

14598

No. _____

Supreme Court of Illinois

Eads

vs.

Couse

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

Ex parte
No. 150

J. W. Middleton & Co., Stationers, 126 Lake St.

Ex parte
7-15
Quinn

1864

Quinn

14598

Supreme Court of Illinois
April Term A.D. 1864
Third Grand Division

John Eads }
vs }
Alfred Conner } Appual from Knox

Argument of the appellee by A. T. Tyn
his atty— May it Please Your Honor

This was an action by Conner vs Eads
of Error for Com. The pleading
fairly put in issue the legality of
the sale, by the want of a proper
notice on the part of the Sheriff
of the sale, and the deft. below
takes issue upon the sufficiency
of the notice by the Sheriff and
the legality of the sale

The notice is defective in not giving
the place of sale. The notice says
that the property will be sold at
the residence of S. Auden 3/4 of a
mile N. W. Gilson front door of the
Cook House in Knoxville. by this notice

it states two places of sale at the
same hour of sale, now which of
these places could the Deft. in Exec.
or other persons know that the sale
would take place. they could not
know. it is the same as if no
place had been fixed for the sale -
the Deft. could not be expected to
be at both of these places at
the same time which were some
six miles apart as the evidence
shows. Thus this notice is as a
blank notice as to place of sale,
it fixes no place of sale. the
Deft. was by the law entitled to
attend the sale and entitled to
have a notice given by the officer
specifying a particular place of
sale so as to be there himself if
he desired, and also that the
public should know when the
property was to be sold, in order
that there might be competition
at the sale and the property sold
for the best price it would bring
not only the law but justice, simple
justice requires this at the hand
of an officer selling property etc

in Execution. But it is said on the
other side that the written part of
the notice will govern, on the rule of
law in the Construction of Contracts
in case of conflict between Writing &
Print that the Writing is to govern and
that Every one is bound to know the
law.

Now in Answer to this, I will say
in the 1st place, it is not a contract
and not to be governed by that rule of
law, and in the next place if Every
body is presumed to know the law,
Would Every body who read this
notice form the notice, ^{know} where the
sale would take place. The notice
was calculated to mislead the public
or those who might have ^{known} attended
~~the sale~~ which it attuned the sale,
it was uncertain as to where the sale
was to be, & it was entitled to have
the notice definite & certain as to
the place of sale

It is further said that it is good
because no one was misled by the
notice and for that reason the
notice is good - but a few what

State of facts do the gentlemen
found this opinion. The facts in
this case do not justify such
a conclusion for these reasons
1st Because this was corn that
was sold, fit for market, an
article that would demand a cash
market price anywhere, it had a
market value, and would sell
readily at about that price upon
any kind of a sale if fair notice
was given. The evidence shows that
it was worth would sell for cash
at 18 cts per bushell at Gilson, in this
action we only occurred for three cribs
of corn. S. Anderson means that
there was in three 4 cribs of
corn (that ~~was~~^{were} sold for only \$16
by the Sheriff.) Eighth hundred forty
three bushells of corn - We show that
Esdr sold to Picard. 709 bushells.
There was properly worth over one
hundred dollars & saleable at any
moment for more money, sold for
only sixteen dollars, and why because
of the want of proper notice of
sale. And then there were no persons
at the sale but the Deputy Sheriff

John Eads & Elkanah Moore and
the man that lived on the place - these
facts show clearly that this want
of proper notice was the cause of
the sacrifice of the property, and that
those wishing to purchase were mis-
led by this want of notice as a
matter of fact. Any one knows that
this corn sold at any place with
a proper notice where there was any
demand or competition would have
brought nearly its market value
then for this reason this sale or notice
will not I think be held good by
your Honors -

It is contended that this Judgt.
should be reversed because Eads
did not have notice of the defect
in notice of Sheriff until after the
sale, the evidence does not definitely
show that Eads had notice of the defect
in the sale notice of sale, until after the
sale, But the amt. of money that
was bid for this corn, shows that
if he was honest and was acting
honestly in the matter that he did

Know that there was some defect
in the notice or he would have
bid more for the Com, in other
words the Cont. of his bid does indi-
-cate that he did know of the defect
in the sale together with the other
fact, that when notified of it, he
manifested no surprise and was
not willing to give up his claim
to the Com. also. he also knew
that Conner was willing to pay the
full bill in full and that the Sheriff
was willing to release him from his
bid -

But it was not necessary that he should
know of the defect in the notice at the
time of the bid, if he had notice of
it at the time as appears from the
evidence before he had paid his money
to the Sheriff, for if the Sheriff had
no legal authority to sell he could not
enforce his bid or recover the money
from Eads if he refused to pay. but
in this case this question does not
arise, as the offer to pay the full bill
in full by Conner and to release Eads
of all liability on account of his

bid, was made to him by the Deputy
Shriff before he had parted
with his money. But he paid his
money with full notice of all these
facts and yet would seem as though
it could hardly be said that under
this state of facts he was not a
purchaser with notice and did not
take this property with all the defects
in the title chargeable upon him
if so he was not a bona fide
purchaser, for he could not take
and insist on a purchase of this
property at such a price, with such
a notice, and claim that it was
all in good faith so far as he
was concerned. A purchaser in good
faith is one who buys and takes the
property without a knowledge of the
defects in the title if there are any.

It is contended that the title passes
when the hammer falls - this is not
the law. for there are many authorities
holding a different doctrine. and
holding that after the property has
been struck off to the bidder upon
his neglect or refusal to pay the money

The officer may sell the property to another person; and if the doctrine continued for some time; this could not be the law, as it clearly is, then if the Eads had notice before he paid the money to the Sheriff and consummated the sale, it is just as good as though he had this notice at the time of the bid, for he took the ~~sale~~^{property} chargeable with such notice -

And the above positions continued for by the appellee, are upon the ground that in order to set up this defence to the sale by the Appellee, it was necessary for him to show notice to the Appellant, who was a party to the action in which the judgment was issued.

But I maintain that it is not necessary for the Appellee to do this, for the reason, that the sale of personal property in this State under our Statute where the proper notice is not given is absolutely void -

The Statute actually prohibits the sale and absolutely declares that "No goods or chattels shall be sold by virtue of any Execution aforesaid" unless the proper notice is given, and makes no provision that the sale shall not be effected unless the purchaser has notice of such defect, as it does in relation to the sale of real Estate and makes no provision that the officer shall be liable to a penalty for selling without notice &c, as it does in sales of real Estate, hence, it must have been the intention of the legislature to have required a compliance with this Statute, and to make the sale absolutely void in case of non compliance with such Statute, by the officer, and that is the natural inference to be drawn from the two Statutes, ~~taken~~ or sections being so widely different in their provisions, in one they provide the sale shall not be void or effect a purchaser without notice - in the other there is no such provision - and ^{the} inference must be that they are effected without notice in the Statute is not merely directory

but is prohibitory. In the case
of *Miner vs The Town of Natchez*,
cited in my brief in 4th *Meigs*
& *Marshall Rep.* on page 630 the
Court in that case hold if the
statute had declared that the officer
should not sell without such notice,
it would be equivalent to declaring
the sale void, and put the two
provisions upon the same ground, &
the case is one where they declare
a sale not void in the hands
of a bona fide purchaser, and
indicate their opinion that that
provision would stand in the same
relation with the provision of the
act, then refused to ~~in~~ which
prohibits a ~~sale~~ private sale by
the officer, and clearly hold that
a statute like ours is not directly,
not prohibitory and equivalent to
declaring the sale void -
Then and many cases holding
private sales by an officer void
when the statute forbids a private
sale & provides for a public sale -
or when it provides for appraisement
or forbids sales before appraisement.

Which in principle is the same as
the question here presented in this
Case under our Statute - but in
order for the Court to hold this ~~to~~
law ^{illegal} ~~and~~ it is not necessary to
decide this question, or in order to
sustain the Replication in this ~~case~~
Case & sustaining the decision of the
Court below. for if the Court hold
simply that the law void in the
hands of a purchaser with notice
it is sufficient to sustain the ruling
of the Court below - And the authorities
cited in this Case are abundant
upon this question -

But it is said we did not tender
the money to the Sheriff and claim
that we were bound to make a tender,
the same as on a note, but I
do not so understand this Case -
we were not bound to tender the
money on the full bill at all. the
evidence shows as a matter of
fact, Cowen by his agent or atty
did offer the Sheriff the full amt.
of the full bill, and would have paid
it if the Sheriff would accept it

or if Eads did not insist on holding
the goods - The offer by Conner to pay
the money to the Sheriff is only a
question between the Sheriff & the Def.
in the fee bill & not an objection that
Eads can make, neither is it at
all material in this case - it does
not effect the sale, or the question
of whether the sale was regular
or irregular and Eads had notice
of that fact or not -

There is another objection made by
the appellant to the 1st instruction
for Plff - They insist that that
instruction excludes the idea of
any defence under the Judicial
Sale, but such is not true, for the
reason, that they claim property
by virtue of this sale at the
time of the commencement of
the suit. And the Court instructs
that if we were the owners of
the property at the time of the
commencement of the suit &c
which includes the question of
Judicial Sale & all other sales
if there had been any

The questions raised in this case
all arise upon the question of
The sufficiency of the notice.
The appellant by his Rejoinder to
our Replication alleges the notice
sufficient and takes issue upon
the question, if upon that issue
the notice is insufficient and
Eads had notice of it before he
paid the money to the officer were
entitled to recover and there is
no error in the record. The evidence
showed upon the trial the defect in
the notice & also that Eads knew
of it & took counsel of law
about the matter before he paid
his money to the Sheriff also
that Ches would pay the fee
bill and had offered \$500 as
if it would be accepted - and this
issue was found against them
upon the evidence and instructions
of the Court. ~~Which~~ and I
think rightfully.

The objections to the other instructions
all rest upon this question &
are proper whether as to those

given or refused and upon the
construction simply that the
sale is only illegal in the case
of the property being sold w. the
appellant with notice of the
defect in the notice before he
paid the money to the shipper
which I think the authorities
clearly show cited in my
brief filed herein -

N. Tyler atty. for
appellant

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Cades 27
or
Conev

Argument of
Appellee

Filed May 10. 1864.
L. Island
Ct.

STATE OF ILLINOIS.

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

APRIL TERM, A. D. 1864.

THIRD GRAND DIVISION.

JOHN EADS, Appellant,	} Appeal from Knox.
vs.	
ALFRED COUSE, Appellee.	

DOUGLASS & CRAIG,
Attorneys for Appellant.

This was an action of Trover for corn, and judgment against appellant in the court below.

The defense set up was that the property was levied upon and sold under a fee bill, and defendant became the purchaser at the sheriff's sale.

Replication—That there was no notice of sale, and that Couse offered to pay the fee bill to sheriff, which was refused, before Eads moved the property or paid for the corn, of which Eads had notice before he paid the money.

If the the sheriff gave no notice at all, or a defective notice of sale of the corn, that would not affect the title of the property in the hands of a purchaser who bought *bona fide*.

There is no pretence in this case that Eads had any notice of any defect in the notice of sale, until after the property had been sold for several days. A question that presents itself is, when does the property pass to the purchaser at a judicial sale? If it passes immediately, then no subsequent notice would affect the title in the hands of the purchaser.

As to when the title passes, I cite the following authorities :

Howard vs. Babcock; 21 Ill., 259.

1 Parsons on Contracts, 441.

Cruikshank vs. Cogswell; 26 Ill, 336.

Brown's Commentaries on Com. Law, 305.

Wade vs. Moffat; 21 Ill., 110, and cases cited.

Sidwell vs. Lobby, 438.

Whether the title passed or not, the 4th replication is not a sufficient answer to the plea of the sale under the fee bill. So far as the notice is concerned, it says "there was no notice," and "Eads had notice of it before he paid the money," not before he bid off the property, and that Couse offered to pay fee bill before Eads paid his bid, and before Eads moved the property. There is no proof anywhere that there was even a tender of the amount of the fee bill, and much less any payment over of the funds, and there is no proof of such a refusal as would excuse a tender. Suppose for a minute that a payment or tender of the money on an execution before the payment of the bid would be a sufficient answer to the plea of the sale, would a plea of an offer to pay the money be sufficient? Take the case of a note when due: The maker meets the payee, and says, "I am ready to pay that note"—"I will pay that note." Now, if a suit is brought on the note, will you be able to stop interest by alleging such an offer to pay? Again: Can a judicial sale be defeated by an offer to pay the execution after the sale? Take the case of real estate as well as personal, for the rule is the same: If you say an offer to pay avoids the sale, then in the case of

the sale of real estate, where the plaintiff bids there is no money to be paid, and all the defendant has to do is to meet the sheriff at any time before the certificate of purchase is made out, and say to him, "I will pay that execution." No money need be paid or tendered, only offer; and if redemption passes and deed is given, and ejectment, the defendant need only prove he met the sheriff and said to him, before the certificate was made, "I will pay the execution," and that the sheriff told the purchaser of it before the certificate was made. Now, the rule is general, and the ~~bill~~ *title* passes as at sales at auction whenever the sale closes or the hammer falls.

Nichols vs. Ketcham; 19 Johnson, 83.

Cochran vs. Roundtree; Stroth., 217.

18 Pickering, 407.

The only answer to the judicial sale is in the 4th replication, for there is no pretence that the 5th and 6th replications are sustained by proof.

The 4th replication depends entirely upon the question of the notice of sale, whether it was good or bad. The original notice is to be found on page 30 of the Record. The law does not prescribe the form or language of a notice. It is to be in writing, (or print) and to be posted. There is no objection to this notice, only the substance of it. Now if it was in fact and in effect a notice of a sale at Anderson's, and so received and read by the public, then it was a good notice. There is proof that that notice took bidders to the place of sale. There is no pretence that bidders went to the Court House. If not, then the notice did not mislead any one. The object and sole object of notice is, that the property may be sold with competition. We say it is a question of fact whether there was or was not notice given of the sale, and that the notice being proved shows notice was given, and that the bidders went to the right place, and that no one was

mislead ; and that if no one was misled by the notice, then as a matter of law the notice was good.

McDonald vs. Cook ; 11 Miss., 632.

The rule of law, in all cases, is, that in construing a contract, if there is conflict between writing and print, that the writing is to govern, as it is supposed to express the agreement of parties. Is it not so in a notice? All are supposed to know the law is this, as well as to know any other law.

The first instruction given for the plaintiff was erroneous, for the reason that it excludes from the jury the idea of any defense under the judicial sale. It of course embraces the plaintiff's case if there was no defence, and should have been qualified by stating if the proof was so and so, then they would find for the defendant.

The second and third instructions given for plaintiff, are not the law of this State, for the reason that the property passed at the sale, and the title could not be divested afterwards by notice of the defect in the sale.

The court erred in modifying the defendant's 2d instruction in italics, and giving the same so modified, for the same reason.

The court erred in refusing to give defendant's instruction No. 1, for reasons already stated.

The court erred in refusing to give defendant's instructions 3 and 6, for reasons herein stated. 1. The authorities already cited show very clearly that the property passes whenever it is stricken off to the purchaser, which clearly shows that the 3d instruction was improperly refused.

If the property passes on the sale, then surely it was immaterial whether Couse did or did not offer to pay the fee bill after the sale. This instruction was the law of this case, and should have been given.

The most that could be said is, the notice is merely irregular, and irregularities in Sheriff's sale cannot be attacked collaterally.

4 Gilman, 336.

It is the policy of the law to sustain judicial sales.

Benningfield vs. Reed, 8 B, Monro, 102.

A purchaser at a Sheriff's sale who refuses to pay for property bought, is liable for the purchase money to the Sheriff. Lamkin vs. Crawford; 9 Ala 153 ;

upon the ground that the title to the property passes when struck off to purchaser.

When one of two persons should sustain a loss, it should fall on him to whom negligence is imputable.

9 Wheaton, 648.

In this case Couse neglected and refused to pay a judgment against him, his property was levied upon and sold to pay his debt. Eads bought the property and paid his money ; now if this suit is decided against him, he loses the money he paid at Sheriff's sale, and Couse gets the benefit of it, as a reward for his neglecting to pay a judgment.

Again Eads ought to have had a new trial on the ground of *newly discovered evidence*.

150 27
John Eads
Appellant
V

Wm. C. Eads
Appellee

Pring for Appellant

Filed Apr 22. 1864

L. L. Eads Clerk

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1864.

JOHN EADS, *Appellant*,
vs.
ALFRED COUSE, *Appellee*. } Appeal from Knox.

BRIEF AND AUTHORITIES OF THE APPELLEE.

I.

This was an action of *trover* by the appellee vs. appellant for four cribs of corn, but only three cribs were claimed upon the trial. The defendant below claimed the corn by virtue of a sale under a *fee bill* in a suit of the appellee vs. appellant and wife, and a purchase by the appellant, which was set up by plea. The plaintiff below by replications deny a sufficient notice of sale by the sheriff, and deny that the sale was legal for want of notice, and aver that the appellant had notice of the defect in notice of sale before he paid the purchase money to sheriff, and after the appellee had offered to pay the full amount of the *fee bill* to the sheriff, of which he also had notice before he paid the money to sheriff. The evidence shows that the notices posted were that the corn would be sold at *two different places at the same hour about six miles apart*, at the Court House in Knoxville, and at the residence of S. Anderson, three-fourths of a mile NW of Gilson.

II.

The statute of this state provides that "*No goods or chattels shall be sold*" by virtue of any execution unless previous notice of such sale shall have been given for at least ten days successively, by putting up written or

printed notices thereof in three of the most public places in the county where such sale is to be, *specifying the time and place of sale.*

Rev. Stat. 1845, Sec. 29, p. 306.

III.

This statute is not a *directory statute merely*, but absolutely declares that the officer *shall not sell without such notice*, or that the goods and chattels shall not be sold, and makes no provision for damages in case of sale without such notice.

Miner vs. Natches, Smead & Marsh. Rep. Vol. 4, p. 630.

IV.

The statute in relation to sale of real estate in this state is different in this: it provides for notice and also a penalty against the officer violating its provisions; and also provides that any irregularity in the sale by the sheriff shall not affect the sale unless it appear that the purchaser had notice of such irregularity.

Rev. Stat. 1845, Sec. 11, p. 302.

V.

By the statute in relation to sale of personal property the sale is void: there can be no sale without proper notice to pass title.

By the other section of the statute the sale is only void with notice to the purchaser of the irregularities.

The provision that the sale of real estate should not be affected for want of notice unless the purchaser had notice, implies that in the sale of personal property they would be affected without notice. But putting the strongest construction against us that can be put upon these statutes, it would be affected with notice then. We have under our replications shown notice clearly after the sale and before the money was paid, and presumptively before sale.

VI.

If a sheriff sell property under an *Execution* or *fee bill* without giving full notice as required by statute, the sale will be illegal, and a purchaser who has notice of such irregularities before he parts with his money, will acquire no title by the sale.

Warring vs. Loomis, 4 Barb. Sup. Ct. R. 484. ✓
 Enloe vs. Miles, 12 S. & M. 147.
 Stewart vs. Croes *et al.* 5 Gil. 444
 Adamson *et al.* vs. Cummins, 5 Eng. 541. ✓
 Addison vs. Crow, 5 Dana, 271.
 Hayden vs. Dunlop, 3 Bibb, 216.
 Givan vs. Doe, 5 Black. 262.
 Burroughs vs. Wright, 15 Vermt. 619. ✓
 Hammeth vs. Wyman, 9 Mass. 138.
 Davis vs. Maynard " " 242.
 Williams vs. Amory, 14 Mass. 20.
 Wellington vs. Gale, 13 Mass. 483.
 Jackson vs. Anderson, 4 Wend. 83.

Frost vs. Brown as M. Chas. N. Tr. ab. 1 Reg. 469
Lloyd vs. Anglin 7 " 428

VII.

A purchaser at a sheriff sale who has not paid the money, cannot protect himself against a prior claim of which he had no notice, or be considered a *bona fide* purchaser.

Swayze vs. Burk, 12 Peters, 11
 Bayley vs. French, 2 Pick. 586.
 Catlin vs. Jackson, 8 Johns. 520.
 Warring vs. Loomis, 4 Barb. S. C. R. 484.

VIII.

Where personal property is sold by an officer on execution and the property is not present at the sale; or where the statute requires an appraisement before sale on execution, and the property is not appraised; or where the statute requires an officer to make return of the writ, the particular manner in which he served it, as is required in Massachusetts, upon the writ, and the officer fails to make such return, or have property appraised or present at the sale, the sale is void. All the above acts are acts to be performed by the officer, or that he is bound to see performed, before he can sell the same, as he is required by our statute to

give notice of sale, although he may have a valid execution in his hands issued upon a valid judgment.

Lawrence Syndic vs. Young, 1 La. Ann. R. 297.
 Succession of Hilegsburg, 1 La. Ann. R. 340.
 Sheldon vs. Soper, 14 Johns. 353.
 United States vs. Slade, 2 Mason R. 71.
 Warring vs. Loomis, 4 Barb. Sup. Ct. Rep. 484.

I X.

Inadequacy of price is a good objection to a judicial sale if not made legally and fairly in other respects.

Nesbith vs. Dallum, 7 Gill. & John's. 494.
 Cooper vs. Galbraith, 3 Wash. C. C. 546.
 Hansford vs. Barbour, 3 A. K. Marsh. 515.
 Cowen vs. Stevens, 3 Harring. 494.
 Cowgil vs. Cahoon, " " 23.

X.

There is no grounds for a new trial on the ground of newly discovered evidence. The affidavit does not show diligence, because the money was paid by Ead's and was in issue by the pleadings, and if Richmond knew when the money was paid by Eads, Eads ought to have known that fact of his own knowledge, and the money was paid to the sheriff or his deputy, and the fact was known by others besides Richmond; besides there was evidence upon that point on the trial.

Crozier vs. Cooper, 14 Ill. 141.
 Schlencker *et al.* vs. Risley, 3 Scam. 483.

X I.

Notwithstanding it is the policy of the law to sustain judicial sales, yet a *defendant in Execution* may take advantage of irregularities in the sale between him and the *purchaser with notice*, when the question of title by such sale is directly in issue. Authorities above cited.

A. TYLER,
Attorney of Appellee.

150 27
Bads
m
Conse

Appella Brief

Filed May 10. 1864.
L. Leland
Clk.

State of Illinois }
 Knox County }

September Term A.D. 1862.

Plas before the Hon Charles B. Lawrence
 Judge of the Sixth Judicial Circuit of the State of
 Illinois at a Court begun and held at the Court House
 in the City of Knoxville in said County on Monday
 the 24th day of September in the year of Our Lord one
 thousand Eight hundred and Sixty two, being the
 fourth Monday of said month

Present: Hon. Charles B. Lawrence Judge
 James H. Stuart, State Attorney
 John H. Smith Clerk

E. C. Smith Sheriff, by Wm McEwan Esqy,
 Court opened by Proclamation

State of Illinois, }
 Knox County. }

The People of the State of Illinois.

TO THE SHERIFF OF

Knox

COUNTY. GREETING:

WE COMMAND YOU TO SUMMON

John Eads

if he may be found in your County, to appear before the Circuit Court of said County of Knox, on the first day of the next
 term thereof, to be holden at the Court House in Knoxville, on the 4th Monday in the month of

September 1862 next, to answer unto Alfred Jones in a Plea
 of Tresser to the damage of said Plaintiff five
 hundred dollars (as he says)

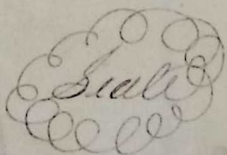
and make return of this writ, with an endorsement of the time and manner of serving the same, on or before the first day of the
 term of said Court to be held as aforesaid.

WITNESS, JOHN H. LEWIS, Clerk of our said Court,

and the Seal thereof, at Knoxville, this

day of August A. D., 1862.

John H. Lewis, Clerk.



KNOX CIRCUIT COURT.

Sept Term. A. D., 186*2*.

Alfred Barnes Pl'tt.

vs.

John Eads Def't.

Summons for

Filed this *8th* day of
Sept A. D., 186*2*.
J. H. Eads CLERK.

Sheriff's Fees.

Service, \$ *00*

1 Miles travel, *0*

Copies,

Return, *10*

E. C. Pratt *8. 60*
Sheriff Knox Co.

I Served the within Summons by reading the same to the within named

John Eads

this

2

day of

September A. D., 186*2*;

at court held in my county

E. C. Pratt

Sheriff of Knox County, Ill.

By *Alfred M. Eads* Deputy Sheriff

State of Illinois }
County of Knox } Knox Circuit Court
Sept Term A.D. 1862,

Alfred Cause the Plff. in this suit
Complainant of John Eads the Def. in this suit who
has been summoned to answer the Plff. in an action
of Tress,

In Chap: Whereas the said Plff. heretofore to wit:
on the 28th day of July A.D. 1862 to wit at the County
of Knox and State of Illinois was lawfully possessed
as of his own property of four bushels of Corn of great
value to wit of the value of two hundred and fifty dollars
and ^{being} so possessed thereof he, the said Plff. afterwards to wit
on the day and year just aforesaid Casually lost
the said four bushels of Corn out of his possession and
the same afterwards to wit on the day and year last
aforesaid came to the possession of the said Def. by
finding. Yet the said Def. well knowing the said
Corn to be the property of the said Plff. and of right
to belong and appertain to him but contriving and
fraudulently intending craftily and subtilly to
deceive and defraud the said Plff. in this behalf
has not as yet delivered the said bushels of Corn or
either of them or any part thereof to the said Plff.
although often requested by him so to do and has hitherto
wholly refused so to do and afterwards to wit on the
28th day of July A.D. 1862 converted and disposed of
the said Corn to his own use to wit at the County of
Knox and State of Illinois aforesaid.

And whereas also the said Plff. afterwards to wit
on the 28th day of July A.D. 1862 to wit at the
said County of Knox was lawfully possessed as of
his own property of certain other Corn to wit:

Twelve hundred bushell of Corn in the Ear of great
 value to wit of the value of two hundred and fifty
 dollars. and being so possessed thereof by the said
 Plff. afterwards to wit. on the 28th day of July 1862
 casually lost the said Corn out of his possession and
 the same afterwards to wit on the day and year last
 aforesaid came to the possession of the deft. by finding
 Yet the said deft well knowing the said Corn to be
 the property of the said Plff. and of right to belong to
 appertain to him but contriving and fraudulently
 intending craftily and subtly to deceive and
 defraud the said Plff. in this behalf has not as
 yet delivered the said Corn or any part thereof to
 the said Plff. though often requested so to do by
 said Plff. and has hitherto wholly refused so
 to do and afterwards to wit on the 20th day of
 August 1862 converted and disposed of the
 said Corn to his own use, to wit at the County of
 Monroe aforesaid, to the Plffs damage of five hun-
 dred dollars and thereupon he brings his suit
 &c

W. Tyler Atty. for Plff.

Filed Sept 3/62.

J. H. Davis Clerk

State of Illinois

Monroe County

Monroe Circuit Court

Sept Term 1862

Alfred Comer

vs

John Eads

Defendant

And now comes the said defendant

and defends the force and injury when he and says he is not guilty of the said supposed finding and converting the goods and chattels above laid to his charge or any or either of them or any part thereof in manner and form as the said plaintiff hath above charged complained against him and of this defendant puts himself upon the country.

Douglas W Craig
Attys for def.
And the said Off with the
like W. Tyler atty of Off.

And for a further Plea in this behalf leave of the Court first had and obtained; defendant says actio non because he says at the time when &c the said property, goods and chattels described in plaintiffs declaration were not the property, goods and chattels of said plaintiff, but were the property of defendant and of this he puts himself upon the country.

Douglas W Craig
Attys for Def.
And the said Off with the
like W. Tyler atty of Off.

And for a further plea in this behalf said defendant, leave of the Court first had and obtained defendant says actio non because he says that hereupon writ on the 1st day of July 1862 John W. Davis clerk of the Circuit Court of Maine Co. Ill. issued a fieri facias under the seal of said Court in due form of law upon a judgment for costs which before this time had been rendered in Maine Circuit Court in case of Alfred Ames vs. John Eads &c. for the sum of \$25.00 which said fieri facias was on the 1st day of July 1862, delivered to E. C. Smith Sheriff of Maine County to

5- execute. And which said fee bill commanded said Sheriff to cause the same to be levied on the goods and chattels, lands and tenements of the said Alfred House

Which said fee bill was by said Sheriff by J. B. Green Deft Sheriff on, to wit, the 28th day of July AD 1862 levied upon the land and property of Alfred House described in Plff declaration and as the property of said Alfred House and that said property was then and there subject to levy sale on said fee bill.

And afterwards to wit on the 8th day of August AD 1862 and before suit brought, said land described in Plaintiffs declaration was by virtue of said levy and fee bill sold at public vendue in said County by said Sheriff by Wm McGowan his deputy three cribs of ^{said} corn to John Eans defendant and a part of a crib to Elkana Moon. they bring the highest and best bidders and that said property was then subject to said sale therefor and said part of crib was sold to apts by said Moon before suit brought.

And afterwards to wit on the 10th day of August AD 1862, defendant as such purchaser of said corn took the same as he had a right to do and this was the only finding, taking and conveying of the corn mentioned and described in Plaintiffs declaration and this defendant is ready to satisfy whereupon he prays judgment.

Douglas & Craig
Attys for Def.

"Filed Sept 24/62.

J. B. Green etc"

6

State of Illinois

Kane County ss.

Kane Circuit Court

Sept Term AD 1862

Alfred Couse

vs

John Eads

Prover

And the said Plff by A Tyler his
 Atty. Comes and defends the wrongs and injury whereto
 and says that the said Plea of the said deft.
 3^dly above pleaded is not sufficient in law in
 manner and form as the same is pleaded to bar
 the said plff. from having and maintaining
 his aforesaid action there against the said deft.
 and this he is ready to verify whereupon he prays
 Judgment &c.

A Tyler

Atty for the Plff.

Filed Sept 25/62

J. H. Lewis Clk

State of Illinois

Kane County ss.

Kane Circuit Court

Sept Term AD 1862

Alfred Couse

vs

John Eads

Prover

And the ^{said} Plff. for Replication to
 said 3^d Plea of said deft. says Exclude non
 because he says that the gun bill was issued and
 levied, neither was the said Com sold to said
 Eads and Moon as alleged in said plea and

7 of this the said Pff. puts himself upon the Country
 &c
 Defts as the like } W Tyler
 D^{ca} Craig } Atty for Pff.

2 And for further Replication to said 3^d Plea the
 said Pff. says Procludi non because he says that
 the said deft did not have a right to take said
 Corn as alleged in said Plea and of this
 the Pff. puts himself upon the Country &c,
 Defts as the like } W Tyler
 D^{ca} Craig } Atty for Pff.

3 And for further Replication to said 3^d Plea the said
 Pff. says Procludi non, because he says that the
 said property or Corn sold was not liable to levy
 and sale at the time it was sold by the said officer
 and of this ^{they} puts themselves upon the Country &c
 Defts as the like } W Tyler
 D^{ca} Craig } Atty for Atty, Pff.

4 And for further Replication to said 3^d Plea the said
 Pff. says Procludi non because he says that said
 sale was void in this that there was no legal notice
 of sale given and that the money was not paid to
 the officer on said sale by said ^{John} Eads until after
 the money by the said house or his Agent was offered
 to the Sheriff & refused by him in payment of the fee
 bill in full and before the property or Corn was removed
 by said Eads all of which the said Eads had notice
 before he paid said money to the Sheriff and this the
 said Pff. is ready to verify whereupon he prays Judgment &c
 W Tyler Atty for Pff.

Cause }
 30
 Eads } Defendant comes and demurs to the
 Plaintiff's 4th Replication to defts 3^d plea and
 says he is not bound in law to answer the same
 Douglass & Craig
 for deft

Special Cause
 The Replication is double

Cause }
 4
 Eads } Rejoinder to Pffs & Replication

And now comes the defendant by way
 of rejoinder to Pffs & replication says legal notice
 was given of said sale and he was not notified
 before he paid the money for the corn that no legal
 notice of the sale was given and of this he puts
 himself upon the country &c

Filed Sept 27/62
 J. H. Lewis Clk
 Douglass & Craig
 Attys for Deft

House Circuit Court Sept Term AD 1862
 House County State of Illinois ss.

Alfred Cause }
 40
 John Eads } Given

5th And for further Replication to the
 3^d Plea of the said deft. above pleaded the

7

said Pff says *procludi non*. because he says that at the time of the issuing of said fee bill in said Plea mentioned he was the owner in fee simple of lot No 11 in Block No 23 in the town of Yates City in said Boone County and also another lot in said town unincumbered that said property was worth more than enough to satisfy said fee bill that the said Pff did not reside upon the same that the title to said property in lot no 11 was in him on record in the records office of said Boone County and that said lot Eleven was worth the sum of fifty dollars and more than the amount claimed in said fee bill that the Sheriff of said County did not notify the said Pff, or his atty. of the issuing of said fee bill, the attorney resided in said County and was his attorney in the suit in which the fee bill was issued and in another suit and in all his matters as attorney at law and was specially authorized to pay said fee bill for the Pff. the fact that he was his attorney and was specially authorized to pay said fee bill was known to the Sheriff and deft at the time of the sale and before the money was paid by said Eads on said sale. that the said lots were liable to levy and sale on said fee bill, that the deft. had notice of the said facts before and at the time of the payment of the money on said sale all of which the said Pff. is ready to verify wherefore he prays Judgment &c

A Tyler atty for Pff.

And for further Replication to said 3^d Plea of said deft says *procludi non* because he

10 Says that he was at the time of the issuing of said
Jus bill the owner in fee simple of the following
real Estate to wit: S.E. 1/4 of Sect 19 in Township
11 N. 3 East and 33 acres off of the West End
of the East 3/8 acres of the S.E. 1/4 of S.E. 1/4 of
Sect 19 in said Township and Range also 37 acres
off of the N. End of the East 1/2 of the said South
West 1/4 of Sect 19 in Town Eleven N. 3 East in
said County that he did not reside on the same
that the title was in him on record at the time of
the issuing of said Jus bill and that they was of
sufficient value to satisfy said Jus bill and
above all incumbrances on the same that he
was not notified of the Existence of said Jus
bill, before it was levied. that said Real Estate
was liable to be sold in said Jus bill that he
had an Atty. at law in said County known to
the said Sheriff to be his Atty. in this matter that
said Atty. was specially authorized to pay for
him said Jus bill that the Sheriff and Atty.
before the money was paid to said Sheriff by
said Atty. upon said sale in said Jus bill had
notice of the above facts all of which the said
Plff. is ready to verify wherefore he prays Judg-
ment &c.

C. Tyler Atty for Plff

Filed Sept 29¹⁸⁶² by order of Court.

J. H. Lewis Clerk

Alfred Cowen }
John Ends } Anne Circuit Court
Filed Term Oct 1863
And now comes the defendant and for

11 demurr to Each of the defendants 5th & 6th
replications and each of them on file in this
cause says that Each of said replications are
insufficient in law to be answered unto and
that the defendant is not bound in law to answer
either of them and that the plaintiff ought not
to recover in this action by reason of anything
in either of said replications stated wherefore
he prays Judgment of Each of said replications &c

Filed Feb 19/63

J. H. Lewis Att'y

Douglas
For deft

At Court }
to } Dover New Circuit Court
John Cass } February Term 1863

And now comes and for rejoinder to Plaintiff's
5th and 6th Replications herein says act's now
because he says that each and every of said
replications and all the allegations therein are
 untrue and of this he puts himself upon the
country &c

Att. doth the like

Tyler for Plff

Filed Feb 24/63

J. H. Lewis Att'y

Douglas for Crain
att'y

per Thier

Alfred House }
 vs } Proven
 John Eads }

If the Jury believe from the Evidence that the property or Corn in Controversy was the property of the Plff. at the time of the Commencement of this suit and was taken by the deft. and that the Plff made a demand for the same before the Commencement of this suit. of said deft. & that the deft neglected or refused to deliver the Corn to the Plff. or had converted the same to his own use the Jury will find for the Plff the value of the Corn

2^d If the Jury believe from the Evidence that the Sheriff who sold the Corn in Question in this suit upon the writ in Evidence failed to give previous notice of such sale for at least ten days successively by posting up written or printed notices thereof in three of the most public places in the County where such sale was to be made specifying the time and place where such Corn was to be sold. and that the deft before he paid the money to the Sheriff on said sale had notice of such failure to give such notice then the Jury will consider the sale under the writ invalid

3^d If the Jury believe from the Evidence that one or two of the three notices posted by the Sheriff for the sale of the Corn in Question on said writ stated that the sale of the Corn would be at the residence

- 13 of S. Anderson $\frac{3}{4}$ mile N.W. of Wilson and at the front door of the Court House in Knoxville at the same time such notice would not be a legal notice of the place of sale. And if the Jury further believe from the Evidence that the Plff. cause by R.W. Sanford or Cass Tyler offered to pay the fee bill in full to the Sheriff or his deputy before the money was paid by said Eads on such sale and that said Asst. Eads had notice of these facts before he paid the money on such sale under said fee bill then the Jury will find such sale under said fee bill invalid. And if they believe further from the Evidence that the property was the Plffs. at the time of the Commencement of this suit and was taken by deft. and he refused to deliver it to Plff upon demand made on him for the same before the Commencement of this suit the Jury will find the deft guilty and assess the damages at the value of the item taken at the time it was taken.

Filed June 3/63

J. H. Lewis Clerk

Defts Instructions

- 2 The Jury is instructed that irregularity on the part of the Sheriff in advertising property for sale under an execution or fee bill will not invalidate the sale so as to effect the title to the property in the hands of the purchaser but if no legal notice of the sale is given and

14 the purchaser has notice of such fact before paying the purchase money then the sale is invalid,

The Jury is instructed that the fact that the Com sold for less than its value is not a matter for the Jury to consider in determining the rights of the Plaintiff to recover in this action,

5. The Jury is instructed that the return of the Sheriff endorsed on the back of the fee bill shown in evidence is prima facie of the facts stated in the return

"Filed June 3/63
J. H. Ellis Clk"

1. The Jury is instructed that the notice of the sale of the Com shown in evidence is a valid and legal notice of such sale at the house of S. Anderson.

3. The Jury is instructed that the law is that the title passes to the purchaser of personal property at a Sheriff's sale whenever the property is stricken off to the purchaser, unless the purchaser refuses payment and the fact that the Sheriff said to the defendant in this suit that he could pay any time for the Com and payment was delayed, did not prevent the title from passing and if the Sheriff gave time for payment the title would pass to the purchaser and the Sheriff would be liable for the amount of the bid,

6th The Jury is instructed that the offer of Com or

15-

Repared

any one for him to pay to the Sheriff the amount of the fee bill after the property was sold is immaterial in this controversy. Even though the jury believe from the evidence that Ends had notice before he paid the amount of his bid and after the sale of such offer to pay and of the contents of the notice of sale. That the offer to pay the fee bill or any defect in the notice of sale or both would not defeat the sale and prevent the title to the land from passing to the purchaser unless the purchaser knew before the sale of such a defect in the notice as would make the notice void.

Filed June 3/63
J. W. Ends Atty

110

Sept 22d 1862 Present same as of first day of this Term
Alfred House }
 vs }
John Ends } Prover

This day came the defendant by attorney and moved the Court to dismiss this suit for want of bond for costs.

110

Sept 27th 1862 Present same as before stated
Alfred House }
 vs }
John Ends } Prover

This day again came the defendant by his attorney and filed his answer to Plaintiff's fourth replication to defendant's third plea. Verdict and the Court having heard said answer.

it is ordered that the same be sustained, Thereupon
on plaintiff's motion, it is ordered by the court that
the plaintiff have leave to amend replication

State of Illinois
Kane County

February Term A.D. 1863.

Plas before the Hon. Charles B. Lawrence
Judge of the Fifth Judicial Circuit of the State of
Illinois at a Court begun and held at the Court House
in the City of Knoxville in said County on Monday
the 16th day of February A.D. 1863 being the third
Monday of said month

Present
Hon. Charles B. Lawrence Judge
James H. Stewart State Attorney
John H. Stuns Clerk
J. Calvin Lewis Sheriff

Court opened by proclamation,

Feb 19th 1863. Present same as of the first day.

Alfred Cowie }
50 }
John Eads } Present

This day came the defendant by attorney
and filed his answer to plaintiff's fifth & sixth
replications herein,

Feb 23 1863 Present same as of the first day

Alfred Cowie }
50 }
John Eads } Present

This day came the Plaintiff by

* Order by the Court 17th all motions or pleas of judgment and for new trials not otherwise
disposed of by the Court, Ordered by the Court that all pleas not otherwise
disposed of be taken as admissions against the losing party, Ordered that all suits on
Common Law or Chancery not otherwise disposed of be continued until the next term
of this Court. Ordered that every adjournment be in person.

Order of the Court that all motions in arrest of judgments and for new trials
 be awarded not otherwise disposed of.
 Order that all writs not otherwise awarded be referred to the logging party or parties
 Order that all writs at law or in Chancery not otherwise disposed of be over-
 ruled until the next term of this Court.
 Order that Court adjourn until June 1st 1863.

attorney and moved the Court for a continuance herein
 whereupon it was ordered by the Court that the plaintiff
 file his affidavit therefor by the coming in of Court this
 afternoon. Thereupon came the defendant and confessed
 said motion, when it was ordered by the Court that
 this suit be continued until the next term of this Court
 at the plaintiff's costs. It is therefore considered by the
 Court that the defendant recover of the plaintiff his
 costs by him in this suit expended at the present
 term of this Court and may have execution therefor.

State of Illinois } June Term A.D. 1863.
 Kane County }

Pleas before the Hon. Chas. B. Lawrence
 Judge of the Fifth Judicial Circuit of the State of
 Illinois at a Court begun and held at the Court
 House in the City of Hannibal in said County on the
 First Monday in the month of June in the year of our
 Lord one thousand eight hundred and sixty three
 being the first day of said month.

Present:

Hon. Charles B. Lawrence Judge

James H. Stewart State Attorney

John W. Lewis Clerk

J. Calvin Lewis Sheriff

Court opened by proclamation:

June 20 1863. Present: same as of the 1st day.

Alfred Bauer

39

vs

John Eads

} Term

This day came the parties and their
 attorneys and issues being joined for trial first summer

18

upon the County. Thereupon came a Jury to wit: James
Grimesy, Samuel Elze, Owen Petterson, John Gibson
Saul McCormack, T. W. Hammond and Saul Hitchcock
J. H. Stephens, Joseph Summers, David Taylor, G.
F. Reynolds and And E. Gale who being duly
elected tried and sworn well and truly to try the
issue joined. After hearing a portion of the evidence
were permitted to separate under instructions from the
court and required to meet the court at half past
eight o'clock to-morrow morning.

June 30th A.D. 1863 Present same as of the first day
Alfred Course

39

John Eads } sworn

This day again came the parties and their
attornies and also came the Jury heretofore empanelled
herin who after hearing the argument of counsel upon
their oaths do say. "We the Jury find the defendant
guilty and award the plaintiffs damages at the sum
of One Hundred and Seven dollars and eighty Cents.

June 4th A.D. 1863. Present same as of the first day.

39

Alfred Course } sworn
John Eads }

And now came the defendant by his
attorney and moved the court for a new trial and
in arrest of Judgment herin.

19 June 5th 1863, Present same as of the 1st day
Alfred Courie

39 20 } Town
John Eads

This day came the plaintiff by attorney and
entered a writ of (\$27.80) Tuncy Town Two dollars
on the verdict rendered against the defendant Herrin,
and the Court having ^{heard} the defendant's motion for a
new trial and in arrest of Judgment Herrin it is
ordered that the same be awarded. It is therefore consid-
ered that the plaintiff recover of the defendant the
sum of Eighty dollars the amount of his damages
awarded by the Jury aforesaid. And the writ of Tuncy
together with his costs by him in this suit expended
and may have execution therefor.

Thereupon came the defendant by attorney and
prayed an appeal to the supreme Court and the
Court having heard said prayer it is ordered that
the same be allowed. upon the defendant filing with
the Clerk by agreement a good and sufficient
appeal bond in the sum \$500 within thirty days
of the date hereof, and by agreement that bill of
exceptions be filed within 30 days of the date hereof.

Ordered by the Court that all motions in arrest of Judgment and
for new trials be awarded not otherwise disposed of.

Ordered that all suits not otherwise taxed be assessed
against the losing party or parties.

Ordered that all suits at law or in Chancery not otherwise
disposed of be continued until the next term of this
Court.

Ordered that Court adjourn until Court in June

The Jury find the defendant guilty and
 assess the plaintiffs damages at the sum of one
 hundred and seven dollars and eighty cents,
 Filed June 3/63
 J. H. Lewis Clk

State of Illinois }
 Monroe County } Monroe Circuit Court
 June Term A.D. 1863

Alfred Cause }
 vs }
 John Eads } Jurors.

Be it remembered that at this term of this
 Court this Cause came on to be tried upon the issue. Verdict
 and a Jury was duly called, tried and sworn, and the
 Plaintiff to maintain the issue on his part called George
 Miller as a witness who being sworn testified that
 on the 21st day of August last the Plaintiff said to
 the defendant "He wanted the Corn he took of his it
 was at Eads Store not far from 9 acres and Eads said
 he had sold it."

The Plaintiff called Samuel B. Anderson who being
 duly sworn testified said the paper shown to him
 was signed by him (the paper shown the witness
 was the bill of sale set out in this bill of exceptions)
 Eads took an acre and cut the rails to the end and
 let the land on to the ground. For any way
 came with him. There were eight hundred and
 forty two bushels of the land in the four ends.

(6)

21 when I measured it. It was taken by Eads in August 1862. Eads was there when they commenced hauling the corn away. Somebody wrote it all. I did not know all the men supposed they were his ^{men}. Corn was then worth 18 cents in the ear. They were there buying corn at Union some of the corn was hauled another way. The corn in the bins was the same as that described in the bill of sale to Lewis. No corn had been used out of the bins after I measured it until it was taken away by Eads except as the rats had used ^{it} or it had wasted.

Leop. Examined said he measured the Corn on the 27th day of August 1861. The Corn was in Lewis' possession, Lewis in 1861 lived at my house a part of the time. On the 27 August Lewis lived along the line of the Railroad from Bond to Vicksburg. On 27 August he finally lived East of the Illinois river and still as far as I know. Lewis boarded with me a part of the time. The Corn was at my house. I did not then own the farm.

Plaintiff offered in Evidence a certain bill of sale of personal property referred to in the Evidence of Samuel B. Anderson which was read to the Jury and is in the following words:

"Know all men by these presents that I Samuel B. Anderson of New Creek Town County State of Illinois in Consideration of fourteen hundred & twenty two dollars (\$1412.00) to me in hand paid by Alfred Lewis of Livingston County Illinois have this day sold and delivered to said Alfred Lewis the following property to wit: Fifty tons of run hay on the farm I now live

CLERK

22

in & Eight hundred forty three bushels Corn in the
 Ear in Cobs in the farm aforesaid also fifty six acres
 of Corn standing in the fields growing in farm aforesaid
 & Ninety thousand Bushels of Ear Corn in Cobs in
 farm S.E. (28) (11) north three East occupied by Richard
 Warner. Also thirty acres of Standing Corn growing in
 the aforesaid farm. Also One thousand bushels of Ear
 Corn in ware house in Gibson. Also the ware house
 situated in Gibson in front of lots Seven and Eight
 in Block fifteen Also one Hay press at Knoxville
 also one pair of platform scales in ware house.
 In witness whereof I have set my hand and seal
 this twenty seventh day of August 1861
 Signed & sealed in the
 presence of } S. B. Anderson Seal
 W. H. Eastman }

State of Illinois, } ss.
 KNOX COUNTY. }
 and for the said County of Knox, and State aforesaid, do hereby certify that the within and foregoing Instrument of Writing
 was filed for record on the 27 day of March, A. D., 1862,
 at 6 o'clock, P. M., and duly recorded in Volume 8 of Ch. Mortgages, on page 386.
 IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court,
 at Knoxville, the day and date aforesaid.
 J. H. Lewis, Clerk.
 By J. M. Gibson, Deputy Clerk.

The Plaintiff rested his case
 and the defendant to maintain the issue in his
 part offered in evidence and read to the jury
 a certain fee bill issued out of this Court in
 the case of Alfred Lane against John Elias & Hannah &
 Eads & the Sheriff return thereon which is in the following words & figures

23 *Alfred Cramer*

VS.

*Appeal**John Cass et al**Plffs Resp*

*Ent ap 15 doc suit 10 file ap 50 Spue
 June 35 file 3 pas 10 Spue 3 pa file 40
 late bond 40, Spue superseded 35
 Bill of Costs 30 Copy 20 Cert Seal 35
 E. C. Both Shff fee on Sum*

Defts Costs

*Ent ap 15 file 3 pas 10 Sp 35 late file
 3 with, ap 45, ins. to dismiss at Plffs
 Costs 20 ord for Jugh 20 Ord Recovery 20 ord
 for Ec 20 Ent final Judgment 25 Spue
 Ent file fee 45 doc 10 Ent file Shff Res 15
 Ser 15 Bill of Costs 30 Copy 20 Cert
 seal 35*

*E. C. Both Shff fee**E Richmond 100**W H Eastman**M D Cooke P.M. fee (below) less 75 ct**Jury Fee no name**W Smith Court fee**E Moore**J. Lammie Shff fee*

3 20

1 20

3 80

2 10

2 00

1 00

3 00

4 90

1 50

1 77

2 47

50

11 14

24 44

I HEREBY CERTIFY the foregoing to be a true copy from my Fee Book of

costs herein.

CLERK.

STATE OF ILLINOIS,

KNOX COUNTY.

The People of the State of Illinois to the Sheriff of said County, GREETING:
 WE COMMAND YOU, That if the within Fee Bill, amounting to *Twenty four*
 dollars and *44* cents, shall not be paid within
 thirty days after being by you demanded, you cause the same to be levied on the Goods and Chattels, Lands
 and Tenements of the said *Alfred Cramer*

in your County, according to the Statute in such case made and provided. And make return of this writ
 within ninety days, as the law directs, with an indorsement hereon in what manner you shall have executed
 the same.

WITNESS, JOHN H. LEWIS, Clerk of the Circuit Court of said County, and the Seal thereof, at
 Knoxville, in said County, this *22* day of *July*
 A. D. 1862

CLERK.

Rec'd July 1st 1862 E. C. Broth Sheriff By J. L. Cowen Deput

DEED BILL

Knox County Circuit Court.

C. Cowen

John Eads

20

Costs, \$ 24.44

Filed July 18th 1862 A. D. 1862

Dr. W. McMan CLERK.

ATTORNEY.

FEES—Levyng Execution,	50
Advertising Property,	25
6 Miles Travel,	60
Commission on \$ 16.00	48
Return of Execution,	10
Total,	\$ 193

CURRY, PAGE & HORTON, Stationers, 125 & 130 Lake St., Chicago.

And by virtue of the within command I did this 2nd day of July A.D. 1862 levy upon the following described personal property to wit four cribs of corn now at or in the yard of Samuel Anderson about 3/4 of a mile north west of Gilsum being about one thousand bushels of corn more or less.

E. C. Broth Sheriff

By J. L. Cowen Deput

And having duly advertised the said described corn by posting up three notices in three public places in my county I did on the 8th day of August A.D. 1862 in accordance with said notice proceed to offer the same for sale at public Auction at the premises of Samuel B. Anderson in Monroe County leaving offered the said corn for sale by the bushel and not receiving any bid therefor I then offered the same by the crib and John Eads having bid the sum of five dollars for the west crib the same was struck off to him at that price & five dollars each for the other two cribs the said Eads being the highest & best bidder therefor I then offered the balance of said corn and Elkanah Moore having bid one dollar for the same the same was struck off to him at that price making in all the sum of sixteen dollars

Monroe August 8 1862

E. C. Broth Sheriff

By Wm McMan Deput

Retained \$5.23 my fees and paid to clerk \$10.77 the balance collected on this bill and return the same satisfied in part

E. C. Broth Sheriff

By Wm McMan Deput

25 The Plaintiff in open court waived the production and proof of the judgment on which the fee bill filed

Defendant offered as a witness George Picknell who being duly sworn testified. I suppose I know the Com. I reside at Gilson It is one a half mile from Gilson to the house of Samuel B. Anderson, Pierce was the weighing of this Com and stored it at Gilson in my own house Its weight was 709 bushels when the Com was hauled it was worth thirteen Cents in the Ear. I was dealing in Com and knew the market price. It was worth from one to one & a half ^{cents} to haul it from Anderson to the Gilson Railroad Station. Gilson was the market for Com in that section at that time. The Com was brought there in August 1862. I bought the Com a month after.

Woodford Pierce sworn for the deft said I weighed the Com I was brought to Gilson & weighed on the 12th 13th & 15th days of August 1862 I weighed 709 bushels that is the Com I was sold at Gilson. P. Connor. Dan Fol. & John Fol. William T. Gay and two of the Agans hauled it.

Charles Agan sworn for the defendant testified I hauled this Com three days from S. B. Andersons house I dont know of any Com being hauled any where else but to Gilson four teams hauled the first day and I & Melius hauled all that was hauled after the first day

Prof. Examined said. the Com was hauled from
S. B. Anderson to Gilson and knows that any
was hauled to any place but to Gilson. there
were three crabs and a piece of a crab.

Here the defendant rested his case.

P. W. Sanford was then offered as a witness & testified
under oath & protests. He said (the witness looking
at the Sheriff's notice of sale of the Com) S. B. Anderson
came to my office and spoke of the sale of the
Com. He brought this notice of sale to me & we talked
about it & he advised with me. On the same day
viz August last. I went to McLinnan the deputy
Sheriff & asked him if he would receive the money on
the ju. bill against Comse & I said if he would receive
it I would pay it. He said he did not know he
would see me & he said something about
seeing both the Sheriff who was absent. This was
after the day of sale stated in the notice & I think
one day after.

Prof. Examined said. I did not call on Sunday on
McLinnan. I did not offer the money that is I
did not count it out or take it from my pocket &
never offered it afterwards. I did not have gold
and silver to pay it. I had no authority from
Comse to do this. I had the money in my pocket
and offered to pay it if McLinnan would receive it.
I would have paid it in gold and silver if insisted
upon. Anderson had requested me to pay it for
Comse. I had no direct authority from Comse.
Tyler at the time of this conversation had been

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gone to Chicago one or two weeks and returned two or three days after. To the giving the evidence of P.H. Sanford the defendant at the time of giving the same objected and the Court overruled the defendants objections and the witness testified to the decision of the Court in overruling the defendants objection the defendant then and there in open Court Excepted and objected.

William McGowan was sworn in the part of the Plaintiff and testified. This notice shown witness is one of the notices of sale. This is one of the notices posted in the Sheriff's Office. I made the sale, I saw no notice of the sale until after the sale. On the morning of the sale both the Sheriff came to me and told me to go and make the sale. I was deputy Sheriff. A day or two after I was paying Sanford's office and called in & conversation came up as to the sale & something was said about the notice not being good & went to Sheriff's Office & saw this notice. We then talked & I said I did not know whether it was good or not this was one or two days after the sale. Sanford said they (but did not say who) would pay the fee bill. I think probably I might have said could not do it but can't say whether I said or not. Both was not at home. Think I deferred doing anything until Both came home. I talked with Tyler afterwards. I don't recollect as he offered to pay the money on the fee bill. I don't know as I went to see Eads before he paid the money on the sale for the Corn. I don't know that I went to see Eads & told him about the defect in the notice.

I told Arthur Eads or Craig my impression as I saw Craig & think then the money had not been paid by Eads, this was after Sanford talked to me with me. Eads paid the money a day or two after Sanford talked with me. I think the money was not paid by Eads until after Tyler got home I can't say Eads had notice of the defect in the notice in the notice before he paid me the money on the sale I did not show the notice to Eads or any one I cannot say I talked with Eads or Eads with Barth I notified Eads or Craig of the defect in the notice and can't say which.

Defendant objected to all the evidence given by Mc Lannan at the time it was given & the Court overruled the objection & permitted him to testify and the defendant then and there to the opinion of the Court in overruling said objection then and there excepted and objected.

Imp. Examined. I did talk to Craig or Eads as to anything only defect in notice. I can't say anything was said about the offer to pay the money. Money was paid by Eads I can't say when it was some days after the sale.

J. C. Cover sworn for Plaintiff testified I was deputy Sheriff of Boone County in August 1882 this notice shown the witness is one of the notices of sale, Tyler did not offer the money the money to me in the free bid. He said he would pay it. This was the next day after he came home I told Tyler I could not take the money and go to

29 Mr. McMan. I went to Eads and told him there was
some little defect in the notice & Tyler would pay
the fee bill. I told him he better let the sale
go & I feared a suit about it & he said he would
see Craig I don't know whether the money was
then paid by Eads or not. Bott was then at
Galzburg. I think I don't know I told Eads what
the defect in the notice was. When I talked with
Eads he said nothing about having paid the money.

The defendant at the time of giving of the evidence of
J. C. Kern objected to the giving of the same when
offered and the Court overruled the objection and
allowed the witness to testify and the defendant
then & there to the opinion of the Court in overruling
said objection then & there accepted and objected

J. C. Kern in Cnf Examination said I went to Eads
the day Bott was at Galzburg it was at Eads Store
& never had but one conversation with Eads about
it. Tyler returned from Chicago two or three days
after sale.

Mr. McMan recalled by Plaintiff said I know
Tyler acted or pretended to act for Kern by his
coming to me that is all I know about it.

S. B. Anderson recalled by the Plaintiff testified I
was authorized to pay taxes and fee bill for Kern
if it was necessary to pay them before he came
back. This authority was given me at the time
the suit was disposed of in which the fee bill was

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igned, I authorized Sanford to pay the money on the full the day after the sale.

The Plaintiff offered in evidence the Sheriff's notice of sale & the defendant objected to the same as evidence & the Court overruled the defendant's objection and the defendant then & there to the opinion of the Court in overruling said objection excepted & objected and the notice was read in evidence & is in the following written words & figures & printed as follows:

Sheriff's Sale.

By virtue of a Final Decree to me directed from the Circuit Court of Knox County, in favor of Whinn Alford Comrs was Jeff and John Eads Etal were left against

I have levied on the following described Personal property, to wit:

One Thousand Bushels of
corn more or less

which I will expose to public sale on the 8th day of August 1862, in the front door of the Court-House, in Knoxville, to the highest and best bidder for ready money. Sale to be between the hours of nine o'clock, A. M., and four o'clock, P. M.

Dated at Knoxville, this 28th day of July, 1862

E. C. Pratt, Sheriff of Knox County, Ill.

The foregoing is all the evidence given on the trial of this cause.

This is an original paper exhibited by the Judge on the 9th day of July

at the request of the Plaintiff the following instructions were given;

37

" Plffs Instructions

Alfred Conner

vs

John Eads

} Tmorr

If the Jury believe from the Evidence that the property or Corn in controversy was the property of the Plff at the time of the Commencement of this suit & was taken by the deft and that the Plff made a demand for the same before the Commencement of this suit of said deft and the deft neglected or refused to deliver the Corn to the plff or had converted the same to his own use the Jury will find for the Plff the value of the Corn

Given

2^d If the Jury believe from the Evidence that the Sheriff who sold the Corn in question in this suit upon the fee bill no Evidence failed to give previous notice of such sale for at least two days successively by putting up written or printed notices thereof in three of the most public places in the County where such sale was to be made specifying the time and place where such Corn was to be sold and that the deft before he paid the money to the sheriff on said sale had notice of such failure to give such notice then the Jury will consider the sale under the fee bill invalid.

Given

3^d If the Jury believe from the Evidence that one or more of the three notices posted by the Sheriff for the sale of the Corn in question of said fee bill stated that the sale of the Corn would be at

Given

the Residence of S. Anderson 74 route Nth of Union
and at the front door of the Court House in Annville.
at the same time such notice would not be a
legal notice of the place of sale. And if the Jury
further believe from the Evidence that the Plff consents
by R. H. Sanford or Aaron Tyler offered to pay the
fee bill in full to the Sheriff or his deputy before
the money was paid by the said Eads on such sale
and that ^{said} Deft Eads has notice of these facts before
he paid the money on such sale under said fee bill
then the Jury will find such sale under said fee
bill invalid. And if they believe further from the
Evidence that the property was the Plff at the time
of the Commencement of this suit & was taken by
deft and he refused to deliver it to Plff upon
demand made on him for the same before the
Commencement of this suit, the Jury will find
the deft guilty and award the damages at the
value of the team known at the time it was taken.

Filed June 3/63

J. H. Lewis Clerk

To the giving of said instructions as asked by Plaintiff
the defendants then and excepted & objected.

At the request of Defendant the Court gave the
following instructions

The Jury is instructed that irregularity in the
part of the Sheriff in advertising property for
sale under an execution or fee bill will not
invalidate the sale so as to effect the title to
the property in the hands of the purchaser but if no
legal notice of the sale is given and the purchaser has
notice of such fact before paying the purchase money then the sale is invalid.

Given

Given

The Jury is instructed that the fact that the Com sold for less than its value is not a matter for the Jury to consider in determining the right of the Plaintiff to recover in this action.

Given

The Jury is instructed that the Return of the Sheriff Endorsed on the back of the fee bill shown in evidence is prima facie of the facts stated in the return."

Filed June 3/63

J. H. Davis Clerk

The defendant asked the Court to give instructions following:

refused

1. "The Jury is instructed that the notice of the sale of the Com served in evidence is a valid and legal notice of such sale at the house of S. Anderson,

refused

2. The Jury is instructed that the law is that the title passes to the purchaser of personal property at a Sheriff's sale whenever the property is stricken off to the purchaser unless the purchaser refuses payment & the fact that the Sheriff said to the defendant in this suit that he could pay anytime for the Com & payment was delayed did not prevent the title from passing. If the Sheriff gave time for payment the title would pass to the purchaser & the Sheriff would be liable for the amount of the bid,

refused

3. The Jury is instructed that the offer of leave or any one for him to pay to the Sheriff the amount of the fee bill after the property was sold

is immaterial in this controversy. Even though the Jury believe from the evidence that Eads had notice before he paid the amount of his bid; And after the sale of such offer to pay and of the contents of the notice of sale. That the offer to pay the fee bill or any defect in the notice of sale or ~~but~~ would not defeat the sale & prevent the title to the corn from passing to the purchaser unless the purchaser knew before the sale of such a defect in the notice as would make the notice void."

"Filed June 3/63

J. W. Lewis Clerk"

And the Court then and there refused to give the instructions so asked by the defendant and the defendants then and there to the decision of the Court in refusing to give the last named instructions excepted and objected

Therefore the case was submitted to the Jury and a verdict found for the Plaintiff.

And the defendant then and there came & entered his motion for a new trial in the following words:

Alfred Case

vs
John Eads

} Second Circuit Court
June Term A.D. 1863.

And now comes the defendant and moves for a new trial in this cause for the following reasons.

- 1 Because the verdict is against the law and evidence
- 2 The Court erred in refusing instructions asked for def.

35 3 The Court ended in giving the instructions asked for the Plaintiff

4 The verdict is agt. the instructions given by the Court,

5 On the grounds of newly discovered Evidence

Douglas Ed Craig
for deft

"Filed June 4/63.

J. H. Lewis Clerk"

And the defendant in support of his motion for a new trial filed his Affidavit in the following words;

"State of Illinois

Stearns County

Stearns Circuit Court

June Term A.D. 1863

Alfred Lewis

vs

John Eads

} sworn.

John Eads the defendant being duly sworn doth depose and say that since this cause was tried he is informed and believes that he can prove on any future trial of this cause, if a new trial is granted herein by the Court, that he said Richmond was present at Stearns the time when the conversation testified to by J. L. Cover, a witness sworn in this cause, took place and that he can as he is informed & believes from information derived from said Richmond, since the trial in said cause prove by said Richmond that defendant had paid the amount of his bid on the Corn sold before said conversation took place between defendant and said Cover as to the notice of sale

as testified to by said Court, and that defendant
 had no knowledge or belief or information that he
 could make such jury by said Richmond route
 after this suit was submitted to the Jury and
 the Evidence closed & the verdict given by the Jury.
 And defendant knows of no other witness by
 which the same fact can be proven
 Subscribed & sworn to before John Eads
 me this 5th day of June 1863

John H. Eads

Sp. P.

Stamp 58
 June 5/63

John H. Eads

Wks. Sec. Court"

"Filed June 5/63

J. H. Eads Wks."

And the Court then and there overruled the said motion
 for a new trial and Judgment was rendered on the
 verdict for \$80.00, the Plaintiff having admitted
 the balance of the verdict.

And the defendant then and there in open
 Court at the time of announcing said motion for
 a new trial to the decision of the Court in overruling
 said motion for a new trial excepted & objected,

And as the matters aforesaid do not appear of record
 the Judges of said Court have caused this bill
 of Exceptions to be signed & sealed

U. B. Saunders Clerk

"Filed July 3/63

John H. Eads Wks."

37

Know all men by these presents that we John Eads and John H. Eads are held and firmly bound unto Alfred Lane, for the special sum of three hundred dollars lawful money of the United States for the payment of which well and truly to be made we said ourselves our heirs and administrators jointly, severally and jointly by these presents. Witness our hands & seals this 30th day of July A.D. 1863

The condition of this obligation is such that whereas the said Alfred Lane did on the 5th day of June A.D. 1863 recover a judgment against the above bounden John Eads in the Circuit Court within & for St. Louis County and State of Illinois for the sum of eighty dollars and costs of suit which said judgment was rendered at the June term of said Court A.D. 1863. And whereas the said John Eads has prayed and obtained an appeal from said judgment to the Supreme Court of said State,

Now if the said John Eads shall pay said judgment, costs, interest & all damages in case said judgment shall be affirmed & shall duly & diligently prosecute said appeal and shall duly & diligently prosecute said appeal then this obligation shall be void, but otherwise shall be & remain in full force and virtue

Stamp 509

John Eads Seal
John H. Eads Seal

Filed and approved this 30th day of June A.D. 1863
J. W. Lewis Clerk

State of Illinois
 Monroe County. I John H. Lewis Clerk of the
 Circuit Court within and for the County and State
 aforesaid do hereby certify that the foregoing is
 a true and correct ^{copy of the} record in the case
 of Alfred Chase against John Eads (Dover)
 as tried in the Monroe County Circuit Court in
 the State aforesaid, as the same appears from
 the Records of my office so much of the ^{recordings of the Supreme Court} ~~file~~ ^{as required under the}
 Statutes my hand and seal of said
 Court at my office in the City of Hannibal
 in the County and State aforesaid
 this 16th day of March A.D. 1864
 John H. Lewis Clk Ct
 Per Sam. S. Charles Dep. Clk



Supreme Court of the State of Illinois
 Of the April term 1864
 John Eads
 Plaintiff in error
 Alfred Chase
 Defendant in error
 Afterwards tried.

on the 3^d Monday of April
in this same Term before the
Justices of the Supreme Court
of Judicature of the People
of the State of Illinois at the
Court House in Ottawa comes
the said John Ends by Deputies
Hearings his Attorney says
that in the record of proceedings
aforesaid and also in the
giving of said judgment aforesaid
there is manifest error
in this Court.

1. The Court used in refusing to
grant a new trial

2 The verdict is against the Law & evidence

3 The Court used in refusing instructions
asked by Def^t

4 The Court used in giving instructions
asked by Plaintiff allowing improper
evidence

5 The Verdict is against instructions given

And the said John Ends prays that
the judgment aforesaid for the errors
aforesaid & other errors in the record
& proceedings aforesaid may be annulled
annulled & altogether held for nothing
so that he may be restored to all
things which he hath lost by

occasion of said judgment
Douglas & Co
Attys for Plaintiff

And now comes the said Alfred Cowen
Def. in Error by A. Tylor his atty. And says
there are no such Errors in the said
Cause or Record as alleged by the Plff
in Error and prays that the said Attys.
May in all things be affirmed and that
he may have judgment for costs &c

A. Tylor atty
for Def. in Error

150 27
John Eads
Alfred Cowen
Record & Errors

Filed Sept. 16. 1884.
A. Deland
Clerk.

per #1175-

STATE OF ILLINOIS.

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

APRIL TERM, A. D. 1864.

ALFRED COUSE, }
vs. } Trover.
JOHN EADS. }

Abstract of Record.

This was an action of Trover brought by Couse vs. Eads, on the 2d day of August, 1862, to recover for four cribs of corn.

2 Narr. in usual form.

4 1st Plea.—General issue.

4 2d Plea.—Property out of Plaintiff and in Defendant.

3d Plea.—John H. Lewis, clerk of circuit court of Knox county, Ill., issued a fee bill under the seal of said court, in due form of law, upon a judgment for costs before then rendered in said court, in case of Couse vs. John Eads and others, for \$24 44-100, which fee bill was delivered to E. C. Brott, sheriff of Knox county, to execute, on 1st day of July, 1862, which fee bill was by said sheriff, by J. C. Cover, his deputy, on the 28th day of July, 1862, levied upon the goods and property described in plaintiff's declaration; and afterwards, on 8th August, and before suit, said property was, by virtue of said levy and fee bill, sold at public vendue in said county by said sheriff, by McGowan, his deputy, three cribs to John Eads, defendant, and a part of a crib to Elkana Moore, they being the highest and best bidders; and said property was subject to sale, and the part of crib sold to defendant by Moore before suit; and on 10th day defend-

ant, as purchaser, took the corn, as he had a right to do; and this was the only finding, taking and converting in declaration.

1st Replication to 3d Plea—Fee bill not issued and levied, nor corn sold, and issue.

2d Replication.—Defendant did not have the right to take the corn, and issue.

3d Replication. Property not liable to levy and sale at time and issue.

4th Replication.—Sale was void because no proper notice of sale, and money not paid to officer by Eads until after the money, by Couse or his agent, was offered to sheriff, and refused, in payment of the fee bill in full, and before the property or corn was moved by Eads; of all of which said Eads had notice before he paid the money to sheriff.

Demurrer to 4th replication, overruled.

Rejoinder to 4th replication.—“Legal notice was given of sale, and defendant was not notified before he paid the money for the corn that no legal notice of the sale was given.” Issue.

5th Replication to 3d Plea.—“At the time of issuing fee bill, plaintiff was the owner in fee simple of lot No. 11, block 23, in Yates City, in said county, and another lot in said town, unincumbered, and worth more than enough to satisfy said fee bill; plaintiff did not reside on the same; that title to lot 11 was in plaintiff, on record in recorder's office of Knox county, Ill., and lot 11 was worth fifty dollars; that sheriff did not notify plaintiff or his attorney of issuing said fee bill; the attorney resided in said county, and was his attorney in the suit in which fee bill issued, and in another suit, and in all matters as attorney at law, and was specially authorized to pay said fee bill for plaintiff; was known to the sheriff and defendant at the time of the sale, and before the money was paid by Eads in said sale; that lots were subject to levy and sale on fee bill; that defendant had notice of said facts, before and at the time of the payment of the money on said suit.”

6th Replication to 2d Plea.—That at date of fee bill plaintiff was the owner in fee simple of N. E. 19, T. 11 N. R. 3

E., and 23 acres off west end of east 38 acres of S. half of S. W. qr. of sec. 19, T. 11 N. R. 3 E., in said county; did not reside on same; title was in him and on record at issuing of fee bill, and was of sufficient value to satisfy fee bill over and above all incumbrances thereon; was not notified of fee bill before it was levied; real estate was liable to be sold on fee bill; had an attorney at law in said county, known to sheriff to be his attorney in his matters, and attorney specially authorized to pay said fee bill; that sheriff and defendant, before money was paid to sheriff by defendant upon said sale on said fee bill, had notice of the above facts.

General rejoinder, denying all allegations in plaintiff's 5th and 6th replications, and issue.

Judgment for plaintiff.

JUNE 5, 1863.

Bill of exceptions in 30 days; appeal prayed and allowed on defendant filing good and sufficient bond with clerk, by agreement, for \$300, within 30 days.

Bill of exceptions.

Isaac Gullier, witness for plaintiff, testified that on 21st August last, plaintiff said to defendant he wanted the corn he took of his. Eads said he had sold it.

Samuel B. Anderson, sworn for plaintiff, said paper (bill of sale in evidence) was signed by him; Eads cut the cribs and let the corn out; Fox and Gay were with him; 843 bushels of corn in the four cribs; taken by Eads in August, 1862; Eads there when commenced hauling; somebody took it all away; did not know all the men, supposed they were his men; corn then worth 18 cents in the ear; they were then buying corn in Gilson; some of the corn was hauled another way; corn in cribs same as that described in bill of sale to Couse; no corn used out of cribs after I measured it until taken away, except what rats took.

CROSS-EXAMINED.—On the 27th of August Couse lived along the line of railroad from Peoria to Galesburg; on that date his family lived east of Illinois River, and still do, so far as I know; the corn was at my house.

Plaintiff offered a bill of sale from Anderson to plaintiff, dated 27th August, 1861, covering 843 bushels of corn in cribs on Anderson's farm.

Here plaintiff rested his case.

23

Defendant offered in evidence, and read to the jury, a fee bill, (with the return thereon) dated 1st day of July, 1862, issued out of Knox circuit-court, in the case of Alfred Consee vs. John Eads et al., for \$24 44-100; sheriff's return showing a levy on the corn 28th July, 1862, and that he duly advertised the same; and that on the 8th day of August, 1862, he offered the same for sale at the house of S. B. Anderson, by the bushel, and got no bids, and then offered it by the crib; sold three cribs to Eads for \$5 each, and balance of a crib to Elkana Moore for one dollar, they being the highest and best bids. Signed by the sheriff.

25-

Plaintiff waived proof of judgment in which fee bill issued.

25-

Defendant offered Geo. Pickerell as a witness: I suppose I know the corn; I live at Gilson; it is one and a half miles from Gilson to Anderson's house; Pierce did the weighing of the corn, and stored it at Gilson in my warehouse; his weights were 709 bushels; when hauled, worth 13 cents in ear; I was dealing in and knew the price of corn; worth from 1 to 1 1-2 cents per bushel to haul it; Gilson was the market there for corn in that section; brought there in August, 1862; I bought the corn.

25-

Woodford Pierce said: I weighed the corn; it was brought to Gilson and weighed Aug. 12th, 13th and 15th, 1862; I weighed 709 bushels; that is the corn sold by Eads; P. Conner, Dan. Fox, John Fox, Wm. F. Gay, and two of the Ogdens, hauled it.

25-

Charles Ogden, sworn for defendant, said: I hauled this corn three days from S. B. Anderson's house; I do not know of any corn being hauled anywhere else but to Gilson; four teams hauled the first day, and I and Cornelius hauled all that was hauled after first day; there were three cribs and a piece of a crib.

Defendant rested his case.

26

P. H. Sanford, for plaintiff, testified, under defendant's protest, (the witness looking at the sheriff's notice of the sale of the corn) S. B. Anderson came to my office and spoke of the sale of the corn; he brought this notice of sale to me; we talked about it, and he advised with me. One

Sunday, in August last, I went to McGowan's office, deputy sheriff, and asked him if he would receive the money on the fee bill vs. Couse, and said if so I would pay it. He said he did not know—would see Craig, and something about seeing Brott, the Sheriff, who was absent. This was after day of sale in notice, and I think one day.

CROSS-EXAMINED.—I did not call on McGowan on Sunday; did not count out the money to him or take it from my pocket, and never offered it afterwards; did not have gold and silver; had no authority from Couse; would have paid it if McGowan would have received it, even in gold and silver; Anderson requested me to pay it for Couse; I had no authority from Couse; at time I saw McGowan Tyler had been to Chicago two or three weeks; returned in two or three days after.

27 Defendant objected to the giving of the evidence by Sanford, and court overruled the objection and allowed the evidence to go to the jury; and defendant excepted.

27 Wm. McGowan, sworn for plaintiff, testified: This notice shown witness is one of the notices of sale (this is the original notice on page 30) posted in sheriff's office; I made the sale; I saw no notice of the sale until after the sale; on the morning of the sale Brott, the sheriff, came to me and told me to go and make the sale; I was deputy sheriff. A day or two afterwards I was passing Sanford's office and called in, and conversation came up as to the sale, and something was said about the notice not being good, and I went to sheriff's office and saw this notice. We then talked, and I said I did not know whether the notice was good or not. This was one or two days after the sale. Sanford said they (but did not say who) would pay the fee bill; I might have said could not do it, but don't know; Brott was not at home; think I deferred doing anything until Brott came home; I talked with Tyler afterwards; I don't recollect as he offered to pay the money on the fee bill; I don't know as I went to see Eads before he paid the money as the sale for the corn; I don't know as I went to see Eads and told him about the defect in the notice; I told either Eads or Craig; my impression is that I told Craig, and think then the money had

not been paid by Eads; Eads paid the money a day or two after Sanford talked with me; think money was not paid by Eads till after Tyler got home; I can't say Eads had notice of the defect in the notice before he paid me the money; I did not show the notice to Eads or any one; I cannot say I talked with Eads, or Eads with Brott; I notified Eads or Craig of defect in notice—can't tell which.

CROSS-EXAMINED.—Did not talk to Craig or Eads as to anything but defect in notice; can't say anything was said as to offer to pay the money.

28 Defendant objected to all of McGowan's evidence at the time. Overruled, and exception.

28 J. C. Cover: I was deputy sheriff in August, 1862; this notice is one of the notices of sale; Tyler did not offer the money to me on the fee bill; he said he would pay it; the was the next day after he came home; I told him I could not take the money, and to go to McGowan; I went to Eads and told him there was some little defect in the notice, and he better let the sale go—that I feared a law suit about it, and that Tyler would pay the fee bill; he said he would see Craig; I don't know whether the money was then paid by Eads or not; Brott was then at Galesburg; I think I told Eads what the defect in the notice was; he said nothing about having paid the money.

CROSS-EXAMINED.—I went to Eads the day Brott was at Galesburg; had only one conversation; Tyler returned two or three days after the sale.

29 Objection to Cover's evidence by defendant. Overruled, and exception.

29 McGowan recalled by plaintiff: I know Tyler acted or pretended to act for Couse, by his coming to me. That is all I know about it.

27 S. B. Anderson recalled by plaintiff: I was authorized to pay taxes and fee bill for Couse, if it was necessary to pay them before he came back. This authority was given me at time suit was disposed of in which fee bill issued. I authorized Sanford to pay fee bill the day after the sale.

Plaintiff offered in evidence notice of sale, and defendant objected. Objection overruled, and exception.

Original notice of sale, certified by the Judge as an original document.

The foregoing is all the evidence.

At the request of plaintiff the following instructions were given :

- 30
- 31
- Given. {
1. If the jury believe from the evidence that the property or corn in controversy was the property of the plaintiff at the time of the commencement of this suit, and was taken by the defendant, and that the plaintiff made a demand for the same, before the commencement of this suit, of said defendant, and the defendant neglected or refused to deliver the corn to plaintiff, or had converted the same to his own use, the jury will find for the plaintiff the value of the corn.
 - Given. {
 2. If the jury believe from the evidence that the sheriff who sold the corn in question in this suit upon the fee bill in evidence, failed to give previous notice of such sale for at least ten days successively, by posting up written or printed notices thereof in three of the most public places in the county, where such sale was to be made, specifying the time and place *where such corn was to be sold*, and that the defendant, before he paid the money to the sheriff on said sale, had notice of such failure to give such notice, then the jury will consider the sale under the fee bill invalid.
 - Given. {
 3. If the jury believe from the evidence that one or two of the three notices posted by the sheriff for the sale of the corn in question of said fee bill, stated that the sale of the corn would be at the residence of S. Anderson, 3-4 mile N. W. of Gilson, and at the front door of the Court House, in Knoxville, at the same time, such notice would not be a legal notice of the place of sale ; and if the jury further believe from the evidence that the plaintiff Couse, by P. H. Sanford or Aaron Tyler, offered to pay the fee bill in full to the sheriff or his deputy, before the money was paid by the said Eads on such sale, and that said defendant Eads had notice of these facts before he paid the money on such sale under said fee bill, then the jury will find such sale under said fee bill invalid. And if they believe, further, from the evidence, that the property was the plaintiff's at the time of the commencement of this suit, and was taken by defendant,

and he refused to deliver it to plaintiff upon demand made on him for the same before the commencement of this suit, the jury will find the defendant guilty, and assess the damages at the value of the corn proven at the time it was taken.

To the giving of said instructions, defendant at the time of giving the same excepted.

At request of defendant the following instructions were given, the words in italics being a modification by the court:

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Given. 2. The jury is instructed that irregularity on the part of the sheriff in advertising property for sale under an execution or fee bill, will not invalidate the sale so as to effect the title to the property in the hands of the purchaser; *"but if no legal notice of the sale is given, and the purchaser has notice of such fact before paying the purchase money thereon, the sale is invalid."*

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Given. 4. The jury is instructed that the fact that the corn sold for less than its value, is not a matter for the jury to consider in determining the right of the plaintiff to recover in this action.

Given. 5. The jury is instructed that the return of the sheriff endorsed on the back of the fee bill shown in evidence is *prima facie* of the facts stated in the return.

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The defendant asked the court to give instructions 1, 3 and 6, in the following words:

Refused. 1. The jury is instructed that the notice of the sale of the corn proved in evidence, is a valid and legal notice of such sale at the house of S. Anderson.

Refused. 3. The jury is instructed that the law is that the title passes to the purchaser of personal property at a sheriff's sale whenever the property is stricken off to the purchaser, unless the purchaser refuses payment; and the fact that the sheriff said to the defendant in this suit that he could pay any time for the corn, and payment was delayed, did not prevent the title from passing; and if the sheriff gave time for payment the title would pass to the purchaser, and the sheriff would be liable for the amount of the bid.

Refused. 6. The jury is instructed that the offer of Couse, or any one for him to pay to the sheriff the amount of the fee bill after the property was sold, is immaterial in this controversy, even though the jury believe from the evidence that Eads had notice before he paid the amount of his bid, and after

the sale, of such offer to pay, and of the contents of the notice of sale; that the offer to pay the fee bill, or any defect in the notice of sale, or both, would not defeat the sale and prevent the title to the corn from passing to the purchaser, unless the purchaser knew, before the sale, of such a defect in the notice as would make the notice void.

The court refused to give instructions 1, 3 and 6, and defendant excepted.

Motion for new trial, because

1. Judgment against the law and evidence.
2. Court erred in refusing instructions asked by defendant.
3. The court erred in giving instructions asked by plaintiff.
4. The verdict is against instructions given.
5. On the ground of newly discovered evidence.

Defendant filed affidavit in support of motion on newly discovered evidence.

If new trial is granted, can prove by Lineus Richmond that Richmond was present at and knows the time when the conversation testified to by J. C. Cover took place; and from information derived from Richmond since the trial, prove by him that at the time of said conversation defendant had paid for the corn so bid off by him; and that defendant had no knowledge, or belief, or information that he could make such proof by said Richmond until after this case was submitted to the jury and the verdict given, and defendant knows of no other witness by whom the same fact can be proven.

Motion overruled and judgment on the verdict, and exception by defendant.

Appeal bond filed July 3, 1862.

Errors Assigned on the Record.

1. The court erred in refusing a new trial.
2. The judgment is against law and evidence.
3. The court erred in refusing instructions asked by the, defendant.
4. The court erred in giving instructions asked by plaintiff, and in allowing improper evidence.
6. The verdict is against instructions given.

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John Gads
appellant

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Alfred Gause
appellee

Abstract.

Filed April 22, 1864
L. Leonard Clerk

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1864.

JOHN EADS, *Appellant*,
vs.
ALFRED COUSE, *Appellee*. } Appeal from Knox.

BRIEF AND AUTHORITIES OF THE APPELLEE.

I.

This was an action of *trover* by the appellee vs. appellant for four cribs of corn, but only three cribs were claimed upon the trial. The defendant below claimed the corn by virtue of a sale under a *fee bill* in a suit of the appellee vs. appellant and wife, and a purchase by the appellant, which was set up by plea. The plaintiff below by replications deny a sufficient notice of sale by the sheriff, and deny that the sale was legal for want of notice, and aver that the appellant had notice of the defect in notice of sale before he paid the purchase money to sheriff, and after the appellee had offered to pay the full amount of the *fee bill* to the sheriff, of which he also had notice before he paid the money to sheriff. The evidence shows that the notices posted were that the corn would be sold at *two different places at the same hour about six miles apart*, at the Court House in Knoxville, and at the residence of S. Anderson, three-fourths of a mile NW of Gilson.

II.

The statute of this state provides that "*No goods or chattels shall be sold*" by virtue of any execution unless previous notice of such sale shall have been given for at least ten days successively, by putting up written or

printed notices thereof in three of the most public places in the county where such sale is to be, *specifying the time and place of sale.*

Rev. Stat. 1845, Sec. 29, p. 306.

III.

This statute is not a *directory statute merely*, but absolutely declares that the officer *shall not sell without such notice*, or that the goods and chattels shall not be sold, and makes no provision for damages in case of sale without such notice.

Miner vs. Natches, Smead & Marsh. Rep. Vol. 4, p. 630.

IV.

The statute in relation to sale of real estate in this state is different in this: it provides for notice and also a penalty against the officer violating its provisions; and also provides that any irregularity in the sale by the sheriff shall not affect the sale unless it appear that the purchaser had notice of such irregularity.

Rev. Stat. 1845, Sec. 11, p. 302.

V.

By the statute in relation to sale of personal property the sale is void: there can be no sale without proper notice to pass title.

By the other section of the statute the sale is only void with notice to the purchaser of the irregularities.

The provision that the sale of real estate should not be affected for want of notice unless the purchaser had notice, implies that in the sale of personal property they would be affected without notice. But putting the strongest construction against us that can be put upon these statutes, it would be affected with notice then. We have under our replications shown notice clearly after the sale and before the money was paid, and presumptively before sale.

V I .

If a sheriff sell property under an *Execution* or *fee bill* without giving full notice as required by statute, the sale will be illegal, and a purchaser who has notice of such irregularities before he parts with his money, will acquire no title by the sale.

Warring vs. Loomis, 4 Barb. Sup. Ct. R. 484.
 Enloe vs. Miles, 12 S. & M. 147.
 Stewart vs. Croes *et al.* 5 Gil. 444
 Adamson *et al.* vs. Cummins, 5 Eng. 541.
 Addison vs. Crow, 5 Dana, 271.
 Hayden vs. Dunlop, 3 Bibb, 216.
 Givan vs. Doe, 5 Black. 262.
 Burroughs vs. Wright, 15 Ver'mt. 619.
 Hammeth vs. Wyman, 9 Mass. 138.
 Davis vs. Maynard " " 242.
 Williams vs. Amory, 14 Mass. 20.
 Wellington vs. Gale, 13 Mass. 483.
 Jackson vs. Anderson, 4 Wend. 83.

Trotter vs. Brown as M. Garock Et. al. 1 Yerg. 469
Goyd vs. Anglin 7 " 428

V I I .

A purchaser at a sheriff sale who has not paid the money, cannot protect himself against a prior claim of which he had no notice, or be considered a *bona fide* purchaser.

Swayze vs. Burk, 12 Peters, 11
 Bayley vs. French, 2 Pick. 586.
 Catlin vs. Jackson, 8 Johns. 520.
 Warring vs. Loomis, 4 Barb. S. C. R. 484.

V I I I .

Where personal property is sold by an officer on execution and the property is not present at the sale; or where the statute requires an appraisal before sale on execution, and the property is not appraised; or where the statute requires an officer to make return of the writ, the particular manner in which he served it, as is required in Massachusetts, upon the writ, and the officer fails to make such return, or have property appraised or present at the sale, the sale is void. All the above acts are acts to be performed by the officer, or that he is bound to see performed, before he can sell the same, as he is required by our statute to

give notice of sale, although he may have a valid execution in his hands issued upon a valid judgment.

Lawrence Syndic vs. Young, 1 La. Ann. R. 297.
 Succession of Hilegsburg, 1 La. Ann. R. 340.
 Sheldon vs. Soper, 14 Johns. 353.
 United States vs. Slade, 2 Mason R. 71.
 Warring vs. Loomis, 4 Barb. Sup. Ct. Rep. 484.

IX.

Inadequacy of price is a good objection to a judicial sale if not made legally and fairly in other respects.

Nesbith vs. Dallum, 7 Gill. & John's. 494.
 Cooper vs. Galbraith, 3 Wash. C. C. 546.
 Hansford vs. Barbour, 3 A. K. Marsh. 515.
 Cowen vs. Stevens, 3 Harring. 494.
 Cowgil vs. Cahoon, " " 23.

X.

There is no grounds for a new trial on the ground of newly discovered evidence. The affidavit does not show diligence, because the money was paid by Ead's and was in issue by the pleadings, and if Richmond knew when the money was paid by Eads, Eads ought to have known that fact of his own knowledge, and the money was paid to the sheriff or his deputy, and the fact was known by others besides Richmond; besides there was evidence upon that point on the trial.

Crozier vs. Cooper, 14 Ill. 141.
 Schlencker *et al.* vs. Risley, 3 Scam. 483.

XI.

Notwithstanding it is the policy of the law to sustain judicial sales, yet a *defendant in Execution* may take advantage of irregularities in the sale between him and the *purchaser with notice*, when the question of title by such sale is directly in issue. Authorities above cited.

A. TYLER,
Attorney of Appellee.

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as
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Appellu Brief

Filed May 10. 1864.
L. Selena
Clerk.