

12380

No. _____

Supreme Court of Illinois

Doty.

vs.

Wilder.

71641  7

To the Hon. Brekua S Morris Judge of the Cir-
cuit Court of Cook County

Humbly Complaining

Sheweth unto your honor your Obedient Theodoros Doty
of the City of Chicago in the County of Cook & State
of Illinois that prior to and on the 3^d day of Feb-
ruary A.D. 1853 one Benjamin Wilder of City of
Chicago aforesaid, was or pretended to be the owner in
law simple of that part of the East fraction of the North
East quarter of Section twenty one (21) Township Thirty
nine North, Range fourteen East of the third principal
meridian described as follows to wit: beginning on the
West line of Clark Street one hundred and ninety eight
and seventy five hundredths feet South of the South
East Corner of block No one hundred and seven School
Section addition to Chicago, thence running South
forty two feet, thence West one hundred and seventy
four feet, thence North forty two feet, thence East
one hundred and seventy four feet to the place of be-
ginning -

Your Orator further shews unto Your Honor, that prior to and on the said 3^d day of February A.D. 1853 A B F Russell & William Dittolf of the City of Chicago aforesaid transacting business under the name firm and style of A B F Russell & Co were real estate auctioneers and agents, and before and at the time aforesaid had in their employ in such business one Philip A Stoyne as a Salesman and one B F Lundy as a clerk -

Your oration further shews unto Your & sister Honor

that on or about the 31st day of March A.D. 1853 the said Benjamin Wilder employed, empowered and authorized the said persons doing business under the name and firm of J B F Russell & Co as his agents to sell at auction the before described premises and for that purpose the said Benjamin Wilder gave to the said Benjamin J B F Russell & Co a description of the same -

Your orator further shews unto your Honor, that said J B F Russell & Co afterwards & wit on the 1st 2^d & 3^d days of February A.D. 1853 caused an advertisement to be inserted in the Democratic Press, a daily newspaper published in Chicago which said advertisement was signed by said Philip A. Hynes as Salesman and stated that a house and lot adjoining the Southern Depot on Clark Street - lot 42 by 174 feet - the house large and convenient for a Tavern being the same premises herein before described - would be sold at auction on the 3^d day of February A.D. 1853 at ten O'clock A.M.

Your orator further shews unto your Honor, that on the said 3^d day of February A.D. 1853, the said J B F Russell & Co by their said Salesman Philip A. Hynes offered the said before described premises for sale at auction to the highest bidder therefor, upon the term that one half of the purchase money should be paid upon the execution of the papers between the parties in relation thereto which was to be done as soon as the same could conveniently be, after the close of said sale, and the sale of some other premises to be thereafter immediately made, and the other half of said purchase money in one year from the day & year last aforesaid, and that said

Before described premises were bought by your orator at such sale for the sum of Forty Seven hundred dollars he being the highest bidder therefor -

Your orator further shows unto your Honor, that the said Benjamin Wilder was present when the said sale of the said premises by your orator as aforesaid took place, and then & there assented to the same, and to the aforesaid terms and conditions thereof -

Your orator further shows unto your Honor, that on the said 3^d day of February AD 1853 and for a long time previous thereto, the said J. B. F. Russell & Co had kept a sales book, in which it was their custom to make a memorandum in writing of all sales made by them as such Auctioneers containing a description of the property sold, the time when the sale was made, the names of the seller and purchaser, the price, and the terms and conditions of sales, which said book had before that time been used for the same purpose by the said J. B. F. Russell (alone), and was headed ^{in writing} in print & facts upon the top of each page thereof "Auction Sales of Real Estate by J. B. F. Russell", with a blank for the date of the same -

Your orator further shows unto your Honor, that said J. B. F. Russell do at the time of said sale so made to your orator as aforesaid by their said Clerk B. F. Burn by whose duty and business in his said employment was to make such entry, made a memorandum in writing in said sales book which in connection with the ^{written or} printed heading upon the top of the page on which it was made is in the words and figures following to wit:

Auction Sales of Real Estate by J. B. F. Russell - Feb 3^d 1853.

Description	Owner	Amount	Purchase	Remarks	Commission	Total
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House and lot
adjoining Southern
depot on Clark Street.

B. Wilder.

4700

J. Doty

1/2 cash 1/2 in

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Your orator further shews unto your honor that at the time and prior to the said 3^d day of February A.D. 1853. the depot of the Michigan Southern Rail Road Company and of others Rail Roads connecting therewith was situated on the West side of Clark Street adjoining the premises herein before described which said depot was known and called by the name of the Southern Depot and was so understood by all parties at said sale -

Your orator further shews unto your honor that the premises herein before described were at the time of said sale adjoining said depot and situate on the Northside thereof and said lot had known and determined boundaries as aforesaid, and was the only lot having a house thereon adjoining said depot, and the only lot owned by said Benjamin Wilder adjoining the same which said several facts were well known to all parties when the said sale was made -

Your orator further shews unto your honor that on said 3^d day of February A.D. 1853. when said sale was made as aforesaid it was a known and established custom in the City of Chicago when sales of real estate are made at auction and the whole or any part of the purchase money is to be cash, as it is termed in such sales, that such purchase money is to be paid when the paper instruments in writing relative to such sale are executed, and the same to be done as soon as it conveniently could be after the close of such sales, which custom was well known to all of the parties and persons present at the sale so made to your orator as aforesaid -

and particularly to said Benjamin Wilder -

Your orator further shews unto your honor that the said Benjamin Wilder at the time when said sale was made to your orator as aforesaid, stated to your orator, and other bidders present at such sale, that the possession of said premises would be given immediately to the purchaser thereof.

Your orator further shews unto your honor that on said 3^d day of February A.D. 1853, your orator applied to the said J.B.F. Russell & Co for the execution and completion of said contract of sale and your orator was then and there ready and willing, and offered to do and perform all things on his part and behalf to be done and performed relative to the same, and that the matter was delayed by agreement between the said J.B.F. Russell & Co and your orator until the said J.B.F. Russell & Co could procure from the said Benjamin Wilder his signature to the paper instruments in writing to carry out said contract on his part and behalf -

Your orator further shews unto your honor that after repeatedly applying to said J.B.F. Russell & Co to have said contract executed while the matter was delayed as aforesaid your orator on the 11th day of February A.D. 1853, tenders to the said J.B.F. Russell & Co the sum of two thousand three hundred and fifty dollars lawful money of the United States in compliance with the terms of said contract on his part and then and there demanded an agreement for a deed in accordance with the terms of the sale so made as aforesaid, and your orator has ever since been ready and willing to pay to said Benjamin Wilder the said sum of money and in all things to comply with the terms of said sale on his part and behalf, and is still ready and willing so to do, but although the said Wilder then and there promised to execute to your orator

such agreement or deed has ever since neglected and now refuses so to do.

And your orator hoped that the said Benjamin Wilder would have performed the said agreement on his part as in justice and equity he ought to have done.

But now so it is, may it please your honor that the said Benjamin Wilder combining and confederating with divers other persons at present unknown to your orator whose names when discovered your orator prays he may be at liberty to insert herein, with apt and proper words to charge them as parties defendants hereto, and contriving how to wrong and injure your orator in the premises, at times pretends that he is unable to make to your orator a perfect legal title to said premises or some part thereof, whereas your orator charges that the said Benjamin Wilder is able to make to him a legal title to said premises without any incumbrances thereon.

All of which actings doings and pretences of the said defendant are contrary to equity and good conscience and tend to the manifest wrong injury and oppression of your orator in the premises. In consideration whereof and forasmuch as your orator is altogether remediless in the premises by the strict rules of the common law and can only have relief in a Court of Equity where matters of this nature are properly cognizable and relivable:

To the end therefore that the said Benjamin Wilder and his confederates when discovered may, not under oath an answer under oath being hereby waived, full true direct and perfect answer make to all and singular the matters herein before stated and charged as fully and particularly as if the same were herein again repeated and they thereunto distinctly interrogated according to the best of their knowledge information and belief -

and more especially that the said Benjamin Wilder may discover and set forth his title to said premises and every part thereof and whether there are any and if so what incumbrances thereon. And that the same Benjamin Wilder may be decreed to execute to your orator a good and valid agreement in writing and such other assurances as may be fit and proper to convey to your orator a legal title to said premises upon the payment of said purchase money which your orator hereby submits to pay in such manner as said Court shall direct, and that your orator may have such other and further relief in the premises as the nature of the case shall require and to your honor shall seem meet.

May it please your honor to grant to your orator the People's Writ of Summons to be issued out of and under the seal of said Court and directed to the Sheriff of Cook County thereby commanding him to summon the said Wilder to be and appear before the Circuit Court of the seventh judicial circuit and to be held within and for the County of Cook on the 4th Monday of October A.D. 1853. at Court House in Chicago in said County according to the rules and practice of said Court and then and there to answer all and singular the premises and to abide such order and decree thereon as to your honor shall seem meet.

Chicago June 24th 1853.
Blackwell & Beckwith
Sdnt,

Theodore Duty
By his Solrs
Blackwell & Beckwith

Court to Circuit Court

In Chancery

Theodore Sotz

vs. Bill

Raymond Wilder

Copy

100

Theodorus Doty
by
Benjamin Wilder

Record &c.

1854...

Filed July 18. 1854
L. Leland Clk.

1854

Proper

12380

And afterwards tried on the 4th Monday of October AD 1853 one
of the days of the October term of said court. comes the defendant
Benjamin Wilder, and filed his answer to said bill of
complaint which is in the words and figures following

Theodore Doty }
a } Cook County Circuit Court
Benjamin Wilder } October Term AD 1853.

This defendant by protestation not confessing or acknowl-
edging all or any of the matters and things in the said
complaints bill to be true in such manner and form
as the same are therein set forth and alleged doth answer
thereto, and for cause of answer sheweth, that the
said complaint hath not in and by his said bill
made or stated such a case as doth or ought to entitle
him to any such discovery or relief as is thereby sought
and prayed for from or against this defendant Wherefore
this defendant demands the judgment of this Honorable
Court whether he shall be compelled to make any
other or further answer to the said bill or any of the
matters and things therein contained, and prays to be
hence dismissed with his reasonable costs in this
wholly sustained

By his Wks
Phelps & McGinn

And on the same day & year last aforesaid come the
complainant by his solicitors Blackwell & Prokettle, and
file their joinder in demurrer, which is in the words
and figures following to wit -

Theodore Doty	}	Cook County Circuit Court October Term 1853.
"		
Benjamin Wilder		

And now the said complainant
comes and says that his said bill of complaint
and the matters & things therein stated
are sufficient to entitle and do entitle him
to the relief in and by said bill prayed
against said debt. And thus he is ready
to verify as this Hon court shall direct
and prays as he has already in and
by his said bill already prayed

By his atty

Blackwell & Prokettle

And afterwards on the 31st day of May AD 1854
one of the days of the May term of said court, came
the ~~the~~ respective parties by their said solicitors
and ~~it~~ was then & there considered by the said
court, that the said answer of the said deft
was sufficient and that the same be sustained
and the said complainant having elected ~~to~~ abide
by his said bill of complaint, it was also ~~ordered~~
adjudged ordered and decreed that the said
complainant's bill of complaint be dismissed
with costs, from which decision of the said
court said order and decree the ~~plff~~ complainant
then & there appealed to the Supreme Court
of this state

It is agreed & stipulated by and between the parties thereto
that the above shall be deemed & taken as a
full ~~and~~ and sufficient record in the above entitled
cause & that no exception shall be taken thereto
for want of any formality in the making up of the
same -

Blackwell & Pickwith
Atty for I Doty
Phelps & McGinn
Sols for B. Wilder

Theodore Doty } Supreme Court. Ottawa
" } June Term 1854
Brigance Wilder } In Mor.

And now the said Theodore Doty by his Atty
Blackwell & McKnight at the above term of this court
before the justices thereof, comes and says that in the
record and proceedings aforesaid and also in the
production of the decree ap^d there is manifest error
in this trial, that the bill of complaint ap^d and the
matter and things therein contained are sufficient
to entitle and do entitle the said complainant to such
discovery and relief as is in and by said bill prayed
for of from and against said defendant. And the
Court was in sustaining said decree and
dismissing said bill of complaint as aforesaid
Wherefore for the error aforesaid, and for other errors
apparent on the face of said record and proceedings
the said Theodore Doty prays that said judgment
may be set aside reversed annulled and for
nothing held and that he may be restored to what
he had the lost by reason of said judgment &c

Blackwell & McKnight

Atty for T Doty

And now the D^f deft by Phelps & McGinn his Atty, comes & says
that in the record of the proceedings and in the production
of the decree ap^d there is not any error in any manner
and form as the said D^f in now had the above alleged
and this he is ready to verify by the record &c wherefore
he prays judgment &c

Phelps & McGinn
Attys for Br^g Wilder