtaining a judgment against them, or giving them their day in Court to show cause why said land so descended to them from their Father should not be sold to pay this debt. We contend that said Heirs are not bound by said proceedings and sales.

This Court has decided an almost similar question in the case of Stone vs Wood, 16th Ill R. 177 to 183. There, was a judgment against the administrator, just as this is, only, that was in the Probate, and this in the Circuit Court. There, no execution could issue. Here, this Court has already decided that no execution could issue. There, the mode of executing that judgment was by applying to the Court to sell lands. Here, as we contend, the only mode of executing this judgment was to revive it by Scire facias against the Heirs, or to sue the Heirs as provided by our Statute.

The cases are exactly similar - There the Heir claimed the right to be heard in Court upon the subject of the sale of his land to pay the debt. He denied that he was concluded by the judgment, and this Court decided that he was not concluded, and that he had a right to be heard before his land should or could be sold to pay the debt claimed against his ancestor.

In this case there is no privity of blood binding the Heirs of Turney, for the revised judgment and execution under which the land was sold was not against their Father, but against a stranger to the title. There is no privity of estate because the judgment under which the land was sold had no lien upon the land when (on the 9th of March 1844) the land became vested in them by the death of their Father.

For these various reasons it is expected that the errors assigned will be sustained by this Court, and that the judgment of the Court below will be reversed, and that the principles of law governing this case, will be so laid down as to ensure the proper decision of the cause in the Circuit Court.

W. M. Cowan

For Plaintiffs in Error

Argument for
Appellant Finney
by
M. McConnell
—
Rec'd. July 26. 1859

Points & authorities by M. Hay.

The judgement against the Administration had no other effect or operation than that of a judicial ascertainment of the debt against the estate, No execution having been issued out within the year after its original rendition, the presumption of satisfaction, unless rebutted by Scire Fa, would have arisen against it, and hence to rebut this presumption it was necessary to revive the judgement but its revival gave it no other validity or effect whatever. It did not become a lien upon the estate real or personal of the intestate, nor could any Execution for any purpose rightfully issue upon it. There was no other way of obtaining satisfaction of the judgement than by filing it in the Probate Court as a claim against the estate to be paid in due course of Administration

Welch vs Wallace 3d Gil 490 - Cady et al Kelly 11th Gil 217 2d Scam 502 - 3 478 - 4th 403 - 1st Gil 491 - 8th Gil 127 - 12th Vel 142 -

The provisions of the Statute providing for the redemption of real estate by a judgement creditor, must be understood as applying to creditors whose judgements can be enforced by Execution against the debtor.

The Statute provides for the issuing of an Execution thereon, and for the levy thereof upon the land to be redeemed, Manifestly this cannot apply to a judgement upon which no Execution can be issued, and under which no land could be sold. all proceedings under such a judgement and Execution are absolutely void. 15th Vel 307 - 15th Ill 301

Nancy J. Forney et. al

vs

Alex. Young

Points & authorities by

Mr. Hay

Nancy S. Turney,
William A. Turney, et. al
vs
Alexander Young -

Error to So Daviess;

For the reversal of the judgment of the Court below we rely upon several points, among which are the following. We refer to the abstract and record for the facts of the case.

Error - 1st "The Gates judgment was no lien upon the lands of John Turney at the time of his death - no execution having issued thereon within a year & a day. This court has frequently decided that judgment creditors without a lien and simple contract creditors are upon the same footing, (see 12 Ill 142 & authorities there cited) consequently Gates being upon an equal footing only, with simple contract creditors could not by means of the proceedings had make the whole of his debt to the exclusion of his equals. He was only entitled to his pro rata distribution with other creditors. The order of court should have been that he be paid in due course of administration (12 Ill. 142). Reviving the judgment was only evidence of a claim against the estate, (that evidence having been destroyed by the failure to issue execution on the original judgment,) so that the claim might be filed for probate. No execution can issue against the estate of a dead man & such executions are void. see authorities in Illinois Reports cited by Mr. Hay.

Upon this point see the brief and opinion of Mr. Hay.

If the scire facias be against the Administra=
=trix, the judgment should be to be levied of the
assets in the hands of Adm^r.

5 B. Monroe 172.

Memorandum of opinion of J. Grimshaw

The Gates judgment was no lien on the land of the liens of Turney no execution having been issued it ceased to be a lien after a year from time it was entered.
It was revived vs Administratrix and not vs heirs the judgment of revival created no lien on lands of heirs it was res inter alios acta

If it was intended to continue the lien of original judgt. if one ever attached as against the heirs they should have been parties to the scire facias but as they were not the judgt vs

Abney created no liens on their lands.

The execution & levy issued on the judgment vs Mrs. Abney could not be used to sell the land of the heirs of Abney nor to redeem from a sale on a judgment vs John Abney



Supposing that the foregoing grounds cannot be maintained for the purpose of reversing this judgment, but which we insist are efficient, then

Error 2nd The land in controversy, upon the death of John Turney, descended to his heirs not charged with the judgment of Gates against Turney, the lien having been lost by reason of the failure of Gates to issue execution within a year & a day. This judgment was revived against the Administratrix and not against the heirs, who were not made parties, in any way, to the proceeding. This revivor created no lien on the lands of the heirs of Turney. No execution coned issue on such revivor against the property of the Heirs, & any execution which might have been so issued was a nullity and void. Under no circumstances coned the Heirs, or the property belonging to them, be charged with this judgment of revivor unless they had been made parties to the proceeding. They had the right to show that the original judgment had been discharged, or that no such a judgment existed &c, which they coned not do unless they were parties to the suit. This judgment of revivor was against the Administratrix personally. No execution coned issue thereon against the lands of another or others — as was done in this case against the property of the Heirs.

On this point see the memorandum of J. Grimshaw expressing his opinion.

Joints ~~& authorities~~ under "2nd"

"A sale of land under a fi fa which issued and bore teste after the death of the person who died seized, without any sci fa. against his heirs or devisees conveys no title to the purchaser & is void & the heir can maintain his action against him who enters under it.

{ Den ex dem' of Bowen vs M. Cullough
{ Taylor's North Carolina Term Reports 261.

{ 1 Devereux & Battle 356, Wood vs
{ Harrison.

1 Saunders Rep 219; Wheatly & Lane.

2 Fitz Herbert Natura Brevium 267 D.

The rule being that where a ~~party~~ new person not a party to the judgment derives a benefit by or becomes chargeable to the execution, there must be a scire facias to make him a party. 2 Saunders Rep 6. Note 1.

19 Barbour (N. Y) 498:

1 Cowen 611.

If a scire facias to revive a judgment against two heirs is served on one only a judgment against both will be void. Lynch & Saunders 9 Dana 59.

Administrator and heirs to be joined in a sci fa.

2 Gilman 110.

Land cannot be sold on execution after death of debtor unless the heirs be made parties by sci fa & this although the execution be an alias the original of which issued in lifetime of the debtor.

Wood vs Harrison 1 Devereux & Bat 356;

In all cases where the inheritance or freehold is affected the tenant of the freehold is to be made a party.

6 Bacon's Abr 114 side paging.

On death of Judgment debtor in order to have execution of his lands, the other party must proceed against the Heirs by scire facias. Foster on Scire facias 190 & following, This book is vol 42 of "Law Library, fifth series."

2 Tidd's prac 1171: 2 Inst. 395:

1 Williams on Exrs. 4th Edition 766:

Bacons Abr, title, sci fa.

An administrator even cannot sell property belonging to the estate to pay the debts of the estate without making the heirs parties to the proceedings, for the heir has a right to show that no such debts exist, or that they have been discharged &c.

Stone vs Wood 16 Illinois 177.

Hopkins v McCann 19 Ill. 113.

Error 2nd" — The original judgment obtained by Gates against John Durney on march 29th: 1802 was for the sum of $161.65. The judgment was revived for $180.46 an entirely different & a larger amount. It was upon this revivor that the execution issued upon which the property in controversy was sold. The judgment of revivor did not pursue the terms of the original judgment & this revivor was null, there being no such a judgment against John Durney. Even if it was a mistake of the Clerk the Court had no power to correct the mistake after judgment rendered on the sci fa.

"A variance in reciting a [redacted] judgment in regard to the "sum, as, where the judgment was for 23 £: 18 s; and "the scire facias recited it to be for 23 £: 10 s. & 8 d. and "so mistook the sum, is fatal and cannot be amended".

Croke's, Elizabeth, 855.

Comyn's Dig. title Bail, R, 2:

Mara vs Quin 6 Term Rep, 5:

Foster on Scire facias, 20, & 350, 371.

"So a sci fa on a judgment, where by mistake in the sci. fa. "the Plaintiffs name was put for the Defendants, Radalphus "for Jacobus; it was moved to amend, it being the fault of the "Clerk; this was denied by the Court for the writ does not appear "to us to be wrong, and there may be such a judgment for aught "we know." Bacon's abrid' title scire facias (D) 120.

"In sci fa on a judgment a variance in the
"sum is fatal under a plea of nul tiel record."

Porter vs Brisbane 1 Brevard (S.C) 456.

Wolf v Pounsford 4 Ham. 397.

In the case at bar judgment was rendered on sci fa by default. The proper parties were not summoned to appear & consequently could not plead.

Error 4th " Stewart & Brown recovered a judgment against John Turney on the 19th of November 1842 upon which execution was issued and returned by order of Plaintiffs, unsatisfied, March 28th " 1843.

John Turney died March 9th " 1844. Nancy A. Turney became administratrix on March 18th " 1844.

On March 29th 1845, the following notice was served on Nancy A. Turney.

" To Mrs. Nancy A. Turney, administratrix of John Turney, deceased.
" You are hereby notified that in the life time of the said John Turney,
" William A. Stewart & Peter L. Brown recovered a judgment against
" him for one hundred and sixty dollars debt, to be satisfied with
" $128.47, damages and costs, at the October term AD 1842,
" of the Jo Daviess Circuit Court, Illinois. Execution was issued
" thereon within one year thereafter, and returned unsatisfied,
" and the plaintiffs will apply for an execution thereon
" at the expiration of three months from the service of this
" notice, according to the statute in such cases made and
" provided. A. L. Holmes
" Galena, March 18, 1845. attorney for Stewart & Brown."

The foregoing notice was issued under a statute ~~passed~~ and approved February 20th " 1843 & to be found on page 168, & 9 of session laws of 1842-3. The Revised Statutes of 1845 did not take effect, & go into force until September 1845 (see Rev. Stat. page 473 sec 37.) This will to be borne in mind, for the statutes of 1843 & that of 1845 on this point are essentially ~~the same~~ different.

It was under the Statute of 1843 that the foregoing notice was issued. That act reads as follows; "Sec 1. Be it enacted by the People of the State of Illinois, "represented in the General Assembly, That where a "judgment has, or may hereafter be obtained in any court "of record in this State, against any person or persons, "who has, or shall after the rendition of said judgment, "die and before execution issues thereon, die, it shall "be lawful for execution to issue against the lands and "tenements of said deceased person or persons, without "first reviving the judgment against their heirs or "legal representatives; any thing in any law to the contrary "notwithstanding— Provided, however, the plaintiff or "plaintiffs in execution" &c shall give notice &c.

~~Which provides that~~ In the Statute of 1845 the words "and before execution issues thereon" are left out, but with that statute we have nothing to do, it not being in force at the time we are now speaking of.

The act of 1843, above quoted, declares plainly and without any qualification or ambiguity that a plaintiff may have execution on a judgment ~~after judgment but~~ ~~before execution issued~~ if the judgment debtor dies after judgment has been obtained, & before any execution has issued on the same. In the case under consideration an execution did issue in the life time of John Chorney & was returned by order of plaintiffs. This is even admitted in the notice itself. Under the proceedings had by virtue of the notice referred

to an alias execution was issued. This, we maintain could not be done. The statutes provides for no such a case. It only provides for a case where no execution has issued. This act was passed in order that a creditor might not lose his lien by the death of the defendant, & without any fault of his, and to give him a ~~simple~~ simple remedy to restore his lien; but where he has acquired a lien by issuing an execution in time, it is his own fault if he has not made his debt & the law was not passed to show favors to this class of creditors. His judgment, also, is a lien & he is not damaged as one would be who had a judgment & the defendant should die before he could get out an execution.

Moreover, this statutes is in derogation of the common law and gives a summary remedy, consequently it must be construed literally and strictly.

An act which is not ambiguous must be construed literally. We refer to the following authorities on this point,

"The Legislature did not intend to make any innovation on the common "law further than the case absolutely required. The law infers "that the Legislature did not intend to make any alteration "in the common law other than what is plainly expressed."

Dwarris on Statutes 695.

Statutes to be construed according to their words, and no hidden or supposed intention is to obtain. Where a statute is not ambiguous it is to be construed according to its words, and if it is defective must be left to the Legislature to remedy. Foley v People, Breese R. 81. 2 Cranch 358: Dwarris 703, 707.

Courts are not at liberty to exclude words from a statute, but are bound to construe them with reference to what plainly appears. Dwarris 718.

A statute which is to take away the common law ought never to have an equitable construction. A statute shall never have an equitable construction to overthrow an estate. Dwarris 729.

A power derogatory to private property, must be construed strictly & not enlarged by intendment. A statute which gives a new remedy ought not to receive a liberal construction By "new remedy" is meant summary proceedings, or deviation from the ancient mode. Dwarris 750

If an affirmative statute introduces a new law, and directs a thing to be done in a certain manner, that thing shall not be done in any other manner, even though there are no negative words. Dwarris 641.

Hobart 298 : Siderin 56 :

2 D. R. 395:

Words not to be strained further than they reach, but the case is to be considered an omission, which courts cannot supply, Dwarris 730.
" 711.

All acts which give a summary remedy & compel a man to part with his property must be construed strictly the power fully set forth where derogatory to the common law. Loffts Rep 439

Hale v Burton, Dudley. (George.) 105

A new remedy must be pursued strictly & excludes all others — Thurston v Prentiss 1 Mann (mich) 193.

Must be so construed that no word will be superfluous.

Hutchen v Niblo. 4 Blackford 148.

The foregoing are a few of the authorities that can be produced upon this point. It is useless to multiply them, for the court are well acquainted with the law.

This proceeding then by which an alias execution was issued in favor of Stewart & Brown not being within the statutes, was null and void; and consequently no redemption could be made from such a sale as was done in this case, in the name of Gates.

Wm A. Turner
Atty

42-150

Nancy S. Turney Et. al.

v

Alex. Young

Points & authorities by
Wm H Turney

including opinions &
authorities by M. Hay
& J. Grimshaw

Filed May 28, 1859
L. Leland
Clerk

1.

On the 13th day of March, being of the March Term, A. D. 1854 of the Circuit Court of Jo Daviess County, on the records of said Court appears the following entry:

33. Nancy J. Turney & William A. Turney, and Henry Turney, Mary E. Turney, Nancy J. Turney, Jr. Infants by Nancy J. Turney their next friend. } Ejectment.

vs.

Alexander Young

The plaintiffs by Wrigley & Jewett their attorneys come and

67. file their declaration & notice, and on their motion it is ordered by the Court, that the cause be docketed, and that the defendant be ruled to plead to the declaration within twenty days from this date.

On the 21st March, being still of the March Term, 1854 of said Circuit Court, appears of record the following entry:

Nancy J. Turney & Wm A. Turney & Henry Turney, Mary E. Turney, Nancy J. Turney, Jr. Infants by their next friend Nancy J. Turney } Ejectment

vs.

Alexander Young. } The defendant by Hooper & Lamphell his Attorneys comes & files his plea.

2

231 On the 31st day of August, being of the August Term, A. D. 1854 of said Circuit Court, appears of record the following entry:

Nancy J. Turney & Wm A. Turney, & Henry Turney, Mary E. Turney, & Nancy J. Turney, Jr. infants by ~~their~~ Nancy J. Turney, their next friend vs. Alexander Young } Ejectment.

Now at this day came the parties by their attornies, and upon issue joined, by agreement of the parties, by their attorneys, they waive the intervention of a Jury, and for trial put themselves upon the Court. And the Court, after hearing the evidence and arguments of counsel, takes the case under advisement.

On the first day of September, being still of the August Term, A. D. 1854 of

233. said Circuit Court, the following entry appears of record—

Nancy J. Turney & William A. Turney, and Henry Turney, Mary E. Turney, Nancy J. Turney, Jr. infants by Nancy J. Turney, their next friend vs. Alexander Young } Ejectment

The Court having

3 fully considered, and being fully advised, upon the issue submitted in this cause, finds the defendant guilty, of withholding from the plaintiffs the possession of the premises described in their declarations; and also finds the Estate established in the plaintiffs on the trial, to be an estate in fee simple, and the defendant, by his attorney moves the court for a new trial.

On the first day of September last aforesaid, being still of the August Term A. D. 1854 of said Court, appears of record the following entry:

Nancy J. Turney & William A. Turney, and Henry Turney, Mary E. Turney, & Nancy J. Turney, Infants by Nancy J. Turney their next Friends. } Ejectment.

vs.

Alexander Young.

The defendant, by his attorney withdraws his motion made for a new trial of this cause. It is therefore considered by the court that the plaintiffs have and recover of the defendant the possession of the premises described in their declarations, to wit: The East & upper half of lot number five (5) between Main and Diagonal Streets in the City of Galena, in the County of Jo Da-

237

4 vies, and State of Illinois; and that they have a writ of possession therefor. And it is further ordered and considered by the Court, that the plaintiffs have and recover of the defendants their costs by them about their suit in this behalf expended, and that they have execution therefor. And on motion of the defendant by his attorney, it is ordered by the Court, that this judgment be vacated under the Statutes, and a new Trial granted upon the payment by the defendant of all the costs of the cause; and said costs are accordingly paid now into Court by the defendant.

On the 4th day of December, A.D. 1854, being of the November Term, A.D. 1854 of said Circuit, appears upon the records thereof the following entry:

Nancy J. Turney, William A. Turney, and Henry Turney, Mary E. Turney, & Nancy J. Turney, Jr. infants by Nancy J. Turney their next friend } Ejectment.

vs.

Alexander Young.

Now at this day came the parties by their attorneys, and upon issue Joined, by agreement of the parties, by their attorneys, they waive the intervention of a Jury, and for trial put themselves upon the Court; and the Court, after hearing the evidence, and a part of the arguments of Counsel, the

5 further argument of counsel is postponed until to-morrow morning.

On the 5th day of December A.D. 1854, being still of said November Term, 1854 of said Circuit Court, the following entry appears of record:

326. Nancy J. Turney & Wm A. Turney, and Henry Turney, Mary E. Turney, & Nancy J. Turney, Jr. by Nancy J. Turney their next friend } Ejectment.

vs.

Alexander Gowen Jr.

Now at this day come the parties by their attorneys, and the Court after hearing the concluding arguments of counsel, takes the case under advisement.

On the 18th day of December, A.D. 1854, being still of the November Term, A.D. 1854, of said Circuit Court, appears of record the following entry:

378. Nancy J. Turney & Wm A. Turney and Henry Turney, Mary E. Turney, & Nancy J. Turney, Jr. infants, by Nancy J. Turney their next friend } Ejectment.

vs.

Alexander Gowen Jr.

The Court having fully considered, and being fully advised upon the issue herein finds for the defendant. It is therefore considered by the Court that the de-

6

fendant have and recover of the plaintiffs his costs by him about his defence in this behalf expended and that execution issue therefor.

On the 26th day of December, A.D. 1854,
393. being still of the November Term A.D. 1854, of said Court, appears of record the following entry:

Nancy J. Turney & Wm A. Turney, & Henry Turney, Mary E. Turney, & Nancy J. Turney, Jr. infants by Nancy J. Turney their next friend vs. Alexander Youngs. } Ejectment.

On motion of the plaintiffs by their attorneys, leave is granted them by the Court to prepare and file their bills of exceptions within twenty days from the rising of the present Term of this Court.

On the 12th day of March, A.D.
1855, being of the March Term, A.D. 1855 of the
412 said Circuit Court, appears of record the following entry:

Nancy J. Turney & Wm A. Turney, & Henry Turney, Mary E. Turney, & Nancy J. Turney, Jr. infants by Nancy J. Turney, their next friend vs. Alexander Youngs } Ejectment.

The plaintiffs by their attorney move the Court to vacate the judgment

heretofore entered in this cause under the Statute, and that the cause be docketed a= gain for trial

On the 27th day of March, A.D. 185-5, being still of the March Term, A.D. 185-5 of said Court, appears of record the following entry:

Nancy J. Tunney, et. al
vs.
Alexander Young. } Ejectment.

5-27. This day came the plain= tiffs, by their attorney, and moved the Court to vacate the judgment entered herein at the last November term of this Court, which motion being fully heard, by the Court, the same was allowed and a new trial granted upon payment of costs by the said plaintiffs, to which order of the Court the defendant by his attorney excepts.

5-29. On the 28th day of March, 185-5, being still of the March Term A.D. 185-5 of said Circuit Court, there appears of record the following entry:

Nancy J. Tunney, et. al
vs.
Alexander Young. } Now at this day comes the defendant by his attorney, and files his bill of exceptions to the ruling of this Court in vacating the judgment herein.

8

Bill of exceptions referred to in last recited entry:

Nancy J. Turney. William Turney
Henry Turney Marg. E. Turney
& Nancy J. Turney their next
friend

vs

Alexander Young.

Ejectment in circuit
Court- March Term AD 1855 Jo Daviess
County State of Illinois:

Be it remembered that
at the March term AD 1855 the said Plain-
tiffs by their Attorney came and moved the
Court to vacate the judgements for the Defend-
-ants heretofore entered of record in the
above cause, which motion is in the words
and figures following: to wit:

Which said motion was made for the rea-

9

-ation of said judgements without reference to the merits of said cause and without attempting to show any reasons or cause for the vacation of said judgements and without attempting to satisfy said Court that justice would be promoted and the rights of the Parties more satisfactorily ascertained and established by vacating said judgements and by granting a new trial in said cause - The defendants objected to the vacation of said judgements and to granting new trial in said cause upon the ground that judgement in said cause had been once vacated and a new trial granted under the Thirtieth Section of the Thirty Sixth Chapter of the Revised Statutes of Illinois upon judgements of cost and without cause shown upon the motion of the Defendants against whom a judgement on the former trial of this cause was rendered, and without reference to merits on the said former trial in said cause and defendant objected also upon the ground that no more than one absolute vacation of judgements without cause and without satisfying the Court that justice would be promoted and the rights of the Parties more satisfactorily ascertained and established thereby can legally be had in said cause and upon the ground that the motion now made is not made for reasons or

10

cause shown for new trial in said cause and is not addressed to the legal discretion of the Court but is made and insisted upon as a matter of absolute right to vacate said judgement upon payment of costs under and by virtue of that part of the thirtieth section of said Thirty Sixth Chapter of the Revised Statutes of Illinois which is as follows, to wit: "The Court in which "such judgement shall be rendered at any" "time thereafter upon the application of the" "Party against whom the same was" "rendered, his heirs or assigns and upon" "the payment of all costs and damages" "recovered thereby shall vacate such" "judgement and grant a new trial" in said cause,"

The Court overruled the objection of said defendant and decided that said judgement be vacated and a new trial granted upon payment of costs in said cause under and by virtue of that part of said Thirtieth Section of the Thirty Sixth Chapter of said Revised Statutes, which said part of said Section is herein above set forth to which decision of the Court in vacating said judgement and granting new Trial in said Cause said Defendant then and

11

thereexcepted and prays that this his Bill of exceptions be made a part of the Record in said cause which is accordingly done

Benj R. Sheldon [Seal]

Filed March 28th 1855
Wm B. Gross Clerk
" " "

On the third day of November, 1856, being of the October Term, A.D. 1856 of the Circuit Court aforesaid, there appears of record the following entry:

Nancy J. Turney, et. al } Ejectment.
vs.
Alexander Young.

By agreement of the parties by their attorney, it is ordered by the Court that this cause be continued generally.

On the 28th day of November, 1857, being of the October Term, A.D. 1857 of the said Circuit Court, there appears of record the following entry:

Nancy J. Turney, et. al. } Ejectment.
vs.
Alexander Young.

Now at this day came the

02

the parties by their attorneys, and by agreement they waive the intervention of a Jury and for trial put themselves upon the Court upon an agreed statement of facts; and the Court, after hearing the evidence and part of the arguments of Counsel postpones the further hearing of this cause until Monday Morning.

On the 30th day of November, 1857, being still of the October Term, A.D. 1857, of said Circuit Court, there appears of record the following entry:

P. 121.

Nancy J. Turney, et. al
vs.
Alexander Young
} Ejectment.

Now at this day came again the parties by their attorneys, and the Court after hearing the remainder of the arguments of counsel, takes the case under advisement.

On the first day of December, 1857, being still of the October Term, A.D. 1857, of the Circuit Court aforesaid, there appears of record the following entry:

Nancy J. Turney, et. al.
vs.
Alexander Young.
} Ejectment.

Now at this day came again the parties by their attorneys,

125-
13

and the Court having fully considered of and being fully advised in the premises, finds the issue for the defendant, to which the plaintiffs by their attorney excepts, and moves the Court for a new trial, which motion is overruled by the Court, to which the plaintiffs by their ~~Counsel~~ attorney excepts, and come and file their bill of exceptions, which is signed by the Court. It is thereupon considered by the Court that the plaintiffs take nothing by their ~~writ~~ suit, herein, and that they pay the costs of this proceeding, and that execution issue therefor.

15

State of Illinois
Do-Davies County } ss. In the Circuit Court
of the March Term A.D. 1854.

Nancy. J. Burney and William. A Burney by Wigley & Dewitt, their Attorneys and Henry Burney Mary. E. Burney, Nancy. J. Burney Jr. Infants by Nancy. J Burney, their next friend, complain of Alexander Young. Defendant in this suit in a Plea of Trespass and Ejectment

Declaration — For that whereas the said Plaintiffs on the first day of February in the year of our Lord One Thousand, Eight Hundred and forty Seven (1847) were possessed in fee of the following described Land and Premises, to wit: The East or upper half of Lot No Five (5) between Main & Diagonal Streets in the City of Galena in the County of Do-Davies and State of Illinois - and the said Plaintiffs possessed of the same, on the day and year aforesaid and being so possessed; the said Defendant afterwards, to wit, on the day and year aforesaid with force and arms Entered into the said Land and Premises, and unlawfully withheld from said Plaintiffs possession thereof to the great damage of the Plaintiffs: Wherefore the said Plaintiffs say they are injured and have sustained damage to the amount of One Hundred Dollars and therefore they sue &c.

And whereas also, heretofore to wit - on the day and year aforesaid, William. A. Burney. Henry Burney, Mary. E. Burney and Nancy. J Burney Jr

16 were possessed in fee of a certain other piece or parcel of Land described as follows, to wit. The East or upper Half of Lot No Five (5) between Main and Diagonal Streets, in the City of Galena, County of Jo. Daviess and State of Illinois, excepting two seventhes of an equal undivided fifth part of said premises, and the said Plaintiffs possessed the same in the day and year aforesaid, and being so possessed, the said Defendant afterwards, to wit, on the day and year aforesaid with force and arms entered into the said Land and premises, and unlawfully withheld from said Plaintiffs, possession thereof, to the great Damage of the said Plaintiffs. Wherefore the said, Plaintiffs say they are injured and have sustained damage to the amount of One hundred Dollars and therefore they sue, said William A. Burnett by Wesley Sewell his attorneys and said Henry Burnett, Mary E. Burnett & Nancy S. Burnett By by their next friend Nancy S. Burnett.

And for that whereas also heretofore to wit, on the day and year first aforesaid, at the County aforesaid, Nancy S. Burnett was possessed in fee of Two undivided Seventh Parts of one Equal undivided fifth part of a certain other piece or parcel of Land known and described as follows to wit: The East or upper Half of Lot No Five (5) between Main & Diagonal Streets in the City of Galena, County of Jo. Daviess and State of Illinois, and the said Plaintiff possessed

of the same on the day and year first aforesaid -
and being so possessed the said Defendants afterwards
to wit - on the day and year first aforesaid with
force and arms entered into the said Land and
Premises and unlawfully withheld from said Plaintiff
possession thereof to the great damage of the said Plaintiff
Wherefore the said Plaintiff says that she is injured
and hath sustained damage to the amount of one
hundred Dollars, and therefore she sues &c

Wigley & Dewitt
Atty's for Pltff.

To Alexander Young

Sir. You will please take notice
that on the first day of the March Term of the Circuit
Court of Jo Daviess County, Illinois to be holden at the
Notice. Second Monday in March next, at the City of Galena
I will file in said Court the Declaration in Ejectment
a copy whereof is hereunto served upon you, and
upon filing the same shall move said Court for a
Rule upon you to appear and plead to said Declaration
within Twenty days thereafter, and that if you neglect
so to appear and plead, a Judgment by Default
will be entered against you and the plaintiffs will
recover possession of the premises

Dated at Galena
March 8. A.D. 1854

Wigley & Dewitt
Atty's for Pltff

18 State of Illinois }
Jo Daviss County } ss.

John W. Jewett being first duly sworn, according to Law, on oath, states, that he is a member of the Firm of Bagley & Jewett, Attorneys at Law and that said Bagley & Jewett have received written authority from Nancy. J. Turney. William. A. Turney and Henry Turney, Mary. E. Turney and Nancy. J Turney Jr, Infants, by Nancy J Turney their next friend, to commence an action of Ejectment against Alexander Young to recover the East half of Lot No 5 (five) between Main and Diagonal [illegible] in the City of Galena, Jo Daviss County. Illinois

Affidavit of authority.

Subscribed and Sworn to. John. W. Jewett
before me this 8th day of March
A. D. 1854, Henry. Clark. J.P.

State of Illinois }
Jo Daviss County } ss. William Meighen

Affidavit of Service.

Sheriff of Jo Daviss County Illinois personally appeared before me and after being duly sworn, according to Law, says that he served the foregoing declaration notice and affidavit by delivering a true and correct copy of Each to Alexander Young the within Defendant, therein named, on the 9th of March 1854.

Sworn to & subscribed before me this
9th day of March. 1854. Wm. Meighen Sheff
J. D. C. Ill.

Wm. H. Bradley. Clk.

of the same on the day and year first aforesaid -
and being so possessed the said Defendants afterward
to wit - on the day and year first aforesaid with
force and arms entered into the said Land and
Premises and unlawfully withheld from said Plaintiff
possession thereof to the great damage of the said Plaintiff
Wherefore the said Plaintiff says that he is injured
and hath sustained damage to the amount of one
Hundred Dollars, and therefore he sues &c

Wesley & Dewitt
Atty's for Pltf.

To Alexander Young

Sir. You will please take notice
that on the first day of the March Term of the Circuit
Court of Jo Daviess County Illinois to be holden on the
Notice. second Monday in March next, at the City of Galena
I will file in said Court the Declaration in Ejectment
a copy whereof is hereunto served upon you, and
upon filing the same shall move said Court for a
Rule upon you to appear and plead to said Declaration
within Twenty days thereafter; and that if you neglect
so to appear and plead, a Judgment by Default
will be entered against you and the plaintiffs will
recover possession of the premises

Dated at Galena
March 8. A.D. 1854

Wesley & Dewitt
Attys for Pltf

18 State of Illinois }
Jo Daviess County } ss.

John W. Dewitt being first duly sworn, according to Law, on oath, states, that he is a member of the Firm of Bagley & Dewitt, attorneys at Law and that said Bagley & Dewitt have received written authority from Nancy J. Turney. Williams. A Turney and Henry Turney, Mary. E. Turney and Nancy. J Turney Jr. Infants, by Nancy J Turney their next friend, to commence an action of Ejectment against Alexander Young to recover the East half of Lot No 5 (five) between Main and Diagonal Streets in the City of Galena, Jo Daviess County. Illinois

Affidavit of authority.

Subscribed and Sworn to before me this 8th day of March A. D. 1854, Henry. Clark. J. P.

John W. Dewitt

State of Illinois }
Jo Daviess County } ss.

William Meighen Sheriff of Jo Daviess County Illinois personally appeared before me and after being duly sworn, according to Law, says that he served the foregoing declaration notice and affidavits by delivering a true and correct copy of Each to Alexander Young the being the Defendant, therein named, on the 9th of March 1854.

Affidavit of Service.

Sworn to & subscribed before me this 9th day of March. 1854.

Wm. Meighen Sh'ff J. D. C. Ill.

Wm H. Bradley. Clk.

Endorsed on Declaration

19. " Filed March 13. 1854

Wm H Bradley. Clk.

Alexander Young
ats
Nancy. J. Durny
and others

In the Daviss County Circuit Court
March Term A.D. 1854
Ejectment. Nar &c

And the said defendants G. Hooper & Campbell his attorneys comes and defend the force and injury when &c. And says he is not guilty of the said supposed trespasses and Ejectments above laid to his charge, or any or either of them in manner and form as the said plaintiffs have above complained against him and of this he puts himself upon the Country

Plea:-

Hooper & Campbell
Attys for Defts

And the said plaintiffs do likewise

Weigley & Dewitt.
for Plaintiffs

Endorsed on Plea

Filed March 21st 1854

Wm H Bradley Clk

20

William A Durney
Henry Durney
Mary E. Durney
Nancy D Durney Jr
Nancy D. Durney Sr
vs.
Alexander Young

Heirs at Law
of John Durney Dec'd

Ejectment

To Jo Daviess County Circuit Court
March Term 1854.

I Hereby acknowledge myself Security for Costs in the above entitled cause for Henry Durney, Mary E. Durney, Nancy D Durney Jr, three of the foregoing plaintiffs who are minors. And I acknowledge myself bound to pay or cause to be paid all costs that may accrue in said cause, either to the opposite party or To any of the officers of this court in pursuance of the Laws of the State of Illinois, I having brought this Suit as next friend for said minors, they being interested as owners in fee in said lot of Land.

Nancy D. Durney Sr

Approved
Wm H Bradley. Clk.

Endorsed on Bond
Filed March 13. 1854
Wm H Bradley. Clk

Endorsed on Declaration

19. " Filed March 13. 1854

Wm H Bradley. Clk.

Alexander Young
ats
Nancy J Durny
and others

In the Daviess County Circuit Court
March Term A.D. 1854.
Ejectment. Har de

And the said defendants G. Hooper & Campbell his attorneys comes and defend the force and injury when &c. And says he is not guilty of the said supposed trespasses and Ejectments above laid to his charge, or any or either of them in manner and form as the said plaintiffs have above complained against him and of this he puts himself upon the Country &c

Plea:-

Hooper & Campbell
Attys for Defts

And the said plaintiffs do likewise

Wigley & Dewitt.
for Plaintiffs

Endorsed on Plea

Filed March 21st 1854

Wm H Bradley Clk

20

William A Durney
Henry Durney
Mary E. Durney
Nancy D Durney Jr
Nancy D. Durney Sr
vs.
Alexander Young

} Heirs at Law of John Durney Decd

Ejectment

To Jo Daviss County Circuit Court
March Term 1834.

I Hereby acknowledge myself Security for Costs in the above entitled cause for Henry Durney, Mary E. Durney and Nancy D Durney Jr, three of the foregoing plaintiffs being minors. And I acknowledge myself bound to pay or cause to be paid all costs that may accrue in said cause, either to the opposite party or To any of the officers of this court in pursuance of the Laws of the State of Illinois, I having brought this Suit as next friend for said minors, they being interested as owners in fee in said lot of Land.

Nancy D. Durney Sr

Approved
Wm L Bradley Clk.

Entered of Record
Filed March 13. 1834
Wm L Bradley Clk

21

Nancy D. Turney & others
vs
Alexander Young

Circuit Court of Jo Daviess County. State of Illinois of the October Term. 1857.

Be it remembered that on the 28th day of November A.D. 1857 being still of the October Term of the Circuit Court the above entitled cause came on to be tried before the Court, the parties having waived the Intervention of a Jury and for trial put themselves upon the Court, the Cause was submitted to the Court upon the following agreed Statement of Facts -

Nancy D. Turney et al
vs
Alexander Young

State of Illinois, Jo Daviess County Circuit Court November term. Agreed Statement of Facts -

On the Twenty ninth day of March A.D. [redacted] and for several years prior thereto, John Turney deceased but then living was the owner in fee [redacted] the no undivided half of Lot number five [redacted] Main & Diagonal Streets in Galena in the County of Jo Daviess aforesaid and Andrew Maurer being his tenant in common of the other undivided half the whole of said lot having been purchased of the United States by said Maurer and by him one undivided half thereof was conveyed to said John Turney.

The plaintiffs are the heirs and all the heirs of said John Turney now deceased. Possession by Young the defendant in this suit

of the East or upper half of said lot at the time of the commencement of this suit and for six years prior thereto is admitted and that Sonny has paid the Taxes thereon.

On the nineteenth day of November 1842 at the November Term of the Circuit Court of said St Davis County was rendered the following judgment to Wit -

William S. Stewart
&
Peter L. Brown
vs. John Turney } Debt

The defendant by [redacted] Turney withdraws his demurrer and appearance, and comes the Plaintiffs by their Attorney and the defendant being three times solemnly called came not but made default. It is therefore considered by the Court that the Plaintiffs have and receive of the Defendant their debt and damages but as these damages are not certainly known and it appearing to the Court that this action was founded on a bond under seal for the payment of money only It is ordered by the Court that the Clerk assess the same the Clerk having reported the same, the Debt at the sum of One hundred and Sixty Dollars and the damages at the Sum of One hundred and twenty Eight Dollars and forty seven cents, which report is approved by the Court It is therefore considered by the Court that Execution issue according to the Statute in such cases made and provided. For the Sum of One hundred and Sixty dollars debt as aforesaid, to be satisfied by the Sheriff receiving the said sum of One hundred and twenty Eight Dollars and forty seven cents, the damages as aforesaid assessed by them with the costs of this suit -

21

Nancy J. Turney & others vs Alexander Young } Circuit Court of Jo Daviess County. State of Illinois of the October Term. 1857.

Be it remembered that on the 28th day of November A.D. 1857 being still of the October Term of the Circuit Court the above entitled cause came on to be tried before the Court, the parties having waived the Intervention of a Jury and for trial put themselves upon the Court, the Cause was submitted to the Court upon the following agreed statement of facts -

Nancy J. Turney et al vs Alexander Young } State of Illinois, Jo Daviess County Circuit Court November term Agreed Statement of facts -

On the Twenty ninth day of March A.D. [illegible] and for several years prior thereto, John Turney now deceased but then living was the owner in fee simple of the one undivided half of lot number five (5) between Main & Diagonal Streets in Galena in the County of Jo Daviess aforesaid and Andrew Maurer being his tenant in common of the other undivided half the whole of said lot having been purchased of the United States by said Maurer and by him one undivided half thereof was conveyed to said John Turney.

The plaintiffs are the heirs and all the heirs of said John Turney now deceased. Possession by Young the defendant in this suit

of the East or upper half of said lot at the time of the commencement of this suit and for six years prior thereto is admitted and that Young has paid the Taxes thereon.

On the nineteenth day of November 1842 at the November Term of the Circuit Court of said Jo Davies County was rendered the following judgment to Wit -

William S. Stewart
&
Peter L. Brown
vs. John Turney

Debt

The defendant by his Attorney withdraws his demurrer and appearance, and now comes the Plaintiffs by their Attorney and the defendant being three times solemnly called came not but made default. It is therefore considered by the Court that the Plaintiffs have and receiver of the Defendant their debt and damages but as these damages are not certainly known and it appearing to the Court that this action was founded on a bond under seal for the payment of money only It is ordered by the Court that the Clerk assess the same the Clerk having reported the same, the Debt at the sum of One hundred and Sixty Dollars and the damages at the sum of One hundred and twenty Eight Dollars and forty seven cents, which report is approved by the Court It is therefore considered by the Court that Execution issue according to the Statute in such cases made and provided for the sum of One hundred and sixty dollars debt as aforesaid, to be satisfied by the Sheriffs receiving the said sum of One hundred and twenty Eight Dollars and forty seven cents, the damages as aforesaid assessed together with the costs of this suit -

23 It is admitted that the parties to the above judgment were regularly in Court and that copy hereunto is correctly taken from records of Circuit Court of said Jo Daviess County.

On this Judgment an Execution issued on the 23d day of December A.D 1842 and was returned not satisfied by order of plaintiffs attorney on the 23d day of March A.D 1843.

Copy

State of Illinois }
County of Jo Daviess } ss.

The People of the State of Illinois

To the Sheriff of Jo. Daviess County - Greeting

We command you that of the goods, chattles, lands and tenements of John Turney you cause to be made the sum of One hundred and sixty Dollars Debt and Nine Dollars, Eighteen and three fourth Cents, costs which William [illegible]tewart and Peter L. Brown lately recovered against him in the Circuit Court of said County as appears of record, and this you are not to omit under the penalty of what the law prescribes. And have those moneys at the Clerks office of said Court at Galena within ninety days from the date hereof and also this writ.

Witness Wm H Bradley, Clerk of the
{Seal} Circuit Court of Jo. Daviess County Illinois at Galena this 23d day of December A.D. 1842

Attest Wm H Bradley. Clk

The Sheriffs will collect Interest on the above from Novr 19th A.D. 1842.

Wm H Bradley. Clk

The Sheriff is directed to return this Execution Satisfied upon receiving the Sum of One hundred and twenty Eight 47/100 Dolls (128.47) damages on the same together with costs.

Wm H. Bradley. Clk

Received this Execution for collection this 23d day of December in the year of our Lord One thousand Eight hundred and forty two at the hour of 1/4 after Four o'clock P. M.

Alex Young. Shff.

Returned this 23d day of March 1843. Not Satisfied, by order of plaintiffs Atty.

Alex Young Shff

Sept 8th. 1843. Twenty Five Dollars was received on account of the within judgment. by.

A L. Holmes
Atty for Plaintiffs

The above Execution issued by Clerk of Circuit Court of said De Dauph County, return was made by the then Sheriff of said De. Dauph County -

On the ninth day of March 1844. said John Turney died intestate and seized of the said undivided half of the above lot. On the 18th day of March AD 1844. Letters of administration issued on Estate of John Turney to his widow Nancy D. Turney who was duly qualified and Entered upon the administration - Her letters remain unrevoked.

After the death of said John Turney the following notice

23 It is admitted that the parties to the above judgment were regularly in Court and that Copy hereunto is correctly taken from Record of Circuit Court of said Jo Daviess County.-

On this Judgment an Execution issued on the 23d day of December A.D 1842 and was returned Not Satisfied by order of plaintiffs attorney on the 23d day of March A.D. 1843 -.

Copy

State of Illinois }
County of Jo Daviess } ss.

The People of the State of Illinois

To the Sheriff of Jo. Daviess County - Greeting

We Command you that of the goods, Chattles, Lands and Tenements of John Murray you cause to be made the Sum of One hundred and sixty Dollars Debt and Nine Dollars, Eighteen and three Fourth Cents, Costs which William S. Stewart and Peter L. Brown lately recovered against him in the Circuit Court of said County as appears of record, and this you are not to omit under the penalty of what the law prescribes. And have the Monys at the Clerks office of said Court at Galena within ninety days from the Date hereof and also this writ.

Witness Wm A Bradley, Clerk of the
Seal } Circuit Court of Jo. Daviess County, Illinois at
Galena this 23d day of December A.D. 1842

Attest. Wm A Bradley. Clk.

The Sheriff will collect Interest on the above from 19th A.D. 1842.

Wm A Bradley. Clk

24. The Sheriff is directed to return this execution satisfied, upon receiving the sum of One hundred and twenty Eight 47/100 Dolls (128.47) damages on the same together with costs.

Wm H. Bradley. Clk

Received this Execution for collection this 23d day of December in the year of our Lord One thousand Eight hundred and forty two at the hour of 1/4 after Four O'clock P. M.

Alexr Young. Shff.

Returned this 23d day of March 1843. Not satisfied, by order of plaintiffs attly.

Alex Young Shff

Sep 8th 1843. Twenty five Dollars were received on account of the within judgment. by A. L. Holmes

Atty for Plaintiffs

The above Execution issued by Clerk of Circuit Court of said Jo Daviess County, return was made by the then Sheriff of said Jo. Daviess County -

On the ninth day of March 1844. Said John Turney died intestate and seized of the said undivided half of the above lot. On the 18th day of March AD 1844. Letters of administration issued on Estate of John Turney to his widow Nancy J. Turney who was duly qualified and entered upon the administration - Her letters remain unrevoked.

After the death of said John Turney the following notice

25

was duly served according to the statute then in force upon said Nancy I Turney administratrix of the Estate of said John Turney deceased. Copy –

To Mrs Nancy I Turney administratrix of John Turney deceased.

You are hereby notified that in the life time of the said John Turney, William S. Stewart and Peter L. Brown, recovered a judgment against him for one hundred and sixty Dollars debt to be satisfied with $128.47 damages and costs, at the October term A.D. 1842 of the Jo Daviess Circuit Court Illinois = execution was issued thereon within one year thereafter and returned unsatisfied and the plaintiffs will apply for an execution thereon at the expiration of three months from the service of this notice according to the statute in such cases made and provided

A. L. Holmes

Galena. March. 16. 1845 Atty for Stewart & Brown

Endorsed on Notice

Served on Mrs Nancy I. Turney the notice of which the within is a true copy the 29th of March. 1845

A. L. Holmes

Sworn to & subscribed before me this 30th day of June A.D. 1845

Wm H Bradley. Clk.

On the within mentioned judgment issued an execution against the Lands and Tenements of the said deceased John Turney in pursuance of the statute in such case made and provided

A. L. Holmes
atty for Pltfs

Tollm H. Bradley. June. 30th/1845.

Said notice was served upon the 29th day of March A.D 1845 upon said Nancy. I. Turney administratrix as aforsaid by Artemus L Holmes

On the 30th day of June 1845 an alias Execution was issued on the above judgment of Stewart & Brown. vs John Turney. against Land & Tenements &c of John Turney deceased. Copy

State of Illinois }
County of Jo Daviss } ss

The People of the State of Illinois

To the Sheriff of the County of Jo. Daviss - greeting

We command you again that of the Land & tenements of John Turney. deceased. you cause to be made the Sum of one hundred & sixty dollars, Debt and Ten Dollars and fifty six cents, costs, which William. S. Stewart & Peter L Brown lately recovered against him in the Circuit Court of said County as appears of record and this you are not to omit under the penalty of what the Law prescribes. And have then money at the Clerks office of said Court at Galena, within ninety days from the date hereof, and also this writ -

Witness. William H Bradley. Clk of the Circuit
Seal Court of Jo. Daviss County Illinois at Galena
this 30th day of June A.D. 1845
Attest Wm H. Bradley. Clk

The Sheriff will collect Interest on the above from 1st November. 19th 1842. A.D.

Wm H Bradley. Clk

27. The Sheriff is directed to return this execution satisfied upon making or receiving on the same the sum of One Hundred and twenty Eight 47/100 dollars ($128.47) damages together with the interest and costs.

Wm H Bradley. Clk

Endorsed.

Twenty five dollars paid on the within judgment to A L Holmes Esq. Plaintiffs atty Sept 8. 1845 which will be deducted

Wm H B. Clk.

Received this Execution for Collection this first day of July in the year of our Lord 18 One thousand Eight hundred and forty five, at the hour of 11 o clock A M.

Wm Millard Sheriff Jo Co. Ill

Levied upon the following described lots or parcels of land situate in Galena in the County of Jo. Daviess and State of Illinois - to wit - The undivided half of lot number five (5) between Diagonal & Main Streets - also lots number two (2) and three (3) in Block number Sixty (60) on the West side of Fever River, agreeably to the United States Survey of the said Town, now City of Galena all of which property is subject to the right of Dower of Nancy S. Turney in the same, this 25th day of July 1845.

Wm Millard Shff.

Returned to me this 20th day of August 1845 Satisfied by selling real Estate to H Clymo.

Wm Millard Shff

The above Execution was issued by the Clerk of the Circuit Court of said Jo. Daviess County and was levied by the

Sheriff of said County on the interest of John Turney at the time of his death in said one undivided half of said Lot Subject to right of dower of Nancy J. Turney, the widow of said John Turney deceased. —

On the 20th day of August 1845, that interest being the one undivided half of said Lot under the Judgment & Execution above mentioned of Stewart & Brown was sold by Sheriff of said Jo Daviess County to Henry Clymo for $170.00. and Certificate of purchase regularly issued to said Clymo of that date in Duplicate according to Law, and one of which was delivered to said Clymo and the other Duplicate was filed according to Law..

Copy.

State of Illinois
Jo Daviess County } Sct

I. William P. Millard, Sheriff of the County and State aforesaid, do hereby certify that by virtue of a writ of Execution in favor of Wm J. Stewart and Peter L. Brown and against the goods Chattels Lands & tenements of John Turney deceased of the County and State aforesaid to me directed from the Office of the Clerk of the Circuit Court of said County I did on the 20th day of August A.D. 1845, Expose to public Sale the following described Lot and premises situated, lying and being in Galena, County and State aforesaid, All the right title and interest which John Turney deceased had at the time of his death in and to the undivided half of Lot Number five (5) between

29 Diagonal & Main Streets which property is subject to the right of Dower of Nancy J Turney in the same and that Henry Clymo bid for the said Lot & premises the sum of One hundred & Seventy Dollars which being the highest and best bid for said lot was struck off to him the said Henry Clymo, and that the said Henry Clymo will be entitled to a deed of said lot so sold to him on the 20th day of November A.D. 1846 unless the same shall be redeemed according to law.

Given under my hand & seal at my office in Galena this 20th day of August A.D. 1845

W.P. Millard. [L.S.]

Sheriff of Jo Daviess Co. Illinois

This is to Certify that the within is a true & correct copy of a certificate of purchase filed by me in the Recorders Office, also a true copy of a receipt given to me by Orrin Smith which certificate was filed by me Aug 23d/1845

Wm P. Millard Shff. J.D.C. Ill

Recd Galena November 16. 1846 of W.P. Millard Sheriff One hundred ninety one Dollars it being the Amount necessary for the redemption of the within named property

Orrin Smith

I do hereby certify that the within is a true and correct copy of a certificate of purchase also of a receipt on said certificate of purchase on file in my office this 8th day of August 1848

Cyrus Aldrich.

Recorder in & for Jo Daviess County

On the back of the last named certificate is the following assignment.

For Value received I sell and assign the within certificate and all my right and privilege under the same to Orrin Smith & Galena

Signed. Henry. Clymo.

This assignment and signature is in the true and genuine hand writing of said Clymo and one of which said certificate was delivered to said Orrin Smith with said assignment by Clymo as above.

On the 29th day of March A.D. 1847 at the March term of said Circuit Court of said County of Jo Daviess the following judgment was rendered. The action was an amicable one in assumpsit and upon appearance of Jno Turney in said Circuit Court judgment was rendered against him by confession.

A. B. Gales
vs
John Turney } Case.

Now at this day came the defendant in proper person, waives service of Process, enters his appearance and confesses a Judgment in favor of the Plaintiff for the sum of One hundred and fifty one dollars and Sixty five cents. It is therefore Considered by the Court that the Plaintiff have and recover of the Defendant the said sum of One hundred and fifty one dollars and Sixty five cents, so as aforesaid Confessed together with his costs by him Expended, and that he have Execution therefor —

31 The above is a correct copy of said Judgment from record of Circuit Court of said Jo Daviess County of March Term A D 1842 — No Execution issued on this judgment within a year from its rendition —

After death of said John Turney to wit on the Seventh day of September A D 1846 the Attorney of said Avery B Gates filed in the Clerk office of the Circuit Court of said Jo Daviess County a praecipe for a Scire facias in the words and figures following to wit —

A B Gates
vs
John Turney } Judgt in 1842

Issue sci fa to revive judgment & make administratrix party & tell Millard to see immediately.

Sgnd Hogg
for Plaintiff

W. H. Bradley. Clk
Sept 7. 1846

And upon said Seventh day of September A. D. 1846. after the above precipe was filed a writ of Scire facias was issued out of the office of the Clerk of the Circuit Court of said Jo. Daviess County to revive said last above mentioned judgment in favor of said Avery B. Gates. vs. John Turney which writ of Scire facias is in the words and figures following to wit — "

State of Illinois } ss. The people of the State of
Jo. Daviess County } Illinois. to the Sheriff of said County of Jo Daviess

Greeting — —

Whereas A B Gates, lately that is to say at the March

term A.D. 1842 of our Circuit Court in and for said County recovered a Judgment against Jno Turney of said County by confession for the sum of One hundred and Eighty Dollars and forty six for his damages and three dollars for his costs and charges in that behalf Expended Whereof he the said John Turney is convicted as appears of record in our said Circuit Court. And forasmuch as A B Gates aforesaid has complained that he has not recovered any satisfaction of his said damages and costs as aforesaid. We therefore command you that you summon Nancy J. Turney Administratrix of the Estate of John Turney deceased if she shall be found in your County personally to be and to appear before our said Circuit Court on the first day of the next Term thereof, to be holden at the Court House in Galena in said County on the fourth Monday in the month of October next to shew cause, if any she has, why execution should not be made of the damages and costs as aforesaid: And have you then there this writ, and make return thereon in what manner you execute the same;

Witness, William H. Bradley Clerk of the Circuit Court of Jo Daviess County Illinois and the seal thereof at Galena this 7th day of September A.D. 1846:

Attest Wm H Bradley Clerk.

Endorsed – Served within Sci fa this 11th day of Septr 1846 by reading same to within named Nancy J. Turney. Admin of Estate of Jno Turney. dec'd. W P Mellard Sh

William A. Bradley being duly sworn, testifies that he has been ever since the year A.D. 1840 up to this time & is now the Clerk of said Circuit Court of said Do. Davies County and during that time has constantly acted as such, that said praecipe above set forth was handed to him to be filed by the Attorney of said Gates, and was filed by said Bradley as such Clerk at the time it purports to have been. and that he said Bradley as Clerk proceeded upon the same day to make out said writ of Scire Facias and on the same day issued the said writ of Scire Facias to William P. Millard the then Sheriff of said Do. Davies County

That in making out said writ of Scire Facias he said Clerk made a mistake in reciting the amount of the judgment in favor of Gates vs Turney to which said writ issued.

That he now observes that upon the Judgment Docket of the Clerk of said Do Davies County Circuit Court there is a Judgment between different and other parties of the Exact amount inserted in the said writ of Scire Facias issued by him in the case of Gates vs Turney and said Witness now supposes that in reciting the amount of the judgment in the last mentioned case in said writ of Scire Facias he took the amount by mistake from the judgment recorded in said Judgment Docket next under the judgment of Gates vs Turney That he never knew of or discovered said mistake till years after said writ of Scire-Facias had issued.—

That there never has been but one Judgment in the Circuit Court of Do Davies County in favor of said Gates vs

John Durney and that is the Judgment of March 29th of March Term A.D. 1842 to revive which said writ of Scire Facias issued. Which writ of Scire Facias was served upon Nancy J Durney admin'x of the estate of John Durney dec'd. upon the 11th day of September A.D. 1846, and the return of Wm P. Millard then Sheriff of said Jo. Davis County is in the words and figures following to wit -

"Served the within Sci-fa this 11th day of September 1846 by reading the same to the within named. Nancy J. Durney. Adm'x of the estate of John Durney, dec'd Fees. 68¾

W.P. Millard. Sh'ff

And on the twenty seventh day of October A.D 1846 at the October Term of the Circuit Court of said Jo Davis County was entered the following judgment -

A B. Gates
vs
Nancy. J Durney admin'x
of the Estate of John Durney. dec'd

On Scire facias to revive a Judgment

and now on this day came the Plaintiff by his attorney and the Defendant being three times solemnly called, came not but made default, and forasmuch as it appears that this action was brought by Scire facias to revive a judgment obtained in this Court in the March term A.D 1842. to wit on the twenty ninth day of March A.D 1842 against the said John Durney and in favour of the said A. B. Gates for the sum of One hundred and eighty dollars and sixty cents

cents damages and three dollars costs.

35 It is therefor ordered and decreed by the Court that the judgement aforesaid for the Sum of one hundred and Eighty Dollars and forty six cents damages and three dollars costs be revived and stand in full force against the said Nancy J. Turney as Administratrix of the Estate of John Turney deceased and that the said Plaintiff have execution therefor against the Good and Chattels. Lands and Tenements. rights credits and effects of the said John Turney in the hands of the said Administratrix to be administered together with his costs in that behalf expended and together with his costs by him laid out and expended in this proceeding by Scire facias.

The above is a Correct Copy of the ~~Execution~~ record of the revival of the judgment in the Case of Gates vs Turney taken from and as appears of record on the records of the Circuit Court of said Dr Davis County

And afterwards upon the 27th day of October 1846 was Entered upon the ~~said~~ record of the said Circuit Court of said Dr Davis County the following order for issuing Execution in the words and figures following to wit —

A B. Gates. vs. } On Scire facias
Nancy Jane Turney. Admrx } to revive a Judgment
of the Estate of John Turney. decd }.

On motion of the plaintiff

by his Attorney it is decreed by the Court that the clerk issue an execution on the Judgment revived in this case –

And Execution issued upon the 27th day of October A D 1846 on the last named judgment of Revival and was placed in the hands of William P. Millard Sheriff of said Jo Davies County upon the same day to Execute and said Sheriff levied upon and Endorsed on said last mentioned Execution a levy on the same day on the east or upper half of said lot numbered 37 five. as the property of the Estate of said John Turney deceased Wm P Millard being then Sheriff of said Jo Davies County

State of Illinois
County of Jo Davies } Sct.

The People of the State of Illinois

to the Sheriff of the County of Jo Davies Greeting

We command you that of the Goods, chattels, lands and Tenements of John Turney deceased in the hands of Nancy J Turney adm^x to be administered you cause to be made the sum of One hundred & Eighty dollars and forty six cents damages and seven dollars and Eighty one cents costs which A B Gates lately recovered against said John Turney in the circuit court of said County as appears of record and this you are not to omit under penalty of what the law prescribes And have those moneys at the Clerk's office of said Court

37- at Galena within ninety days from the date hereof and also this cost.

Witness: W H Bradley, Clerk of the Circuit Court of Jo Davies County Illinois at Galena this 27th day of October A D. 1846

Attest. Wm H Bradley. Clk

The Sheriff will collect interest on the above from March 29th A D. 1842. W H Bradley Clk

Levied the within writ on the following described property lying and being in the City of Galena, to wit The East or upper half of Lot Number five (5) between Main & Diagonal Sts and fronting 25 feet on Main St and 38 feet 6 inches on Diagonal St the said being the property of the estate of the within named Jno Turney decd - this 27th day of October 1846

W P. Millard Sheriff

The levy endorsed on this execution was made by Avery B. Gates as a judgment Creditor of John Turney deceased and the property advertised had been sold under a previous Execution in favor of W S. Stewart & Peter L. Brown and bought in by Henry Clymo and now has been bought by Alexander Young for the amt of bid made by Henry Clymo with interest Principal & interest amounting to One hundred & ninety one 6/100 Dolls and the amt required to satisfy this Execution making in all Three hundred and Eighty nine 18/100 Dollars. Returned this Execution satisfied this 17th day of November. 1846. Wm P Millard Shf J.D.Co. Ills.

The above Levy is in the hand writing of the Sheriff of said Jo Davies County when Levy was made, Also on last named Execution Shff Entered Credit as follows to wit "Cr Cash May 29th 1842 $40.00. Paid to plaintiffs attorney by Defendant.

On the 16th day of November A D 1846 was paid to the Sheriff of said Jo Davies County for the purpose of redeeming the property sold under the said judgment of Stewart & Brown vs John Turney the sum of $191.00 that being the amount necessary to redeem.

Upon said 16th day of November A D 1846 said Sheriff of Jo Davies County Executed the ordinary certificates of redemption in due form in duplicate one of which was duly filed with recorder of said Jo Davies County. On the same day said Sheriff paid to said Orrin Smith the said sum of One hundred and ninety one Dollars, said Smith being then the assigner of said Clymo and the then holder of the certificate of purchase issued as herein above stated to said Clymo by virtue of the sale of the real estate hereinafter mentioned under the judgment of Stewart & Brown vs John Turney —

And said Smith in his own proper hand Endorsed on said certificate of purchase on which said assignment by Clymo was written (being the certificate of purchase that was then lodged in the Recorder's office of said Jo Davies County which had been filed Augt 23d. 1845.) the following receipt to wit - in the words and figures following —

39- Received, Galena, Nov 16, A.D. 1846 of W.P. Millard Sheriff One hundred and ninety one Dollars it being the amount necessary for the redemption of the within named property. - Orrin Smith

State of Illinois
Jo Davies County } Sct.

I. William P. Millard Sheriff of the County and State aforesaid do hereby certify that by virtue of a writ of Execution in favor of Wm. S. Stewart and Peter L. Brown and against the goods and chattels, lands & tenements of Jno Turney deceased of the County and State aforesaid to me directed from the office of the Clerk of said County I did on the 20th day of August A.D. 1845 Expose to public sale the following described lot and premises situated lying and being in Galena County and State aforesaid to wit All the right title and interest which John Turney deceased had at the time of his death in and to the undivided half of Lot Number five (5) between Diagonal & Main Sts which property is subject to right of Dower of Nancy J Turney in the same and that Henry Clymo bid for the said lot and premises the sum of One hundred and seventy Dollars which being the highest and best bid for said lot was struck to him the said Henry Clymo and that the said Henry Clymo will be entitled to a Deed of said Lot so sold to him on the 20th day of November A.D. 1846 unless the same shall be redeemed according to law Given under my hand & seal at my office in Galena this 20th Augt A.D. 1845

Wm P. Millard. Shf. J.D. Co. Ill

For Value received I sell and assign the within certificate and all my rights and privileges under the same to Orrin Smith of Galena Henry Clymo —

Recd Galena Nov 16. 1846 of Wm P Millard Shff One hundred, ninety one Dollars it being the amt necessary for the redemption of the within named property
Orrin Smith

The said certificate of purchase the assignment thereon and the above receipt thereon made by said Smith were then again lodged in the Recorders office of said Jo Davies County and said Orrin Smith received and took away the said money being $191. in the said receipt specified

On the 17th day of November A D 1846. William P. Millard Hm the Sheriff of Jo Davies County again as such Sheriff sold at public sale the premises, being the East or upper half of said lot Number five and Alexander Young the defendant in this suit became the purchaser at said public sale had by said Sheriff for the sum of $389.98 and a certificate of purchase was regularly issued to him and duplicate duly filed on the same day by said Sheriff. On same day Sheriff Wm P Millard returned on the Execution that the levy was made by Gates as a judgment creditor and that the property had been sold under a previous judgment of Stewart and Brown and redeemed and again sold at Sheriffs sale & bought by Young for $389.98 and said Sheriff

41 returned said Execution Satisfied - the amount bid paying redemption money and Gates judgment & costs

The Levy Endorsed on this execution was made by Avery B Gates as a judgment Creditor of Ins Turney deceased and the property advertised had been sold under a previous execution in favor of Wm S Stewart and Peter L ~~Robinson~~ Brown and bought in by Henry Clymer and now has been bought by Alexander Young for the amt of bid made by Henry Clymer with Interest Principal & Interest amounting to $191. 06/100 - and the amt required to satisfy this execution making in all $389.98. Returned this Execution Satisfied this 17th day of November 1846 Wm P. Millard

Shf S. D Co. Illinois

On the 28th day of January A.D. 1847 William P Millard Sheriff of said Jo Daviess Co Executed in his own proper hand writing a Sheriff's deed to Alexander Young, defendant for said East or upper half of said lot number five and acknowledged the same

43 Whereas A. B. Gates did at the Term of the Circuit Court for the County of Jo Daviess and State of Illinois recover a judgment against John Turney for the sum of one hundred and eighty 4/100 Dollars and costs of suit, upon which judgment an execution was issued dated on the 27th day of October A.D. 1846 directed to the Sheriff of said County of Jo Daviess to execute, and by virtue of said execution the said Sheriff levied upon the lands hereinafter described and the same was struck off and sold to Alexander Young he being the highest and best bidder therefor, and the time and place of the sale having been duly advertized according to Law. Now therefore know all by these Presents that I, William P. Millard Sheriff of the said County of Jo Daviess in consideration of the premises have granted, bargained and sold and do hereby convey to the said Alexander Young, his heirs and assigns the following described lot of ground, to wit, the East one half of Lot Number (5) Five between Main and Diagonal Streets and fronting twenty five (25) feet on Main Street and twenty eight feet 6 inches (28 1/2) on Diagonal Street lying and being in the City of Galena, to have

and to hold the said described premises with all the appurtenances thereto belonging, to the said Alexander Young his heirs and Assigns forever. Witness my hand and seal this twenty eighth day of January in the year of our Lord one thousand eight hundred and forty seven

Wm P. Millard {Seal}
Sheriff of Jo Davies County Ills

State of Illinois } ss
Jo Davies County } "

I George M Mitchell Clerk of the Jo Davies County Court in and for said Jo Davies County and State of Illinois do hereby certify that William P. Millard Sheriff of said County whose signature appears to the foregoing deed of conveyance and who is personally known to me to be the identical person who signed the same, this day appeared before me and acknowledged that he had signed sealed and delivered the same as his free act and deed for the uses and purposes therein expressed

In testimony whereof I have hereunto set my name and affixed the seal of said Court at my Office in Galena this 28th Day of January A D. 1847. attest - Geo. M. Mitchell Clerk

~~D. 1847 Attest~~

~~Geo. M. Mitchell~~
~~Clerk~~

45

State of Illinois }
Jo Daviess County } ss

Recorders Office Galena
March 27. 1847.

I Jeremiah Bettes Recorder in and for said County do certify that the foregoing Sheriffs Deed and certificate of acknowledgment are recorded in Book H of Deeds folio 172

Attest Jeremiah Bettes Recorder

Endorsed upon said Deed is the following —
Received for Record
March 27th 1847 at 10
oclock A. M.

Recorded in Book
H. folio 172

On the 27th day of March A.D 1847, said deed was duly recorded in Recorders Office of said Jo Daviess County.

At the July Term of the Jo Daviess County Court in the year 1846 a proceeding in partition was had of said lot five — A copy of the papers and proceedings in said partition suit are as follows:

Nancy Jane Turney widow of John Turney, deceased.

vs.

Wm Turney,
Henry Turney,
Mary E. Turney,
John A. Turney,
Nancy J. Turney
Heirs at law of said John Turney,
Kearn Hays,
Thomas Drum,
Andrew Mouser,

} To Daviess County Court.
In Chancery
Bill for Dower & Partition

The Clerk of said Court will please issue a summons in Chancery in the above entitled ~~cause~~ suit returnable to next term

June 3d 1845.

Strode & Sheldon
Solrs for Complts.

47

State of Illinois } In Chancery
Jo Daviess County } Jo Daviess County Court

To the Hon Hugh J. Dickey
Judge of the Jo Daviess County Court in Chancery
sitting: Humbly complaining showeth unto
your honor your Oratrix, Nancy Jane Turney of the
City of Galena in the County and State aforesaid
the widow and relict of John Turney of said
City, deceased, that the said John Turney
was in his life time during the coverture of your
Oratrix with him and at the time of his death
seized or entitled in fee simple in possession of
or to divers messuages, lands & hereditaments
situate in the City and County aforesaid among
which are the following named & viz: Lot No
two in Block No sixty in said City - Lot No
four in Block No sixty one in said City - Lot
No nine in Block No thirteen on the East
side of Fever River in said City - The West
half of Lot No two in Block No fifty nine in
said City except one hundred feet off from
the east side or end conveyed to Patrick Cox -
Lot number One in Block no sixty one on the
West side of Fever River, except 130 feet off its
west end - The one undivided half part of a
Lot in said City which said John Turney formerly
occupied on Diagonal Street, which is designated
by the survey of the Town of Galena as Lot No
four between Main & Diagonal streets of which
last named Lot he was seized as aforesaid

as a Tenant in Common in equal parts with Andrew Moore who resides in the State of Ohio, who at the times aforesaid was seized of the other one undivided half part of said last named Lot in Common and undivided with said John Turney in fee and is now so seized of the same in Common and undivided with the Heirs at Law of said John Turney, hereinafter named who are seized of the other one undivided half part of the Lot And your Orator further shows that the said John Turney was in his life time and during the coverture of your Orator with him seized of Lot No One in Block No fifty nine in said City of Galena and other Lots of Ground in said City. which Hearn Hays of the said City now claims to be seized or entitled to in fee simple which he is now in possession of & has been in the possession of the rents & profits thereof ever since the death of the said John Turney And your Orator further shows that the said John Turney was in his life time and during the coverture of your Orator with him seized of One hundred and thirty feet of Land off from the West end or side of Lot Number One in Block Number Sixty in said City & other Lots of ground in said City which Thomas Drum of said City claims to be seized or entitled in fee simple in possession of or to and

49 which he is now in the possession of and has been in the possession of the rents and profits thereof ever since the death of the said John Turney:

And your Oratrix further shows that the said John Turney departed this life on or about the 8th of March AD 1844 leaving your Oratrix his Widow, William Turney Henry Turney. Mary E Turney. John H Turney and Nancy. J. Turney all of said City his Children and his heirs at Law. they being his only Children him surviving and all being infants who since the death of said John Turney have been and now are in possession or receipt of the rents and profits of the said freehold estates of which he was seized at the time of his death =

That your Oratrix upon the death of the said late Husband became and now is entitled to dower in or out of all the said John Turneys freehold estates of which he was seized in fee at the time of his death or at any time during their coverture and particularly those above named and your Oratrix being entitled in manner aforesaid, hath by herself applied to the said Heirs at Law and the said Hays and Dram and Monroe and requested them to account with her respectively & pay to her one third part of the nett Rents and

and profits of the said purchased Estates by them respectively possessed or entitled to as aforesaid accrued since the said Husbands death and recvd by them or either of them and she has demanded of them respectively in writing to assign and set over for your Orators a full third part of the Estate by them respectively possessed and seized of as for her dower therein

And your Orator further shows that she is Administratrix of the Estate of the said Husband. that his personal Estate is insufficient to pay his debts. that all his Real Estate which descended from him to his said heirs at law will be required to pay his just debts & that as such Administratrix she is about to petition the proper Court in said County to subject all the Real Estate which descended from him to his said heirs to the payment of his just debts which is needful and proper in order to the sale thereof. that the undivided moiety of the said heirs at Law in the said Lot on the East between Main and Diagonal Street of which they are seized as aforesaid in common and in equal parts with Andrew Mourer should be divided and set off to them aggregately that they may hold the same separately from the said Mourer:

And that the Heirs at Law

57 and the said Hays. Drum & Mourer may set forth a full true and just rental and particular of all the Freehold Estates Messuages, & Lands whatsoever which they are now respectively possessed or seized of or which the said John Turney was seized of or entitled unto in possession in his life time during the coverture of your Oratrix with him & at the time of his death. where the same are situate & in whose possession or power the same have ~~[illegible]~~ respectively been ever since the death of the said John Turney and at what yearly or other rent & what sums of money have been respectively received by them on account of the Rents and Profits of said Freehold Estates since the said John Turneys death and when received = And that your Oratrix may be declared to be entitled to her dower out of the aforementioned Lands and Freehold Estates and all the Freehold Estates of which her said late Husband died seized or was of during their coverture, that an account may be taken of the Real Estate of which the said John Turney was seized at the time of his death or during said coverture, that your Oratrix may be let into the possession and receipt of the rents and profits of one third part thereof and may be declared to be entitled to hold and enjoy the same for her life, as and for her dower, and (if necessary) that a commission may issue for the purpose of assigning and

and ~~assigning~~ selling out such dower or third part of said Real Estates; so that your Oratrix may hold and enjoy the same in severalty as and for her dower = And that said Lot No five between Main and Diagonal Streets of which the abovenamed heirs at Law of said Turney are seized as Tenants in common with said Mourer in equal moieties may be divided between them and the half part of said heirs set off to them aggregately that they may hold and enjoy the same separately from said Mourer and your Oratrix's dower therein be set off and assigned to her out of each half part of said heirs set off to them separately = and that an account be taken of the Rents and profits of said freeholds & estates respectively received by the defendants herein since Turney's death and that they may pay to your Oratrix one third part thereof respectively and of which may hereafter become due from them in that behalf = And that your Oratrix ~~having no adequate remedy at Law~~, may have such further and other relief in the premises as shall seem meet = Your Oratrix having no adequate remedy at Law prays that the said William Turney. Henry Turney. Mary E Turney. John. H. Turney, Nancy S. Turney. Hearn Hays. Thomas Drum

53 and Andrew Mourer, may be made Defendants to & answer this bill, that process of summons may issue to them, to compel them to appear before this Court, and answer the premises and perform and abide such order and decree therein as to your honor shall seem meet and your Oratrix shall ever pray &c

Strode & Sheldon
Solicts for Compl^t

Filed 3^d June 1845
Geo. W. Mitchell
Clerk

Nancy J. Turney
vs
William Turney
Henry Turney
Mary E. Turney
John H. Turney
Nancy J. Turney
& John Turney
heirs of John Turney dec^d
Thomas Drum
Kean Hays
& Andrew Mourer

Jo Davies County Court
Bill for Dower & partition

And now the said complainant by leave of the Court for that purpose first obtained comes &c by way of amendment to her

said bill, shows that since the filing of her said bill: to wit: on the day of August A D 1845 Henry Clymer of Jo Daviess County in the State of Illinois purchased at a public sale under an execution duly issued on a judgement obtained in the Circuit Court of said County against the said John Turney dec^d all the right title and interest in and to the said Lot number five (5) between Main and Diagonal Streets in the City of Galena in said State described in said bill which the said John Turney deceased died seized of or entitled and that afterwards Orrin Smith of said County purchased of said Clymer his interest in said Lot under said rule and said Clymer duly made an assignment of the Sheriffs certificate of purchase of said Lot at said sale; wherefore the Complainant prays that the said Clymer and Smith be made parties parties to this bill and process issue against them for that purpose and answer the same under oath or otherwise the necessity of answering under oath being waived and that they may be compelled to stand to & abide by such decree as may be rendered in the premises =

Filed July 24th 1846
Geo. M. Mitchell
Clerk

Nancy Jane Turney
By her Solicts Strode & Sheldon

~~Filed 24th July 1846~~

55 State of Illinois } Sct. The People of the State of
Jo Daviess County. } Illinois to the Coroner of
the County of Jo Daviess, - Greeting.

We command you to summon William Turney, Henry Turney, Mary E. Turney, John A. Turney, Nancy J. Turney, heirs at law of John Turney, deceased, Kearn Hays, Thomas Drum and Andrew Mauser to appear before the Jo Daviess County Court, at the Court House, in Galena, at the next term, to be holden at Galena, on the 1st Monday of July next, to answer Nancy Jane Turney, widow of John Turney deceased in a bill in Chancery, filed in said Court. And have you then there this writ, - Witness the Hon. Hugh T. Dickey, Judge of said Court at Galena, this 3d day of June, 1845.

Seal.

Attest - Geo M. Mitchell, Clerk.

Endorsed on the above summons is the following return: "Served the within Subpa in Chancery this Sixth day of June 1845 by delivering certified copies of original to the within named Wm Turney, Henry Turney, Mary E Turney, John A Turney and Nancy J. Turney. - Also served the within on Kearn Hays, this 7th of June, & on Thomas Drum on this 4th of June, 1845, by delivering to each a certified copy of the within. Andrew Mauser not found in my county. W. P. Millard, Elitor.

Fees, Services	3.50.
Copies	1.75.
M. & Return	.56.
	5.81.

Strode & Sheldon
Attys. for Pltf. - 80 cts paid by ~~Pltf.~~

56

State of Illinois }
Jo Daviess County }

In the Jo Daviess County Court of said County, to July Term, A.D. 1845.

Nancy Jane Turney Widow of
John Turney, deceased.

vs.

Wm Turney, Henry Turney, Mary E. Turney, John A. Turney, Nancy J. Turney, Keam Hays, Thomas Green, and Andrew Mourer, } Bill for Dower and partition—

The said Complainant, by her solicitor, having this day filed in said County Court her bill of complaint, praying said Court for the assignment of her dower in, & the partition of certain lands therein described; and having filed also the proper affidavit, showing that Andrew Mourer, one of the above named defendants, resides out of this State; public notice is therefore hereby given to the said Andrew Mourer, that the said complainant has this day filed in said Court, her said petition, against the above named defendants, and that a summons has issued thereon, against said defendants, returnable at the July Term of said Court, to be held at Galena, in said County, on the first Monday in the Month of July, A.D. 1845; and unless you, the said Andrew Mourer, appear before said Court, at said time and place, and answer said petition, the same will be taken as confessed against

57

you, and a decree entered according to the prayer of said bill Geo. M. Mitchell, Clerk

Strode & Sheldon, Solicitors for Complainants

Galena, June 3, 1845.

I hereby certify that the advertisement hereto annexed, was published for four weeks successively, in the North Western Gazette & Galena Advertiser, the first of which publications was on the 6th day of June, A. D. 1845;

W. C. E. Thomas
Ed. & Pub. said paper.

Nancy. D Turney
vs.
William. Henry, Mary. E.
John A. & Nancy. D. Turney
Kearnsleys. Thomas. Drum
& Andrew Maurer

In Davis County Court
In Chancery
Petition for Dower &
Partition

State of Illinois
Ss
Davis Co

This day personally appeared before me Charles G. Thomas Probate Justice of the Peace in and for said County Nancy. D Turney who being first duly sworn according to Law deposes and says that Andrew Maurer one of the above named defendants in the above Entitled suit resides in the State of Ohio

Nancy. D Turney

Sworn to & subscribed before me
this 3d day of June. A.D. 1845.

Charles G. Thomas P. P.

Nancy. I Turney } In Dawes County Court
vs } In Chancery
Thomas Drum Et als. } Bill for dower & partition

The complainant excepts to the answer of Thomas Drum filed herein as insufficient for the following reasons. It does not admit or deny service of notice on said Drum to assign complainant her Dower as charged in the bill

Strode & Sheldon for Complt.

Answer of Thomas Drum, one of the Defendants in the Bill of dower and partition of Nancy I Turney

This Defendant now and at all times hereafter reserving unto himself all benefit and advantage of Exception which can or may be had or taken to the many errors, uncertainties and imperfections in the said complainants bill, Nor answer thereto or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto - this defendant answering saith he admits that the said Nancy. I Turney is the widow of the said Jno Turney deceased and that the said John Turney was in his life & during the said connection seised in fee of all the premises described in said bill of complaint.

And this defendant further answering saith that on the second Monday of June 1842 he recovered two judgments against said John Turney, one for the sum of $92.50 and costs, and the other for $128.85 and costs, that Executions

59

now issued on said judgments, and Levied by the Sheriff on Lot No one in Block No 59 and on one hundred & thirty feet front & rear of Lot No 1 in Block No sixty on Spring St which on the said premises alleged in said bill to be claimed by the defendants and Kearn Hays, that said premises were appraised under the Statute then in force and the defendants bought said premises at Sheriffs sale at two thirds their appraised value and which sale for said said judgments and costs. That a deed for said premises was executed by the Sheriff to the defendants on the 14th day of February 1844. That there were no buildings at the time of the said Sheriffs sale on said premises - That since he has obtained a deed for the same, he sold a part thereof to Kearn Hays being the same as described in said bill. That said Hays has since that time erected a dwelling house on the same and made other valuable improvements that the whole of the premises purchased at Sheriffs sale as aforesaid now at the time not worth more than two or three hundred dollars at the most. That since said purchase the property has improved in value and that he is advised and believes that if the Complainant is entitled to dower in the premises she is only entitled to her dower computed according to the value of the land at the time of the alienation Exclusive of the rise in value and of the buildings and improvements made thereon by the said Hays and the defendants - and the defendants for his answering saith he is now possessed of and seized of said 130 feet off of Lot No 1 in Block No 60. aforesaid and no more of which said Bro Turney was seized in his life time during said Coverture. That he has received no rents or profits

therefrom before or since Jno Turney's decease but paid Taxes &c. And this Defendant submits and insists that the said property ought not to be charged with the said complainant dower. All of which matters & things the defendant is ready to verify prove & maintain.

Thos Drum.

To Davis Co. } ss
Illinois } On this 13th day of October 1845

before me personally appeared the above named Thomas Drum and made oath that he has heard the above answer subscribed by him read and knows the contents thereof and that the same is true of his own knowledge except as to the matters which are therein stated to be on his information or belief and as to those matters he believes them to be true

John G Potts. J.P.

In Chancery.

Before the Hon. Hugh T. Dickey

The answer of William Turney Henry Turney, Mary E Turney, John A Turney and Nancy J Turney, infants under the age of twenty one years, by A L Holmes their guardian ad litem defendants to the bill of Dower and Partition of Nancy J Turney. These defendants answering by their said Guardian say, that they are severally strangers to all and singular the matters and things in the said bill for Dower and partition. That these defendants are all and every of them infants under the age of twenty one years and claim such interests in the premises as they are entitled to and submit their interests to the protection of this Honorable Court. A L Holmes
Solicitor & Guardian ad Litem —

61 Nancy I Turney
widow of Jno Turney decd.
vs " William, Henry,
Mary E. John. A & Nancy
I & John Turney. heirs of Jno
Turney decd. Thomas Drum
Kearn Hays, Andrew Maurer
Henry. Clymo & Orrin Smith

Jo Davies County Court

Bill for Dower & partition

Henry Clymo & Orrin Smith

now come and waive the issuing of process to them in this cause and for answer to the Complainants bill in this cause say that on the day of August AD 1845 the said Henry Clymo purchased at a Sheriffs sale under an execution duly issued on a judgment obtained against the said John Turney decd in his life time and then in force all the right title and Estate in and to said lot No 5 between Main & Diagonal Streets in the City of Galena in the State of Illinois described in said bill & which the said John Turney died seised of or entitled to and obtained from the Sheriff who made the sale his certificate of such purchase made in due form of law and afterwards the said Clymo sold to said Orrin Smith all his right interest & Estate in & to said lot under said sale and duly assigned under his hand & seal the said certificate of purchase to said Smith.

And the said Clymo & Smith believe that said John Turney at the time of his death owned the one undivided half of said lot and the said Andrew Maurer the other half and they are willing and desirous that partition of said lot between said Maurer and said heirs should be made as prayed for in said bill and the Complainants dower set off to her as prayed.

Orrin. Smith. Henry Clymo

In pursuance of an order of the Jo Davis County Court a copy of which is hereunto annexed, the undersigned Master in Chancery in and for said County respectfully reports

That it has been proved to him satisfactorily that the said John Turney did as stated in said Complainants Bill of Complaint exhibited and signed and entitled in the cause following described Lots of Land lying in the said City of Galena to wit:

Lot No 2 in Block No 60 on Green Street
Lot No 5 " " No 61
Lot No 1 " " No 69 except 30 feet on the West side
Lot No 9 " " No 68 East side fronting River
West 1/2 Lot No 2 " " No 59 except 100 feet from the East side
One undivided half (1/2) of Lot No 5 between Main and Diagonal Street (all the above are on the West side of Fevre River except Lots 9-13) and that the said Lots of Land belong at the present time to the said mentioned in said Bill of the said John Turney except the last mentioned undivided half of 1/2 of Lot 5 which has been sold to satisfy a certain Judgement against the said John Turney in favor of Wm S. Stewart and Peter L. Brown rendered on the 19th Day of November AD 1842 and that the same was sold on the 25th day of August AD 1845 under executions issued upon the said Judgement for the

sum of $170 the amount of the said judgement and costs and that one Henry Clymo became the purchaser thereof = Said Andrew Mourer at the time of filing compl^t bill was owner of the other undivided 1/2 of said Lot = The undersigned further reports that there was at the time of said Turney's death and now is a stone House upon the said Lot No 2 in Block No 60 and that it composed the Residence of the said Turney at the time of his death and that the same is now worth about $1000 - that the whole of said Lot No 5 between Main and Diagonal Streets is worth about $3000 and that the other three Lots abovementioned are worth about $200 each —

The undersigned further reports that the said Lot number 5 between Main and Diagonal Streets can divided, and in case the same is redamed by the Heirs of said John Turney the share of the said Mourer be set off to him specially and the share of the said Fellers be set off to them aggregately without prejudice — It is also the opinion of the undersigned that the said complainants dower in the same can be set off to her without such prejudice = That the said

65

last Mentioned Lot fronts 57 feet on Diagonal Street and 50 feet front on Main Street extending from one to the other: All of which is respectfully Submitted

Walter Merriman
Master in Chancery

Nancy J. Turney
vs.
William Turney
Henry Turney
Mary A. Turney
John A. Turney
Nancy Jane Turney
heirs of John Turney deceased
Thomas Dram
Hearn Hays
& Andrew Mower

Bill for Dower & Partition

Upon reading and filing due proof of a publication of a notice to the said Andrew Mower of the pending of this Suit in this Court, wherein Saxon and against whom the same was pending and at what time and place the summons herein was made returnable by advertisement in a newspaper published the City of Galena in this County and State for four weeks successively once at least in each week the first whereof was on the

day of A.D. 1845 and the

Andrew
said Mourer and Sean Hays having
failed to comply with a rule heretofore
made in this cause to plead answer
or demur to this bill by Monday last
and the said Mourer & Hays after
being this day three times called, coming
not, On motion of complainants Solicitor
It is ordered that the Bill in this cause
be taken as confessed by the said Sean
Hays and Andrew Mourer: And on motion
of Complainants Solicitor it is ordered
that it be referred to Walter Merriman
Esqr Master in Chancery for this County
to ascertain and report the situation
of the premises described in the bill &
whether in his opinion the lot therein de-
scribed as belonging to said Heirs and
Andrew Mourer can be divided and
the share of the said Mourer be set
off to him separately and the share of the
said Heirs be set off to them aggregately
without prejudice to their interests — and
whether the complainants dower therein
can be set off without such prejudice, and
it is further ordered, that said Master also
take proof of the facts and circumstances
stated in the Bill, & said Master is hereby
required to report such proofs to the Court
and also to report upon the other matter hereby
referred to him with all convenient speed —

Filed 20th July 1846 Geo. W. Mitchell, Clerk

67

State of Illinois }
Jo Davies County } ss. We Dan Stone, Allan Tomlin and Milton M. Maughs Commissioners this day appointed by a decree of the County Court of said County, to make partition between Andrew Maurer and the heirs at Law of Jno Turney decd of a certain lot of ground as described in said decree and also to assign to Nancy I Turney widow of said John Turney her dower in the lots described in said decree, do severally, solemnly swear that we will fairly and impartially make partition of said lot in accordance with the decree of said Court as to the rights and interests of the parties, if the same can be done consistently with the interests of the Estate and that we will fairly and impartially allot and set off to Nancy I Turney widow of John Turney deceased her dower out of the lands and tenements described in the said decree of said Court for that purpose as therein directed if the same can be made consistent with the interest of the Estate, according to the best of our several judgments

So help us God.

Dan Stone
Allan Tomlin
M. M. Maughs

Subscribed and sworn to this
28th day of July AD 1846 before me
Charles G Thomas P.J.P.

Nancy I Turney
vs
William Turney & others } To the Judge of the Jo Davies County Court - We Dan Stone Allan Tomlin, & Milton M Maughs Commissioners appointed in and by a decretal order of the Jo Davies Co Court in the State of Illinois, made in the above entitled cause, on the 28th day of July AD 1846 to make partition of a certain lot and to assign to the said Nancy I. Turney her dower

certain Lots & parcels of lots of ground in the said decretal order mentioned & described do Hereby report to the Court that having taken upon ourselves the execution of the duties imposed upon us by the said decretal order we took & subscribed the oaths aforesaid. That we did deliberately Examine all the Lots and parcels of Land mentioned & described in the said decretal order and that we did make partition of the said Lot No 5. between Main & Diagonal Sts in the City of Galena in said State in the said decretal order described in manner following, that is to say; we divided the said Lot No 5 between Main & Diagonal Sts into two equal parts quantity & quality relatively considered by a line running through said Lot parallel with its North and South Lines from the centre of the East line of said lot on Main Street to the centre of the West line of said Lot on said Diagonal St making each of said halves of said Lots Twenty feet fronting on Main St and Twenty Eight & one half feet on Diagonal St. One of which divisions or allotments that is to say the East or upper half of said lots we did set apart & allot & assign to the Heirs at Law of John Durney deceased to wit William Durney, Henry Durney, Mary E. Durney John Durney & Nancy D. Durney as and for the part & share of the said Heirs at Law and those claiming under them or either of said ancestor in the said Lot according to the rights & interests of the said Heirs at Law therein as the same hath been determined by the said Court and the decretal order aforesaid, And the other of which said Divisions that is to say the West or Lower half of said Lot we do set apart allot & assign to the said Andrew Maurer as and for the part & share of the said Maurer of the said Lot according to the rights & interest therein of the said Maurer as the same hath been determined by the said Court and by the

69 decretal order aforesaid.

And we do further report that we did set off, allot and assign to the said Nancy. D. Turney widow of said John Turney deceased One hundred & thirty feet of ground off from the west end of said Lot, No one in Block No Sixty on the West side of Fever River in said Galena and in said decretal order mentioned as & for her dower in both the said One hundred and thirty feet of ground & Lot No one in Block No Fifty nine in said decretal order described, according to quality & quantity of said lot and parcel of ground as and being had to their present value Exclusive of all improvements made upon them - Said One hundred and thirty feet of ground & a parcel of ground off from the West end of said Lot No one in Block No Sixty bounded on the South & North by the South and North Lines of said Lot running one hundred and thirty feet from the South west and North West corner of said Lot on Spring and Green Streets, on the West by the West line of said Lot, and on the East by a line parallel therewith and distant One hundred and Thirty feet east.

And we do further report that we did set off, allot & assign to the said Nancy. D Turney Lot No Two in Block No Sixty on the West side of Fever River in the said Galena in said decretal order described on which is the dwelling house of said John Turney deceased & thirty feet of ground off from the East side or end of said Lot No one in Block No Sixty in said Galena on the West side of Fever River as & for her dower in all the following Lots or parcels of ground in the said city of Galena and described in the said decretal order to wit. The said Lot No Two in Block No Sixty - The said Lot One in Block No Sixty Except the said one hundred and thirty feet off from the west side -

The East half of said Lot No Two between Main & Diagonal Streets - Lot No Five in Block No Sixty one. The west half of Lot No Two in Block No Fifty Nine Except One hundred feet off From the East side, all on the West side of Pecos River - and Lot No Nine in Block No Thirteen on the East side of Pecos River. The said Thirty feet of ground is bounded on the east by the East line of said Lot one in Block Sixty on the West by a line parallel thereunto and distant thirty feet therefrom west, on the north & South by the North and South lines of said Lot thirty feet between first said described lines, all which dower was so set off and assigned as aforesaid in pursuance of the directions in said decretal order contained according to the rights of the said Nancy I Turney as determined by the said Court in and by the decretal order aforesaid of the said partition was in like manner made and according to the respective rights of the parties as thus determined. In witness whereof we the said Commissioners have to this our report set our hands and seals this twenty ninth day of July A.D. 1846.

Allan Conlin [Seal]
Milton M. Maughs [Seal]
Dan Stone [Seal]

Nancy I Turney
vs
William Turney et al

Bill for dower & partition.

The report of the Commissioners heretofore appointed in this Cause to make partition and assign dower in certain Lots of ground as described in a decretal order of

76 this Court herein, dated the 29th day of July A D 1846 being read and filed. Whereupon on motion of the complainant it is ordered that such report & all therein contained be and the same is hereby ratified & confirmed & that the said partition of said Lot No 5. between Main & Diagonal Streets in the City of Galena & State of Illinois, remain firm and Effectual forever and that the said parties respectively hold & Enjoy in Severalty the said portions of the premises set apart and allotted to them as aforesaid - & the said complainant have and Enjoy the lots and parcels of ground set off and allotted to her in and by said report as & for her dower for and during her natural life and that the costs of this suit be equally divided between the said complainants and the said Defendant Andrew Mourer, each paying one half thereof & that the complainant recover of the said Mourer, the one half of all her costs, about this suit Expended & have Execution therefor - .

Nancy. J. Turney
vs
William, Henry, Mary. E.
John, Nancy Jane Turney
heirs at Law of Jno Turney decd.
Thomas. Drum. -
Kearn Hays; Andrew Mourer
Orren Smith & Henry Clymo

Jo Davies County Court

Bill for dower and Partition

Satisfactory proof having heretofore been made to the Court of the due publication of notice to the said Andrew Mourer a non-resident of this State of the pendency of this suit, in a newspaper printed

72

in this State for four weeks successively as required by the Statute in such case made & provided & the said bill having been taken as confessed against him and the said Kearn Hays. This cause came on to be heard this day on the Report of the Master in Chancery & the pleadings proofs and Exhibits in the cause had thereupon it is ordered adjudg and decreed that the interests and Estates of the several parties to this suit in and to the several lots and parcels of land described in the bill of complaint in this cause are as therein set forth & that partition be made of said Lot No 5 between Main & Diagonal Streets in the City of Galena described in said bill among the said heirs at Law of John Turney dec.d & those claiming under them or their ancestor & the said Mourer according to their respective interests and Estates, And that Allen Tomlin. Dan Stone & Milton M Maughs be and they are hereby appointed Commissioners for the purpose of making such partition & the assignment of dower hereinafter mentioned. And that the said Commissioners after being duly sworn fairly and impartially to execute their trust shall divide the said Lot No 5 between Main & Diagonal Streets into two equal parts quality & quantity relatively considered & thereupon they shall allot to the said heirs at Law of John Turney deceased and those claiming under them or their ancestor. One of the said two equal parts to be held and Enjoyed by them in severalty & they shall allot to the said Andrew Mourer the other of the said two equal parts to be held and Enjoyed by him in severalty and they shall designate the said parts so allotted respectively and the boundaries thereof by sufficient descriptions and monuments —

73

And it is further adjudged that the said Complainant Nancy D Durney is entitled to & do recover her dower in the following described lots or parcels of land described in the said bill situate in the City of Galena in the County of Jo Daviss & State of Illinois, to wit -

The one undivided half part of said Lot No 5 between Main and Diagonal Streets which belonged to the said John Durney deceased at the time of his death and descended to his said heirs.

Lot No Two in Block No Sixty
Lot No Five in Block No Sixty one
Lot No One in Block No Fifty nine

One hundred & thirty feet front & rear off from the west side or end of Lot one in Block No Sixty on Spring Street. All the residue of said lot one in Block Sixty.-
West half of Lot No Two in Block No Fifty nine. Except one hundred feet off from its East side or end, all the foregoing lots are on the west side of Fever river -
Lot No Nine in Block No Thirteen on the East side of Fever river.

And it is further ordered that the said Commissioners assign to the Plaintiff by metes and bounds her dower in the said one hundred and thirty feet off from the West side of Lot one in Block Sixty on Spring Street separately, also in the said Lot No one in Block No Fifty nine separately, or they may assign her dower in both said lots in the said one hundred and thirty feet alone as the said Thomas Drew desires it. And that they assign to her by metes and bounds her dower in the

said half part of said lot No 5 between Main & Diagonal Streets which they shall allot to the said heirs at Law & then claiming under them or their ancestor as afore directed and all the other above described lots or parcels of land in which she is entitled to dower as afore decreed quality & quantity relatively considered, either separately in each tract or all together in some one or otherwise as may best suit the interests of the parties.

And it is further ordered that this decree shall be binding upon the said infant defendants unless they shall within six months after they respectively attain the age of Twenty one years upon being served with process for that purpose shew to the Court good cause to the Contrary —

And it is further ordered that the defendants respectively deliver possession to the plaintiff & the said heirs at law of such parts of said lots as they respectively occupy or claim to own which shall be so set out assigned & allotted to the plaintiff & said heirs respectively as above decreed and that the tenants of any on the premises so to be assigned and allotted, attorn to & pay their rents to the plaintiff or said heirs according to such assignment or allotment.

And it is further ordered that said Commissioners make report of their proceedings herein with all convenient speed —

It is now agreed that all the proceedings aforesaid under the Stuart & Brown Judgment and the redemption from the sale under said judgment by Gates and the levy and sale and deed under the Gates judgment

are here admitted to apply to the whole of said upper half of said Lot five, and no advantage shall be taken by either party of the fact that the sale under the Stuart & Brown ~~judgment~~ Judgment was of the undivided half of said Lot but the same shall be considered as of the whole of the said upper or East half.

75

It is admitted that at the December Term of the Supreme Court in 1850 the said case of Gates against Nancy J Turney admx upon said scire facias was heard upon writ of Error and by said Supreme Court the said judgment of revival was reversed and decided to be erroneous and said case was remanded to said Circuit Court for further proceedings and no other proceedings have ever been had therein. All of which will be seen by 12th Illinois reports pages 141 & 142.

The above is a statement of the facts presented on the trial of the above entitled Cause before the Circuit Court of So Davies County Illinois at October Term A D 1857. Hon B. R. Sheldon presiding as Judge and the records & papers referred to in it are to be considered as included in it & the Clerk of the Circuit Court of said So Davies County is to copy this statement, inserting copy of all papers and records therein referred to. and the whole together is to be taken as a certified record of the Evidence heard in the trial of the above Cause together with all admissions made & no objection is to be taken to the introduction in Evidence of any record, receipt execution, certificate of purchase or other writing or paper herein above referred to, except such objection goes to the

relevancy or competency of such Evidence or both for which it is offered. And the whole of the above Statement of Facts, papers and record shall be signed & sealed by the Judge of the Circuit Court of said St. Davies County upon the request of either party and shall when so copied and filed up by said Clerk and signed & sealed by said Judge be and operate as a Certificate of the Evidence in the above Entitled cause and shall stand in the place of & be a bill of exceptions in said cause to be so used by the parties in this suit upon Appeal or writ of Error to the Supreme Court of the State of Illinois.

This is all the Evidence offered in this cause on both sides and is for the purpose of this trial in this Court and the Supreme Court only and not for the any future trial of this case if any should be had.

W. Wesley Atty for Plffs
R.A. McClellan " Defts

No Testimony having been offered or received Except the foregoing Agreement of facts. The Attorney for the Plaintiff objected to the introduction of all the Evidence in the agreed Statement of Facts as offered by the Defendants as incompetent & irrelevant which objection was overruled by the Court & the Plaintiff Excepted.

The Court after argument took the case under advisement and on the first day of December being still of the October term of said Court A.D. 1857 found the issue for the defendants. Whereupon the Plaintiffs moved the Court to set aside the finding and for a new trial upon the following motion

77 Nancy J. Turney et al. vs Alexr Young } Circuit Court Jo Daviess County Illinois. Of the October Term 1857.

Now at this day come the Plaintiffs in this cause and move the Court to set aside its finding therein and for a new trial for the following reasons -

1st " The finding of the Court is contrary to the evidence in the cause.

2d " The finding is contrary to the law in the case.

3d " Because from the evidence the Court should have found the issue for the plaintiffs and not for the Defendants

4th " And for other good and sufficient reasons appearing upon the face of the papers

W. Weigley
Atty for Pltfs -

Which motion the Court overruled & rendered judgment on the finding, to the overruling of which motion & rendering judgment as aforesaid the plaintiffs by their attorney then and there excepted and prayed that this their bill of Exceptions might be signed sealed and allowed by the Court which is accordingly done in open Court this first day of December A.D. 1857.

Benjn R. Sheldon Seal

78-

State of Illinois
Jo Daviess County } ss I Wm R Rowley Clerk of the Circuit Court in and for said County in the State aforesaid hereby certify the foregoing to be a full true and correct Transcript of all the proceedings of said Circuit Court in the Case of Nancy J Turney et al vs Alexander Young as the same appears of Record. Together with the papers in said Cause & the Bill of Exception as Signed & sealed by the judge of said Court. In testimony whereof I have hereunto set my name and affixed the seal of said Court at my Office in Galena this 18th day of Dec A D 1857

Attest W R Rowley
Clk



Nancy I. Young et al
vs
Alexander Young

In the Supreme Court
of the State of Illinois
Third Grand Division
of the Term of April 1858.

Appeal from To Daviess.

And no come the said Appellants by R S Blackwell their attorney and say that in the records of the proceedings aforesaid and in the rendition of the judgment aforesaid manifest error hath intervened to their prejudice in this to wit.

1. The said Circuit Court erred in finding the issue aforesaid for the said Appellee
2. The said Circuit Court erred in overruling the motions of the said Appellants for a new trial herein
3. The said Circuit Court erred in rendering a judgment ~~against~~ for the said appellee when by the laws of the land the said judgment should have been for the Appellants

Wherefore &c they pray judgment &c

R S Blackwell for appellants

42-130

Nancy T. Turney
vol. appellants
vs. { appeal
from Loc Dovers
Alex^r. Young
appellee

Filed April 21 1858
L Leland
Clk