

No. 12484

Supreme Court of Illinois

Coughron

vs.

Gutchees

71641  7

fol. 1-

State of Illinois } S. S.
County of Cook }

Now before the Honorable
John M. Wilson Judge of the Cook County Court
of Common Pleas within and for the County of
Cook and State of Illinois at a Vacation Term
of said Cook County Court of Common Pleas begun
and holden at the Court House in the City of
Chicago in the County and State aforesaid
on the first Monday being the seventh day of
April in the year of our Lord one thousand eight
hundred and fifty six and of the independence
of the United States the eighteenth—

Present the Honorable John M. Wilson Judge
James S. Beach clerk acting
Sheriff of Cook County
Walter Kimball Clerk
Attest

Be it remembered that heretofore to wit; on the thirtieth day of May in the year of our Lord one thousand eight hundred and forty eight there issued out of the office of the Clerk of the Cook County Court, the People's writ of Summons against Ira Gates in a Petition for a Mechanics Lien - which said writ of Summons, and return thereon enclosed is in words and figures as follows to wit;

State of Illinois } ss.
Cook County

The People of the State
of Illinois to the Sheriff of said County - Greeting

We command you that you summons Ira Gates if he shall be found in your County personally to be and appear before the Cook County Court of said County, on the first day of the next term thereof, to be holden at the Court House in the City of Chicago in said County on the first Monday of October next to answer unto Washington Corbham in a Petition for a Mechanics Lien to the damage of the said plaintiff as he says in the sum of Two Hundred Dollars -

And have you then and there this

mit. with an endorsement thereon in what
manner you shall have executed the same
Witness—the Honorable Hugh D. Pro
Key Judge of our said Court and the seal
thereof at the City of Chicago in said County
this 29th day of May A.D. 1848—

E. S. 3

James Curtis Club

Returned Sept 12th 1848 and executed by reading
the within in the presence of Ira Gates Jury
8th 1848—

Irae Cook Sheriff of C. C.
By S. A. Rickett depy Siff

And thereafter to wit: on the seventh day of
September in the year Eighteen hundred
and forty Eight, comes Washington Congham
Plaintiff by C. S. M. Sull his Attorney and
filed in the office of the Club of the Cook
County Court his Petition to enforce Mecha-
nic's Lien ~~xxxxx~~ ~~xxxxx~~ Power of attorney Affid-
ant, & Cognovit, which said Petition. Power of
Attorney affidavit and Cognovit, are in words
and figures following to wit;

Now Hugh T. Dickey Judge of Cook
County Court in the State of Illinois;

The Petition of Washington Coughron of the
County and State aforesaid - Respectfully Sheweth;
That on or about the first day
of December in the year of our Lord One thousand
Eight Hundred and forty six - Ira Bates of Chgo-
cille in Cook County in the State aforesaid claim-
ed and pretended to be the Owner and your Petitioner
verily believe was seized in fee simple of the following
described premises viz; All that piece of land com-
mencing at the South East corner of the North West
Quarter of Section Number eleven (11), Township Thirty
nine (39), North Range, Twp 12, East of third
principal meridian, running thence West on
the South line of said Quarter Section Twelve (12)
rods; thence North on a parallel line with the East
line of said Quarter Section to the Turnpike leading
towards Elgin, thence East twelve (12) rods to the
East line of said Quarter Section, thence South on
the East line of said Quarter Section to the place
of beginning. Together with the Tavern stand situ-
ated thereon with the out buildings and all
appurtenances thereto belonging, which place is
known commonly as "Gates Cottage"

And your Petitioner farther sheweth
that being at the day & date last aforesaid a

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mechanic i.e. a Carpenter & Joiner working at his trade in the County aforesaid. He did enter into a verbal agreement to and with the said Ira Gates to do certain work in his trade upon the dwelling House Barn & other outbuildings, situated upon said lot and piece of land above described, which said work was to be performed at a certain stipulated price per day, and that no particular time was specified when said work was to be completed, but that your Petitioner was to receive for each days work bestowed upon said premises in pursuance of said contract, One Dollar and a half per Day - And your Petitioner further sheweth that the number of Days which he bestowed in labor upon said premises amounts to Eighty five Days and a half for which your Petitioner claims now to be due to him the Sum of One Hundred & twenty Eight Dollars & twenty five cents as by the bill of items hereunto annexed may appear -

And your Petitioner further sheweth that the said work was fully completed on or about the middle of January - In the year of our Lord Eighteen Hundred & forty seven and that the same was fully accepted and received by the said Ira Gates so soon as the same was completed -

And your Petitioner would further shew that at the time of the completion and acceptance of the work as aforesaid it was agreed by & between your

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Petitioner and the said Gates. that the payment of the same should not be demanded until the 1st Day of January next following.

And your Petitioner would further state that the first day of January the Day & Date when the said sum of money became justly due & payable according to the said agreement has long since elapsed and that the said Ira Gates although justly indebted hath not kept his promise to pay the same, and hath not paid the said sum of money or any part thereof although often requested so to do, but hath hitherto wholly neglected and refused to the great detriment and damage of your Petitioner.

Your Petitioner would therefore pray your Honor to make an order that the said lot of Land above described, together with all appurtenances therunto belonging may be sold to satisfy the Lien of your Petitioner, according to the form of the Statute in such case made & provided to satisfy the Lien of your Petitioner - and that the proceeds of said sale or so much thereof as may be necessary, be applied to the payment of your Petitioner's claim to the discharge of his lien.

And your Petitioner further prays that your Honor will make such further or other order in the premises as to your Honor may seem meet & right.

Washington Congress
By OR. W. SULL His Atty

Copy of ac

Ira Gates

To Washington Coughran Dr
Twenty one & a half Days work for self at \$1.50 per day \$32.25
" Function and a half Days work for son at do \$21.75
" Sixteen Days work for Shirley at do \$24.00
" Thirty three & a half for Learett at do \$50.25
\$128.25

In Cook County Court

Ira Gates

vs

Washington Coughran } S. Ira Gates Defendant
in the said suit do hereby authorize and empower
any Atty of any Court of Record in the State of
Illinois or in the United States to appear for me
and confess judgment for the amount claimed
by said Plaintiff to release all errors in the proce-
dings or in the Judgment for me & in my ~~half~~
name and as fully and in the same manner
as I myself might do and also to stipulate
that execution may issue upon the same imm-
ediately -

Dated Sept 6, 1848

Ira Gates

Seal

Cook County Court
 Ira Gates
 ad

Washington Congham } State of Illinois, County
 aforesaid - I, O. K. M. Sull of Chicago in said
 County being duly sworn do depose and say
 that I was present when the above Deft executed
 a power of atty for confession of judgment and
 for immediate issuing of execution and releasing
 all was in judgment proceedings and that I
 saw him sign said power of atty and further with
 not --

O. K. Sull -
 Sworn before me this 7th day of Sept 1848
 James Curtis.
 Clerk

In Cook County Court
 Ira Gates
 ad

Washington Congham

And the said Defendant
 Ira Gates by Henry A. Clark his atty comes & def
 ends the wrong & injury when & and says that
 he cannot deny the action aforesaid of the said
 Plaintiff there of against him nor but that he
 promised and undertook in manner & form as
 the said Plaintiff hath above there of complained

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against him nor but that the Plaintiff hath sustained damages by occasion thereof over and above his costs and charges by him laid out, and expended in & about this suit to one hundred and twenty eight Dollars and twenty five cents for which sum he hereby confesses Judgment with a release of all costs ~~in the~~ ~~entry~~ in the entry thereof & the proceedings connected therewith and does agree that execution on the Judgment confessed, may issue immediately

Dated Sept 16 1848 Henry A. Clark

And thereupon on the day and year last aforesaid, the following among other proceedings were had in said Cause and entered of Record to wit:

Washington Coughran

Ira Gates

Confession

And now on this 7th day of September A.D. 1848 comes the said Plaintiff by Lull his Attorney and files his petition in this Cause for a Mechanics Lien and thereupon comes the said Defendant by Clark his Attorney and confesses the action of the said Plaintiff by filing his cognovit herein duly & proved

and confesses Judgment in favor of said Plaintiff for one Hundred & twenty eight dollars and twenty five cents, besides costs of suit with a release of all errors herein —

Therefore it is considered that the said Plaintiff do have and recover of said Defendant his damages of one Hundred and twenty eight Dollars and twenty five cents in form aforesaid and also his costs and charges by him about his suit in this behalf expended and that he have execution therefor against the following described property to make the same to wit: All that piece of land commencing at the south east corner of the North West Quarter of Section number eleven (11) in Township thirty nine (39) north range twelve (12) East of the third (3) principal meridian running thence West on the south line of said Quarter section, twelve (12) rods thence North on a parallel line with the east line of said Quarter section to the Ironpike leading towards Elgin thence East twelve (12) Rods to the East line of said Quarter section thence South on the East line of said Quarter section to the place of beginning — Together with the Tavern stand situate thereon with the out buildings, and all appurtenances therunto belonging being

the premises commonly called known as
the Gates Battage in Cook County -

And, thereupon on the seventh day of Sept-
ember in the year last aforesaid, there issued
out of the office of the Clerk of the Cook Coun-
ty Court, and Execution which said Exec-
ution and endorsement thereon is in words
and figures as follows to wit;

State of Illinois } ss.
Cook County }

The People of the State of Illi-
nois to the Sheriff of Cook County - Greeting =

We command you that of the following describ-
ed goods & chattels, lands and tenements of
Ira Gates Defendant in your County to wit;
all that piece of land commencing at the
South East corner of the North West Quarter
of section number eleven (11) in township
thirty nine (39) north range twelve (12) East
of the third principal meridian, running
thence west on the south line of said
Quarter section twelve (12) rods thence
north on a parallel line with the East line
of said Quarter section to the Ironpike
leading towards Elgin, thence East twelve

(12) rods to the East line of said Quarter Section thence South on the East line of said Quarter Section to the place of beginning -

Together with the Tavern Stand situated thereon with the outbuildings and all appurtenances thereto, belonging being the same premises commonly known as the Gates Collage in Cook County, your cause to be made the sum of One Hundred and twenty eight Dollars and twenty five cents (\$128.25) which Washington Cunningham Plaintiff lately in the Cook County Court in vacation on the 7th day of September instant recovered against the said Defendant and which by the said Court was adjudged to the said Plaintiff for his damages -

And also the further sum of Four dollars and ninety three $\frac{3}{4}$ ($93\frac{3}{4}$), which were adjudged to the said Plaintiff for his costs and charges by him about his suit in that behalf expended whereof the said Defendant was convicted as appears to us of Record and have you these moneys ready to render to the said Plaintiff for his damages & costs aforesaid and make return of this writ with an endorsement thereon in what manner you shall have executed the same in ninety

days from the date hereof—

Witness— The Hon Hugh S. Dickey
Judge of our said Court and the seal
thereof at Chicago in said County this
4th day of September A.D. 1848

ELB

James Brantley
Clerk

The within execution stayed by order of the
Court his Hon H. S. Dickey—

Oct 6, 1848

J. Good Sheriff
By John Beach Deputy

And afterwards to wit: on the twenty second day
of April in the year of our Lord one thousand
eight hundred and fifty six. the following
among other proceedings were had and entered
of Record to wit:

Washington Conghran	}	Motion to amend Order
vs Morris Gutchens who inter- pleads with Ira Gates		

And now upon this
day come the Parties. by their attorneys and

the Court being sufficiently advised in the premises of the motion to amend the former order and decree referred to in this motion submitted to the Court, on consideration of the premises the Court do now overrule the motion of said Boughran and that the same be dismissed at his costs

And thereupon the said Plaintiff enters his exceptions herein to the opinion and ruling of the Court, and time is given to the first day of the next term of this Court to prepare & file his bill of Exceptions herein -

And afterwards to wit: on the fifteenth day of May in the year last aforesaid, there was filed in the office of the clerk of the Cook County Court of Common Pleas, a Bill of exceptions which said Bill is in words and figures as follows to wit:

In the Cook County Court of Common Pleas
Of April Term A.D. 1856 -

Washington Boughran	} On motion to correct Record entry
^{vs} Morris Gutcher who enters pleads with Ira Bates	

Be it remembered
that on this 22^d day of April. A.D. 1856 being

one of the days of the April Term of this Court in that year came the said Conghram by his attorney Burges - and the said Gutchens by his attorney G. P. Wilder, the said Gales by his attorney Oliver R. M. Sull - Buckner S. Morris in his own person & Richard H. Swift Reuben Whaple by their attorney Waite - And the motion made by said Conghram to correct the record entry in this cause came on to be heard together with the chancery causes hereinafter mentioned which motion is as follows to wit:

2 Chy causes

Dated 16th December A.D. 1854. W. Kimball Clerk
In the Cook County Court of Common Pleas
Washington Conghram - Gail Docket No 2090

²¹
Morris Gutchens who
multiples with Ira Gales

And the said Conghram by his Atty Sull & Burges moves the Court that the order entered of record in this cause on the 1st day of March 1851 as follows -

"This day comes the said parties by their Attorneys & on motion of Gail's defendants Attorney it is ordered that this cause be stricken from the docket at the costs of the plaintiff therefore it is considered that the said defendant to have & recover of the said Plaintiff his costs & charges by him in this behalf

expended & have execution thereof -"

be so, amended, as to read, and
be as follows viz;

This day come the Plaintiff
by his attorney and the said Gutchens inter-
pleading &c - by his Attorney Collins also come
And thereupon the said Gutchens by his attor-
ney withdraws the interpleader by him entered
in this cause & on his motion it is ordered
that the said interpleader be stricken from the
Docket at his costs -

It is therefore considered that
the said Goughran do recover of the said Gutchens
his costs by him about said interpleader ex-
pended and have execution thereof; and
that the original case of said Goughran
vs. said Gutchens stand continued - or such
other or further amendment thereof made
as the said Court may order on the affidavit
filed in support thereof -

Will H. Burgess
for Goughran

J. Morris Gutchens

And in support thereof
said Goughran read the following affidavits -

In the Leek County Court of Common
Pleas;

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Washington Congham

²³
 Morris Gutchen who inter-
 pleads with Ira Gates deceased

Genl Docket

No 290 -

Mechs Lien

On motion to correct Record
 Entry of March 1. 1851 -

State of Illinois
 County of Cook (S.S.)

Oliver B. H. Sull being duly
 sworn doth depose & say that at this date above
 stated this deponent was one of the Attorneys
 of said Congham in said cause and was
 present in Court when the proceedings took
 place. to enter which upon the records of the
 Court the said above mentioned entry was
 made - That on that occasion James H.
 Collins Esq. the attorney for said Gutchen
 when the interpleader by said Gutchen in
 the original suit of said Congham against
 said Gates was called up, said he had
 concluded to withdraw the said interplea-
 der & to have the same dismissed and there-
 upon the same was dismissed by order of
 the Court - That it was then understood
 that no further interference would be made
 by Richard H. Swift to any further proceed-
 ings in said original suit as said Collins

concluded that Gutchens or Swift would not be affected by those proceedings as establishing a Mechanics Lien on the property described in said Judgment -

That this defendant or Clerkman has Law practice at the time spoke of issuing execution on the Original Judgment to the Court - and it was then understood that the multiplicity of said Gutchens being withdrawn Coughran would be at liberty to issue execution without any formal order to that effect by the Court -

That after Court rose he applied to the Clerk for an execution upon said Original Judgment - & then found that the said order was entered in such a manner & without vacating the previous order that the Clerk thought he had no right to issue it this defendant then consulted with Judge Spring about it who presides in Court when said order was made -

And he was of opinion that as this was in the nature of a final order he could not make it in vacation & advised this Defendant to wait until the next term of the Court that then the order of March 1. 1850 could be corrected and the previous Order vacated, and a new execution awarded -

That this Deponent served upon said Collins a notice a copy of which is on file in this cause with the admission of said Collins of service upon him thereof; that at the time he served said notice upon said Collins he conceded or admitted that he had withdrawn the interpleader or motion he had made for Gutchen's benefit in the case and did not intend to pay any further attention to the case -

That this deponent in taking the order of November 15th A.D. 1850 intended to correct the entry of March 1st 1850 so as to show that the said Collins had withdrawn said interpleader that said order of November 15th A.D. 1850 was done & entered upon consultation with the Judge of the Court & Clerk before & by whom said order of March 1st 1850 was made & entered - both of whom conceded at the time that the said Gutchen at that time withdrew his said interpleader and that said Bingham was thereupon to be at liberty to issue execution and that the Order of the Court should have been so drawn as to show that to be the State of the case -

O.R. McSull

Subscribed & sworn to before me.

this 9th day of April - A.D. 1856.

Walter Kimball
Clerk

In the Cook County Court of Common
Pleas -

Washington Burghman

General Docket 20900

Meck's Lien -

vs
Maris Gutchen who inter-
pleads with Ira Gates

On motion to correct
Record Entry of March 1, 1850

State of Illinois } s.s.
County of Cook }

John W. Chickering of
said county, being duly sworn oath depose
and say that at the time above mentioned
he was one of the attorneys of said Washington
Burghman, and that he was present in court
when the order was taken in said cause of
said date -

That on that occasion the said cause
came on to be heard upon said interpleader
and James H. Collins Esq the attorney for said
Gutchen since deceased withdrew the interple-
ader of said Gutchen - thereupon
said interpleader was dismissed at the costs
of said Gutchen, and this was all that was
then and there done or intended to be done
to the best of the recollection of this affiant
and this deponent further says that the suit
as between said Burghman & said Gates was not
dismissed or intended to be dismissed -
Subscribed & sworn to before me this 6 day of Nov 1854 J. W. Chickering -
Not Public

And it also appearing to the Court that on the 18th day of April A.D. 1846, said Gates & Maples to secure a note of even date therewith made by them to said Swift for \$949.²⁵ due the 18th day of April 1847-executed and delivered to said Morris in trust for said Swift an ordinary Trust Deed of that date conveying to him certain premises therein described as follows to wit:

"And also on the part of said Gates the 2 acres Harrow called "Gates Cottage" & the barn & outhouses and therewith and also the land on which the same is situated as follows to wit: Commencing at the South East corner of the North West Quarter of Section (11) Elmer Town (39) Thirty nine Range 12 East of the third principal meridian running west on the South line of said Quarter Section twelve rods thence north on a parallel with the East line of said Quarter Section to the turnpike now built known as the Steam Mill & Sattuck Turnpike, leading towards Elgin, thence East twelve rods to the East line of said Quarter section, thence south on the East line of said Quarter section to the place of beginning" ^{with power to sell the same in case of non-payment of said note when due}

That on the 13th day of March 1847 said Gates & Hutchins entered into an agreement ~~as follows viz:~~

This Article of agreement entered into this thirteenth day of March

one thousand eight hundred and forty seven - Between Ira Gates and Morris Hutchins both of the State of Illinois and Counties of Cook & Kane - The conditions is as follows to wit;

The said Ira Gates is to rent or hire the Tavern Stand with the privilege of getting fire wood sufficient for the use of the House which he now occupies and known as "Gates Cottage" situated in Cook County near the Oplaw river at the Junction of the St Charles and Elgin road, for the sum of four hundred dollars a year which is to be paid on or before the twenty fifth day of March next; and it is agreed that the four hundred and fifty Dollars shall draw twelve per cent per annum after the payment thereof - And it is further agreed that the said Gates shall leave all of his furniture which he now has with the exception of two beds two bedsteads and bedding and other necessary furniture for the use of his own private family - And it is agreed that the said Hutchins shall have the said Tavern Stand for the term of one year with the privilege of two years more by his paying the same amount of money annually in advance thereafter on the same day of the month as above named.

drawing interest at twelve per cent when paid
 And it is further agreed that the said Gutchens
 shall finish off the barn which is now up and
 the frame which is nearly ready to be raised
 in good workmanlike manner furnishing
 means himself to do the same which shall be
 done on or before the first day of Oct next as
 above described - And it is further agreed
 that the said Gates at the expiration of the
 time agreed on for the rent of said tavern
 shall pay to the said Gutchens the amount
 of money which the said lumber and nails
 shall cost in Chicago and also a Good Carpenter
 which the said Gutchens shall hire the
 sum of One dollar per day which shall be
 paid for at the of the lumber for the barn -
 And it is further agreed that the said Gutch-
 ens shall get every thing in readiness for sto-
 wing the two wells that is now dug between
 the House & barn furnishing the Stone on the
 spot for stowing the same and then the said
 Gates shall either lay the said Stone in the
 two wells or furnish a hand to do the same -
 And it is further agreed as a condition
 hereinafter mentioned between the said Gates
 and Gutchens, that the said Gutchens shall
 furnish money sufficient to clear the Tavern
 stand from the incumbrance which R. H. Swift

has in pledge for money due said draft by the said Gates by the fifteenth day of May next.

The said Gutchens is to furnish the money as above mentioned to pay the debt to R. Kempt and the said Gates is to allow the said Gutchens the interest which he may have to pay for the money which shall be deducted out of the rent of the said town which shall not exceed twelve percent after the first day of Nov. next;

And the said Gutchens shall lay down the barn-room floor by the said Gates paying the said Gutchens what the lumber shall cost at the yard at the same time of the payment for the lumber for the barn —

And the said Gates is to furnish rails in the woods to fence the yard and garden spot. And it is agreed that Gates shall pay to Gutchens a reasonable compensation for his trouble in finding the loan of said money — And for the fulfillment of the above named articles of agreement the bind ourselves our heirs administrators and assigns under a penalty sum of five hundred Dollars which shall be paid by the one part to the other which shall fail to fulfil the conditions of the within articles of agreement

And for the security for the money which the said Gutchens shall furnish to releas the taxen stand from the hands of R. E. Swift the said Gutchens shall have a deed from R. E. Swift free from incumbrance - And the said Gutchens shall give the said Gates a bond for a re-deed when the money shall be refunded by rent or otherwise - And all the money that the said Gutchens cannot raise within his own means the said Gates shall pay the extra interest over and above twelve per cent after the first day of Nov next -

Given under our hands and seals this thirteenth day of March one thousand eight hundred and forty seven -

Witness
J. H. Doucett
J. E. Egan.

Ira. Gates.
Morris Gutchens

[Signature]
[Signature]

Which was filed for Record the 15th day of May A.D. 1848 -

That on the 17th day of June 1848 said Morris at the request of said Swift said note not being paid, sold said premises under and in pursuance of said deed of trust to said Swift for \$550 - which was applied

on said note - and executed to him a deed thereof of that date -

That on the 26th day of June 1848 said Swift executed to said Gutchens a Warranted deed of said premises in consideration of the sum of \$1900 to him duly paid by said Gutchens -

That on the 9th day of July 1853 by deed of that date said Gutchens conveyed said premises to said Whaples which was recorded on the 1st day of Oct 1853

That on the 3rd day of September 1853 by deed of that date said Whaples conveyed said premises to said Morris which was recorded on the 9th day of Sept 1853 and said Morris hath not since then made any conveyance -

Which said Motion was consented to by said Gates through his Attorney Sull but resisted by said Gutchens & the other parties above named -

And the following papers are on file of Record in this cause and used on the hearing as evidence as follows to wit;

Washingtonburgh } Cook County Court

Ira Gates
State of Illinois
Cook County ss

Richard H. Swift of the
City of Chicago, County aforesaid being duly
sworn saith - That the above entitled cause
was commenced by the issuing of summons
therein bearing date the 30th day of May 1848,
requiring the defendant to answer unto the
plaintiffs in a "petition for a mechanics lien"
as appears by the record of proceedings in said
case - But no petition or Bill appears to have
been filed at the time of the issuing of said
summons or until the 1st day of September
1848 as appears by the indorsement or filing
on said petition. And this deponent further
saith that on the said seventh day of September
1848 - a Judgment was entered in said
cause on a cognovit signed by Henry A. Clark
Esq as the attorney of the said defendant
for the sum of \$128.25 damages with costs -
said Judgment contains an award of execu-
tion in substance as follows: "That he (the said
plaintiff) have Execution against the follow-
ing described property to make the same
(said Judgment) to wit: All that piece

of land commencing at the South East corner
 of the North West Quarter of Section number
 eleven in township number thirty nine north
 Range Twelve East of the third principal me-
 ridian - running thence West on the South
 line of said Quarter Section twelve Rods - thence
 north on a parallel line with the East line of
 the said Quarter Section to the Turnpike lead-
 ing towards Elgin; thence East twelve Rods
 to the East line of the said Quarter Section
 thence South on the East line of said Quarter
 Section to the place of beginning together
 with the town stand situate thereon with
 the out-buildings, and all appurtenances
 thereunto belonging being the premises common-
 ly known as "Galt's Cottage" in Cook County.
 And this deponent further saith that he is
 informed and verily believes that an execution
 has been issued upon said Judgment & in
 accordance thereto - and the said premises above
 described - have been taxed upon, and adverti-
 sed for sale on the sixth day of October next;
 at 10 o'clock in the forenoon; and deponent
 verily believes said premises will be sold
 at that time by the Sheriff of Cook County
 unless restrained by an order to stop proceed-
 ings thereon - And deponent further saith

that he purchased said premises under a Sale made by B. V. Morris under & date by virtue of a Court deed executed by said Court to said Morris prior to October 1847 - and soon after this defendant conveyed the said premises in fee simple to Morris Hutchins - with covenants of Seizin and against him & incumbrances; and this defendant is interested to defend said premises against said pretended lien set up in this cause -

And the defendant further saith that he truly believes that the said pretended lien has no just or equitable foundation whatever & is set on foot to extort money from this defendant & that he has a good defence against said pretended lien as he is advised by counsel & truly believes - and further defendant saith that -

R. H. Swift

Subscribed this 6th
day of October 1848 before me
J. A. Curtis Clerk

Washington Congdon } Cook County Clerk

Wmth Gates } Sir - Take notice
that I intend to move this Court to set aside
& vacate the summons & all subsequent

proceeding in this cause; to dismiss this cause
for the following reasons -

First - That the Summons was issued before
any bill of petition for a debt was filed &
therefore irregularly issued & without any auth-
ority or jurisdiction to issue the same -

Second - That the Judgment was irregularly
entered up - and without authority or jurisdiction.

Third - That all the proceedings in said cause
are irregular & contrary to law -

Said Motion will be founded on the annexed
affidavits & on the record proceedings in said
Cause

Yrs

J. M. Collins

Atty for

Morris Gutchens

To Mr Sull

Plffs atty

Cook County Court

Ira Gates

ads

Washington Brigham

State of Illinois ss

O. R. W. Sull of Chicago

in said County being duly sworn deposes and
says: That on or about the first day of December
A.D. 1846 as the Deponent is informed and verily
believes the Defendant in the above suit was

FX

possessed in fee simple as the owner of the same
 of certain lands or premises which were purchased
 by the said Deft from one Ashbel Steel and are
 particularly described in the Deed of conveyance
 executed by said Steel to the said Deft
 That while thus the owner as aforesaid, he the said
 Gates did employ the said R. H. Washington
 Conghran to do certain work as a mechanic
 upon said premises at a certain stipulated price
 which work was to be paid for at a certain
 stated time - That after the commencement of
 the said work & before the completion of the same
 and on or about the 8th day of Decr in the same
 year, the said Ira Gates did convey by a deed
 of Trust to Buckner S. Morris Esqr of Chicago
 as the attorney of R. H. Swift the said premises
 in trust however as appears by the Deed of record
 in the Recorder's Office of the said County to secure
 the payment of the sum of \$750.00 secured to
 be paid by a promissory note bearing even date
 with the said Deed & payable to the said R. H.
 Swift or his order and empowering the said
 Buckner S. Morris Esqr to sell & dispose of the
 said premises in the nonfulfillment of each
 & every of the conditions - And the Deponent
 further says as he is informed & believes that the
 said work upon the said premises was fully
 completed in due time, but by agreement the

said Hff was not to demand payment therefor until a specified day then after, but before the arrival of the said day in which he was to receive payment as aforesaid: the said premises were sold under and by virtue of the said Court Decree by the said Justice therein mentioned and the same were bid in by R. H. Smith for the sum of \$5 to 4.00 or thereabouts and shortly thereafter conveyed to one Gutches Morris who now claims to hold the same under said Decree from R. H. Smith. And this deponent says further as he is informed & truly believes that shortly after the Decree of Court was executed & was about the 13th day of March A.D. 1847 the said premises were leased to the said Morris Gutches by the said Gates by a written agreement for the term of one year with the privilege of enjoying the same for a longer term should he so elect viz; for two years longer on his paying for the occupation of the same, the same amount annually on the same day of the month thereafter said payments to be made in advance at the beginning of each year. And the said Gutches did enter into possession of the said premises as the agent of the said Gates and did continue to occupy them and does still occupy the same.

And this deponent further says that by the said

lease or agreement in writing the said Gutchens did agree to pay for the use of said premises four hundred Dollars yearly and himself to apply the same in payment & discharge of the incumbrance of R. H. Swift upon the premises - And this Deponent further says that it was in vby said writing agreed that he the said Gutchens should furnish money sufficient to clear said premises from the claim or incumbrance of R. H. Swift by the 15th day of May then next and said Gutchens was to allow to him interest for & on the said amount which said interest was to be deducted out of the amount of rent to for the occupation of the premises - And it was also further agreed by the said writing - that for the security of the said Gutchens for the money which he should so advance for the purpose of clearing the premises from the said incumbrance he should be allowed to receive a Deed directly to himself from R. H. Swift and he the said Gutchens did therein & thereby promise and agree to give a bond for a re-deed as soon as the money should be refunded to him either by the rent & occupation of the said premises or otherwise -

And this deponent further saith that as he is informed & verily believes the said Deed was performed by the said Plaintiff Washington Conghron in good faith & that

the said Ira Gates is still indebted to him the said Plaintiff for the same & that according to the Statute in such case made & provided he the said Plff has a good, valid & subsisting lien against said premises for the price of his said labor and that the same has not been in any way paid or discharged —

And this deponent further says that on or about the 30th day of May last, proceedings were ~~had~~ commenced by the said Plff under the Statute to enforce the said lien, but that the said Gates, the Defendant acknowledged the justness of the said claim & being unwilling to contest it did employ a Judge acknowledging himself to be indebted to the said Plaintiff for the said work done in the sum of \$128.25 together with costs and did by stipulation in writing by his Attorney release all errors both in the Judgment and in all proceedings connected therewith, and did further stipulate that Execution might issue immediately.

And this deponent further says that Judgment was in pursuance of the said authority accordingly entered up for the said sum against the said Defendant and Execution was issued by the Clerk of the said County to the Sheriff thereof against the said premises and the said Sheriff did levy upon the said premises

I did advertise the same for sale and that on the day on which the same were to be sold and before they were sold the said Shiff was served with an order from the said Court to stay all proceedings in the said matter until further order of the same. And this Deponent further says that as he is informed & truly believes the said Morris Gutchers was himself aware of the existence of said lien upon the said premises.

And this deponent further says that as he is informed & believes the said Plff Washington Coughran has a good & valid claim against the said premises still subsisting for his labor as a mechanic upon and about the same & that this claim is not set on foot as is charged for the purpose of extorting money, but for the purpose of obtaining payment of a just & lawful demand and this Deponent believes as he is informed that there is no valid defence to the same either by the said Gates or any other persons but that any proceeding taken to interfere with the matter is merely for the purpose of vexing hindering & delaying the said Plff in the collection of a just claim & for no other reason —

Subscribed before me this 3rd }
 Day of October 1846 }
 Jas Curtis Clk }

O. R. Hull

Washington (Bingham) } Cook County Court
 vs } of Common Pleas of
 Ira. Gates } October Term A.D. 1850

J. H. Collins Esq. Atty for
 Wm. Gutches who interpleads in above
 case with above Dist -

Dr. Sir -

Take notice
 that we shall move the Court in the morn-
 ing of Nov 13th at 9 o'clock or as soon thereaf-
 ter as counsel be heard for the entering a new
 Judgment in above suit -

Yours

Chas. H. Collins

Dated Tuesday Morning

Nov 12, 1850

That on said Notice is an admis-
 sion of service in said Collins hand written as follows:

I admit service of within notice
 this 12th day of Nov 1850

J. H. Collins

Atty

And that since the rendition of the Judg-
 ment in favor of Bingham against Gates ren-
 dered in vacation on the 7th day of September
 A.D. 1848 the following entries appear as record in said court

And thereafter to wit; on the sixth day of October
in the year of our Lord one thousand eight hun-
dred and forty eight, said day being one of the
days of the October Term of the Cook County
Court the following among other proceedings
were had in said cause and entered of Record
to wit;

Washington Conghron	} Motion
Orn Gates	

And now comes Collins
attorney for Morris Gutchens and enters the motion
of said Gutchens upon affidavit of R H Swift filed
herein for a stay of execution issued in the above
entitled cause and to open and set aside the
judgment entered up herein - and on motion
of said Collins it is thereupon ordered that a
sale of the property advertised upon said exe-
cution be stayed until the order of the Court
upon the hearing of said motion ~

And afterwards to wit; on the 30th day of Oct-
ober in the year last aforesaid the following
further proceedings were had and entered of
Record to wit;

Washington Conghron	} Motion
Orn Gates	

And now come the

parties by their attorneys - and the Court after mature deliberation had, being now fully advised upon the motion taken under advisement in this cause - do sustain the same and order that the judgment entered up in vacation in this cause be opened, and it and the subsequent proceedings therein be vacated and set aside - and that this cause be placed upon the docket for further proceedings & that Morris Gutchens be at liberty to come in and become a party Defendant to the Petition in this cause -

And afterwards to wit: on the first day of March in the year one thousand eight hundred and fifty said day being one of the days of the February term of said Court the following further proceedings were had in said cause and entered of Record to wit:

Washington Congham }
 " } Mech^l Lien
 Morris Gutchens who

interpleads with Ira Gales This day comes the said parties by their attorneys and an motion of Callins Defendants attorney it is ordered that this cause be struck from the Docket at the costs of Plaintiff - therefore it is considered

that the said defendant to have and recover of the said Plaintiff his costs and charges by him in this behalf expended and have execution therefor —

And thereafter to wit: on the fifteenth day of November in the year last aforesaid. said day being one of the days of the October Term of said Court the following further proceeding were had in said cause and entered of Record to wit:

Washington Conghran	} Confession Mch ^l Linn
21 Geo Bates	

And now again comes the said Plaintiff by checking back his attorneys. And on his motion and at appearing to the Court that Morris Gutchens a party defendant in this suit who filed his answer herein has disputed the same — It is therefore ordered that the order heretofore entered in this cause on the thirtieth day of September A.D. 1848 staying proceedings and setting aside the Judgment entered herein on the seventh day of September A.D. 1848 be vacated and set aside, and that execution issue on said Judgment —

That on the 17th day of March 1851 a

special alias execution issued upon said Judgment, purports to be - levied upon the lands and premises aforesaid which thereunder by the Sheriff of said County were on the 28 day of April 1851 sold to said Burghman for the amount of said Judgment & costs - but no deed is as yet executed & execution not returned -

On the 24th day of April 1852, said Smith filed a bill in chancery in this Court against said Burghman Gato & Church Sheriff of said County to restrain perpetually the making of a Deed of said lands to said Burghman under said sale & on the 3^d day of July 1855 Burghman filed his bill in the chancery side of this Court to compel the execution of said deed making said Gutchers, Morris Whaples & others parties thereto -

And after hearing the arguments of counsel the Court now here being fully advised in the premises overruled and deny the said Motion and refuse to ~~change~~ in any manner said record entry of the 1st March 1854 -

Which decision of the Court in denying said Motion & refusing to correct said record entry the said Burghman

then there excepted and prays that this
 his bill of exceptions in the premises may
 be signed & sealed by the Court and become
 a part of the record according to the Statute
 in such case made provided and it is
 done accordingly in a few Court the day
 and year first herein written —

John W. Wilson *Esq*

State of Illinois
 County of Cook & SS

I Walter Kimball Clerk of the Cook
 County Court of Common Pleas in & for said County
 and State, do hereby Certify that the foregoing
 is a full true and correct transcript of the
 papers, and orders entered of Record in said
 Court now on file in my office, in the case
 of Washington Coughran, against Ira Sates.

In testimony whereof I have
 hereunto set my hand & affixed
 the Seal of said Court at Chicago
 in said County this 22nd day of
 May A.D. 1886.

Walter Kimball, Clerk
W

In the Supreme Court of
the State of Illinois for the
Third Grand Division
of June Term A.D. 1856

Washington Conglomerate Office

as
Morris Gutchins vs
interpleaded with Fra Galis
river deland & Oliver P. M.
Full his Adm.

Error to
Cook County
Court of Common
Plas.

And now comes the said
Plaintiff in error by Farnsworth & Bur
gess his Attorneys and says that in
the record & proceedings aforesaid
there is manifest & material error
appearing of record therein in this

That the court was in error
in coming to the Record entry of March
1st 1850 - as asked for by said Pff in
error by his motion filed 16th Decr 1854

Wherefore he prays that the
judgment of the court below be
reversed &c

Farnsworth & Burges

Washington County

John Waters
 & John Adams

 Transcripts

Filed June 11, 1888

L. L. Lane
 Clerk

Filed 1888
 paid by post office
 W. H. H. H. H.

State of Illinois
Washington boughman

Supreme Court

us
Morris Gutcheus Impleading
with Ira Gates

Error to look

The printed abstract fails to present fully & so as to be correctly comprehended the case in which the motion the overruling of which is assigned as error was made. A few facts in the history of the proceedings which are omitted are therefore here stated. May 30th 1848 a summons in a mechanics lien case in favor of boughman and against Gates was issued. returnable 1st Monday of October thereafter and served by the Sheriff on Gates July 8th. On the 6th day of September 1848 Gates executed a power of attorney authorizing any attorney to confess a judgment in that case for the amount claimed. The next day (Sept 7th) boughman filed his petition for a mechanics lien on the land mentioned in the Trust Deed to Morris for use of Swift and Clark as attorney (by virtue of the said power of attorney) of Gates on same day appears before the court in vacation filed a Cognovit & confessed a judgment in that case. This is the only judgment ever entered

Gates never appeared in the court himself nor did any attorney ever appear for him except as above stated. Now clearly the judgment confessed if of any validity must be as one establishing a mechanics lien. For the power of attorney authorizing the confession only conferred power to confess in the mechanic lien

case and if the judgment confessed were not conformable to the power it would be illegal - besides the manner of the entry & the language of the judgment shows that it was at the time of the confession understood and designed to be a judgment establishing a mechanics lien and not a common or general judgment against Gates. It is easy to see that if a mechanics lien were established by that judgment that the rights and interests of Swift, Gutchens & Morris would be injuriously effected. Now we think to allow this motion would be to establish such a lien.

To say the least it would be a disputable - doubtful question and to that extent cast a cloud over our title - and therefore the motion was properly over ruled if Coughran was not entitled to his lien. That he was not entitled to his lien ~~is manifest~~ as against Swift, Gutchens & Morris is manifest ~~because~~ for if entitled to one it was by virtue of the Statute and as the proceedings did not conform in substance nor in any manner with the provisions of the statute they were a nullity as against third persons -

The attempt ~~by~~ to show that Gates had an interest in the land by the terms of an alleged lease can avail nothing in this motion because that is a disputable question and disputed questions of fact are not tried by ex parte affidavits -

In addition to the foregoing considerations we think the motion ought not to be allowed for the

following reasons.

1st No injury can accrue to Coughran by the overruling the motion. he has his remedy against Gates. while on the other hand to allow it may injure Gutchen & others ~~rights~~

2^d The motion comes too late. over 4 years have elapsed since the order was entered now sought to be amended before the motion was made. The law requires motions of this kind to be made within a reasonable time.

Lockett vs Thompson 3 John 205-
Fowler vs Rayberg 4 Ham 45-

3^d Errors in form apparent upon the face of the record of a judgment or order may at a subsequent term on motion be amended - O'Connor vs Mullin 11 Ills 57. Atkins vs Hunman 2 Gil 437 (451). But this can only be done on notice to the opposite party and where it is clear the amendment will not work injury to third persons. The Supreme Court of this State have never I believe held that any other amendment could be made at a subsequent term and it is expressly decided in several courts of other States that such amendments only were allowable at a subsequent term.

Greenland vs Field 6 Call 12 } State vs Calhoun
Hall vs Williams 1 Fair 278 } 1 Dev & Bat 374
Commonwealth vs Barwood 2 Virg Cases 527 }

Here new matter - not in the record existing only in
paris is presented and that too by ex parte affidavits
to sustain this motion. I find no authority warranting
the disturbing of judgments in this way - and to permit
it would ~~be~~ impair confidence in judgments - foster
negligence in judicial proceedings & determine questions
of fact by ex parte affidavit ~~and~~.

Again is not a motion like this addressed to the
discussion of the Court and its decision ~~not~~ final
1 Seam 498. 2 Seam 33. 3 Seam 46 -

It is believed that in refusing to allow
the motion the court did not err -

Jane 25th 1856 -

Silvanus Milcox
Atty for Gutchen -

Washington Courthouse

Morris Gutchen appearing
with Ira Bates

Suprem. Court -

Argument of S. Milcox atty
for defts in error in the
above case -

Filed June 30, 1856

L. Leland

Clerk

Appended

Supreme Court.

WASHINGTON COUGHRON,

VERSUS

MORRIS GUTCHUES Interpleading with
IRA GATES.

ERROR TO ~~COM.~~ PLEAS COURT,
Cook County.

This case comes here upon the decision of the Court below in refusing to correct a record entry.

The first question is, were all such persons as were interested in the motion, notified of its pendency? To answer this it will be necessary to ascertain the state of the original record, and who were thereby affected, or to be affected by enforcing it.

The parties were originally Coughron, Plff., and Gates, sole Deft. to a judgment by confession for \$128.25, and costs, with an order for special execution. This is all that the original judgment amounted to; calling it a mechanic's lien don't make it so. The party sues out a summons on the common law side of the Court, to answer "in a petition for a mechanic's lien, to the damage of said Plaintiff of \$200." Before the term of the Court when that writ was returnable, the Defendant authorizes an Attorney to appear for him in that cause, and confess a judgement for the amount of the Plaintiff's claim, and thereupon a petition is filed containing a sufficient statement to entitle the party to recover, if filed as a declaration, and the plea of the general issue interposed alone. To this the Defendant, by his Attorney, files a cognovit actionem for \$128.25, amount of the items of Plaintiff's demand as attached to his petition, and the Court in vacation renders a common-law judgment for that amount, and a special execution.

It is not pretended or claimed for the purposes of this case, that the Court could render any decree on the chancery side of the Court, establishing a lien, as such, on property in vacation. It is a question of doubt whether the Court at that time possessed power to render a decree upon confession of parties in vacation; something would depend upon the character of the decree. If it was upon a mere money demand, to be satisfied by an ordinary execution, it is difficult to see any good reason why, under the broad language of the statute giving a Court having both chancery and common-law jurisdiction, power to render judgment upon confession, why it cannot as well render a money decree as a money judgment. And in any event, such a decree would render our Statute to be nothing but a judgment, and in case of doubt, would be referred to that power of the Court, under which it might stand consistently with the law and the intention of the parties.

But the language used in the entry is nothing but the language of a common-law judgment, establishes no lien, and directs that execution issue to make it of certain lands, describing them.

This, then, as between the parties, is merely a judgment. Can it be anything else as to third persons? Are they at liberty to treat it as a decree establishing a mechanic's lien adverse to their interests, when upon its face it is no such thing? Under the mistaken view that this judgment did, or might effect injuriously, their rights, Gutchues files the affidavit of Swift and makes a motion to set aside this judgment, and be let in to defend, and discloses the fact that Swift had, under trust deed from Gates, sold the property described in the judgment, bid it in himself, and made a Warranty Deed to Gutchues. In reply to that, Coughron discloses the fact that Gutchues had leased the premises and agreed to take up the incumbrance to Swift, receive a deed from him, and when repaid by rent or otherwise, to reconvey to Gates—these facts as to state of title are not denied.

At this time, then, when the motion to interplead was first made, the only parties interested were Gutchues, holding warranty deed from Swift, and Gates and Coughron.

The petition states facts upon its face that show that no proceedings under it could by any possibility affect Gutchues' interest in the land, whatever it might be, as more than six months had elapsed after work done and time for it to be paid for had elapsed. (Sec. 24 of Lien Law.)

The work was done under a general employment, and no time set for its payment; it was then under the law to be paid for as soon as completed. The petition then says that when the work was done it was then agreed that Coughron should not be paid for it until one year from that time, January 1st, 1848—in other words, the original contract was modified, and payment of the money that was then due at the time of completing the work, for it was extended for one year. By this extension Coughron lost his lien, under the decision of 3 Scam. 179. The original contract is what controls in these cases of liens, as to the time when they attach and how soon they must be enforced to save them.

This state of the case, that is, that Coughron had a lien but had lost it, that Gutchues as a prior incumbrancer on the property, could not be injured, appeared on the face of the papers, and it must be presumed was within the cognizance of the Court below, and therefore is important in correctly understanding the character and effect of the orders made by the Court and their construction.

I am under obligation to the counsel (Mr. Morris) for his admissions on page 3rd of his printed brief, as to the law of the case, and the rights of the parties.

It is clear under the facts as presented in the record then before the Court—1st, That Gates had an interest that might be sold on an execution. 2nd, That Gutchues was but an incumbrancer. 3rd, That the defect in his title converting him to an incumbrancer, was not the act of Swift, but his own act. 4th, That his interest as an incumbrancer was by laches of Coughron prior to his (C's) lien as a mechanic, and must be redeemed by him. 5th, That Swift had no longer any occasion to take care of Gutchues' interest.

Upon this motion on the affidavit of Swift, and nothing to show that Gutchues interposed in the matter personally, except that Collins, as his Attorney, moves to open the judgment, &c., a cause is placed on the docket entitled "Washington Coughron vs. Morris Gutchues, who interpleads with Ira Gates." This is not Coughron vs. Gates, but Coughron vs. Gutchues. The case under this entitling remains on the docket of the court without further action taken by either party until March, 1850, when the order is made to correct the record entry of which this motion is now interposed.

Execution was issued and parties' land sold, and redemption about to expire, when Swift still troubled with the nightmare of a mechanic's lien, files, April 27th, 1851, a bill to restrain the sheriff from making deed, and to set aside sale. After this bill was filed Gutchues sells to Whaples, July 7th, 1853, and Whaples to Morris, Sept. 9, 1853.

Then Morris, Whaples, Gutchues, Swift and Gates are, or may be, interested in resisting this motion to correct, and they are all notified and appear—Gates consents—the others resist.

There are two constructions to be put on the order of March 1st 1850; one that it merely dismissed the interpleader; the other, that it dismissed the original cause. If the latter, then the question is, did the order of Nov. 15, 1851, on notice to Collins, the Attorney of Gutchues, authorise the order that was then made? If it did, then the execution and sale are regular; if it did not, does it lie in the mouth of the resisters, who are mere incumbrancers to object?

Which of the two constructions shall we put on the order? It is clear from the affidavit filed, that so far as the interests of Gutchues and Swift were concerned, there was no object to be gained by their interpleading. Coughron could not establish a lien upon his own showing; they were not parties to it, and could not be affected by it. They, even if made parties, the proceeding conceding that their claims were prior to the claimant's, could not be affected by it. This interpleader, then, being a useless proceeding, is it not to be presumed that the parties and the court were dismissing the auxillary motion to the original cause, correctly entitled in the motion itself, and not the original case. Again, under that motion, the Court had no power to interfere as between Gates and Coughron. Gates admits his indebtedness and gives a judgment. The Court might stay that judgment, as to third persons, but could not upon their motion set it aside as to the party defendant confessing it, and yet Swift, the guardian of Gutchues, not content with taking care of his interest, also wants to protect Gates and set aside a judgment as to him, when there is not a shadow of pretense that Gates, ever contended that it was wrong.

This should have been the character of the orders of Oct. 6 and Oct. 3, 1848; they should not have affected the whole proceeding of Coughron vs. Gates, but only so far forth as it affected Gutchues' interests in the land; and it is to be presumed that the reason why, as Chickering says in his affidavit nothing further was done at the time because probably the counsel supposed those orders did not affect the rights of Coughron as against Gates at all, under that view dismissing the interpleader, would be sufficient, nothing further would have been necessary, Coughron could at once take out his execution. But when after court the matter is investigated, it is found that those orders were broader than were necessary, and operated to stay execution as against Gates himself, the counsel applies to the Judge, he says you had better wait until term time and then the proper orders can be entered so as not to be any question about it. The counsel, to do nothing in the dark, give notice to Gutchues' counsel of what they intend to do, and he makes no objection.

If, however, the Court should view this as an order dismissing the case of Coughron vs. Gates—then was the notice of Nov., 1851, to Collins, sufficient. At that time the only party outside of the record interested was Gutchues; so far as Gates was concerned, the papers on file were then sufficient to warrant a judgment against him,—and Whaples and Morris had not yet had their conveyances, they had notice when they acquired title, as the order was then made of record, the lease between Gates and Gutchues of record, and they notified by les pendeus—for from Oct. 1848, to the present, this property has been in litigation.

The notice is to Collins, the attorney of record for Gutcheus, entitled in Coughron vs. Gates, is directed to "J. H. Collins, Esq., att'y for Morris Gutcheus, who interpleads in above case with above defendant," is for the entering of a "new judgment in above suit," and service accepted by him. Was this sufficient notice? As to the time and manner and person, it was for the Court below to say—see 11 Ills., 59—and no objection seems then to have been taken to it. We are upon this question of notice cited by the counsel to 4 Scam. 409. The Court say that to reinstate a cause upon the docket, notice, accompanied by copies of the affidavit on which it is founded, should be given to the opposite party. The point of the case is that a copy of the affidavit must be served,—not that it must be served on the party and not the attorney—for in that case the notice was upon the attorney.

But a much clearer case is that of 11 Ills. 59, O'Conner vs. Mullen,—under which this notice is clearly sufficient, and the giving of notice is a matter for the Court below to regulate.

It is not now charged that Collins was not the attorney of Gutcheus, that he did not give him notice, or that he did not attend to the interest of his client. The motion is made before the Judge who made the original order; he seems to have been satisfied with the correctness of the notice, and the propriety of the order he then made. What was it? The order dismissing the interpleader still left the orders of Oct. 6, 1848, and Oct. 30, 1848, standing; they had to be vacated first, or such an order entered by the Court as was equivalent to it; until that was done no execution could issue upon that judgment. The dismissal of the interpleader, without further order, would not have that effect, and this is evidently what Judge Spring meant when he said it should be done in term. The attorney of Gutcheus is notified that such an application would be made, for I think that so far as he, Gutcheus, is concerned, the setting aside of those orders would come clearly within the notice. Its effect was substantially the same; no objection was made; Collins was an attorney practicing in that Court, and it is to be presumed that if he had objection to make he would have made it. He made none then,—the Court who was familiar with the matter, whose attention is shown to have been called to it in particular by application in vacation, allows it to be done. And who objects to it now, and for what reason? Gutcheus and his grantees who have acquired this property from him, with notice object to Coughron collecting his debt, subject to their rights whatever they may be. The reason assigned is that this was originally a mechanic's lien suit; that summons was issued before petition filed; that judgment was entered in vacation. Now these are mere irregularities; might be heard in the mouth of Gates, but not from third parties, who can only show that a judgment is as to them unjust, not irregular—against conscience, not against the practice of the Court.

This judgment as to Gates is final—it concludes him; no mere irregularity can vitiate it; his confession waived all that. The Court will as to him, presume that the parties intended what they did and could do. His, (C.'s,) lien was gone, but he had a claim upon Gates. Gates could say take your execution against this land and I will confess a judgment for the amount of your claim. There is nothing in this that is illegal—12 Iredell. N. Car. 88. If Gates had no interest, the judgment was a nullity as to the land. If he had, Coughron was entitled to it in satisfaction. And it is competent for the parties to stipulate as to the extent of a judgment, and it don't lie in the mouth of third persons to object.

The counsel in this case are extremely unwilling that we should confess our errors; they can't let us surrender—they will not accept a truce on any terms. We baptized our proceeding in its infancy "a mechanic's lien suit," and though even in that character, which it can hardly be said ever to have had, they not being parties to it, are and can be in no way bound by it, yet they still call it so, for unless they can harp on mechanics lien, they have no basis for their argument. They don't deny their character of prior incumbrancers—whom we now have a right to redeem from, but seek to raise a question upon the bona fidis and regularity of the assignment from Gates to us. Admit if you please that Gates confessed a judgment which was without any consideration whatever, yet such a judgment is competent for the redemption of lands from Sheriff's sales; is it not equally so for a redemption from a mortgage?

Could Gates, had he been disposed, set aside this judgment? Does not enough appear in the record up to and at the confession, to show that Coughron had a valid demand in contract for services rendered to \$128.25? Was not Clark sufficiently authorized to appear and confess it? If so, Gates himself cannot interfere—see 8 Blackford, 133. The judgment is good and final as to him—and is so as to all claiming under or through him.

The cases in chancery hinge upon this—that by their bill they charge that this suit is to enforce a mechanic's lien, and if a lien is established by it, it casts a cloud upon their title. But under the argument of the counsel on his third page, from the references to "3 Gibon" to "17 Ill. 424", and his remarks, it is difficult to see how they are to be injured, or that there is any equity in Swift's bill.

In the Supreme Court of the State of Illinois
for the 3^d Grand Division

Washington Corydon

vs
Oliver P. H. Full Administrator
of Ira Gatch's dec'd
+ Morris Gatchman who
interpleaded with said Ira
Gatch

Error to Cook

Com. Pleas

We do hereby enter ourselves
responsible for costs in this cause &
acknowledge ourselves bound to
pay or cause to be paid all costs
that may accrue hereafter either
to the opposite party or to any of
the officers of this Court - under
the laws of this State -
dated May 10. 1856

W. J. Pringle

On filing the Within security for costs
the Clerk of the Supreme court
will issue writ of error to the Cook
county court of Common Pleas
to certify the Record in a case wherein
Washington Conghron was Plaintiff
and Ira Gates Defendant in
which suit Morris Gatchum in-
terpleaded - since the rendition
of the judgment therein said
Gates hath departed this life &
Oliver R. W. Lull duly appointed
his administrator - the Court
now having refused to ~~grant~~ ^{grant}
a new writ ^{upon motion} made in said case
by said Conghron from which
decision is sought to be reversed on
error -

Sci. fa. to Ham & Cook co.
sent them to us -

W. J. Dwyer
for App in error.

Filed May 12/1856,
J. Deland

432
Washington Conghron
vs
Oliver R. W. Lull et al
Pursue

WASH NGTON COUGHRON.

vs.

Morris Gutchees, Interpledant with Ira Gates.

Supreme Court—Error to
Cook Co. Common Pleas Court.

ABSTRACT.

Argument of Dftr. in Error.

15. On 16th Dec. 1854, the Plaintiff filed his motion by Lull & Burgess his Attorneys, Page 15
(Lull then being Administrator of Gates and Attorney for Plaintiff,) to correct the order
and judgment made in this case, March 1st. 1850, viz: "This day comes the parties by
their attorneys, and on motion of Collins, defendants attorney, it is ordered that this
cause be stricken from the Docket at the cost of the plaintiff. Therefore, it is considered
16 (by the Court) that the defendant have and recover of the said plaintiff, his costs and
charges by him in this behalf expended, and have execution therefor," be so amended,
that Gutchees withdraws his interpleader, and on his motion it be stricken from the docket.
- 40 On 22nd April, 1856, (April Term,) this motion was heard (with two Chancery suits
touching this and other matters, in one of which this motion was filed,) which motion the 40
Court over-ruled, and plaintiff excepted. This is assigned for error. The papers in the
two Chancery suits with the following were read on this motion.
7. On 6th September, 1848, Gates, by writing, authorizing any attorney of any Court of 7
record to appear for him and confess judgment for the amount of the plaintiff's claim
and release, error, &c.
9. On (next day,) 7th September, 1848, Mr. Lull filed the same with plaintiffs petition for 9
mechanics' lien, and cognovit, signed in H. A. Clark's name only, not as attorney for any
one.
5. The petition states, about 1st December, 1846, Gates pretended to be the owner of Pet. 5.
certain land, (describing it.) That he did enter into a verbal agreement with Gates," to
do carpenters work on house, barn &c., on said land, at \$1,50 per day. The number of 6.
days he bestowed in labor on the premises was 85½ days—claimed \$128 and 25 cents,
due him as per bill annexed. Completed work, middle of January, 1847. At the time
of completion it was agreed payment should not be demanded till 1st January, 1848, which
is elapsed, payment refused—prays that the Court would make an order that said prem-
ises be sold to satisfy his lien, according to the Statute and proceeds applied, &c.
9. Judgment was then entered by the Clerk in vacation awarding execution against the 9.
premises for \$128 and 25 cents—Execution issued and returned, "stayed by order of the 27
Judge," &c. On 6th Oct. 1848, R. K. Swift made affidavit of the facts appearing of 27
record in the case, and of his ownership of the estate by sale to him under a Trust 29.
Deed and prior lien, and his subsequent sale and deed, of warranty to Morris Gutchees
of the same—that he was interested to defend it against the plaintiff's pretended lien
Which he believed had no just or equitable foundation whatever, and set on foot to extort
money from him—that he has a good defence to it. On due notice given and motion, 30
30th October, 1848, (at October Term,) the judgment and all proceedings under it was 37
set aside and vacated, and the cause placed on docket with liberty to Gutchees to become
party to the Petition. (But the plaintiff did not, nor would, make either Gutchees or Swift, a party to his Petition, so two years passed away, consequently.) On March, 38

38
39 1st 1850, on motion, by Collins, the *cause* was stricken from the docket at the plaintiff's costs, and judgment given against him for costs. (Parties were then out of court, 11, Ill. R. 646.)

17 Mr. Lull's affidavit of April, 9th, 1856, (as attorney for Coughron, Administrator of Gutchees,) says he was present when Collins made said motion, striking the *cause* from the docket, he understood him as saying he had concluded to withdraw the
18 interpleader and dismiss it, supposed it was so done—it was so understood—and that no further interference would be made by Swift or Gutchees, as they would not be effected by the proceedings. After Court arose he applied to the Clerk for execution on old judgment, he then found the order entered in such manner—without vacating the previous
19 orders, that the Clerk thought he had no right to issue it. He consulted Judge Spring, who thought the nature of the order was final—he could not make it in vacation—that the order of March, 1st, 1850, and all previous orders could be vacated, and new execution awarded—(If so, why did he not give such notice and make such motion, instead of giving notice, in November gave notice to Collins, he would move “for a new judgment.”) That he, in taking the order of November, 15, 1850, intended to correct the entry of 1st March, prior. Mr. Chickering testifies to the best of his recollection, Collins' motion was to dismiss interpleader, as he understood it. (Now the order of the Court, March, 1st 1850, can not be changed or void by parole evidence. See 15 Ill. R. 85, 86 in point. The order made at a subsequent term—November, 15th, 1850, is therefore void, and the execution thereby issued, is also void. *This alone is sufft to affirm the judgment*

21 On 13 March 1847, Gates & Gutchees made an agreement in writing, by which “Gates is to rent or hire the tavern stand” for one year with privilege of two, to Gutchees, at \$400 a year, 400 to be paid 25th inst., which shall draw 12 per cent. interest after paid. Gutchees should finish the barn with his means by October, and Gates to pay for it. Carpenter allowed dollar a day. Gutchees to furnish money to pay off Swift, by 15th of May, then next Gates to allow 12 per cent. interest on money Gutchees may pay; Gutchees to lay bar-room floor, and Gates to pay for it, and also to pay Gutchus for his trouble to find a loan of money to pay Swift, for which he was to have deed from Swift as security. Gutchees to give bond to deed it to Gates, when money refunded by rent or otherwise; all money Gutchees raise over his own, Gates to pay extra interest over 12 per cent.

36. On 12 Nov. 1850, Mr. Lull gave notice to Mr. Collins, that he would on 13th move the Court for a new judgment against Gates. [This notice did not legally bring Gutchees, Swift, or Gates, before the Court again, as Collin's employment was ended, and the notice to him was nothing. See 11 Ill. R. 646 Goodrich vs Huntingdon.] 4 Nov. 409.

39 On the 15 Nov. 1850, the Court on that notice made an order vacating the order of Sept. 30, 1848, (which sat aside the judgment and proceedings of Sept. 7, in vacation,) reinstating the old Judgment, with an award of executions; (Leaving the order of March, 1, 1850, untouched and in full force, which had dismissed the plaintiff's cause, at his costs.)

40 On 17 March, 1851, special alias execution issued against the property, and the same was advertised and bid off by the plaintiff, for the amount of his judgement, interest, and costs, April, 28, 1851. But no certificate was issued or deed made, or cost paid or execution returned.

(This order awarding execution, and the execution and sale, are void. See 11, Ill., 646.)

40 On 27 April, 1851, R. K. Swift filed his bill against Coughron, Gates, and Church, the sheriff, parties, defendants, to enjoin them from making the certificate and deed under the sale to the plaintiff; with a prayer for injunction, and on hearing to perpetuate it, which was granted. *which was returned to the plaintiff*

On 24 July, 1855, the plaintiff filed his bill, vs. Gate's administrators Lull, Gutchees, Swift, Whaples, Morris, and others to compel the execution of the deed to him for the entire property. *which was answered &c.*

[These two Chancery suits, by request of plaintiff's solicitor were "consolidated" and heard together with the motion to amend the record and change the judgement as above stated, after the papers in the chancery suits were read. The court after argument, on consideration dismissed the plaintiff's Bill; decreed a perpetual injunction in Swift's cause and overruled the plaintiff's motion to mend or set aside the judgment of dismissal. Such was the order of proceedings.]

"Judgment set aside *without notice* to the opposite party is void." *Sears vs Low, 2. (authorities cited Gilman, 281.*

"The Court has no power to reverse its own judgment after the term is passed, and the parties are out of court. Bibb 346, Reed vs Batchelder.

A Court can not reinstate a cause which had been discontinued at a prior term; any order made thereon is void. 5 More. R. 450, Barkurshin.

A confession of Judgment is no bar to equitable relief. The bar applies only to a legal defence of the same party. 4, Litt. 160, Moseby.

The decrees of 7th September, 1848, and 15th November, 1850, obtained without making Swift, Gutchees, Whaple, and Morris parties, is as to them fraudulent and void. 17, Ills. 424. (Storey, Eq. § 55, 427. *) 7 B. Moore, 351. Alexander vs Stevens. ** Storey Eq. pl.*

Judgment or decree by confession, as against other parties, must prove the debt was just and bona fide, otherwise it cannot overthrow another sale, though it be fraudulent. Roberts on Fr. 489. *2 Davis R. 476.*

Lessee may show lessors title ended. 4 Scam. 90.

So in Mechanics' lien case. 3 Gibon 511. Shaffer vs Weed. So the filing of the petition six months after debt due by the terms of the contract, the lien if any he had, ceased as against Swift and those claiming under him by a prior lien. 3 Gibon, 511.

The petition must show a cause of action and right to recover. This does not do so. It does not state when the money was to be paid; till on or after its completion. It was then agreed it should not be demanded till Jan. 1848. 3 Scam. 544.

17 Ills. 424. All persons in interest should have been made parties. The rights of those not made parties are not affected by the decree, or any proceeding under it—they must stand as if no decree had ever been made." They have no right to decree the sale of our property and sell it.

In 15 Ills. 85. The court say: "It was not competent to show by parol evidence that the Justice of Peace intended to enter a different judgment than the one entered on his docket. It is important his record should remain immutable and constitute the sure evidence of their adjudications as of the higher courts. Upon the faith and stability of these records, rights are acquired and transactions based, as well as of other courts. If the Justice can record one judgment to-day, and years after overturn it by testifying to another which he kept in his memory, no sort of confidence can hereafter be placed in their records." This is sound logic and good sense.

The act establishing the Cook County Court in 1845, section 4 declares that the Judge shall have power in term time to fix any number of days, and times at which he will hear in vacation at his chambers, motions, arguments of demurrers, agreed cases, &c., and for making interlocutory orders necessary to expedite proceedings in a cause; and the Chancery Court shall be always open for granting such orders as necessary in practice. Provided that no final order, judgment, or decree shall be entered in vacation except judgments by confession, which may be entered at any time. Provided further that the Court shall examine and sign the record and order on motion days

The decree then made in this case the 7th September, 1848 was void. If it was a judgment it is also void—because there was no declaration filed. Nor was it made and entered on any motion day—or in term time—nor was the same examined and signed by the judge as required by law.

But suppose Mr. Collin's motion was such as Lull & Chickering understood it to be, to wit: the withdrawal and striking the interpleader from the docket at Gutches's cost.

What was there to be staicken from the Docket? There was no pleadings on file of Coughron vs. Gutchus or vice versa. A simple entry on docket, "*Washington Coughron vs. Morris Gutchus who interpleads with Ira Gates.*" This was all. There was a petition of Coughron vs. Gates on file. But, the plaintiff nor his solicitors would so amend it as to make Gutchus & Swift, or either of them parties—although the Court ordered the case to be docketed and Gutchus allowed to be made a party defendant, and be allowed to interplead, yet the petitioner did not, nor would amend his petition to make Gutchus a party, and the case by that title remained on the docket without any steps by either to amend the pleadings in the case till 1st March, 1850, when the suit was stricken from the docket at Petitioner's cost—without his solicitors making *any motion* for execution, for *new* judgment, or for any purpose, knowing as they *did* that the former judgment or decree was vacated and set aside—what could they have been dreaming about? The fact is, as I suppose, they did not understand the *effect* of striking the case from the docket, and judgment for costs, until the Clerk explained it to Mr. Lull. They dared not make Gutches, or Swift a party to his petition, nor has he dared to attempt to prove his claim to be a just one. Although Swift charged by his affidavit, that plaintiff's claim was the product of a fraudulent combination to cheat and fraud him, and without just foundation. Yet they have no credible proof that his claim was for a full, or legal, or valuable or *bona fide* consideration, which is necessary to be shown. See the case of Thomas vs. Southard, 2 Dana, Ky. R. 476, in point. Every circumstance in this case go to prove a fraudulent combination by Gates and Coughron, and their solicitors acts tends same way.

45 Jan 409

MORRIS FOR DFT.

- 1st Written the Clerk or Judge in vacation, has any authority in law to enter the judgment or decree in this case 7 Sept. 1848.
 - 2^d There is legal cause of action stated in said Petition - its base on Error.
 - 3^d The order made Nov 15. 1850 was irregular & void.
 - 4th The Motion was properly over ruled April 1856 six years after suit was stricken from the docket & judgment for costs. as the Motion sought to reverse & revise that judgment.
- Morris for Dft.

Wm. J. Clarkson, Printer, 50 South Clark Street.

H F Warts will file a brief on the same side in a day or two.

STATE OF ILLINOIS,

Supreme Court,

ss.

The People of the State of Illinois,

To the Sheriff of the County of Cook ——— Greeting:

BECAUSE in the record and proceedings, and also in the rendition of the judgment of a plea which was in the ~~Circuit~~ ^{Cook County} court of Common Pleas of Cook county, before the Judge thereof, between Washington Coughron Plaintiff and Oliver R. W. Lull Administrator of Ira Gates deceased and Morris Gutcheus who interpleaded with said Ira Gates

Defendants it is said that manifest error hath intervened, to the injury of the said Washington Coughron

as we are informed by his complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the state of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said Oliver R. W. Lull Administrator of Ira Gates deceased and Morris Gutcheus who interpleaded with said Ira Gates,

that they be and appear before the Justices of our said Supreme Court, at the next term of said court, to be holden at Ottawa, in said state, on the Second Monday in June next, to hear the records and proceedings aforesaid, and the errors assigned, if they shall see fit; and further to do and receive what said court shall order in this behalf; and have you then there the names of those by whom you shall give the said Oliver R. W. Lull Admr of Ira Gates deceased and Morris Gutcheus who interpleaded with said Ira Gates notice, together with this writ.

Walter B. Scates
WITNESS, the Hon. Samuel H. Treat, Chief Justice of our said
Court, and the Seal thereof, at Ottawa, this 13th day of May
in the Year of Our Lord One Thousand Eight Hundred and Fifty-Six.

L. Leland
Clerk of the Supreme Court.
By J. B. Rice Deputy

I admit our senior on me
of this unit May 15th 1856 -
hence my appearance

O. R. M. Tull
Admr of Est of Ira Gates
Dec 3

32
Dougherty
to
Tull et al

Seize & return to
Dougherty

Filed June 11, 1856
J. L. Leland
Clerk

BEFORE ME, the People of the State of Illinois,
I, the Clerk of the Court, do hereby certify that the
above is a true and correct copy of the original
of the same, as the same appears from the records
of the Court.

STATE OF ILLINOIS,

Supreme Court,

ss.

The People of the State of Illinois,

To the Sheriff of the County of Kane — Greeting:

BECAUSE in the record and proceedings, and also in the rendition of the judgment of a plea which was in the ~~Circuit~~ ^{Cook County} court of Common Pleas of Cook county, before the Judge thereof, between *Washington Coughron Plaintiff & Oliver R.W. Lull Administrator of Ira Gates deceased & Morris Gutchen* who interpleaded with said Ira Gutchen —

Defendants, it is said that manifest error hath intervened, to the injury of the said *Washington Coughron* —

as we are informed by *his* complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the state of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said *Oliver R.W. Lull Administrator of Ira Gates deceased & Morris Gutchen* who interpleaded with said Ira Gates.

that *they* be and appear before the Justices of our said Supreme Court, at the next term of said court, to be holden at Ottawa, in said state, on the *Second Monday in June* next, to hear the records and proceedings aforesaid, and the errors assigned, if *they* shall see fit; and further to do and receive what said court shall order in this behalf; and have you then there the names of those by whom you shall give the said *Oliver R.W. Lull Adm'r. of Ira Gates dec'd & Morris Gutchen* who interpleaded with said Ira Gates notice, together with this writ.

Walter B. Skates
WITNESS, the Hon. *Samuel H. Treat*, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *13th* day of *May* in the Year of Our Lord One Thousand Eight Hundred and Fifty-six.

L. Leland
Clerk of the Supreme Court. Do
By *J. B. Rice* Deputy

32
 Boughran
 vs
 Sull admr. &c
 Ser. Ju

Filed May 29, 1884
 S. Seland Clerk

Sheweth that
 the within named
 James L. Burch and
 James L. Burch
 are in my county
 May 26, 1884

Boughran
 vs
 Sull et al
 Ser. Ju
 Burch

STATE OF ILLINOIS

The People of the State of Illinois

County of Cook

County of Cook

In the Supreme Court of the State of Illinois
for the Third Grand Division -

of June Term 1856

Washington Congdon &
William Church and
Oliver R. N. Lull against
Plaintiff of Ira Gatusdecas

vs
Richard H. Swift Defendant

In the Clerk of said Court.

Issue Writ of error to
the Cook County Court of Common
Pleas on the chancery side thereof
in a case wherein the said Swift in
error was defendant & said Swift
complainant & in which a decree
was rendered for said complainant
against said Defendants above.

Sci. fa. to Cook Co.

Yours &c

Samuel H. Hough
for App in
Error.

In the Supreme Court
Washington Congdon
William Church & Oliver
R. N. Lull Plaintiffs of Ira Gatus
vs
Richard H. Swift

} Error to
Cook Com.
Plas

I do hereby enter myself security
for costs in this cause and acknowledge
myself bound to pay or cause to be paid all
costs that may accrue thereon in favor of
the opposite party or any of the

Specimens of this count under the laws
of this State.

W. M. Tall
W. M. Pung

4

Filed June 7, 1856,
L. Leland
LLM

Filed June 7, 1856,
L. Leland
LLM

Sup. Court

Songhorn, Cal

us

Script.

Specimen

Washington Douglass
vs
Oliver R W. Sull et al

32

12484

1857

