

8497

No. _____

Supreme Court of Illinois

J. P. Klein et al

vs. *Horine*
M. L. ~~Marine~~

State of Illinois } Monroe County Circuit
Monroe County } Court September term A.D. 1864

Mathias J. Horne

vs:

George Jacob Klein
Jacob Peter Klein
Michael Klein &
John F. Kraft.

Bill in Chancery for
Relief.

Be it remembered that on
the 9th day of August 1864, the following
Summons was issued in the above entitled cause.

This cause was taken under advisement and the
original Bill and some other papers filed in the
case, were lost or mislaid by the Court / to wit:

State of Illinois } p: The People of the State of
Monroe County } Illinois, to the Sheriff of said
County greeting.

We command you that you
summon George Jacob Klein, Jacob Peter Klein
John F. Kraft & Michael Klein, If they may
be found in your County, that they be and appear
personally in the Circuit Court next to be holden
at the Court house in Hatur, within and for
said County of Monroe, on the 4th Monday of
September next, on the first day of said term, then
and there in our said Court in Chancery sitting
to answer Mathias J. Horne, on his Bill of.

2

Complaint for Relief &c. And hence made due
return. Witness William Erb Clerk of said
Circuit Court, and the seal thereof
hereunto affixed, at my office in Watulor
this 9th day of August 1864
(R. Stamp 50^c) Wm Erb CLK

Upon which Summons appears the following endorsement.
to Wit: "Executed the within Writ by reading the
same and delivering a true copy thereof of the
within named defendants on Sept. 16th A.D. 1864."

Chs. Fairbank Esq. Wm. C.

And filed in said Court to Wit: "Filed September
21st 1864. William Erb CLK By John Seyler Esq.

And on the 27th day of September 1864 the fol-
lowing Remuner was filed to Wit:

Mathias S. Horne }
vs. } Bill for Relief
George Jacob Meinertius }

And now comes the defts by D. B.
Undenied their solicitor, and say that the
complainants bill is not sufficient in Law to
require them to answer for cause say!

1st There is no equity in the bill.

2^d Complainant has a complete remedy at Law if
injured.

- 3^d There was no October term 1862 of this Court.
 4th The bill shows already an unnecessary number of
 suits pending and unnecessary costs.
 5th No execution has been returned against Michael Klein.
 6th Jacob Peter Klein is an improper party.
 7th Bill does not show that there is any Money due
 to George Jacob Klein.
 8th The bill does not show that Michael Klein
 has any property.

J. B. Underwood
 Deft: Solicitor.

And on Wednesday September the 28th 1864 the
 following order was made and entered of record to that:

Matthias C. Houne vs: George Jacob Klein Jacob Peter Klein, Michael Klein & John C. Kraft) Bill in Chancery for Relief. Now comes the com- plainant by O'Hehery his solicitor, and the defendants by J. B. Underwood their solicitor, whereupon the answer to the bill is taken up, which after arguments of the counsel is sustained by the Court, and the Complainant, by leave of Court having amended his bill, a rule is entered herein requiring the defendants to answer the amen- ded bill by the 18 th day of January next. It is therefore considered by the Court that this cause stand continued till next term.
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4

And on Wednesday May the 10th 1865, the following order was made and entered of record to Wit:

Matthias J. Horine	} Bill in Chancery for Relief.	
vs:		
George Jacob Klein,		} Now comes the complainant by O. M. Henry his solicitor, and the defendants by J. B. Woodward their solicitor, and ask leave to amend the answer of John J. Kraft, one of the said defendants, which is granted by the Court, and the answer amended, whereupon this cause is set for hearing on the bill and pleadings, and the Court upon the hearing of the same, takes this case under advisement, to be decided on vacation, and the decree entered as of this term of the Court.
Jacob Peter Klein, Michael Klein & John J. Kraft		

And on Wednesday Oct. 7th 1865 the following order was made ^{record} entered of.

Matthias J. Horine	} Bill in Chancery for relief.	
vs:		
George J. Klein		} Continued generally.
Jacob Peter Klein		
John J. Kraft & Michael Klein		

And on Thursday May the 10th A.D. 1866 the following order was made and entered of record to Wit:

5
Mathias T. Hoare

vs.

George J. Klein,
Jacob Peter Klein
John C. Kraft &
Michael Klein

Bill for Relief.

Taken under advisement
at a former term.

And on Wednesday November the 28th
1866 the following order was made and entered of
record to Wit:

Mathias T. Hoare

vs.

George J. Klein
Jacob P. Klein,
John C. Kraft &
Michael Klein

Bill for Relief.

Now comes the complain-
ant by O'Hebony his solicitor
and asks leave to file a
bill in place of the one
missing from the file in this case, which is granted
by the Court, and a new bill filed, and leave
granted to amend by the first of March next.
Whereupon it is ordered that replication be filed,
and proof taken in vacation, and that this cause
stand continued for hearing at the next term of
this Court.

And on the 29th day of November A.D. 1866
the following Supplemental Bill for Relief was
filed to Wit:

/ turn over /

State of Illinois } p. Special November term
Monroe County } U.S. 1866 of the Circuit Court.

The plaintiff, Matthias S. Horne
would respectfully represent unto your Honor.

1. That on the year U.S. 1862 as more fully appears from the records of this Court, on said cause, to which reference is to be had, upon the hearing hereof; your orator Math: S. Horne, obtained a judgment against George I. Klein for \$868.00 upon a certain note made payable to one Josiah Clark / for whose use this suit is brought, and which had been duly assigned for value received to said Horne, and upon which judgment an execution issued, and upon which the then Sheriff made a return, "No property found"
2. And that at the same time of the Circuit Court said Horne had an Injunction issued therefrom restraining and forbidding certain parties, within the jurisdiction of the said Court, to Wm: Jacob P. Klein & John Kraft, from paying a certain Note & Mortgage debt to the said George I. Klein or from disposing of the same, to the bill for which a demurrer was sustained - bill amended - but said Court: allowed that said Injunction remained there, and remains till this day in full force and effect. The debt so enjoined, and which then and now is sought to be directed towards the payment of the Judgment &c: set forth in

paragraph first, was the consideration Money for the purchase of a certain farm from George I. Cline the debt; on said original writ - it, the said bill sets forth the fact, that said note and Mortgage had been fraudulently and without any legal consideration transferred to Jacob P. Klein, a brother of George I. Cline, and that the collection ought to go towards the satisfaction of the above judgment &c.

3. Your petitioner further states, that he garnished the said John Kraft & Jacob P. Klein filed interrogatories thereto, to which Kraft answered that said Mortgage and Note had been made payable to George I. Klein for \$984, thinks the same assigned to Jacob P. Klein, and who had assigned to Michael Klein, the father of these two Kleins.

But your orator doth allege that the said answer as well as the answers of Jacob P. Klein & Kraft, were not full nor explicit, but vague and uncertain, and that the fraud was and is attempted to be covered up and concealed by said parties, and to delay and defraud the collection of said Judgment.

Further at the May term of this Court U.S. 1867, said Complainant garnished Michael Klein, and upon the evidence heard, judgment was rendered against him for \$945. but he alleges that said Judgment is unavailing

in as much said Michael has no property out of
which said Judgment can be made, and is in-
solvent.

That at the Term of this Court U.S. 1864
the Complainant filed a bill of Complaint praying
for relief on the premises, and asking an order,
Judgment and decree of the Court, from the acts
doings of said defendants, on the ground of fraud.
That the Bill therein framed have been lost or
mislaid, so that the same cannot be produced,
at this term of Court, to which all of said causes,
by garnishes, Injunction and bill for Relief
were continued, he therefore prays that in view
of all the facts, said causes may be heard at
this term of Court, that Judgment may be
made at this term for every one and all of said
defendants, John Craft, Jacob P. Klein and
George J. Klein and Michael Klein, to pay
to the Compt. the sum of Eight hundred and
sixty eight dollars, with the interest legally accruing
thereon from the U.S. 1862 up to
present date or time of this order &c., and that
the same be made a lien upon the lands of said
defendants, and that such other and further relief
be granted as in equity and good conscience is
entitled to

Salwell & Kennedy } Mathias C. Horne
Sols. &c. }

9

State of Illinois } Josiah Clark being sworn
Monroe County } doth say the statements above
are true.

Sworn to & Subscribed before } Josiah Clark
me this 29th day of March }
1866 }
Wm. Erd Clerk

James W. Kennedy being
sworn doth say this bill contains substantially
the facts set upon the original bill for relief.
Sworn & subscribed this 29th } James W. Kennedy
day of March 1866. }
Wm. Erd Clerk

And on May the 7th U.S. 1867 the following
motion was filed to Wit:

Horine }
vs: } Bill in Chancery
Klein & Kraft it. ab }

And now the depts come
and pray a continuance for the reason that
George Peter Klein is not summoned to answer
this suit, nor has he been notified of its
pendency by publication.

D. B. Underwood & Meyer

And on May the 8th U.S. 1867 the following
answer of Frederick Kraft was filed to Wit:

Mathias C. Hurre

10

vs.
George J. Klein
John Kraft &
Jacob P. Klein

} Bill for relief

John Kraft for answer
to complainant's bill says. That it is true he owed
the Note and Mortgage as stated on the bill. That
about two years ago, he was informed and verily
believe, and still believes that the Note of Hurre
was paid, and thereupon paid the Money due
on his Note to William Erd Club of this Court
who at once delivered the same to the Wife of
Klein, who was present with her husband.

This defendant insists and believes, that said
Hurre has been fully paid all his claim now
sued for. As to the balance of Compt's
accounts this deft. admits as he knows not they
are false.

I am to & subscribed before
me this 8th day of May 1867
Wm Erd Club

} Frederick Kraft

And on Wednesday May the 8th A.D. 1867
the following final decree was made and entered of
record to Wit:

Mathias C. Hurre

vs.
George J. Klein, Jacob
P. Klein, Michael Klein
& John C. Kraft.

} Bill for Relief.

Now on the

11

first Wednesday, May the 8th 1867 comes the
complainant by O'Heaney, Kennedy & Talbot his
solicitors and the defendant John S. Craft by J. B.
Anderson & C. W. Meyer his solicitors, and the
demurrer to the bill having been overruled, a rule
is entered requiring the defendants to answer by
two o'clock P. M. And the deft: John S. Craft
having filed his answer, on motion of the com-
plainant the bill is dismissed as to him, and
the other defendants the said George I. Klein
Jacob P. Klein & Michael Klein having failed
to answer the Complainant's bill, the same is
taken for confessed against them. Therefore, the
Court after the hearing of this cause, orders that
the complainant have a Decree against the said
George I. Jacob P. & Michael Klein for the
sum of \$1106.70. being the amount found due
the Complainant, by the Court. That the com-
plainant have and recover from the defendants
aforesaid, the said Eleven hundred & six
dollars and twenty cents, together with the costs
by him herein expended, and that he have
execution &c.

The Bill of Impediment, mentioned in the foregoing
Copy of the Bill of Relief, is in words and figures
as follows to Wit:

State of Illinois } September term A.D. 1862
Monroe County } Monroe Circuit Court:

12

To Hon: L. L. Bryan Judge &c:
W. C. Horne Compt: by Talbot Tol: residents of
said County show that on the 15th day of January
A. D. 1859 at Watulor, Monroe County, Illinois, George
Jacob Klein who is made deft: to this, made and
delivered to one Josiah Clark, his promissory note
in writing of that date, and thereby promised to
pay to said Josiah Clark or his order the sum
of Six hundred and thirty three dollars, and
thirty three cents, three years after the date thereof,
with interest thereon at the rate of ten per cent
per annum from date thereof until paid, interest
payable annually, for value received. Which said
promissory Note on the 26th day of December
A. D. 1859, and before the same became due and
payable, was by the said Josiah Clark assigned
to Mathias S. Horne your orator by endorsement
on the back thereof in writing. Your orator further
shows that the said George Jacob Klein left this
State as a soldier in the Army of the United States
sometime last fall, before the said note became
due and payable, the same having fallen due
on the 15th day of January A. D. 1862, and
your orator further shows, that said George
Jacob Klein, has remained out of the State of
Illinois, and beyond the Jurisdiction of this Court,
ever since the said note became due, and is still
absent from this State and beyond the jurisdiction

of this Court. Your orator further shows that on the 11th day of February A.D. 1861. one John Fried: Kraft being indebted to the said George Jacob Klein, made and delivered to him his certain promissory Note in writing of that date for the sum of Nine hundred and thirty four dollars payable June 1st 1861. to said George Jacob Klein, and to secure the payment of said note said John Fried: Kraft and his Wife made their Indenture of Mortgage of the same date to said George Jacob Klein, upon the farm now occupied by said Kraft, known as the Singleton place, which Mortgage is acknowledged and recorded in Book No. 1, page 515 of the records of said County, and filed for such record Aug. 18th 1861. Your orator further shows that the said Note and many other notes of the value of \$800.00 were assigned and transferred by said George Jacob Klein to his brother Jacob Peter Klein, who is made deft. herein, for safekeeping and collection during his absence in the Army, and it was stipulated concerning said transfer that said Jacob Peter Klein should out of the Money so collected upon the notes pay certain debts and demands outstanding against said George Jacob Klein, Your orator distinctly avers however that the amount of said notes was far more than enough to satisfy said indebtedness, and that the said note and

14

Mortgage of said Draft to said Klein still remain unpaid in the hands of said Jacob Peter Klein, and the proceeds thereof belong in equity and justice to said George Jacob Klein and ought to be subject to his debts. And your orator avers that said indebtedness, or in the hands of said Peter Klein, is all the property of said Jacob, within this State, and that said Peter Klein threatens to transfer the same, to prevent payment of said Note, and the Money therein stipulated to be paid. In consideration therefore that no process of law can now reach said George Jacob Klein, and that before a Judgment or decree in attachment can be issued upon him the said assets will be so transferred, settled and arranged, that they cannot be reached by legal process, and your orator would in such event be without remedy. Your orator therefore prays summons against said Jacob Peter Klein and said John Fried. Weyt who are made defendants to this suit to appear and answer this bill. That an Injunction issue from this Court enjoining and restraining them or either of them from transferring said note and Mortgage to any person or persons, and from paying the sum or sums of Money specified and payable upon said Note and Mortgage upon the hearing of this cause; And that upon a hearing, an account may be taken of what is

due your orator, upon the said promissory Note, and the same be ordered to be paid at an early day, and that the said Jacob P. Klein and John Fried: Draft be perpetually enjoined from transferring and selling said note and Mortgage until such order as the Court may make in premises, and that all other proper relief be granted your orator.

Subscribed and sworn to before

W. T. Horne Compt.

H. C. Talbot agent for Mathias

J. Horne said Complainant being duly sworn says the facts set forth in his bill above is true.

Subscribed and sworn to before
me this 8th day of May A.D.
1862.

H. C. Talbot

Wm. Erb Clerk

State of Illinois } p. Monroe County Circuit
Monroe County } Court September term 1862.

On reading and examining the within bill and prayer for Injunction by Mathias J. Horne against Jacob P. Klein and John Fried: Draft, it is ordered upon filing the same with the Clerk of the Circuit Court of said County, said Clerk issue a Writ of Injunction according to the prayer of the bill, commanding the Sheriff of said County to enjoin the said Jacob P. Klein and John F. Draft from transferring said Note and Mortgage to any person or persons, and from paying the sum or sums of

16

Money specified and payable upon said Note upon
the Mortgage until the hearing of the cause &c.
until the further order of said Court, and it is
further ordered, that the said Clerk take Bond
from said Complainant in the sum of twelve
hundred and twenty dollars, conditional accord-
ing to law previous to the issuing of said
Writ of Injunction. Given under my hand and
seal this 12th day of May A.D. 1862.

Harmon Hurre Esq

Master in Chancery in & for said County
Which bill ~~xxx~~ for Injunction was filed to Wit:
"Filed May 19th 1862. Wm. Erb Clerk."

State of Illinois }
Monroe County } I the Undersigned Clerk
of the Circuit Court of said County in the said
State, hereby certify that the foregoing Record, or
Transcript contains a true and correct copy of the
Summons and the endorsement thereon, of the
Answer, supplemental bill, motion for continuance,
answer of John C. Kraft, all the orders of Court
and the final Decree, as the same appear of
record in my office, in the foregoing untitled
cause, and I further certify that the foregoing
Record also contains a true and correct copy of
the Bill of Injunction and the order of the

Master in Chancery, as the same appears of Record
in my office, on the case of "Mathias T. Hurme
against Jacob Peter Klein and John S. Kraft."

In testimony Whereof I ^{am}
Court Clerk of said Court, and
the Seal thereof hath affixed
at Watutor this 20th day of
July A.D. 1867
Jm. Ord Cho

And now Compt in error comes and
says there is manifest error in the fore-
going record for which the decree should
be reversed, to wit

- I The Court erred in rendering decree against
the three depts and in not dismissing bill
- 1st Compt had complete remedy by garnishee process
 - 2^d He had complete remedy by injunction suit
 - 3^d He had complete remedy by bill for relief
 - 4th Supplemental bill has no original error
copy to stand upon
 - 5th Supplemental bill showed compt
had no interest in suit and that the
only person entitled if any was one Clark
not a party—

- II Court erred in rendering decree jointly and severally against three depts, when the bill showed only that one or the other held mortgage and note sought to be applied to the part of the judgment
- III The Court erred in decreeing upon all the cases together as prayed for - Wyck Blunderwood Citys for Compt in Error

Mathias C. Horine

as:
 Jacob Peter Klein
 & John C. Compt and

Chambers & Co

The writ of error will be made a supersedeas on Plaintiff in error attaching a bond in the penalty of fifteen hundred dollars with Robert Bried, Karl Schoenberg and John

Keller his Executors conditioned according to Law - Given Under my hand this 29th. Day of August 1867

Sidney Steele
 Ch. Jus. Sup. Court

Jacob Peter Klein
 & John C. Compt
 for Defendants



14
 Supreme Court 1st-
 Grand Division
 Reinstated at

Horine
 J.P. Klein
 95
 M L Horine

Record

8497

Filed August September
 4th 1867
 W. M. Miskank
 Clerk

Rec'd 9.5.00. - from
 under bond

3
Walter f. It appears, that Matthias J. Hines Marine, as assignee of Jacob H. Hines sent ~~one~~ George f. Hines the holder of the note and recovered a judgment for \$868. He at the same time of court filed a bill and obtained an injunction to restrain George f. from collecting a note. He had an John Draft for \$964, and to prevent him from transferring the note or draft from paying it, upon the grounds that it would probably be paid before it could be reached by legal process and ^{be} applied to the payment of Hines judgment.

He afterwards instituted garnishee proceedings against Matthias Draft and Jacob P. Hines. Draft answered, that the note had been assigned to by George f. to Jacob P. Hines who had assigned it to Matthias Michael Hines the father of George and Jacob. It does not appear what became of this proceeding.

Draft in error subsequently filed a bill against all of the Hines and Draft, but this bill was afterwards lost. On application to the court, he obtained leave to file a bill substituted bill. In it he recites these facts, and charges that the assignment from George was fraudulent to Jacob, was for the fraudulent purpose of hindering

him in the collection of his debt. That at the May term 1864, he garnished Michael Klein, and upon the hearing on his answer a judgment was rendered against him for ~~\$945~~ \$945, but that it is unavailing as Michael has no property out of which to satisfy the judgment. The substituted bill further alleges that the former bill was filed for relief against the ~~actings~~ and change of defendants, on the ground of fraud which bill is lost and cannot be produced at this term. It concludes with a prayer that he have a decree against each and all of the defendants to pay his judgment with interest, and that the decree be a lien on their lands and for general relief.

It will be observed, that the substituted bill is meager in its allegations, and seems rather to be a very general recital of the contents of the previous bill which had been lost. It ^{should} have been in every particular as full and complete in all of its parts as the bill, the place of which it was intended to supply. It should as far as possible have contained the same statements and allegations as were embodied in the original. In this bill it is charged that George Klein fraudulently assigned the note to Jacob.

P Klein. But there is no specific charge of fraud against the latter or Michael Klein. There is a recital that the original bill asked a decree from the acts and doings of defendants, on the ground of fraud, which bill is lost and cannot be produced at this time. It will therefore be seen that there is no specific charge of fraud against the defendants except George Klein. This statement no doubt implies, that the last bill stated facts showing fraud on the part of the defendants, but of what character does not appear.

Again it does not appear that Jacob P Klein participated in the fraud, in receiving the assignment of the note. If he in good faith, paid a valuable consideration for the note, he could not be affected by the fraudulent intention of George P. This is the well recognized rule of law, and the bill should have charged fraud upon the assignee. When a bill is taken as confessed it amounts to an admission of the truth of the allegations it contains, but of nothing out side or beyond their scope. For the charge of fraud on the defendants, this bill is defective, in not stating the facts constituting fraud,

as even that Michael and Jacob P. Klein
were guilty of fraud. A decree can only
be based on proper and sufficient allega-
tions contained in the bill, and as these
are wanting in this case, the decree must
be reversed and the cause remanded, but
leave is given to defendant in error to
~~file~~ file an amended bill containing
such averments as he may be advised
the nature of his case may require, and
to which plaintiffs in error will have
leave to answer.

Decree reversed.

Jacob P. Klein

14 vs 39

Mathias P. Klein

Opinion by
Kaschke

OK

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116
8120
10240

Know all men by these presents, That we
Jacob Peter Klein of Macoupin County & Valentine
Breyel & Carl Schenck of the County of Monroe
in the State of Illinois, are held and firmly
bound unto Matthias T. Morine in the
penal sum of two thousand dollars, lawful
money of the United States, for the payment
of which well and truly to be made, we
bind ourselves, our heirs, executors and admin-
istrators jointly, severally and firmly by these
presents. Witness our hands and seals, this
day of A. D. 1867

The condition of the above obligation
is such, that whereas, the said Matthias T.
Morine did on the 8th of May A. D. 1867 in
the Circuit Court of the County of Monroe,
in said State of Illinois, at the May term A. D.
1867, thereof recover a decree against the above
bounden Jacob Peter Klein and others, in a
Bill in Chancery for Relief, for the sum of
Eleven hundred and Six dollars and seventy
cents, and costs of suit, to reverse which
decree the said Jacob Peter Klein is about
taking said case on writ of error to the
Supreme Court in the State of Illinois,
and is applying to one of the judges
thereof for a supersedeas; now if the
above bounden Jacob Peter Klein shall
duly prosecute his writ of error with effect,

and shall pay said decree, costs interest
and damages in case the said decree
shall be affirmed, then the above
obligation to be void, otherwise to
remain in full force and effect,

David P. Klein

Valentine Briegel

Seal

Seal

Seal

Seal

John Keller.

State of Illinois

Monroe County

Valentine Briegel

being duly sworn upon oath says
that he is worth, over all liabilities,
at least \$2000. — That part con-
sisting of real estate lying in the
county of Monroe state of Illinois
is worth about \$1500. — That
this affiant is a resident of
Monroe county Illinois

Valentine Briegel

Subscribed and sworn to

before me this 3rd day of Aug 1867.

J. A. Clerk of Circuit
Court Monroe County Ill.

State of Illinois

County of Monroe

Carl Schaeffgen

being duly sworn upon his oath says

that he is worth, over all liabilities, at
least \$1000. ^{or} — That part consisting
of real estate lying in the County of Monroe
State of Illinois is worth about \$800.
That this affiant is a resident of Monroe
County Illinois.

Subscribed

Subscribed and sworn to
before me this 5th day of
August 1867.

Wm Ord
Clerk of Circuit Court Monroe
County Illinois

State of Illinois
County of Monroe being duly sworn upon
his oath says that he is worth, over all liabilities
at least \$2000. ^{or} That part consisting of real
Estate lying in the County of Monroe, State
of Illinois is worth about \$1500. and
that this affiant is a resident of Monroe
County Illinois. John Keller.

Sworn to & Subscribed before
me this 21 day of August
1867. Wm Ord
Circuit Clerk of Monroe
County Ill

Supreme Court State of Illinois
J P Klein, in-
pleaded &c } Error to Monroe
vs
Mathias J Thorne }

The Clerk will please file
papers & docket this case and
as Judge Breese has granted su-
perseas on back of record the
Clerk will proceed as per Rules of
Court No 3, 4, & 5 - 3rd Freeman's Digest
of Ills Rpts p 691, 2 - Issue your
certs to Clerk of Monroe co and
Seire facias to Sheriff and
oblige Yours &c

Wm & J B Underwood
Compts attys

P.S. Enclosed find \$5.
Ms.

2^d P.S. Execution has been issued
from Monroe to the Sheriff of
Macoupin Co. where my client
resides, but I cannot see any
law or rule authorising you to
notify him to desist
Yours truly J. B. A.

Receipts

Received
of
George
W. Clark of
Simp. Co.

Given Sept 10th 1863

W. H. Mearns

Co.

JACOB PETER KLEM ^{vs.})
MATHIAS L. HORINE.)

BRIEF IN CASE.

The record is a little confused. The abstract is far from giving a satisfactory and clear view of the history of the proceeding. The whole record may be thus stated: Horem had recovered judgment against George Klem for \$868. *Fi. fa.* issued thereon and returned no property found in 1862. This was a note George had made to Clark, who had sold it to Horine. George had sold the land to John Kraft, and had taken note in part payment of him for \$934. He left for the army, and transferred this note to his brother, Jacob Peter Klem, to be held by him for George, &c. Horem tried to reach this note in the hands of Jacob Peter, and restrained Kraft and Jacob Peter from its transfer, but to no purpose. It was shifted and put into the old man's hands, Mathias M., father of Jacob and George, who was garnisheed, but who had passed it out of his hands fraudulently into that of the wife of some of the Klems. Judgment was taken against Mathias but he was insolvent.

Then the schemes of fraud multiplying between the Klems, and their moves to baffle the application of this note to this debt, a bill was filed for discovery and general relief, to reach that note and mortgage, and apply it to the satisfaction of this debt to Horine.

The Court will see that these parties had reached an issue on the bill filed, and the Court had taken the cause under advisement to decide it, and lost it.

The statement or bill in the record, was recognized by all parties as the bill in *lieu* of the original. It was no supplemental bill, except as it *supplied* the place of the one lost. It was no bill of review further than it *consolidated* all the proceedings in progress as it were in final decree against the three, whose conduct was a fraudulent conspiracy, from the beginning, and the last scene of the payment of the money to Erd and by Erd to the wife of one of the Klems is a convincing fact all were guilty of fraud. This Court will presume from the finding of the Court on such bill, in the absence of a bill of exceptions embodying the proof.

This case is full of justice and equity on the part of Horine, and injustice and fraud on the part of all the defendants. The decree against all was first for the shifting of the note from one to the other, had baffled both garnishee process and injunction; both had been tried and failed. There was but one bill for relief. No supplemental bill, only the bill to supply the lost bill. It was for the use of Clark, as Clark would be compelled to make good the note to Horine only.

There was no objection to hearing the cases all together, and the court had a right to consolidate all and hear them.

Upon the whole case it is submitted no injustice is done that the court can see from the whole record in this case.

H. K. S. O'MELVENY,
For the Defendants.

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Joseph B. B. B.

Jan 2nd June 1808
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The People of the State of Illinois.

To the Clerk of the Circuit Court for the County of Monroe..... Greeting:

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the
Circuit Court of... Monroe..... County, before the Judge thereof, between.....

Matthias J. Morin

Plaintiff, and... George Jacob Klein, Jacob Peter Klein

Michael Klein and John F. Kraft

Defendant, it is said manifest error hath intervened to the injury of the aforesaid... Jacob Peter

Klein

as we are informed by... his..... complaint, and we being willing that error, if any there be, should be
corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment
thereof be given, you distinctly and openly, without delay, send to the Justices of our Supreme Court the record and
proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same
before our Justices aforesaid, at Mt. Vernon, in the County of Jefferson, on the first Tuesday in June next, that the record
and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done
according to law.

WITNESS, SIDNEY BREESE, Chief Justice of the Supreme Court,

and the seal of said Court at Mt. Vernon, this... fourth.....

day of... September..... in the year of our Lord, one

thousand eight hundred and... sixty seven.....

W. H. Williams

Clerk of the Supreme Court.

14

SUPREME COURT

FIRST GRAND DIVISION.

Jacob Peter Klein

PLANTIFF IN ERROR

VS.

Matthew T. Kinn

DEFENDANT IN ERROR.

WRIT OF ERROR

Grand and FILED. Sept 4th 1867

Wm. Miller & Co. Clk

This writ of error is made a Supremacy and is to be obeyed accordingly.

First Grand Division
Supreme Court
State of Illinois

ABSTRACT OF RECORD & BRIEF.

SUPREME COURT.

Jacob P. Klein, impleaded with George J. Klein and others, Complainants in Error,

vs.

Mathias T. Horine, Defendant in Error.

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This was a bill in Chancery for relief, filed by defendant in error *vs.* complainant in error, impleaded, &c.

1-2 August 9th, 1864, Summons issued and was served on all defendants. (Clerk certifies the Bill and other papers filed in cases were lost by the Court while he had the cause under advisement.)

2-3 Sept. 27, Demurrer filed to bill for reasons: 1st. No Equity. 2d. Remedy at law. 3d. No October term 1862. 4th. Bill shows an unnecessary number of suits pending for same cause. 5th. No execution had been returned against Michael Klein. 6th. Jacob Peter Klein is not shown to be a proper party. 7th. Bill does not show any money or property due George J. Klein. 8th. Bill does not show Michael Klein has no property.

Sept. 28, 1864, Demurrer argued and sustained. Bill amended and rule to answer by 15th January.

4 May 10, 1865, Leave given to amend the answer of John F. Kraft. Amended. Case heard on bill and pleadings; taken under advisement, to be decided in vacation, decree to be entered as of this term.

October 4th, 1865, Continued generally.

5 May 10th, 1866, "Taken under advisement at former term." November 28th, 1866, Leave given to file a bill "in place of the one missing;" leave granted "to amend" by the 1st of March, and order that *replication* be filed and proof taken in vacation; trial set for next term.

6-7 November 29th, "Supplemental Bill for Relief," charges that in the year 1862 complainant obtained a judgment in that court against George J. Klein for \$868, upon a note payable to Josiah Clark, ("for whose use this suit is brought,") assigned by him to complainant. Execution returned "no property found." At the same term, enjoined Jacob P. Kline and John Kraft from paying a note and mortgage debt to George J. Kline, and from disposing of the same. To said bill a demurrer was sustained; bill amended and continued to the present term. The debt enjoined which was then, and now is, sought to be directed towards the payment of the judgment, &c., set forth in paragraph first, was the consideration money for the purchase of a certain farm by Kraft from George J. Klein. Said bill states that said note and mortgage had been fraudulently transferred to said Jacob, a brother of said George, and that the collection ought to be applied to said judgment. Bill further states that said complainants garnisheed John Kraft and J. P. Klein, to which Kraft answered that the note and mortgage were for \$934, payable to George J. Klein, who he thinks assigned it to Jacob P. Klein, who assigned it to Mi-

chael Klein, his father. The answers of both said Jacob P. Klein and Kraft were not explicit, but vague and uncertain, for the purpose of defrauding complainant in collection of said judgment.

8 At the May term, 1864, judgment was obtained against Michael Klein for \$945, but he being insolvent, the same was unavailing. At the.....term, 1864, complainant filed a bill for relief, asking a decree from the acts and doings of defendants, on the ground of fraud, which bill is *lost* and cannot be produced at this term, to which all of said causes, "Garnishee, Injunction and bill for relief," were continued. Prayer, that judgment may be made for every one and all of said defendants to pay the complainant \$868, "with interest, and the same be made a lien on the lands of said defendants, and general relief."

9 Affidavit of Josiah Clark says that the statements above are true; and James W. Kennedy says on oath this bill contains substantially the facts set out in the original bill for relief.

May 7th, 1867, the defendants moved for a continuance because George P. Klein is not summoned nor published.

10 May 8th, 1867 Kraft answers that, being informed and believing that complainant Horine had been paid, he, about two years before, paid his note to the circuit clerk, who at once paid it over to Kline and wife in the clerk's office. Sworn to, &c.

11 May 8th, 1867. Final decree. Kraft appears by attorneys, and the demurrer overruled, and the rule on the other defendants to answer by 2 o'clock. Kraft answers. Bill dismissed as to him; and the other defendants failing to answer, the bill taken for confessed against them. Therefore, the Court, after hearing the cause, orders the said complainants have decree against the said George J., Jacob P. and Michael, for \$1,106.70 and costs, and have execution therefor.

11-12 Copy of Bill for Injunction referred to in supplemental bill, which is in substance as stated in supplemental bill, with prayer for general relief as well as Injunction. Certificate of Clerk to record.

16

ERRORS ASSIGNED.

I. The court erred in rendering decree against the three defendants, and in not dismissing bill.

1st—Because complainant had a complete remedy by garnishee process.

2—He had complete remedy by his bill for injunction.

3—He had complete remedy by bill for relief, without supplemental bill.

4th—Supplemental bill has no original (or copy of original) to stand upon.

5th—Bill showed that complainant had no interest, and that the only person entitled, if any, was one Clark, who was not a party to suit.

II—Court erred in rendering judgment jointly and severally against three defendants, when the bill showed only that one or the other held the note and mortgage sought to be applied to the payment of the judgment.

III—The Court erred in decreeing upon the cases together as prayed for.

BRIEF OF COMPLAINANTS IN ERROR.

I. The whole proceedings are so irregular, disconnected and improperly joined, that no decree should have been rendered upon the last bill.

II. The last bill (taken as true,) did not make a case for complainant—

1st—Because it purported to merely state substantially what was alleged in the bill for injunction, without averring that the allegations of the injunction bill were true. The default to the last bill only admitted that the injunction bill alleged thus and so.

2d. The last bill expressly admits that compt. below had no interest in the suit, and that the suit was brought "for the use of" one Clark, not a party to the suit. In equity the party entitled to the equitable right must be compt., and it is error to render decree in favor of one who has no equitable interest. *Story Eq. Pl. Sec. 728. (Redfield's Ed.)*

3d. The decree does not show testimony was taken for compt., (and if there was it could not extend further than the allegations of the bill,) yet compt. makes the former proceedings and *testimony* a part of his bill, in which it is expressly stated that Jacob Peter Klein and John Kraft, in the garnishee process, swore vaguely, and that Kraft swore he believed the note and mortgage sought to be garnisheed had been assigned to Jacob P., and by him to his father Michael. In Kraft's answer to last bill, he swears that hearing and believing compt. below had been paid, he, about two years before, paid over the am't due on his note and mortgage to the circuit clerk, who paid it at once to Klein and wife, (which, probably, was about the time compt. was paid, and suit still proceeded for use of another.) The answer of the co-deft. in this instance, (though not competent generally against deft.,) being called out by compt. and made a part of his bill, ought to be treated as competent; and it, together with the answer of Jacob P., in the garnishee case, expressly denying any interest, should prevent a decree for complainant.

4th. The suit was in effect discontinued for want of a bill "in place of the one missing." A bill of a different character—a "supplemental bill,"—showing compt. has no equitable interest—entitled of the term when filed—so changed in its character that a complete answer to the last bill would not be responsible to this, is certainly not within the legal meaning of an order allowing a bill to be filed "in the place of the one missing." It should be a bill filed *nunc pro tunc*—now as then—purporting to be a copy as near as the memory of man can make it.

III. If the court had jurisdiction of the last bill and the proceedings were regular, then the court should have sustained the demurrer, for the reason aforesaid, and particularly because the bill showed on its face that compt. had no equitable interest in the suit, and that one Clark (not a party) was entitled to all of compt.'s supposed interest. *Story Eq. Pl. Sec. 728. (Redfield's Ed.)* *Hoove v. Harris 11 Ill R 25*

IV. That supplemental bill should have been dismissed, because complainant had three other cases pending for same cause, each of which furnishing a complete remedy, we deem it unnecessary to argue.

V. As the bill and proceedings only claimed satisfaction out of a single debt of Kraft, in the absence of any allegation or proof as to which of the debts. had collected it, it was error to decree against all of them jointly and severally. The record shows that Kraft swore in his answer—which was not denied, that he paid the money to but one of the Kleins:

W. H. & J. B. UNDERWOOD,
Solicitors for Complainant in Error.

46. P. Klein
implied &c

25.

W. J. Horine

Abstract of
Record & Brief

Filed & put June '88

W. J. Horine
WJH

STATE OF ILLINOIS, }
SUPREME COURT, } ss.
First Grand Division.

The People of the State of Illinois,

To the Sheriff of Monroe County.

BECAUSE, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Monroe county, before the Judge thereof between Matthias J. Morine

plaintiff and George Jacob Klim, Peter Jacob Klim, Michael Klim and John F. Kraft

defendant; it is said that manifest error hath intervened to the injury of said Peter Jacob Klim

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 MOUNT VERNON, 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 Matthias J. Morine

that he be and appear before the Justices of our said Supreme Court; at the next term of said Court, to be holden at MOUNT VERNON, in said State, on the first Tuesday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if he shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Matthias J. Morine notice together with this writ.

WITNESS, the Hon. Edmund Bruce Chief Justice of the Supreme Court and the seal thereof, at MOUNT VERNON, this fourth day of September in the year of our Lord one thousand eight hundred and Sixty-Six

R. M. Williams

Clerk of the Supreme Court.

14

FIRST GRAND DIVISION.

Recd of Mr. Price,

PLAINTIFF IN ERROR.

U.S.

Matthews & Jones

DEFENDANT IN ERROR.

Carroll & Monahan

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FILED
September 26th 1864

Wm. W. W. W.

Clark

Executed the within writ by reading the same to the within
named Mathias I Horine this the 20th day of Sept
A.D. 1867 I W Bourne Sheriff Monroe Co Ill

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Solicitors for Complainant in Error.

14 G. P. Klein
impleaded &c.

vs.

M. T. Gorine

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Record & Brief

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W. H. & T. B. UNDERWOOD
clerk

W. H. & T. B. UNDERWOOD
Solicitors for Comptroler in Taxes

No 14

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Kline
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Jacob Peter Plin
~~Plin in~~

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Matthias y Herin

Expendant in inno