

12911

No. _____

Supreme Court of Illinois

Sherman

vs.

Koon

71641  7

Chicago April 22/59

L. Leland

Ch Sup Ct.

Ottawa

Please find accord
and abstract Sherman v. Hood
and your Docket fee \$5.00 -
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We cannot find in your Docket
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Docket fee -

Yours &c

Smith Dury Kelley

Supreme Court }
State of Illinois }

James D. Sherman
Plaintiff in error
vs
Henry G. Koon et al
defts in error } In Chancery
Error to Cook County
Circuit Court

Abstract of the Case

This is an appeal from an order of the Cook County Circuit, dismissing the bill for want of Jurisdiction. The bill of complainant is a bill in aid of execution, and was filed on the fifteenth day of February AD 1859. Stating that the complainant, residing in Chicago in the County of Cook, in the Term of January AD 1859 recovered in said Circuit Court of Cook County, a judgment against Henry G. Koon, one of the defendants, for Three Hundred & forty two & $\frac{2}{100}$ Dollars damages and costs. The proper issuing of an execution on the 5th day of January, in the year 1859, directed to the Sheriff of Kauka Kee County, the then residence of the defendant, Henry G. Koon a proper endorsement and delivery to the Sheriff of said County, on the same day; that on the 8th day of February 1859, the Sheriff levied upon the interest of said Henry G. Koon in certain Real Estate mentioned in the bill, in said County of Kauka Kee. Also the endorsement of said levy, upon the execution; that said execution was in full force and effect at time of levy and filing bill, and judgment wholly unsatisfied, and that the Sheriff cannot safely proceed to sell said Real Estate, to satisfy said execution, for the reason that the Codefendants of Henry G. Koon, for the purpose of defrauding the complainant and other creditors of said Henry G. Koon, hold the title to, or

incumbrances upon said property, which transactions are charged to be entirely fraudulent, and the facts showing that are stated in the bill, all the defendants are averred to reside in said Kan-
-Kakee County, which bill is duly verified,

Afterwards the defendants by Van Buren & Gary their Solicitors appeared and moved the Court, to dismiss the bill of complaint in this case, for want of Jurisdiction of this Court,

Afterwards, and on the 4th day of March 1859. Said Court on this motion dismissed the bill with costs, from which decision the Complainant appealed to this Court,

Smith Dewey & Kellogg
attys for Plaintiff in error,

Supreme Court
Cook County

James D Shuman
Plff in error

vs

Henry G Koon et al
Defts in error

abstract of case

Filed April 23. 1879
L Leland
CLK

Smith Dewey & Kellogg
attys for Plff in error

United States of America }

STATE OF ILLINOIS, COUNTY OF COOK, S. S. }

Pleas, before the Honorable George Manierre

Judge of the Seventh Judicial Circuit of the State of Illinois, and Solo 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

Monday (being the Twenty First day) of

February in the year of our Lord one thousand eight hundred and

fifty nine and of the Independence of the said United States the

Eighty Third

Present, Honorable

George Manierre Judge of the 7th Judicial

Circuit of the State of Illinois. }

Charles Haven States Attorney.

John Gray Sheriff of Cook County.

Attest;

Wm L. Chase Clerk.

Be it remembered that heretofore, to wit, on the Sixteenth day of February, in the year aforesaid, James D. Sherman Complainant, by Messrs. Smith, Dewey & Kellogg, his Solicitors, filed in the office of the Clerk of the Court aforesaid, his certain Bill of complaint, in aid of execution against Henry G. Koon, Susan Ann Koon, James Koon, William B. Koon, and John C. Mateer, Defendants, and also his bond for any injunction, which Bill and Bond are in the words and figures following to wit—

State of Illinois } Cook County Circuit Court
Cook County } Of the March Term, A.D. 1859.

To the Hon. George Maniere, Judge of said Court, in Chancery sitting—

James D. Sherman, of the City of Chicago, County of Cook, and State of Illinois, who is a Citizen of the State of Illinois, brings this his Bill against Henry G. Koon, James Koon, William B. Koon, Susan Ann Koon, and John C. Mateer, of the City of Kankakee, County of Kankakee, and State of Illinois, and who are Citizens of the State of Illinois, and residing in said Kankakee County aforesaid, and therefore your Orator complains and says that heretofore, to wit— in the term of January, in the year of our Lord one thousand, eight hundred and fifty-nine, in the Circuit Court of the said County, by the consideration and judgment of said Court, your Orator recovered against Henry G. Koon, Defendants in this suit, the sum of Three Hundred and forty two dollars, and twenty-one cents, for the damage which he had sustained

as well by reason of the nonperformance of certain prom-
 ises and undertakings, as for the costs and charges of
 your Orators by them about their suit in that behalf
 expended, which were adjudged to your Orators, in and
 by the said Court whereof the said Henry G. Koon, was
 convicted - as by the record of the said judgment in the
 office of the Clerk of said Court, reference being thereto
 had, and to which, for greater certainty, your Orator pray
 leave to refer, will more fully and at large appear -
 And your Orator further shew unto your Honor, that
 the said judgment so recovered in manner aforesaid,
 remaining in full force and effect, and the costs and
 damages aforesaid, unpaid and unsatisfied, your Or-
 ator on or about the fifth day of January, in the year
 of our Lord, one thousand, eight hundred and fifty nine,
 for the purpose of obtaining satisfaction of the said
 judgment, sued and prosecuted out of the said
 Court, a writ of the people, called a Fieri Facias, di-
 rected to the Sheriff of the County of Kankakee, that
 being the County in which said Defendants resided,
 at the time of the issuing of said writ - by which said
 writ the said Sheriff was commanded, that of the
 goods, chattels, lands and tenements of Henry G. Koon,
 Defendant in your County, you cause to be made the
 sum of Three Hundred and forty-two dollars, and
 twenty-one cents, which your Orator in the said Cir-
 cuit Court, recovered against the said Defendant, Henry
 G. Koon, and that he should have the money at the
 Clerk's office of said Court, at Chicago in said County,

in ninety days from the date thereof, to satisfy the judgment so recovered by your Orator as aforesaid - and that he should have then and there that writ -

And your Orator further show unto your Honor, that the said writ of Fieri Facias, before the delivery thereof to the said Sheriff of the said County aforesaid, was duly indorsed, and was afterwards, and on or about the tenth day of January, in the year of our Lord, one thousand, eight hundred and fifty nine, delivered to the said Sheriff, to be executed in due form of law -

And your Orator further show unto your Honor, that the said Sheriff of said County aforesaid, on the Eighth day of February, in the year of our Lord, one thousand, eight hundred and fifty nine, indorsed on the said writ to him in that behalf directed and delivered as aforesaid, that he had levied on the following described property, to wit, the north half of the south west quarter of the south east quarter of Section number Eight (8) Town thirty (30) North of Range thirteen (13) west, the south half of the south west quarter of the south east quarter of Section number Eight (8) and the north west quarter of the North east quarter of Section number seventeen, in Township number thirty (30) North of Range thirteen west of the second 2nd principal meridian, the same being situate in the county of Kankakee, and State of Illinois -

And your Orator further shows unto your Honor, that said writ of Fieri Facias is now in the hands of said

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Sheriff, but that he cannot, for the reasons hereinafter mentioned, safely proceed to sell the said property so levied upon, and satisfy said writ, without the aid of this Honorable Court—

And your Orator further shows unto your Honor, that the said judgment still remains in full force and effect, not reversed or satisfied, or otherwise vacated and that the said Henry G. Koon has not paid the same to your Orator, but has hitherto wholly neglected and refused so to do—

And your Orator further shows unto your Honor, that there is now actually and equitably due to your Orator upon the aforesaid judgment, the sum of three hundred and forty two dollars and twenty one cents, together with the interest thereon, from the fifth day of January one thousand, eight hundred and fifty nine, over and above all claims of said Defendant by the way of set off, or otherwise—

And your Orator further shows unto your Honor, that on the sixth day of February, A.D. 1859. Said Sheriff filed a certificate of said levy in the Recorder's office of said Kankakee county, which said certificate of levy was duly recorded in the records of said office.

And your Orator further shows unto your Honor, upon information and belief, and so charges the fact to be, that on or about the first day of October A.D. 1858. and before that time, said defendant Henry G. Koon was engaged in the mercantile business in the State of Iowa—that while so engaged in

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Sheriff, but that he cannot, for the reasons hereinafter mentioned, safely proceed to sell the said property so levied upon, and satisfy said writ, without the aid of this Honorable Court—

And your Orator further shows unto your Honor, that the said judgment still remains in full force and effect, not reversed or satisfied, or otherwise vacated and that the said Henry G. Koon has not paid the same to your Orator, but has hitherto wholly neglected and refused so to do—

And your Orator further shows unto your Honor, that there is now actually and equitably due to your Orator upon the aforesaid judgment, the sum of three hundred and forty two dollars and twenty one cents, together with the interest thereon, from the fifth day of January one thousand, eight hundred and fifty nine, over and above all claims of said Defendant by the way of set off, or otherwise—

And your Orator further shows unto your Honor, that on the sixth day of February, A.D. 1859. Said Sheriff filed a certificate of said levy in the Recorder's office of said Kankakee county, which said certificate of levy was duly recorded in the records of said office.

And your Orator further shows unto your Honor, upon information and belief, and so charges the fact to be, that on or about the first day of October A.D. 1858. and before that time, said defendant Henry G. Koon was engaged in the mercantile business in the State of Iowa—that while so engaged in

trade, he became greatly in debt, and unable to meet his liabilities— that while thus indebted, and in failing circumstances, said defendant Henry G. Koon for the purpose of hindering, delaying and defrauding your orator and other creditors of said Henry G. Koon of their just rights, purchased of his co-defendant, John R. Mattee, the Real Estate hereinbefore described as levied on as aforesaid, by said Sheriff, paying therefore out of the means or money belonging to him the said defendant, Henry G. Koon, and your orator further charges upon information and belief, that said Mattee contriving and colluding with said Henry G. Koon, for the purpose of placing said Real Estate so levied on as aforesaid, beyond the reach of levy and sale upon execution against said Henry G. Koon, on or about the first day of October, A. D. 1858. transferred to Susan Ann Koon, who your Orator believes to be the wife of said Henry G. Koon, by Warranty deed, a portion of said Real Estate described as follows, to wit, the north half of the south west quarter of the south east quarter of Section Number Eight (8) in Township number thirty (30) North of Range thirteen west, situate in Kankakee county and State of Illinois, and on or about the same day and year transferred the remaining portion of said real estate so levied on as aforesaid by Warranty deed to one James Koon, who your Orator believes to be a brother of said Henry G. Koon, which said Real Estate is described as follows, to wit, the south half of the south west

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quarter of the South east quarter of Section eight,
and the North west quarter of the North east
quarter of Section number seventeen (17) in town
ship number thirty (30) North of Range thirteen
(13) west of second Principal meridian, situate
in the county of Kankakee, and State of Illinois.
And your Orator further charges upon informa-
tion and belief, that in fact no consideration pas-
sed from said Susan Ann Koon, or said James
Koon to said John C. Mateer for said Real Estate
so transferred to them as aforesaid, but that in
fact the consideration moved from said Henry G.
Koon to said John C. Mateer— And your Orator fur-
ther shows unto your Honor, that he is informed
and believes, and so charge the fact to be, that
afterwards, and on or about the first day of October
A. D. 1858. said James Koon contriving and collud-
ing with said Henry G. Koon, for the purpose of
hindering, delaying and defrauding your orator,
and other creditors of said Henry G. Koon, of their
rights, gave to John C. Mateer, a mortgage on the
Real Estate so as aforesaid transferred by said
John C. Mateer to said James Koon— which said
mortgage was pretended to be made to secure the
payment of three certain promissory notes of
\$375⁰⁰ each, bearing date October 1st A. D. 1858. and
due respectively in one, two and three years from
the date thereof—

And your Orator further shows unto your Honor

that he is informed and believes, and he so charges the fact to be, that afterwards, and on or about the fifth day of October A.D. 1858. Said James Koon transferred (by Warranty deed to William B. Koon, who your Orator believes is a brother of said James and Henry G. Koon, the following described Real estate, to wit, the south half of the south west quarter of the south east quarter of Section number Eight, also the north west quarter of the north east quarter of Section number Seventeen, in township number thirty (30) north of Range thirteen (13) West, situate in the county of Kankakee, and State of Illinois, being a portion of the Real Estate so levied on as aforesaid, for the pretended consideration of Fifteen hundred and fifty dollars, but your Orator further charges upon information and belief, that said transfer from said James Koon to said William B. Koon, was made without any good or valuable consideration passing from the said William B. to said James Koon, but that the same was done by collusion with the said Henry G. Koon, for the purpose of concealment, and to deceive and defraud your Orator, and other creditors of said Henry G. Koon. And your Orator further charges upon information and belief, that said Real Estate so described as levied on and transferred as hereinbefore mentioned, and set forth, is in fact the property of said Henry G. Koon, that said transfer of said Real Estate from said John C. Mateer to said Susan Ann Koon, and the mortgage of the property hereinbefore described,

transferred by said James Koon to John C. Mateer,
 and the transfer of said Real Estate hereinbefore de-
 scribed as transferred by said James Koon to William
 B. Koon, are each and all fraudulent and void, as
 to your Orator, and were made for the purpose of de-
 ceiving and defrauding your Orator and other credi-
 tors of their rights in the premises, and to enable
 said Henry G. Koon to enjoy and control said Real
 Estate so levied on as aforesaid, or the avails thereof,
 without having the same subject to levy and sale
 upon execution against him the said Henry G. Koon.
 But your Orator further expressly charge that said
 Real Estate so levied on as aforesaid, is subject to
 the lien of your Orator's said judgment and should
 be sold upon execution to satisfy the same—
 And your Orator well hoped that the said Defendant
 Henry G. Koon would have paid to your Orator, the a-
 mount due him on said judgment, or would have
 applied for that purpose any property belonging to
 them, or in which they are in any way interested, as
 in equity and good conscience they ought to have done.
 But now so it is, may it please your Honor, that the
 said Defendants combining and confederating togeth-
 er and with divers other persons, to your Orator unknown
 but whose names when discovered he prays may be
 inserted herein, with proper and apt words to charge
 them—and contriving how to injure and defraud
 your Orator in the premises, neglect or refuse to pay
 the amount so due to your Orator on his said

judgment, or to apply for that purpose the property be-
longing to the said Defendant Henry G. Horn, and for
reason whereof the said Defendants set up a variety
of unfounded pretences - All which actings, doings, neg-
lects and pretences, are contrary to equity and good con-
science, and tend to the manifest wrong and injury
of your Orator in the premises - In tender considera-
tion thereof, and for as much as your Orator is reme-
diless in the premises, at and by the direct and
strict rules of the common Law, and cannot have
adequate relief, save in a Court of Equity, where matters
of this and a similar nature are properly cognizable
and relievable - To the end, therefore, that the said
Defendant may, if they can show why your Orator
should not have the relief hereby prayed, and may,
upon their several and respective corporal oaths, and
according to the best and utmost of their several and
respective knowledge, remembrance, information and
belief, fully true, direct and perfect answer make to
all and singular the matters and things hereinbe-
fore stated and charged, and particularly to the sev-
eral interrogatories hereinafter numbered and set
forth - that is to say, the said defendant may fully
set forth and discover, according to the best of his
knowledge, remembrance, information and belief - First
what is the nature and situation, amount and val-
ue of all the property of the said Defendant, so levied
upon as aforesaid - as fully and completely as though
they had each of them been specially interrogated thereunto

And your Orator prays this Honorable, Court that said transfers of said real estate so levied on as aforesaid, from said John C. Mateer to said Susan Ann Koon, and James Koon, and the mortgage of that portion of said Real estate hereinbefore described as mortgaged by said James Koon to said John C. Mateer, and afterwards transferred by Warranty deed by said James Koon to said William B. Koon may be declared null and void as to your Orator, and that the said Real Estate so levied upon by said Sheriff, may be adjudged and decreed to be subject to the lien of your orator's said judgment, and that said Real Estate so levied upon as aforesaid, shall be sold upon execution, to satisfy your orator's said judgment—

And the said Defendants, or some of them, may be decreed to pay your Orator, the amount so as aforesaid due to him, for principal and interest on his said judgment, together with your Orator's costs and charges in this behalf sustained—and may be decreed to apply for that purpose any interest of the said Defendants Henry G. Koon, in and to the property so levied upon as aforesaid, whether legal or equitable—and that the said Defendants may be enjoined and restrained from selling, assigning, transferring, encumbering, or in any manner disposing of or intermeddling with any of the property so as aforesaid levied upon, until the further order of this Court—and that a receiver may

be appointed, according to the course of practice in this Court, and with the usual powers of receivers in like cases— And that your Orator may have such further, or such other relief in the premises as the nature of his case shall require, and as shall be agreeable to equity and good conscience—

May it please your Honor to grant unto your Orator, the People's Writ of Injunction, issuing out of and under the seal of this Honorable Court, to be directed to the said Defendants Henry G. Koon, Susan Ann Koon, James Koon, William B. Koon, and John C. Mateer, and to their Counselors, Attorneys, Solicitors, Trustees and Agents, therein and thereby commanding and strictly enjoining the said Defendant and the persons before mentioned, in manner aforesaid—

And may it please your Honor to grant unto your Orator, the People's Writ of Subpoena, issuing out of and under the seal of this Honorable Court, to be directed to the said Defendants Henry G. Koon, Susan Ann Koon, James Koon, William B. Koon, and John C. Mateer, therein and thereby commanding them and each of them on a certain day and under a certain penalty, to be therein inserted, that personally be and appear before the Judge of the Circuit Court of said County, at the Courtroom in the City of Chicago, then and there to answer all and singular the premises, and to stand to, and abide by, and perform such order and decree

therein, as to your Honor shall seem agreeable to equity and good Conscience - And your Orator will ever pray etc -

Smith, Dewey & Kellogg } James D. Sherman
Compl'ts Solrs. } per Albert Cramer,
E. M. Dewey, of Counsel } his agent and attorney in fact
State of Illinois }
Cook County } p.

On this 16th day of February, one thousand, eight hundred and fifty-nine, personally came before me, Albert Cramer, who being duly sworn saith that he is the agent of the Complainant in the foregoing Bill of Complaint, that said Complainant is at present without the limits of the State of Illinois, that he makes this affidavit in the behalf of said complainant, that he has read the foregoing Bill of Complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters and things therein stated upon information and belief, and as to these matters he believes it to be true -

Albert Cramer -

Sworn and subscribed

before me, this 16th day of February, A. D. 1859 - Wm. L. Church, Clerk -

Let the writ of Injunction issue in conformity with the prayer in the foregoing Bill of Complaint - Complainant filing a Bond in the penalty of Three hundred dollars, with a good and

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sufficient surety-

George Manierre

Judge of 7th Judicial Circuit, Ills.

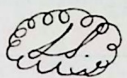
To the Clerk of the Circuit Court, Cook Co-

Know all men by these presents, that we, James D. Sherman and Albert Cramer, are held and firmly bound unto Henry G. Roon, James Roon, William B. Roon, Susan Ann Roon and John C. Mater, in the penal sum of Three Hundred dollars, lawful money, which said sum well and truly to be made, we bind ourselves, our heirs, Executors and administrators, jointly and severally, by these presents - Witness our hands and seals this 17th day of February, A.D. 1859.

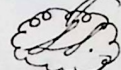
Whereas the above named James D. Sherman has filed his Bill of Complaint in the Cook County Circuit Court on the Chancery side thereof, against the above named obligees, praying among other things, for an injunction to restrain said above named obligees from selling, assigning, transferring, encumbering or in any manner disposing of, or intermeddling with certain Real Estate in said Bill of Complaint specified as levied upon by the Sheriff of Kankakee County, and whereas the Honorable George Manierre, Judge for said County Circuit Court, has granted an injunction for that purpose, according to the prayer of said Bill, upon the said James D. Sherman's giving the security required by law in such cases -

Now therefore the condition of the above obligation is

such, that if the above bounden James D. Sherman, and Albert Cramer, their heirs, Executors or administrators shall well and truly pay, or cause to be paid, to the said obligees, their heirs, executors or assigns, all the costs and damages which may be recovered or adjudged against said James D. Sherman, in case it shall finally be determined that said injunction issued improperly, then this obligation to be void, otherwise to remain in full force and effect.

James D. Sherman 

by Albert Cramer, his attorney

Albert Cramer 

And thereupon, on the same day and year last aforesaid, there issued out of the office of the clerk of said Court, at the suit of said complainant, the People's certain writs of summons and Injunction, directed to the Sheriff of Kankakee County, and clothed in the words and figures following, to wit-

State of Illinois }
County of Cook } ss.

The People of the State of Illinois,
to the Sheriff of Kankakee County - Greeting -
We Command you that you Summon Henry G. Koon, James Koon, William B. Koon, Susan Ann Koon, and John C. Mateer, if they shall be found in your County, personally to be and appear before the Circuit Court of Cook County, on the first day of the next term thereof, to be holden at the Court House, in Chicago, in said County of Cook, on the first Monday of

the penalty of what the law directs—
To the Sheriff of Kankakee County to execute, and
return in due form of law—

Witness, Wm. L. Church, Clerk of the said
Circuit Court, and the Seal thereof, at Chi-
cago, in said County, this 17th day of February,
A. D. 1859. Wm. L. Church, Clerk—

And afterwards, to wit, on the 24th day of February,
in the year last aforesaid, said writs were returned
into the Courts aforesaid, by said Sheriff endorsed
as follows, to wit—

Served this writ on each of the within-named de-
fendants, by reading the same to them— and by de-
livering a copy thereof, to them respectively, this 19th day
of February, 1859. Fees— \$ Service— 2,50— \$ Copies, 2,50—
Milage, 3,70— Return. 10— \$ 8. 80. H. H. Dearborn,
Sheriff—

Served this writ on the within-named Henry G.
Koon, James Koon, William B. Koon, Susan Ann Koon,
and John C. Mateer, by delivering a true copy thereof,
to each of said persons, and also by reading the same
to each of said defendants, this 19th day of February,
A. D. 1859. Fees— \$ Services, 2,50— \$ Copies, 2,50— Mil-
age, 3,70— Return. 10— Total \$ 8. 80— H. H. Dear-
born, Sheriff—

And afterwards, to wit, on the 28th day of February, in
the year last aforesaid, the said defendants by Van Bur-
ren & Gary, their Solicitors, filed in the Court ^{aforesaid} their motion
in the words and figures following, to wit—

Cook County Circuit Court-

James D. Sherman

In Chancery

vs

Henry G. Koon

Susan A. Koon

James Koon

William B. Koon, & others

And now comes the defend-
ants by Van Buren and Gay, their Solicitors, and
move the Court to dismiss the Bill of Complaint
in this cause, on the ground that the defendants
live out of the County of Cook, and in the County
of Kankakee, and the real estate referred to in the
said Bill, is situate in the said County of Kan-
kakee, and therefore this Court has no jurisdiction
of the person of the defendants - nor of the subject
matter of the suit -

Second - because there are no Equities in the Bill -

Van Buren and Gay,

Sols for defts -

And thereupon afterwards to wit, at the February
Term of said Court, to wit, on the 4th day of March,
in the year last aforesaid, the following proceedings
among others, were had and entered of record there-
in, to wit -

James D. Sherman

In the Circuit Court of Cook Co

vs

In Chancery -

Henry G. Koon, et al

On the 4th day of March, A.D.

1859. before said Court, the said Cause came on to be heard, upon the motion of said defendant to dismiss said complainant's bill, in this cause for want of jurisdiction - and after hearing the arguments of counsel, it is ordered, adjudged and decreed by the Court that the injunction heretofore issued in this Cause, be dissolved, and said bill dismissed with costs, and that the said defendants recover of said complainant, their costs in this suit. And thereupon the said complainant prays an appeal to the Supreme Court, which is granted upon condition that he file herein his bond with Benjamin H. Brookfield surety, on or before March 5th inst. in the penal sum of seven hundred and fifty dollars, conditioned according to law - And afterwards to wit, on the 5th day of the month and year last aforesaid, the said Complainant filed in said Court, his certain appeal bond, which is in the words and figures following, to wit -

Know all men by these presents, that we, James D. Sherman and Benjamin H. Brookfield, are held and firmly bound unto Henry G. Roon, John C. Metier, Susan Ann Roon, James Roon and William B. Roon, in the penal sum of seven hundred and fifty dollars, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, and Administrators, jointly, severally, and firmly by these presents - Witness our hands and seals, this fifth day of March, A.D. 1859.

The Condition of the above obligation is such that whereas a suit is pending in the Cook County Circuit Court in the State of Illinois, on the Chancery side thereof, in which the above bounden James D. Sherman is the Complainant, and the above named obligees are defendants, and whereas a motion has been made to dismiss the bill in said suit, and to dissolve the Injunction granted therein - and whereas a decision has been rendered adverse to said Complainant - and whereas an appeal has been taken from said decision, to the Supreme Court of Illinois, by said Complainant - Now if the said James D. Sherman shall pay or cause to be paid all costs and damages which may result to said obligees from continuing said Injunction, if said decision shall be sustained, then the above obligation shall be void.

State of Illinois, }
COUNTY OF COOK. } s. s.

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 ~~of the writs pleadings & proceedings &~~ ^{also affidavits} in a certain cause ~~to wit~~ pending in said Court on the Chancery side thereof, wherein ~~James D. Sherman~~ was complainant and

~~Henry G. Keon & Co~~ were defendants

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our said Court at Chicago, this Twentieth day of April A. D. 1859

Wm L Church

Wm L Church

Clerk.

Sup Court

James D Shuman

vs Appr

Henry G. Koon

et al Appr

Find in favor

Van Genn & Gay

Att for Appr

Fils Apl 22-1859.

L. Deland
Clk.

Supreme Court

James D. Sherman

vs. Appellant

Henry G. Koon

Susan A. Koon

James Koon and

William B. Koon

Appellees

And hereupon afterwards to wit
on the 19th day of April in the Term then
in the year 1859, the said Henry G. Koon
Susan Koon James Koon & William B. Koon
by Paul Dusen & Gary their Attornies,
fully comes here into Court and says,
that there is no error either in the record
and proceedings aforesaid, or in giving
the judgment aforesaid; and ~~that they~~
they pray that the said Supreme Court
of Inducature before the aforesaid
justices now here, may proceed to affirm
the same as well the record and proceedings
aforesaid, as the matters aforesaid
above assigned for error, and that the
judgment aforesaid in form aforesaid
given may be in all things affirmed
as it is because &c.

Paul Dusen Gary

Attys for Appelles

Supreme Court

Samuel D. Sherrard

vs

Henry G. Knowlton

} Error from Cook Co. -

And now comes the said Plaintiff
by Smith Dewey & Kellogg, and say
that in the error proceedings of said
Court & the Record thereof there is manifest
Error in this Court

1st That the Court erred in dismissing the
Bill deciding that it had no jurisdiction

2^d That the Court erred in dismissing the Bill

3^d That the Court erred in rendering judgment
for the Defendant and against the plain-
tiff with costs.

Smith Dewey & Kellogg
Plffs attys.

Case of Sherrard
Filed May 2, 1859
L. Deland Clerk

308-141

Jas. D. Sherman

is

Henry G. Koon stats

Record

Fils Apl 23-1859.
L. Keland
Ch.

15 08 ch

SUPREME COURT,

STATE OF ILLINOIS.

IN CHANCERY.

~~JONATHAN RICHARDS~~, et. al.

Plaintiffs in Error,

vs.

~~HENRY C. HYDE~~, et. al.

Defendants in Error.

Error to Cook Co. Circuit Court.

Brief of Plaintiffs in Error.

This is an appeal from an order dismissing the bill, upon motion, for want of jurisdiction.

It is a bill filed in aid of an execution issued out of the Cook County Circuit Court, directed to the Sheriff of Winnebago county, and levied upon property in said county which is charged to have been fraudulently conveyed for the purpose of hindering, delaying and defrauding creditors. The facts in which the fraud consists are stated therein. The complainants reside in Cook county. The property is in, and one defendant resides in, Winnebago county. The other defendants are non-residents.

The defendants relied upon section 2 of the Chancery Code, but cited no authorities.

The plaintiffs in error claim that this proceeding is not an original bill, but supplementary and auxiliary to the suit at law, for the purpose of giving effect to the regular process of the court, and afford the complainants the relief sought, viz. payment of their judgment.

1. Upon principle. The court by Statute has authority to issue its process to a foreign county, commanding the Sheriff to obtain satisfaction of its judgments from the property of the defendant. By a familiar principle, the court having the power to direct the officer to make the execution out of the property of the defendant, by a necessary implication, would have authority to take the steps absolutely necessary to make the power effectual and practical. If a party can throw obstructions fraudulently (as in this case) in the way of the process of the court, and the court have no right to remove them, then the power of the court becomes entirely useless, for that power which depends upon the volition of the object towards which it is to be exercised is hardly worth the name.

In the case at the bar, if the allegations of the bill are to be taken as true in this proceeding, the defendant has fraudulently conveyed away his property for the purpose of defeating a process of the court regularly and within its authority issued. Now, must this court seek the aid of another forum to protect itself and its process from the fraud of the defendant? In other words, has it not *ex necessitate* power to *enforce* its commands as against fraud?

In *Steiff vs. Hart*, 1 Comstock, N. Y. Court of Appeals 20, the court say, page 30:

"Whenever a power is given by statute, *everything* necessary to making it effectual, or requisite to attain the end, is implied."

In that case a well settled rule of common law was determined, overruled by implication, because it interfered with the proper carrying out of a provision of the statute.

There are many other cases referred to in this case, in which this power has been exercised.

1 Kent Com., 464.

The doctrine is fully recognised in *O. Field vs. the People*, 2d Scamm., 79.

The Court of Chancery is not a separate tribunal, but the powers formerly exercised by Courts of Chancery exclusively are, by the constitution and statutes of this State, merely conferred upon the courts of law. (See Court Act, art. 5, sec. 1.) And the chancery code merely prescribes the *method of exercising that power* by the court having the power.

2. The question has been distinctly decided that a creditor's bill was not an original bill, but merely a continuation of the suit at law. In the case of *Haddan vs. Spader*, 20 Johnson's Reports, 554, which was a bill filed by a creditor to reach property fraudulently assigned, in page 574, the court say, "The jurisdiction of Chancery is supplementary and in aid of the common law process, and if confined to cases of fraudulent assignments I perceive nothing dangerous or alarming in the exercise of such a power; on the contrary, it seems wise and salutary in giving full and firm effect to the writ of *Fieri Facias*."

In the case of *Tarbell vs. Griggs*, 3d, Paige, 207, which was a creditor's bill filed in the State Court upon a judgment in the United States Court, the Chancellor held that the State Court had no jurisdiction, because it was in aid of the process of the United States Court: in other words, on the ground that it was not an original suit, which is the principle contended for in this case.

In the case of *Hatch vs. Dow & Rendick*, 4th McLean 112, the court expressly holds that a creditor's bill is a continuation of a suit at law and *not an original suit*, and decides that a change of citizenship after judgment, but before bill filed, does not divest that court of jurisdiction in the suit in equity, because it is a continuation of the same proceedings.

When a legal claim is established by a judgment, and courts of law are unable to afford adequate relief, from a defect in their process or powers, a Court of Equity may assist the creditor. 11 Vam. 283, 12 ib. 699, Walk. ch. 28.

E. M. DEWEY,
Of Counsel.

SMITH & DEWEY,
Attorneys for Plffs in Error.

STATE OF ILLINOIS.

SUPREME COURT.

James D. Sherman
 JONATHAN RICHARDS, et. al.

H. G. Koon vs.
 HENRY HYDE, et. al.

Plaintiffs in Error,
 Defendants in Error.

Brief of Plaintiffs in Error.

SMITH & DEWEY,
 Attorneys for Plffs. in Error.

Filed May 9, 1859
W. H. Leland
Clerk

SUPREME COURT,

STATE OF ILLINOIS.

James D. Sherman IN CHANCERY.

~~JONATHAN RICHARDS~~, et. al.

Plaintiffs in Error,

vs.

~~HENRY C. HYDE~~, et. al.

Defendants in Error,

Error to Cook Co. Circuit Court.

Wm. G. Koon

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The defendants relied upon section 2 of the Chancery Code, but cited no authorities.

The plaintiffs in error claim that this proceeding is not an original bill, but supplementary and auxiliary to the suit at law, for the purpose of giving effect to the regular process of the court, and afford the complainants the relief sought, viz. payment of their judgment.

1. Upon principle. The court by Statute has authority to issue its process to a foreign county, commanding the Sheriff to obtain satisfaction of its judgments from the property of the defendant. By a familiar principle, the court having the power to direct the officer to make the execution out of the property of the defendant, by a necessary implication, would have authority to take the steps absolutely necessary to make the power effectual and practical. If a party can throw obstructions fraudulently (as in this case) in the way of the process of the court, and the court have no right to remove them, then the power of the court becomes entirely useless, for that power which depends upon the volition of the object towards which it is to be exercised is hardly worth the name.

In the case at the bar, if the allegations of the bill are to be taken as true in this proceeding, the defendant has fraudulently conveyed away his property for the purpose of defeating a process of the court regularly and within its authority issued. Now, must this court seek the aid of another forum to protect itself and its process from the fraud of the defendant? In other words, has it not *ex necessitate* power to *enforce* its commands as against fraud?

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When a legal claim is established by a judgment, and courts of law are unable to afford adequate relief, from a defect in their process or powers, a Court of Equity may assist the creditor. 11 Vam. 283, 12 ib. 699, Walk. ch. 28.

E. M. DEWEY,

Of Counsel.

SMITH & DEWEY,

Attorneys for Plff's in Error.

308-141

STATE OF ILLINOIS.

SUPREME COURT.

James D. Shuman
~~JONATHAN RICHARDS~~, et. al.

Plaintiffs in Error,

W. G. Koon vs.

~~HENRY HYDE~~, et. al.

Defendants in Error.

Brief of Plaintiffs in Error.

SMITH & DEWEY,

Attorneys for Plffs. in Error.

Filed May 9, 1859

L. Leland
Clerk

IN THE SUPREME COURT.

JAMES D. SHERMAN,
Appellant.

vs.

HENRY G. KOON ET AL.,
Appellees.

APPELLEES' POINTS.

The bill shows on its face that all the defendants below (appellees) reside in Kankakee county, and that the land, to enforce or aid a levy upon which is the object of the bill, is also in that county. The suit should therefore be brought in that county.

See Sec. 2, Chap. 21, Revised Statutes.

The fact that the judgment upon which the execution issued was rendered in the Circuit Court of Cook County, gives that court no jurisdiction of the suit in chancery, for the statute makes no such exception. The law and chancery sides of the court are as separate as if they were distinct courts.

It is quite immaterial whether the judgment at law upon which the creditor's bill is based be in the same or some other court. It may be a justice's judgment.

Balentine v. Beall, 3 Scam. R. 206.

Or of the probate or county court.

Manchester v. McKee, 4 Gilman R. 515.

Or a decree of the Circuit Court in chancery of another county.

Weightman v. Hatch, 17 Ill. R. 281.

Sec. 36, Chap. 21, R. S.

The evil consequences of suits in which the title to lands is involved, being sustained in other counties than those where the land lies would be great as to *bona fide* purchasers *pendente lite*, without notice, who would be bound by the result without any means of previous information of the pendency of the suit.

Herrington v. Hubbard, 1 Scam. R. 573.

1 Story Eq. Sec. 405.

VAN BURENS & GARY,
Solicitors for Appellees.

308-141
Sup. Court

Samuel V Sherman
Appellant
vs

Henry G Koon & Co
Appellee

Appellee's Pointe

Filed May 5. 1839

Richard
Clark

Vernon Dunn & Gary
Sols for App

S U P R E M E C O U R T .

STATE OF ILLINOIS.

JAMES D. SIHERMAN, Plaintiff in Error.	}	IN CHANCERY.
<i>vs.</i> HENRY G. KOON <i>et al.</i> , Defendants in Error.		Error to Cook County Circuit Court.

Abstract of the Case.

This is an appeal from an order of the Cook County Circuit, dismissing the bill for want of jurisdiction.

Pages. The Bill of complainant is a bill in aid of execution, and was
1 & 2. filed on the Fifteenth day of February, 1859, stating that the complainant, residing in Chicago, in the County of Cook, in the term of January A.D. 1859, recovered, in said Circuit Court of Cook County a judgment against Henry G. Koon, one of the defendants, for three hundred and forty-two 20-100 dollars, damages and costs. The proper issuing of an execution, on the 5th day of January, in the year 1859, directed to the Sheriff of Kankakee County, the then residence of defendant, Henry G. Koon; a proper endorsement and delivery to the Sheriff of said County, on the same day; that on the 8th day of February, 1859, the Sheriff levied upon the interest of said Henry G. Koon, in certain real estate mentioned in the bill, in said County of Kankakee. Also, the endorsement of said levy upon the execution; that said execution was in full force and effect at time of levy and filing bill, and judgment wholly unsatisfied, and that the Sheriff cannot safely proceed to sell said real estate, to satisfy said execution, for the reason that the co-defendants of Henry G. Koon, for the purpose of defrauding the complainant and other creditors of said Henry G. Koon; hold the title to or incumbrances upon said property, which transactions are charged to be entirely fraudulent, and the facts showing that, are stated in the bill. All the defendants are averred to reside in said Kankakee County. Which bill is duly verified.

13. Afterwards the defendants, by Van Buren & Gary, their Solicitors, appeared and moved the court to dismiss the bill of complaint in this case, for want of Jurisdiction of this Court.

14. Afterwards, and on the 4th day of March, 1859, said court, on this motion dismissed the bill with costs, from which decision the complainant appealed to this court.

SMITH, DEWEY & KELLOGG,
Attorneys for Plaintiff in Error.

STATE OF ILLINOIS.

SUPREME COURT.

JAMES D. SHERMAN,
Plaintiff in Error.

vs.

HENRY G. KOON, *et al.*
Defendants in Error.

Abstract of Plaintiff in Error.

SMITH, DEWEY & KELLOGG,
Attorney for Plff. in Error.

Culver, Page & Hoyne, Chicago.

Filed April 27, 1859
L. Leland
Clk

SUPREME COURT.

STATE OF ILLINOIS.

JAMES D. SHERMAN,
Plaintiff in Error.

IN CHANCERY.

vs.

HENRY G. KOON *et al.*,
Defendants in Error.

Error to Cook County Circuit Court.

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SMITH, DEWEY & KELLOGG,
Attorneys for Plaintiff in Error.

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STATE OF ILLINOIS.

SUPREME COURT.

JAMES D. SHERMAN,
Plaintiff in Error.

vs.

HENRY G. KOON, *et al.*
Defendants in Error.

Abstract of Plaintiff in Error.

SMITH, DEWEY & KELLOGG,
Attorney for Plff. in Error.

Culver, Page & Hoyne, Chicago.

Filed April 27, 1857

L. Belmont
clerk

12911
