

No. 13802

Supreme Court of Illinois

Mellinghaus

vs.

Reeves

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable George Manierre Judge of the Seventh Judicial Circuit of the State of Illinois, and Sole Presiding Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof begun and held at the Court House in the City of Chicago, in said County, on the 12th Monday, (being the 12th day) of July in the year of our Lord one thousand eight hundred and 59 and of the Independence of the said United States the Eighty-fourth

Present, Honorable George Manierre Judge of the 7th Judicial Circuit of the State of Illinois.

Walter Haven States Attorney.

John Gray Sheriff of Cook County.

Attest, [Signature] Clerk.

Be it remembered that heretofore to-wit: on the 13th day of July in the year aforesaid, the same being one of the days of the July Term of said Court the following, among other proceedings were had and Entered of Record. to-wit:

"William Fellinghaus, Julius Probsting & M. O. Kenessey

Armed Rivers and the City of Chicago

- Bill of Injunction re

This cause came on to be heard on the 11th day of July of the July Term of this Court A. D. 1859 before the Honorable George Manierre Judge re upon Bill and answer of Defendant Rivers, Masters report and the proofs and Exhibits in the cause and Exceptions thereto, and it appearing therefrom among other things, that at a former term the Bill

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of Complaint in this cause had been duly confessed against the City of Chicago for want of an answer, and that the cause had by consent of the defendant Rera and by the order of the Court on complainant's motion been referred to the Master to take proofs and examine and report, and that by article of agreement dated 13th May 1856 and made between said defendant Rera of the first part and Adolph Lorrner of the second part in consideration of \$1350. to be paid by said party of the second part, to the said party of the first part as follows, that is to say, \$315 ^{$\frac{59}{100}$} with the receipt of which was duly acknowledged and the balance in three equal annual payments of \$315 ^{$\frac{59}{100}$} each on the first days of January in each of the years 1857, 1858 and 1859, with annual interest at the rate of six per cent, and also all the law subsequent to 1856 said defendant Almer Rera to convey to said Lorrner in fee simple clear of all incumbrances the following lots pieces and parcels of land or ground and premises, namely, lots Eleven (11) and Twelve (12) in subdivision of lots forty four (44) forty seven (47) forty eight (48) of fifty seven (57) and fifty eight (58) in Brown and addition to Chicago situate in said County of Cook and State of Illinois, and in which contract it is provided that in case of failure of said party of the second part to make either of the payments or perform any of the covenants on his part said contract shall at the option of said party of the first part be forfeited and determined, and the party

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default of the second part shall forfeit all payments made by him on said contract, and such payments shall be retained by said party, default of the ~~second~~ first part in full satisfaction and liquidation of all damages by him sustained, and that he should have the right to re-enter and take possession of said premises, it being hereby mutually agreed between said parties thereto that said times of payment were the essence of the said now recited contract and a part of the consideration thereof; that afterwards said contract and her conditions were assigned unto Herman Whrlaub and William Satter, their heirs and assigns subject to the payment and performance by them of all the purchases, payments, and allegations therein expressed or contained and then remaining unpaid and unperformed. That the said Whrlaub and Satter did on the 4th day of March 1857 pay to said Rees \$555³⁴/₁₀₀ in full for principal and interest due on said contract on February 1st 1857, including taxes and did also on February 8th 1858 pay to him \$350 in full for the payment interest and taxes due on said contract in February 1st 1858; that on March 18th 1858 said Satter assigned his interest in said contract to said Whrlaub in fee. That on the 20th day of June A D 1856 said defendant Rees also sold to one Paul Baker by a contract similar in all its terms and provisions to said recited contract, and differing only in its date, parties, payments and parcels. Lot. four (4) in said

Subdivision of said described lots in Browns addition to Chicago aforesaid for six hundred dollars as follows \$150-00 Cash the receipt whereof was truly acknowledged, and the balance in three Equal payments - Annually of \$150-00 Each on first day of February in the years 1857. 1858. and 1859 respectively, with annual interest at six per cent; That after divers Messrs Assignments said last recited contracts and the covenants therein comprised were on the 5th day of February 1857 assigned to said Herman Wolcott and William Butler subject to the payment and performance by them of all such of the purchases, payments and obligations therein expressed and contained as well on as after the first day of February 1857 to be paid observed or performed, and that they did on the 4th day of March 1857 pay to said defendant Reeves \$168-00 in full for principal and interest and taxes to February 1st 1857 and did on the 9th day of February 1858 pay Reeves the further sum of \$170-00 in full for principal interest and taxes up to the first day of February 1858. That on the 8th day of March said Butler assigned his interest in said contract last recited, to said Wolcott; That on the 15th day of June 1856 said Common Council ordered an official survey of the Real Estate required to be taken for the opening and Extension of La Salle Street from its then present termination at Division Street north to North La Salle Street; that said Extension passed in a

North and South direction through and interests and appropriates all the first Eighty and fifty-Eight One hundredth of a foot in length of each of said described lots, of said street and leave only nineteen and forty ~~two~~ hundredths of a foot as the depth of each of said lots respectively. That on the 16th day of June 1856 Commissioners were duly Elected by said Common Council to make the award of damages and assessments for said extension, and that the damages awarded for so much of said lots respectively, as are appropriated for said Extension as aforesaid amounts to \$ 1757 ⁴⁵/₁₀₀ and that the same has not yet been paid by said Common Council; That on the 14th day of August said Commissioners made their report of said assessment to said Common Council, and that on the 5th day of October 1857 said report and assessment was duly confirmed by an order of said Common Council, that on the 8th day of June 1858 said Herman Wolcott made an assignment (inter alia) of said Contracts, hereditaments and promises to the Complainants in trust for the benefit of his creditors.

It is therefore adjudged decreed and ordered that said Oliver Peers cannot specifically perform the whole of said several recited contracts, or either of them and that the same so far as they respectively relate to the said parts of the said several lots so taken for the Extension of said Street that is to say; the next 80 ⁵⁸/₁₀₀ feet thereof, have by virtue of the statute in that case made and provided become absolutely discharged and

vacated upon the confirmation of said ^{recited} report, And
the said Abner Peers can specifically perform the same
contracts, specifically so far as they relate to the East
19 ⁴⁷/₁₀₀ feet of said lots respectively, and that by virtue
of said statute said several contracts respectively
remain valid as to the residue of said lots respectively
remaining unappropriated by said street as aforesaid

That the amount paid to said Peers
upon and in respect to said recited contract, with
interest upon such payments as were made prior to the
confirmation of said report exceeds the proportional
value of the unappropriated parts of said lots respec-
tively to the amount of \$1303 ⁶⁵/₁₀₀. And it is adjudged
ordered and decreed that the defendant Abner Peers
shall forthwith pay to the complainant the sum of
\$1303 ⁶⁵/₁₀₀ being the amount so received by him in excess
as aforesaid with interest from the time of filing the
Master's Report in this cause until paid, and it is ordered
that said complainant have a lien upon said unpaid
award and assessment of \$1454 ⁴⁵/₁₀₀ in the hands of
said Common Council as aforesaid to the extent of the
amount and interest hereby decreed to be paid by said
Abner Peers as aforesaid, and that said City of
Chicago be perpetually enjoined from paying the same
to any person or persons whomsoever to the prejudice
of the complainant Bill aforesaid, and that within
thirty days from the entering this decree the said Abner
Peers shall at his own costs by good and sufficient

warrantly convey and assign unto the Complainants their heirs and assigns all the unappropriated parts, that is to say: $\frac{49}{100}$ feet of each of said lots respectively and the intirence thereof in fee simple in possession free from incumbrances. And in case of his default therein the same deed made to be made by S. C. Paine Fiscal Esq or the Master in Chancery of this Court. It is further ordered and decreed that the complainants shall ~~have~~ and pay one half and said defendant Rivers shall bear and pay the other half of the costs accrued in this cause.

And of records to-wit: on the 3rd day of August AD 1859. said defendant Arner Rivers filed in said Court his certain Appeal Bond which is in the words and figures following to-wit:

"I know all men by these presents that me Arner Rivers of Louisville Kentucky and Charles A Reno of the County of Cook and State of Illinois are held and firmly bound unto William Dillingham, Julius Probsting and M. D. Wernsey in the penal sum of Fifty thousand dollars lawful money of the United States, for the payment of which well and truly to be made we have ourselves or heirs Executors and administrators. jointly severally and firmly by these presents, Witness our hands and seals this thirtieth day of August AD 1859

The condition of the above obligation
is such that whereas the said William Sellingshaw
Julius Probsting and Mr. W. W. Wernsey did on
the thirtieth day of July A D 1859 in the Circuit
Court, in and for the County of Cook and State
aforesaid, and of the July Term thereof A D 1859
render a judgment against the above binder
Abner Reeves for the sum of — Dollars
and — Cents besides costs of suit; from which
said judgment of the said Circuit Court the said
Abner Reeves hath prayed for and obtained an
appeal to the Supreme Court of said State —
It is therefore of the said Abner Reeves shall duly
prosecute his said appeal with effect, and moreover
pay the amount of the judgment costs interest
and damage rendered and to be rendered against
him in case the said judgment shall be affirmed
in said Supreme Court, that the above obligation to
be void otherwise to remain in full force and virtue

Abner Reeves Seal
C. A. Reno Seal

I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of Final Decree and Appeal Bond in a certain cause lately pending in said Court on the Chancery side thereof, wherein William Delaney et al Complainants and Abner Peas Defendant.

In Witness Whereof, I have hereunto set my hand, and affixed the Seal of said Court at Chicago, this Nineteenth day of April A. D. 1887

Wm L Church Clerk.



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Circuit Court of Cook Co.

Jellingsham Etal

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Filed Apl. 28. 1860
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