No. 14737

Supreme Court of Illinois

Ware

vs.

Nattinger

71641

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 108

J. W. Middleton & Co., Stationers, 196 Lake St.

Appeal from
Kendall
Ware
vs.
Hottinger

1864

State of Illinois
La Salle. County. ss. Pleas before the Honorable Meadison. E. Hollister the Judge of the Ninth Judicial District of the State of Illinois and the presiding Judge of the La Salle County circuit Court at a term of said Court. commenced and held at the Court house in Ottawa in said County on the first Monday in the month of November the same being the second day of November, in the year of our Lord one thousand eight hundred and fifty seven, and of the Independence of the United States of America the Eighty second.

Present the Honorable Meadison. E. Hollister, Presiding Judge
John. F. Nash. Clerk
Washington Bushnell States Attorney
Eri. L. Waterman Shiriff.

Be it remembred that on the 27th day of July A.D. 1857. a summons issued out of and under the Seal of said Court in the words and figures following to wit:

State of Illinois }
La Salle County } ss. The People of the State of Illinois. To the Shiriff of Kendall County - Greeting: We command you as we have before commanded you, that you Summon Charles. B. Ware, if he shall be found in your County, personally to be and appear before the Circuit Court of said La Salle County on the first day of the next term thereof, to be held at the Court house, in Ottawa, in said County, on the 2d day of November next to answer unto John. G. Nattinger. in a plea of Covenant. to the damage of said Plaintiff as he says, in the sum of One thousand

Dollars, And have you then and there this writ, with an endorsement-
2 thereon, in what manner you execute the same.

Witness, John, F, Nash, Clerk of our said Court, and the Seal thereof at Ottawa this 29th day of July A.D. 1857.

Seal

J. F, Nash, Clerk.

Which summons was returned by the Sheriff of said County Sept 17. 1857. with an endorsement thereon as follows, to wit;

"Served this by reading it to the Defendant named within, this
"13th Day of August 1857.

Jonathan Raymond Sheriff
by L. B. Judson Dept Sheriff of
Kendall County Ill.

"Fees.
"Serving $1.50
"Mile 1.75
"Return 10
$2.35

Be it remembered that on the 23rd day of October A.D. 1857, a Declaration was filed in the words and figures following to wit;

State of Illinois
La Salle County } Circuit Court thereof.

To November Term A.D. 1857.

John, G. Vattinger, Plaintiff in this suit, by Glover & Cook, his Attornies, complains of Charles, B. Ware, defendant, summoned &c, of a plea of Covenant broken. For that the said, Charles, B. Ware, and Bethia, C. Ware, his wife on the 29th day of October A.D, 1856. executed and delivered to the Plaintiff a certain indenture made between the said Charles, B. Ware, and

Bethiah

1st Count

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C. Ware, his wife, of the first part, and the said plaintiff of the second part, which indenture sealed with the Seals of the said Charles, B. Ware and the said Bethiah, C. Ware, is now to the Court here shown and by said indenture the said defendant and Bethiah, C. his wife for the consideration of the sum of three thousand dollars, therein mentioned, did grant, bargain ~~and~~ sell, remise, release, alien & confirm to the plaintiff, by the name of J. L. Hattinger, and to his heirs and assigns the following described lot, piece, or parcel of land situate in the county of La Salle and State of Illinois and known and described as follows to wit: Part of Lot number four in Block number eighteen in the original town plat of the town of Ottawa as surveyed by the Canal Commissioners and bounded as follows that is to say, Commencing at the South West corner of said lot and running thence North seventy five feet and thence East fifty one feet, thence South seventy five feet, thence West fifty one feet to the place of beginning, together with all and singular the hereditaments and appurtenances, thereto belonging, or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues & profits thereof, and all the Estate, right, title & interest, claim and demand, whatsoever of the said Charles, B. Ware, and Bethiah, C. Ware, either in law or equity of in and to the said premises with the hereditaments and appurtenances to have and to hold the said premises with the appurtenances unto the said plaintiff his heirs and assigns forever, And the said Charles, B. Ware did by the said indenture now brought into court here for himself his heirs executors and administrators, covenant, grant bargain and agree to and with the said plaintiff, his heirs

and assigns, amongst other things in manner following,
11 that is to say, that he the said Defendant at the time of the
sealing and delivery of the said indenture was well seized
of the above discribed premises as of a good sure, perfect, absolute
and indefeaseable estate of inheritance in law in fee simple and
had good right, full power and lawful authority to grant,
bargain, sell and convey the same in the manner and form
in said indenture set forth, and that the said premises were
then free and clear from all former and other grants, bargains,
sales, liens, taxes, assessments, and incumbrances of what kind or
nature soever, and that the said premises in the quiet and
peaceable possession of the said plaintiff his heirs and assigns
against all and every person or persons lawfully claiming or
to claim the whole or any part thereof the said party of the
first part (in said indenture mentioned) should & would
warrant & for ever defend. And the Plaintiff avers that he fully
paid to the said defendant the consideration money for said premi=
ises, and that the said defendant hath not kept and performed
his several covenants as aforesaid but hath broken the same.
And the said plaintiff in fact saith that said defendant,
claimed title to an undivided half part of said premises by
several mesne conveyances from and through one Jabez Fitch,
and that on the 28rd day of April A.D. 1838, said Jabez Fitch was
the owner of one equal undivided half part of the premises above
discribed and that he continued to be the owner thereof for a
long space of time to wit: for two months thereafter and until
after the close of the April Term A.D. 1838, of the Circuit Court
holden in and for the County of La Salle and State of Illinois.
And that at said April term of said Court, one David Robert-

by the consideration and judgment of said Court recovered a judgment in said Court against one Solon Knapp, and the said Jabez Fitch for the sum of Five hundred and eight (508) Dollars besides costs as by reference to the record of said judgment now remaining in the office of the Clerk of the Circuit Court of said County will more fully and at large appear. The plaintiff avers that after said judgment was rendered to wit: on the fourteenth (14) day of May A.D. 1838, an execution in due form of law was issued upon said judgment by the Clerk of said Court, which execution was afterward to wit: on the day and year aforesaid delivered to the Sheriff of said County to execute which execution was afterwards to wit: on the eighth (8) day of August A.D. 1838, Returned by the Sheriff of said County wholey unsatisfied, no levy having been made thereon, and afterward to, wit: on the 25th day of March A.D. 1841, a second execution in due form of law was issued on said judgment by the Clerk of said Court, which execution was afterwards to wit: on the day and year aforesaid delivered to the Sheriff of said County to execute, and afterward and during the life of said execution the said Sheriff levied the same upon the following portion of said Lot four (4) in Block eighteen (18) to wit: commencing at the South West corner of said Lot, running thence East twenty nine and one half feet, thence north seventy five feet, thence West twenty nine and one half feet, thence South seventy five feet to the place of beginning, and afterwards to wit: on the 16th day of June A.D. 1841, the said Sheriff sold the land so levied upon at public auction sale as required by law, and at said sale one John C. A. Hoss, became the purchaser of the land so levied upon for the sum of Four hundred Dollars, and said

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Execution was afterward to wit: on the 1st day of September A.D. 1841. returned by said Sheriff wholly unsatisfied as to the residue thereof. with the endorsement thereon by the Sheriff of said County $400. made by sale of Real Estate no more property found to make the balance, as by said executions and the several returns thereon now remaining in office of the Clerk of said Court will more fully and at large appear. And the plaintiff avers that afterwards to wit: on the 11th day of April A.D. 1843. another execution was issued by the clerk of said Court in due form of law on said judgment for the balance thereof remaining unsatisfied which execution was afterward to wit: on the same day delivered to the Sheriff of said County to execute, and said Sheriff afterwards to wit: and during the life of said execution by virtue thereof levied upon a part of the aforesaid Lot four (4) which is bounded as follows commencing twenty nine and a half feet east of the South west corner of said Lot four (4) running thence East twenty one feet, thence North seventy five feet, thence West twenty one feet. thence South seventy five feet to the place of beginning. And afterwards to wit: on the 7th day of June A.D. 1843; the said Sheriff sold the part of said Lot so levied on as aforesaid at public auction and at said sale the said John. V. A. Hoss became the purchaser thereof for the sum of fifty dollars as by said execution and the return of the said Sheriff endorsed thereon now remaining in the office of the Clerk of said Court will more fully and at large appear. And the plaintiff avers that afterwards to wit: on the 29th day of January A.D. 1853. Richard Thom who was then and there Sheriff of said County executed and delivered to the said John. V. A. Hoss a Deed for that part of said Lot four (4) which was first sold to

him under and by virtue of the said second execution which was
7 issued upon the judgment aforesaid which deed was filed for record
by the said John. V. A. Hoss in the Recorders office of said County
on the 2d day of February A.D. 1853. and on the 29th day of January
A.D. 1853. the said Richard Thorne who was then and there
Sheriff of said County executed and delivered to the said
John. V. A. Hoss, a deed for that part of said lot which was
sold to said Hoss as aforesaid under and by virtue of the
third execution issued upon said judgment the said parties
of said Lots not having been redeemed from the said sales
aforesaid and that the said last mentioned deed was duly
filed for record in the Recorders office in said La Salle
County on the 2d day of February A.D. 1853. And the Plaintiff
avers that the judgement aforesaid from the time of the rendition of
the same became and was a lien upon that portion of said Lot
which was owned by said Titels as aforesaid and that by virtue
of the deeds aforesaid executed by the Sheriff aforesaid to the said
Hoss. the said Hoss became seized of all the right title and interest
which was in the said said Titels at the time of the rendition
of the said judgment in and to the several parts of said Lot men-
tioned and described in the deeds aforesaid and continued to
hold such interest. and was the owner thereof at the time the
said Indenture from the said defendant to the said Plaintiff
was executed and delivered as aforesaid. And the Plaintiff
avers that in order to secure the title to the premises mentioned
and described in the said Indenture from the said defendant
to the said Plaintiff. the said Plaintiff was compelled to and
did afterwards to wit: on the 1st day of September A.D. 1856.
to wit: at the County aforesaid pay to the said John. V. A. Hoss

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a large sum of money, to wit: the sum of Five Hundred Dollars for his interest in the Lot aforesaid And as a further breach of the covenants of the said defendant in said Indenture from said defendant to said Plaintiff contained, the Plaintiff avers that before the making of the said Indenture to wit: on the 25th day of February A.D, 1850, and for a long time prior thereto ~~a suit~~ a suit was pending in the Circuit Court of La Salle County Illinois in which the said Charles B. Ware, was plaintiff and Wilburn F. Walker defendant, that on said 25th day of February a Fee Bill was issued by the Clerk of the said Court against the said Charles B. Ware, for costs made by him in said suit, amounting to nineteen dollars and thirty seven and one half cents, which Fee Bill was in due form of law, and was on the day and year aforesaid given to the Sheriff of said county to execute, which said Fee Bill was afterwards to wit: on the same day levied by said Sheriff upon the west fifty and one half feet of the South half of said Lot four (4) which said levy remained in full force and not vacated in any manner until the twenty third day of October A.D. 1854, on which day the said part of said Lot was sold by Richard Thorne who was then and there Sheriff of said County at Public sale made under and by virtue of the Fee Bill, and levy aforesaid and at said sale George E. Walker purchased said portion of said Lot for the sum of Thirty six dollars and thirty six cents as by said Fee Bill and the return of the Sheriff thereon, now remaining in the office of the Clerk of the said Court will more fully appears and at large appear. And said portion of said lot not having been redeemed from said sale, afterwards to wit: on the 25th day of January A.D, 1856, Francis Warner.

who was then and there Sheriff of said County executed
9 and delivered to said George. E. Walker a conveyance for said
part of said lot under the sale aforsaid And the plaintiff
avers that after the said sale had been made as aforsaid, to wit:
on the 23rd day of October A.D. 1854 a certificate of said sale
in due form of law was duly filed in the office of the Recorder
of said La Salle County and that from the filing of said Cer=
tificate the amount of said sale became and was a lien upon the
part of said Lot so sold as aforsaid, and afterwards to wit: on
the 1st day of September A.D. 1856. said plaintiff was compelled
to and did pay to the said George. E. Walker, a large sum of
money. to wit: the sum of sixty dollars for said part of said
Lots so sold and conveyed to him as aforsaid.
And so the said plaintiff saith that the said defendant at the
time of the execution and delivery of the Indenture aforsaid
from him to the said Plaintiff was not well seized of the prem=
ises therein mentioned as of a good sure perfect, absolute and
indefeasable estate of inheritance in law in fee simple, and
had not good right. full power and lawful authority. to grant
bargain. sell and convey the same in manner form in said
Indenture set forth, and that said premises were not then free
and clear from all former and other grants, bargains, sales.
liens, taxes, assessments or incumbrances of what kind or nature so
ever, and so the said defendant hath not kept his said covenant
in that behalf but hath broken the same.-
2 Count And for that the said Charles. B. Ware. and Bethiah. E. Ware.
his wife on the 29th day of October A.D. 1856. executed and
delivered to the plaintiff a certain Indenture made between
the said Charles. B. Ware and Bethiah. E. Ware his wife of

the first part and the said plaintiff of the second part which
10 Indenture sealed with the seals of the said Charles B. Ware and the said Bethiah C. Ware, is now to the Court here shown and by said Indenture the said defendant & Bethiah his wife for the sum of three thousand dollars therein mentioned did grant, bargain sell, remise, release, alien and confirm to the Plaintiff by the name of J. G. Hattinger, and to his heirs and assigns the following described lot, piece, or parcel of Land situate in the County of La Salle, and State of Illinois and known and described as follows, to wit: Part of Lot number four (4) in Block number eighteen in the original town plat of Ottawa, as surveyed by the Canal Commissioners, and bounded as follows, that is to say; commencing at the South west corner of said lot and running thence North seventy five (75) feet thence East fifty one (51) feet, thence South seventy five (75) feet, thence West fifty one (51) feet to the place of beginning, together with all the hereditaments and appurtenances thereto belonging or in any wise appertaining and the reversion and reversions, remainder and remainders, rents issues and profits thereof and all the estate, right, title, and interest, claim and demand whatsoever of the said Charles B. Ware, and Bethia C. Ware, his wife, either in law or equity of in and to the said premises with the hereditaments and appurtenances to have and to hold the said premises, with the appurtenances unto the said Plaintiff his heirs and assigns forever, And the said Charles B. Ware, did by the said Indenture now brought into Court here, for himself his heirs executors and administrators, covenant, grant, bargain & agree to and with the said Plaintiff, his heirs and assigns, amongst other things in manner following, that is to say;

that he the said Defendant at the time of the sealing and delivery
11 of the said Endenture was well seized of the above discribed premises
as of a good, sure, perfect, absolute and indefeasable estate of
inheritance in law and fee simple and had good right, full power
and lawful authority to goarnt, bargain, sell, and convey the same
in the manner & form in Said Endenture set forth, and that the
said premises were then free and clear from all former and other
grants, bargains, sales, liens Taxes, assessments and incumbrances
of what kind or nature soever, and that the said premises in the
quiet and peaceable possession of said Plaintiff his heirs and
assigns against all and every person or persons, lawfully claim=
ing or to claim the whole or any part thereof, the said party of
the first part (in said indenture mentioned) should & would
warrant and forever defend, And the Plaintiff avers that he
fully paid to the said defendant the consideration money
for said premises and that the said defendant hath not kept
and performed his several covenants aforesaid but hath
broken the same, and the said Plaintiff in fact saith that
said defendant claimed title to an undivided half part of
said premises by several mesne conveyances from and
through one Jabez Fitch, and that on the 28th day of April
A.D. 1838, said Jabez Fitch was the owner of one equal undi=
vided half part of the premises above described and that
he continued to be the owner thereof for a long space of time,
to wit: for two months thereafter and until the final close of
the April Term, A.D. 1838, of the Circuit Court holden in and
for the County of La Salle and State of Illinois, and that
at said April Term of said Court one David Roberts by the
consideration and judgment of said Court recovered a

12 judgment in said Court against one Solon Knapp and the said Jabez Fitch for the sum of five hundred and eight (508) dollars besides costs as by reference to the record of said judgment now remaining in the office of the clerk of the circuit court of said County will more fully and at large appear, and the Plaintiff avers that after said judgment was rendered, to wit; on the fourteenth day of May A.D. 1838, an execution in due form of law was issued upon said judgment by the Clerk of said Court; which execution was afterward, to wit; on the day and year aforesaid delivered to the Sheriff of said County to execute, which execution was afterward to wit; on the eighth day of August A.D. 1838, returned by the Sheriff of said county wholly unsatisfied no levy having been made thereon and with the endorsement thereon by the Sheriff of said County "no goods or chattels, lands and tenements in the county, and afterward to wit; on the 25th day of March A.D. 1841, a second execution in due form of law was issued on said judgment by the Clerk of said court, which execution was afterward to wit; on the day and year aforesaid delivered to the Sheriff of said County to execute, and afterward and during the life of said execution the said Sheriff levied the same upon the following portion of said lot four (4), to wit; Commencing at the South west corner of said Lot running thence East twenty nine and one half feet; thence North seventy five feet, thence west twenty nine and one half feet thence South seventy five feet to the place of beginning, And afterwards to wit; on the 16th day of June A.D. 1841, the said Sheriff

sold the land so levied upon at Public Sale, after having
13 given notice of said Sale as required by law, and at said
Sale one John. V. A. Hors, became the purchaser of the land
so levied upon for the sum of Four hundred dollars, and
said execution was afterward. to wit:, on the 1st day of Sept=
ember A.D, 1841. returned by said Sheriff wholly unsatisfied
as to the residue thereof and with the endorsement thereon
by the Sheriff of said County "$400. made 16. June 1841. by sale
of Real Estate, no more property found to make the balance"
as by said Executions and the several returns thereon now
remaining in the office of the Court will more fully and
at large appear. And the Plaintiff avers that afterward. to wit:
on the 11th day of April A.D, 1845. another execution was
issued by the Clerk of said in due form of law on said
judgement for the balance thereof remaining unsatisfied, which
execution was afterward to wit: on the same day delivered to
the Sheriff of said County to execute, and said Sheriff after=
ward and during the life of said execution, by virtue thereof
levied upon a part of the aforsaid Lot four (4) which is
bounded as follows, commencing twenty nine and one half feet
east of the South West corner of said Lot four (4) running thence
East twenty one feet, thence north seventy five feet, thence West
twenty one feet, thence South seventy five feet to the place of
beginning. And afterwards to wit on the 7th day of June A.D.
1845. the said Sheriff sold the part of said lot as levied on
as aforsaid at Public Auction, and at said sale the said John
V. A. Hors, became the purchasor thereof for the sum of fifty
Dollars as by said Execution and the return of the said Sheriff
endorsed thereon now remaining in the office of the Clerk

of said Court will more fully and at large appear.
141 And the Plaintiff avers that afterwards to wit: on the 29th day of January A.D. 1853, Richard Thorne who was then and there Sheriff of said County executed and delivered to the said John, V. A. Hors, a Deed for that part of said lot four (4.) which was first sold to him under and by virtue of the said second execution which was issued upon the judgment aforesaid which Deed was filed for record by the said John, V. A. Hors, in the Recorders office of said County on the 2d day of February A.D. 1853. And on the 29th day of January the said Richard Thorne who was then & there Sheriff of said county, executed and delivered to the said John, V. A. Hors a Deed for that part of said Lot which, which was sold to said Hors as aforesaid under and by virtue of the third execution issued upon said judgment, the said parts of said Lot not having been redeemed from the said sales aforesaid, and that the said last mentioned deed was duly filed for record in the Recorders office in said La Salle County on the 2d day of February A.D. 1853. And the Plaintiff avers, that the judgment aforesaid from the time of the rendition of the same became and was a lien upon that portion of said Lot which was was owned by Jabez Fitch, as aforesaid and that by virtue of the Deeds aforesaid executed by the Sheriff aforesaid to the said Hors, the said Hors became seized of all the right, title, and interest which was in the said Jabez Fitch, at the time of the rendition of the said judgment in and to the several parts of said Lot mentioned and described in the Deeds aforesaid, and continued to hold such interest and was the owner thereof at the time the

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said Endenture from the said defendant to the said plaintiff was executed and delivered as aforesaid. And as a further breach of the covenants of the said Defendant in said Endenture from said defendant to said plaintiff, contained, the plaintiff avrs that before the making of the Endenture, to wit: on the 25th day of February A.D. 1850. and for a long time prior thereto a suit was pending in the Circuit Court of La Salle County Illinois, in which the said Charles. B. Hare, was plaintiff and Wilburn. F. Walker defendant, that on said 25th day of February a Fee Bill was issued by the Clerk of the said Court against the said Charles. B. Hare, for costs made by him in said suit. amounting to nineteen Dollars and Thirty seven and one half cents, which Fee Bill was in due form of law, and was on the day and year aforesaid given to the Sheriff of said County to execute which said Fee Bill, was afterwards to wit: on the same day levied ~~before~~ by said Sheriff upon the West fifty and one half feet of the South half of the said Lot four (4) which said levy remained in full force and not vacated in any manner until the twenty third day of October A.D. 1854, on which day the said part of said Lot was sold by Richard Thorne, who was then and there Sheriff of said County, at Public sale made under and by virtue of the Fee Bill and levy aforesaid, and at said sale, George. E. Walker, purchased said portion of said Lot for the sum of Thirty six dollars and Thirty six cents, as by said Fee Bill and the return of the said Sheriff thereon now remaining in the Office

of the office of the Clerk of said Court will more fully and at large appear, and said portion of said Lot not having been redeemed from said sale, afterwards to wit; on the 20th day of January A.D. 1856, Francis Warner, who was then and there Sheriff of said County executed and delivered to said Geo. E. Walker, a conveyance for said part of said Lot under the sale aforesaid, And the Plaintiff avers that after the said sale had been made as aforesaid, to wit; on the 23d day of October A.D. 1854, a certificate of said sale in due form of law was duly filed in the office of the Recorder of said La Salle County, and that from the filing of said certificate the amount of said sale became and was a lien upon the part of said Lot as sold as aforesaid, And so the said Plaintiff saith that the said defendant at the time of the execution and delivery of the Indenture aforesaid from him to the said Plaintiff was not well seized of the premises therein mentioned as of a good, sure, perfect absolute & indefeasable, Estate of inheritance in law in fee simple, and had not good right full power, and lawful authority to grant, bargain, sell and convey, the same in manner and form in said Indenture set forth, and that said premises were not then free and clear from all former and other grants, bargains, sales, liens, taxes assessments & incumbrances, of what kind or nature soever and so the said defendant hath not kept his ~~word~~ said covenants in that behalf but hath broken the same,

Whereby the plaintiff hath sustained damage in the sum of one thousand dollars and therefore he brings his suit,

Glover and Cook.
Plffs Attys.

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This Endenture made this Twenty ninth day of October, in the year of our Lord One thousand eight-hundred and fifty six, between Charles. B. Ware, and Bethiah C. his wife. of Kendall County, in the State of Illinois party of the first-part and J. G. Hattinger of La Salle County, in the State of Illinois party of the Second part;

Witnesseth; that the said party of the second part for and in consideration of the sum of Three thousand $3000. dollars to us in hand paid by the said party of the second part; the receipt-whereof is hereby acknowledged and the said party of the second part forever released and discharged therefrom) have granted, bargained, sold, remised, released, aliened and confirmed; and by these presents do, grant; bargain, sell, remise, release, alien and confirm, unto the said party of the second part; his heirs, and assigns forever, all the following described Lot piece or parcel of land situated in the County of La Salle, and state of Illinois, and known and described as follows to wit-; Part of Lot number four in Block number Eighteen in the Original Town Plat of the town of Ottawa as surveyed by the Canal Commissioners and bounded as follows, that is to say, Commencing at the South West corner of said Lot and running thence North seventy five feet, thence East fifty one feet, thence South seventy five feet-; thence West fifty one feet to the place of beginning, Together with all and singular the hereditaments, and appurtenances thereunto belonging or in any wise appertaining and the reversion and reversions, remainder & remainders, rents, issues and profits thereof. And all the estate, right; title, interest, claim and demand whatsoever of the said party

of the first part either in law or equity, of in and to the above
18 bargained premises, with the hereditaments and appurtenances
To have and to hold the said premises above bargained and described with the appurtenances.
unto the said party of the second part his heirs and assigns
forever, And the said Charles B. Ware party of the first part for
himself, his heirs, executors and administrators, does covenant,
grant, bargain and agree, to and with the said party of the
second part his heirs and assigns, that at the time of the
ensealing and delivery of these presents, he is well seized
of the premises above conveyed, as of a good sure, perfect
absolute and indefeasable estate of inheritance in Law in fee
simple, and has good right full power and lawful authority
to grant, bargain, sell and convey the same in manner and
form aforesaid, and that the same are free and clear from all
former and other grants, bargains, sales, liens, taxes, assessments,
and incumbrances of what kind or nature soever, And the above
bargained premises in the quiet and peaceable possession of
the party of the second part his heirs and assigns, against all
and every person or persons lawfully claiming or to claim the
whole or any part thereof the said party of the first part shall
and will warrant and defend forever defend.

Signed sealed and delivered in presence of

Charles B. Ware (Seal)
B. C. Ware (Seal)

State of Illinois
County of Cook } ss.

D. Jesse B. Thomas a Notary Public for Chicago in said County in the State aforesaid do hereby certify that Charles B. Ware and Bethiah C. Ware his wife who are personally known to me as the same persons whose names are subscribed to the within Deed appeared before me this day in person and

acknowledged that they executed and delivered the said instru-
19 ment of writing as their free and voluntary act for the uses and
purposes therein set forth, And the said Bethiah, E, Hare, wife
of the said Charles, B, Hare, having been by me examined, seperate
and apart, and out of the hearing of her husband, and the
contents and meaning of the said instrument of writing having
been by me fully made known and explained to her, acknowled-
ged that she had freely and voluntarily executed the same and
relinquished her dower and all other right, title and interest,
in and to the lands and tenements therein mentioned, without
compulsion of her said husband and that she does not wish
to retract the same, Given under my hand and Seal Notarial
this twenty ninth day of October A.D. 1856,

" Seal

Jesse, B, Thomas
Notary Public

" State of Illinois
County of La Salle } ss 3579.

This Instrument was filed for record on
the 1st day of November at 7/4 O.C. A.M. A.D. 1856 and duly
Recorded in Book 51 of Deeds Pages 100 and 101.

" J. F. Nash, Clerk.

Be it remembered that on Friday the 5th day of February 1858
same being one of the days of the February term of said Court
for said year An order was entered of Record in said cause
in the words and figures following to wit:

" John, G, Nattinger }
54 vs } Covenant,
Charles, B, Hare }

This day the Plaintiff comes by Skinner & Cook

his attorneys and on his motion the defendant is ruled to file his
20 plea, instanter, And it appearing to the Court that the defendant has
been summond more than ten days before the first day of the pres=
ent Term of this Court, and being three times solemnly called in open
Court comes not, nor any one for him but makes default. And it
appearing to the Court that the defendant is still in default of a plea,
on motion of Plaintiffs Attorneys it is ordered by the Court that judg=
ment be entered herein against the defendant by default for want of
a plea, and that a jury of inquest be called to assess the amount
of the Plaintiffs damages.

Be it remembered that on Monday February 8th the same being one
of the days of the February Term A.D. 1858 of said Court, an order was
entered of Record in the words and figures following to wit:

John G. Nattinger
54 vs. } Covenant.
Charles B. Ware.

On motion of the Defendant by W. H. L.
Wallace, his solicitor it is ordered that the default
heretofore entered herein be set aside and vacated,

On motion of Plaintiff by Glover & Cook his attorneys, the defendant
is ruled to plead to Plaintiffs declaration.

Be it remembered that on Wednesday February 10th 1858, the same
being one of the days of the February term of said Court for said year
an order was entered of Record in the words and figures following
to wit:

John G. Nattinger
54 vs } Covenant.
Charles B. Ware

On motion of the Plaintiff by Glover & Cook his Attorneys the
21 Defendant is ruled to plead herein, on or before Monday morning
of the third week of the present term of this court.

Be it remembered that on the 15th day of February A.D. 1858.
Defendant filed his Pleas herein in the words and figures following
to wit:
State of Illinois
La Salle County } Circuit Court thereof. February term 1858.

Charles B. Ware
ats
John G. Nattinger } Covenants.

And now comes the said defendant
and defends &c and says that the said supposed
indenture in said declaration mentioned is not his deed, and of
this he puts himself upon the Country &c

W.H.L. Wallace
for deft.

And the Plaintiff doth the like by
Glover & Cook

And for a further Plea in this behalf
the said defendant says Actio non &c because he says that he hath
not broken the said covenants in said declaration mentioned, or
any or either of them, in manner and form as the said plaintiff
hath above complained against him, and of this he puts him-
self upon the country &c

And Plaintiff doth the like
by —

W.H.L. Wallace.
for deft.

And for a further plea in this behalf, the said defendant says.

22

Actio non &c because he says, that the said Jaby Fitch was not on the 23d day of April A.D. 1838, the owner of one undivided half of said premises in said declaration mentioned as is therein alleged, and of this he puts himself upon the country &c,

And for a further plea in this behalf, the said defendant saith Actio non &c because he says that said Jaby Fitch did not continue to be the owner of the undivided half of said premises in said declaration mentioned until after the final close of the April Term A.D. 1838, of the circuit Court holden in & for the County of La Salle, aforesaid, as is alleged in said declaration and of this the said defendant puts himself upon the country &c,

And for a further plea in this behalf the said Defendant says Actio non &c because he says there is no such record now remaining in the office of the Clerk of said Court in manner and form as said Plaintiff hath thereof alleged, and this he prays may be inquired of by the Court &c,

And for a further plea in this behalf the said defendant saith Actio non &c because he says that the said Fee bill in said declaration mentioned was fully paid and satisfied before any levy thereof was made & this the said defendant is ready to verify, wherefore he prays Judgt. &c,

W. H. L. Wallace
Atty for dfft.

Be it remembered that on the 4th day of November A.D. 1858, the Plaintiff filed his Demurrer to Pleas, in the words and figures

following to wit:

23 John. G. Nattinger
vs
Charles. B. Ware.
} Circuit Court of La Salle County November Term A.D. 1858.

And now comes the said Plaintiff by Glover & Cook his attys and as to the 2d 3d 4th 5th and sixth Pleas of said defendant above pleaded, and as to each of them severally, Plaintiff says that the same are not sufficient in law, and he is not bound by law to answer the same, wherefore he prays judgt &c,

And for special cause of demurrer to said Pleas & each of them Plaintiff says that each of said courts profess to answer the whole of the Plaintiffs declaration and in reality only answer a part of the same.

Glover & Cook
Pltffs Attys.

Be it remembered that on Saturday June 20th 1863, the same being one of the days of the June term of this Court for the year aforesaid an order was entered of Record in the words and figures following to wit:

John. G. Nattinger
2. vs
Charles. B. Ware
} Covenant.

This day Messrs. Gray, Avery & Bushnell withdraw their appearance herein for the defendant and it is ordered by the Court, on motion of Glover, Cook & Campbell of Counsel for plaintiff that plaintiffs demurrer to defendants second third, fourth, fifth & sixth pleas be sustained. It is therefore considered by the court that judgment be entered herein against said defendant

on the said demurrer. And it appearing to the court that by agreement of parties this cause was heretofore submitted to the court for trial by both parties, it is order to be passed until after the discharge of the jury for this term of Court.

Be it remembered that on Thursday June 25th A.D. 1863, the same being one of the days of the June Term of said Court for the year aforesaid the order was entered of Record in the words and figures following to wit:

John. G. Pattinger
2 vs
Charles. B. Ware
3 } Covenant.

This day again comes the Plaintiff by Glover. Cook and Campbell his attorneys. And the Court after hearing the evidence. And due deliberation thereon had, find the issues in favor of the plaintiff, and assess his damages at Seven hundred and seventy three dollars and eight-cents, It is therefore ~~ordered~~ considered by the Court that the plaintiff have and recover of the defendant the sum of Seven hundred and seventy three dollars and eight-cents for for his damages, also his Costs and charges by him herein expended and that he have execution therefor.

State of Illinois }
La Salle County } ss I Absalom B. Moore clerk
of the Circuit Court in and
for said County do hereby certify that the above
and foregoing, so far as it purports to be, is a
true full and complete Copy of the files and of the
record of proceedings had in a certain cause late
depending in said Circuit court, wherein one John
G. Stallinger was plaintiff and one Charles
B. Wan was defendant.

Witness my hand and the Seal of
said Court at Ottawa this 5th day of
March A. D. 1864.



Absalom B. Moore clerk
C. H. Hook D/Cy.

Fees for record $8.00

Supreme Court of the State of Illinois April
Tm 1864

Charles B Ware } Error to La Salle
vs
John G Hathaway

And now comes the said Charles B Ware by Leland & Blanchard his Attorneys & says that in the manifest error in the record & proceedings in this cause in this viz

1st The court below erred in sustaining the demurrer of the plaintiff below to the 2d 3d 4th & 5th pleas of the defendant below and to each of them

2d The court below erred by trying the issue without calling a jury.

3d The declaration is insufficient & the demurrer to the pleas should have been sustained to the 1st count & each count therein separate.

Plff in error therefore prays for a reversal of the judgment & that the cause may be remanded

March 7 1864 Leland & Blanchard
for Plff in error

Chicago March 9. 1864.

Let the writ of error in this case be made a supersedeas upon the said Charles B Ware giving bond in the usual form in the penal sum of One thousand dollars with Elisha S Wadsworth as surety

O B Ricketts
Associate Justice of Sup Court

Record 108

Charles B Ward

to

John G Nottingen

Record & Evans

Filed Mch. 15. 1864.
L. Leland
Clk.

Know all men by these presents, that we, Charles B. Hare of the County of Kendall and State of Illinois and Elisha S. Wadsworth of the County of Cook & State aforesaid, are held and firmly bound unto John G. Nattinger of the County of LaSalle and State aforesaid in the penal sum of One 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 administrators, jointly, severally and firmly by these presents

Witness our hands and seals this tenth day of March A.D. 1864.

The condition of the above obligation is such that, whereas, the said John G. Nattinger, did on the twenty-fifth day of June A.D. 1863, in the Circuit Court of LaSalle County and State aforesaid and of the June Term thereof A.D. 1863, recover a judgment against the above bounden Charles B. Hare for the sum of Seven Hundred and Seventy three Dollars and Eight cents, besides costs of suit; upon which said judgment

of the said Circuit Court of La Salle County the said Charles B. Ware has prayed for, and obtained a writ of error which is made a supersedeas from the Supreme Court of said State

Now therefore, if the said Charles B. Ware shall duly prosecute his said writ of Error with effect and moreover pay the amount of the judgment, costs, interest and damages, rendered and to be rendered against him in case the said judgment shall be affirmed in said Supreme Court, then the above obligations to be void, otherwise to remain in full force and virtue

Charles B. Ware Seal

E. Merriman Seal

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

William C. Grant of said County being duly sworn doth depose & say that he is well acquainted with the said Elisha S. Wadsworth who executed the foregoing bond & that said Wadsworth is sufficient security for the amount therein mentioned

Wm C Grant

Subscribed & sworn to before me this 11th day of March A.D. 1864

C. B. Smith
Asst Supreme Court

108

Charles B Lowe

vs

Robin G Nathings

Bond Supersedeas

Filed March 15. 1864.

L. Leland

Clk.

SUPREME COURT OF ILLINOIS:

THIRD GRAND DIVISION.

April Term, A. D. 1864.

CHARLES B. WARE,
vs.
JOHN G. NATINGER,
} ERROR TO LASALLE COUNTY.

ABSTRACT OF RECORD.

The plaintiff below, Nattinger, on the 27th of July, 1857, declared against
2 Ware, the defendant below, for a breach of the covenants contained in a full covenant warranty deed, dated Oct 29, 1856. The premises are a part
17 of lot 4, block 18, Ottawa.

The narr contains two counts, and each count two breaches. The 1st and 2d counts are precisely alike, except that in the 1st, it is alleged that Nattinger purchased the outstanding titles (mentioned hereafter) tne 2d does not contain this allegation.

The 1st breach in each count is :

4&11 "That said defendant claimed title to an undivided half of said premises, by several mesne conveyances, from and through one Jabez Fitch, and that on the 23d of April, A. D· 1838, said Jabez Fitch was the owner of one equal and undivided half of the premises, and that he continued to be the owner until after the close of the April Term 1838 of the Circuit Court of LaSalle County, Illinois, and that at said April Term one David Roberts recovered a judgment against one Solon Knapp and said Jabez Fitch for $508 and costs, as by referring to the record now remaining in the office of the Clerk of the Circuit Court of said County will more fully and

at large appear, that the premises were sold on exexcution to John V. A. Hoes for $450, (there were two separate sales of part at each) and that after the redemption expired Sheriff's deeds were made to him, and that by the deeds Hoes obtained all the right title and interests which Fitch had at the time of the rendition of said judgments. In the 1st count it is alleged that plaintiffs was compelled to and did on *the first day of September*, 1856 pay Hoes $500 for his interest, The 2d does not contain this allegation.

8&15 The 2d breach in each count is as follows:

On the 25th of February, 1850, a fee bill was issued for 15.27 costs against Ware, in a suit in which he was plaintiff and one Wilburn F. Walker, defendant, in the Circuit Court of LaSalle County, and on the same day levied on the premises; that the levy remained in full force until the 23d of October, 1854, when the sheriff sold the premises to one Geo. E. Walker for 36.36, that on this last day a certificate of sale was filed in the Recorder's office of LaSalle County, that the premises not having been redeemed, sheriff made a deed on the 25th of January 1856 to the said Walker,

9 First count alleges that Nattinger was compelled to and did pay to Walker 90 *on the first of September* 1856, for the premises so purchased by him.

The second count omits this last statement about paying the 90.

To this declaration Wallace, Att'y for defendant, filed five pleas. Feb. 15, 1858.

21 / Non est factum. 2d Plea in Appeal Commissioners

~~2d.~~ 3d Jabez Fitch was not on the 23d of April 1858, the owner of one undivided half of said premises. 1858

~~3d.~~ 4th Jabez Fitch did not continue to be the owner of the undivided half of said premises until after the final close of the April term, 1858, of the LaSalle Circuit Court.

22 ~~4th.~~ 5th There is no such record now remaining in the office of the Clerk of said county, as alleged.

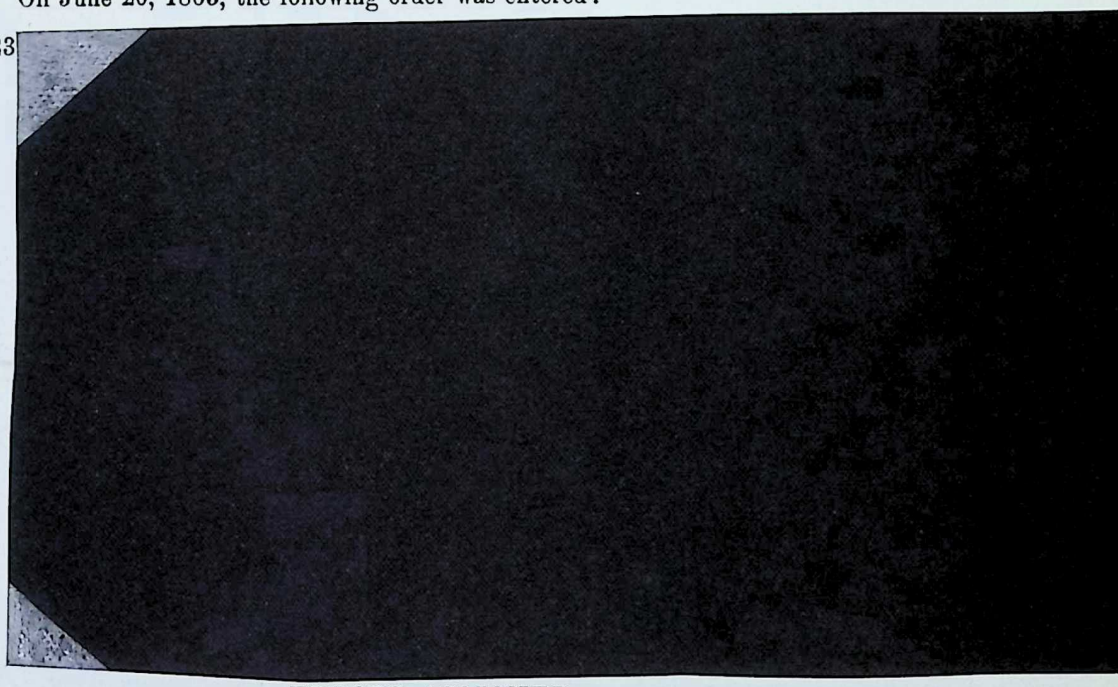
~~5th.~~ 6th That the said fee bill was fully paid, and satisfied before the levy thereof.

On the 4th of Nov. 1858, a demurrer to the 2d, 3d, 4th and 5th was filed, alleging for special cause, that each of said counts profess to answer the

whole of plaintiffs declaration,and in reality only answer a part of the same.

The pleas to which there was a demurrer all commence, "and for farther plea in this behalf, defendant says *actio non* &c., because he says that."

On June 20, 1863, the following order was entered:

23 

ERRORS ASSIGNED.

1st. Sustaining demurrer to 2d, 3d, 4th and 5th pleas.

2d. Court erred in trying the cause without a jury.

LELAND & BEANCHARD,
For Plaintiff in Error.

118-158

Charles B. Ware

vs

John G Nattinger

Abstract

Filed April 12, 1864

L Leland Clk

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT,

To the Clerk of the Circuit Court for the County of LaSalle 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 La Salle County, before the Judge thereof, between

John G. Hattinger

plaintiff, and

Charles B. Hare

defendant, it is said manifest error hath intervened, to the injury of the aforesaid

Hare

as we are informed by his complaint and we being willing that error should be corrected, if any there be, 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 our Justices of the 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 Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April 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.

Pinckney H Walker

Witness, The Hon. ~~JOHN D. CATON,~~ Chief Justice of our said Court, and the Seal thereof, at Ottawa, this Fifteenth day of March in the Year of Our Lord One Thousand Eight Hundred and Sixty four.

L. Leland

Clerk of the Supreme Court.



Charles B. Ware

No. 108 vs.

John G. Stutsman

WRIT OF ERROR.

This Writ of Error is made a Supersedeas, and as such is to be obeyed by all concerned.

L. Leland

Clerk.

FILED Mch. 15, A. D. 1864,

L. Leland

Clerk.

STATE OF ILLINOIS,
SUPREME COURT } ss. The People of the State of Illinois,

To the Sheriff of La Salle County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of La Salle County, before the Judge thereof, between

John G. Attinger

plaintiff, and

Charles B. Ware

defendant, it is said that manifest error hath intervened, to the injury of the said

Ware

as we are informed by his complainant the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said

John G. Attinger

that he be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said

John G. Attinger

notice, together with this writ.

Witness, The Hon. ~~John D. Caton~~ Pinckney H. Walker, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 15th day of March in the year of our Lord One Thousand Eight Hundred and Sixty-four.



L. Leland
Clerk of the Supreme Court.

Charles B. Mace

No 108 vs.

John G. Nattinger

SCIRE FACIAS.

FILED Apl. 20 A. D. 1864

L. Leland Clerk.

State of Illinois
LaSalle County } ss.

I have duly Served the within writ by reading the same to the within named John. G. Nattinger on this the 5th day of March A.D. 1864

W. R. Milleyard Shff
By D. J. Booth Dpty

Fees Service & Ret 70
Mileage 5
75

Ware

vs

Nattinger

The right of trial by Jury is secured by the Constitution. And every reasonable presumption should be made against the waiver United States vs W. P. Rathbone

2 Paine. C. C. 579

It is not stated that he waived a jury at that term Bingo vs Jacobs 14 B. Mon. Ky 521

Must go to trial in same manner as if defendant had answered

1 Scam 390

Demurrer should have been carried back & sustained to first count of Sam

Ware convicted in Nattinger - Oct 19 - 1856

1st Count alleges purchase with Warrants 11 Ill 240. Sept 1st 1856

Not set forth not an issuable plea
Reeves vs Forman 26 Ill 313

Waive

Mistake in first count

notty said about first count

was Plead

that was submitted before

108

Waive as to

Written Suggestions

L. Rail C. C. R

14 B Monroe Ky

1 Sawn

11 Dec

26

108-158

Supreme Court of Illinois:

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1864.

CHARLES B. WARE, Plff in Error,
vs.
JOHN G. NATTINGER, Deft in Error.

ARGUMENT FOR PLAINTIFFF IN ERROR.

BY

LELAND & BLANCHARD.

For a concise statement of this case we refer your honers to the Abstracts.

The first error complained of in this record is the sustaining of the demurrer to the 2d, 3d, 4th, 5th and 6th pleas.

It is said the pleader professes in his pleas to answer the whole declaration, but only answers part thereof in each of his pleas. We conclude, of course, that neither of the pleas, except the first or plea of *non est factum*, is an an answer to all the breaches assigned in the declaration, but we deny that Mr. Wallace made any such unprofessional profession as that wherewith he is charged.

Filed Apl 26. 1864
C Sedgwick

It is not assigned as special cause for demurrer that the pleas are not wholly in the English language, nor that they are unintelligible because a Latin contraction is used, and we claim that the contraction *actio non*, &c., should have a reasonably free translation in order that justice and common sense may prevail in the land. This contraction is in common use among lawyers, and it is just as reasonable to apply the "et cetera" to the breach to which the subject matter of the pleas belongs as to the whole narr. If instead of *actio non*, &c., the pleader had said in his 2d, 3d and 4th pleas "*actio non*" as to the first breach in the first and second counts mentioned, the "et cetera" would have had a reasonable and sensible translation, because the statements in these pleas can only apply to these breaches, and by no possibility to the 2d breach to 1st and second counts, and *vice versa* as the 5th plea, which belongs to the 2d breach in 1st and 2d counts, as in actions of this kind pleas like the 2d, 3d, 4th, 5th and 6th, should be pleaded to breaches, and cannot apply to the whole narr. where there are several breaches. It seems more nice than wise to call those pleas ones professing at their commencement to answer the whole narr. rather than the breach to which they belong when the "&c." can as well be applied to a breach as to a whole declaration. Aye, much more rationally and sensibly, we think, this view is sustained in the case of

Bryan v. *Bates*, 15 Ill., 87.

If this straw is sufficient to throw the car of justice off the track, let us see whether these pleas are fit and suitable for the breaches that fit them.

The 2d and 3d do not differ materially as answers to the 1st breach in each count, because it is not alleged in the narr. that Fitch acquired title between the day judgment was rendered and the last day of the term of court, but that he was the owner

on the 23d of April and continued to be till said last day of the term. A denial, therefore, that he was the owner on the 23d of April, would amount to a denial that he continued to be and was the owner on the last day of the term at which time the lien attached. But be this as it may, the third plea contains a denial that Fitch was the owner at the time when the lien would have attached if he had been the owner; and as to this declaration which contains the allegation that Ware derives title from and through Fitch to an undivided half, a statement in the plea that Fitch did not own the undivided half on the last day of the term, is the denial of a fact necessary to the validity of the Hoe's title, and an answer to the breach, and whether Fitch conveyed the undivided half to Ware directly, or as is alleged or there were mesne conveyances is of course immaterial. If Fitch conveyed before the last day of the term the lien could not have attached, and the plea is good.

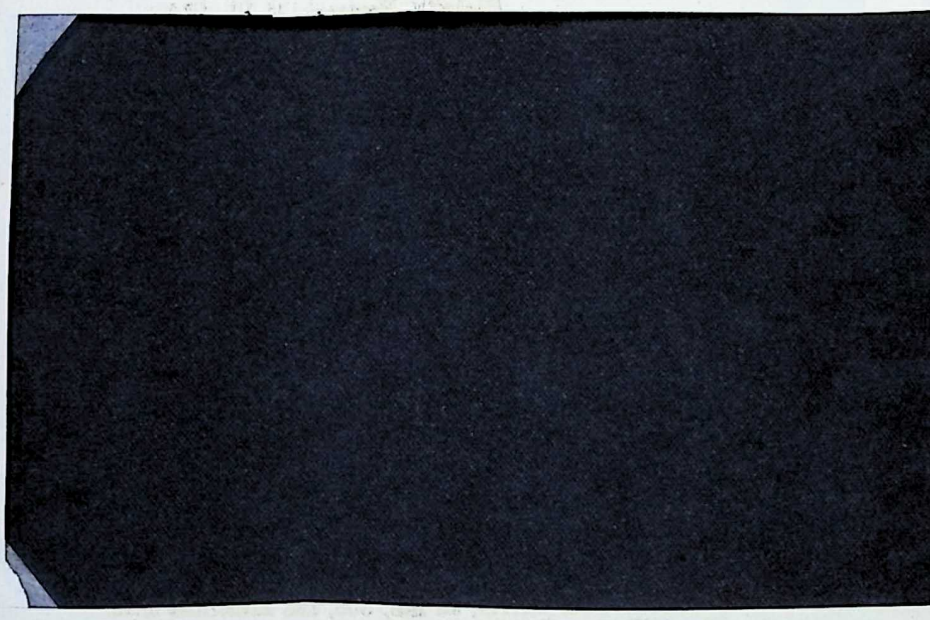
The only conceivable objection to the 4th or plea of *nul tiel* record is that it professes to answer the fee bill title breach as well as the judgment title breach, and we say that it makes no such profession; that it only practices what it professes, and that it not only professes but actually does fully answer the 1st breach of 1st and second counts of the narr., and neither professes to nor does answer the 2d breach of 1st and second counts thereof.

The fifth plea applies only of course to the fee bill title breach, and it seems to us that it does not commence with any profession inconsistent therewith.

There may be a conflict of authority on the question whether a purchaser at a sale on execution on a satisfied judgment, without notice, obtains any title.

This Court in analogous cases has decided against the title.

These fee bills by which one collects his own debts in so summary a way without judge or jury, ought not to be shown as much favor as a judgment.

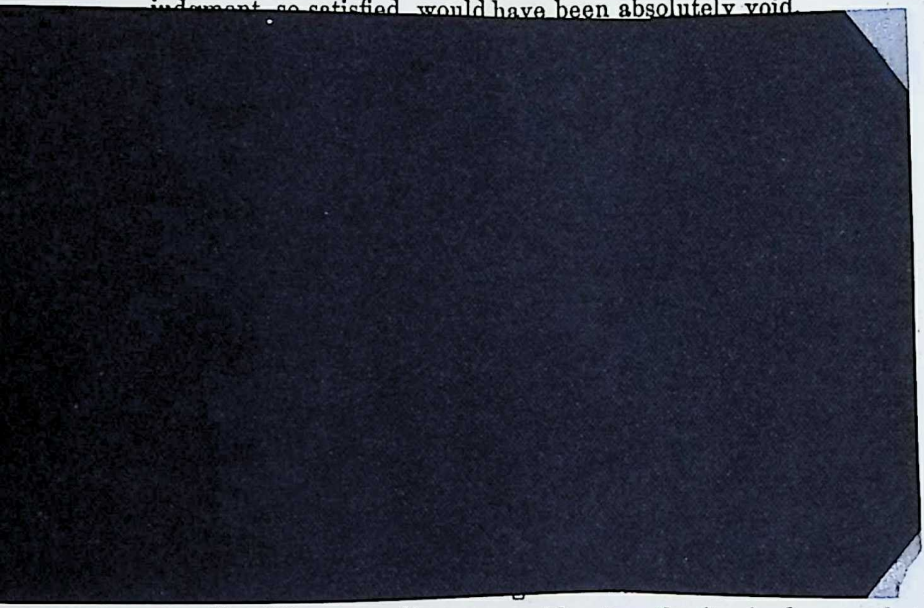


There is another view of the question, which we think is sound.

The declaration alleges that the fee bill was issued February 25th, 1850, and in same day levied on the premises, which levy remained in force until October 23, 1854, when the Sheriff sold the premises, and on the 25th day of January, A. D. 1856, the Sheriff made a deed to the purchaser.

The plaintiff in error conveyed to defendant in error the premises between the time of sale by Sheriff and the execution of Sheriff's deed. The plea alleges that the fee bill was fully paid and satisfied before the levy. Now, if the fee bill had been based upon a judgment, which was a lien upon the premises, and that judgment had been paid by Ware before the convey-

ance to Nattinger, the payment would have extinguished the judgment lien, though the judgment had not been satisfied of record, and a levy and sale upon an execution issued upon said judgment so satisfied would have been absolutely void.



the Sheriff's proceedings are without authority in law, and whenever a Sheriff acts without authority no title possess.

7 Johnson, 536.

The law is well settled that a purchaser at a Sheriff's sale buys at his peril.