

No. 14261

Supreme Court of Illinois

Smith

vs.

Lind

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 180

14261

Smith

28

Long

1862

Proffice

Jameson & Morse, Printers, Chicago.

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, 1862.

GEORGE SMITH }
vs. SYLVESTER LIND. }

DEFENDANT'S POINTS AND AUTHORITIES.

POINT I.

By the statute of this State, (*see Laws Feb. 12, 1853, p. 172; Scates' Treat. & B. Statutes, p. 271, Sec. 7.*) it is *provisoad*, "that as between judgment creditors and other parties claiming under the lien of such judgment, *rendered at the same term of the court, or on the same day* in vacation, there shall be no preference or priority of the lien of one judgment over that of another."

13 *Ohio*, 334, *Nor. Bank vs. Roosa*.

One judgment cannot by a prior levy obtain a preference over other judgments of the same term, levied within the year.

4th *McLean*, p. 555, *Rockhill vs. Hanna*.

To the same effect as above.

Judgments in Indiana entered on the same day create equal liens, and the issuing of an execution on any one of them does not affect the lien of the others. At page 559 Judge McLean says: "This lien does not depend upon a race of diligence on the executions."

It is not liable to be displaced by greater diligence, &c.
4 *Yerger*, 358, *Porter vs. Eastman*.

Judgment creditors of judgments rendered on different days of *the same term* of court, are entitled to a rateable division of moneys levied, as if they were all rendered as of the first day of term.

There is no other way to carry this statute into effect, but to require the sheriff to distribute the fund in such manner as to execute the statute, i. e., so as to produce equality, as between the several executions in his hands of the same term.

If the prior levy of one execution is held to give that execution any exclusive right in the case supposed, the statute is rendered nugatory.

It has been, indeed, decided in New York, and perhaps elsewhere, that when two judgments were docketed on the *same day*, and were therefore equally liens, that the one first levied should hold as against the other on the ground of diligence.

But, that is not a parallel case. The law there does not say, "*there shall be no preference or priority*" between them. If it did, a different rule would certainly prevail.

The law gave each a lien there, but it did not (as in Illinois) prohibit priority among those otherwise *in equali jure*.

The lien of every judgment against the same party at the same term, is cut off by a sale of real estate under any one of them, and the purchaser holds the property discharged from all the judgment liens.

To carry out the law, there must be either one sale and a general pro rata distribution of proceeds, or there must be as many sales as there are liens, and each sale of equal validity.

The latter course would be equivalent to *confusion worse confounded*, which shows its absurdity.

POINT II.

The decision of the Circuit Court is just toward the counter claimants in this case, as far as it goes, in giving them a pro rata in the distribution. *But we insist* it fails of full justice in another aspect. *Smith*, it is shown, at the time held *other collateral and real estate securities* for his debt, which remain untouched. We insist, the court was bound to have ordered at least an account and exhaustion of these, on equitable principles, in order, if possible, to give full payment to all.

See cases cited on this point in 13 vol. Ill. R., p. 43, &c.

1 Story Eq. Jur., sec. 633.

1 Johns. Ch., p. 412, 13, Chesebrough vs. Millard, &c.

180-10

Geo Smith

vs

Dyproster Lines

Depts Bury & Points

Filed May 8. 1862

S. Ireland

Ch.

The motion was based upon affidavit, which stated in substance, as follows:

That on the twenty-seventh day of June, A.D. 1861, a judgment was rendered in said case, in favor of said George Smith, in the Circuit Court of Cook county, at the June term, 1861, against defendant Lind, for the sum of seven thousand and sixty-nine dollars and seventy-two cents, and costs of suit, and that on the same day an execution was issued and immediately placed in the hands of the sheriff of said county; that said judgment was the first entered in any of the Courts of said county against said defendant, and then unsatisfied, and said

This was a motion made in the above entitled cause for a rule upon the sheriff of Cook county to apply upon the judgment recovered in this case, the amount bid by the plaintiff at the sale of certain real estate of the defendant which was levied on and sold under an execution issued in the cause, and to issue to the plaintiff a certificate of purchase for said land sold.

ABSTRACT OF RECORD.

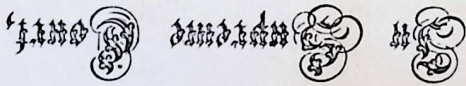
GEORGE SMITH,
 VS.
 SILVESTER LIND. }
 ERROR TO COOK.

APRIL TERM, A.D. 1862.

THIRD GRAND DIVISION.

STATE OF ILLINOIS.

OF THIS



execution was the first against said Lind issued and placed in the hands of said sheriff; that on the day afterwards, to wit, the twenty-eighth day of June, 1861, and during same term, another judgment was rendered in said Court against the said defendant, one in favor of the Chicago Firemen's Insurance Company for the sum of twenty-eight hundred and sixty-one and twenty-two one hundredths dollars, upon which, on same day, an execution was issued and put in the hands of the sheriff, and that on the twenty-ninth day of June, 1861 and during same term of Court, another judgment was rendered against same defendant in favor of plaintiff, George Smith, for the sum of sixty-three hundred and twenty and thirty-four one-hundred dollars, and costs, upon which an execution was issued and placed in hands of sheriff of said county on same day.

3 That no other judgments were rendered against defendant, Lind, at said term of Court, and that afterwards, on the ninth day of September, 1861, affiant as attorney for Smith, by his diligent examination of the records of Cook county, discovered the real estate described in affidavit, in name of Lind at time of judgment, and directed said sheriff to levy upon said real estate, which was done, and the same was afterwards sold under a writ of "venditioni exponas" issued in said case, and plaintiff bid the sum of eight hundred and
4 fifty dollars, which being the highest and best bid, the said real estate was sold to plaintiff for said sum; that the costs of sheriff in levying upon and selling said property have been paid by plaintiff, and a certificate of sale demanded of sheriff therefor, and that the amount bid be applied by the sheriff upon the judgment recovered in this case, which the sheriff declines to do, and pretends that part of said sum so bid belongs to the said Chicago Firemen's
5 Insurance Company, the other judgment creditor.

That the first and only levy made upon said land sold, was made under the execution issued in this case, and that there is due upon the judgment rendered in this case, the sum of forty-four hundred dollars and upwards, and prays in conclusion for a rule upon said sheriff to compel him to apply said sum so bid upon the judgment in this case, and to issue certificate of sale to plaintiff.

The rule, *nisi*, was accordingly entered against the sheriff.

6 To which the sheriff made return—the Chicago Firemen's Insurance Company
7 joining in the return.

8 Admitting the rendition of the judgments as stated in affidavit of petitioner, the issuing of the executions and the levy upon and sale of the real estate as stated.

9 And claiming that said judgments recovered at said June term of said Court, should share alike in the proceeds of said real estate, and that the judgment of the Chicago Firemen's Insurance Company should have a pro rata share of said proceeds, by virtue of the act of the legislature entitled "An act to regulate the practice of the Circuit Court of Cook county and the Cook county Court of Common Pleas, approved February 12, 1853."

10 The Chicago Firemen's Insurance Company also claims that certain credits
to should be made upon the judgments in favor of said George Smith, on account
20 of collaterals collected by him since judgment recovered, and also that certain
collaterals still held by Smith should be credited upon said judgments last
recovered, detailed accounts of which are annexed to said return.

21 An order is therefore made by said Court upon the said affidavit and return,
22 dividing the nett proceeds of said real estate sale between said two judgments
23 of said Smith, and the one of the said Chicago Firemen's Insurance Company,
pro rata, in proportion to the amounts due upon said judgment at the time of
the sale of said real estate after all credits allowed, making no credit however
of the said collaterals not realized upon.

To which order of the court the said plaintiff did then and there except,
and assigned the following causes of error thereto. *& the defendant also excepted
to the disallowance of credits of said collaterals*

First.—Said court erred in refusing to direct that the whole proceeds of said
real estate should be applied upon said judgment of George Smith first re-
covered, the execution of which was levied upon said real estate, and said real
estate sold thereunder on account of the superior diligence exercised in making
said levy and sale.

Second.—Said Court erred in ordering any portion of said proceeds of real
estate to be paid to the Chicago Firemen's Insurance Company, to be applied
upon its said judgment.

Third.—Said Court erred in refusing to make the rule upon the sheriff
absolute, as prayed for by the plaintiff.

Fourth.—The Court erred in refusing to compel the sheriff to issue to the
plaintiff a certificate of purchase of the land levied on and sold.

Fifth.—The Court erred in making the entire order as excepted to.

186 - 184
Supreme Court

George Smith

vs

Silvester Lind

Abstract

Filed April 21st 1862

L. Deland

Clerk

In Supreme Court
OF THE
STATE OF ILLINOIS.

THIRD GRAND DIVISION,
APRIL TERM, A.D. 1862.

GEORGE SMITH,
PLAINTIFF IN ERROR.
VS.
SILVESTER LIND,
DEFENDANT IN ERROR.

ERROR TO COOK.

STATEMENT OF CASE.

The plaintiff in error recovered a judgment against the defendant at the June Term, A.D. 1861, of the Cook county Circuit Court, on the twenty-seventh day of June, A.D. 1861, and on the same day sued out an execution upon the judgment, and placed it immediately in the hands of the sheriff of Cook county. On the day following (being June twenty-eighth) and during the same term of Court, The Chicago Fireman's Insurance Company recovered a judgment against the same defendant, upon which execution was issued the same day, and on the day following, (June twenty-ninth), and during said term, the said plaintiff (George Smith) recovered another judgment against the defendant (Lind) and an execution was issued on the same day and placed in the sheriff's hands.

During the lives of the aforesaid executions an examination of the Records of Cook county was made by the attorney of the plaintiff in error for real estate belonging to the common defendant, which examination was made at the expense of the plaintiff, and, by his diligence having discovered such property, he directed that a levy be made upon it by the sheriff with the execution issued upon said first judgment, which was accordingly done, and the property levied on was advertised and sold and the plaintiff in error became the purchaser for the sum of eight hundred and fifty dollars. He paid to the sheriff the costs of sale and demanded of him a certificate of purchase of the property sold, and also demanded that the amount of his bid should be applied on said first named judgment (upon which there was then due the sum of forty-four hundred dollars and upwards), the sheriff under instructions from the other judgment creditor declined to do this, and an application was made to the Court for a rule upon the sheriff to issue said certificate and apply said proceeds as asked by plaintiff in error, which, after hearing was refused by the Court, and an order was made dividing the proceeds of sale between said judgment creditors, pro rata, which order was excepted to and case removed by writ of error to this Court.

BRIEF OF PLAINTIFF IN ERROR.

I

The plaintiff claims the entire proceeds of the real estate levied upon and sold by the execution issued upon the judgment recovered in this case by reason of his superior diligence in making the levy and sale.

“Where several judgments are entered at the same time that creditor obtains a preference who first sues out and levies his execution.”

Burnley v. Boyett, 1 Howard (Miss.) 39.

“Where two judgments in favor of different plaintiffs are filed and docketed *the same day*, neither has the preference as a lien, but if one creditor takes out an execution and delivers it to the sheriff before the other creditor issues his execution and the lands of the debtor are taken and sold, a priority will be gained by the vigilant creditor and his execution must be first satisfied.”

Adams v. Dyer, 8 Johnson 347.

Waterman v. Haskins, 11 Johnson 228.

Gilbert on Executions, 55.

The Attorney General v. Andrew Hardress, 23.

Michael v. Boyd, 1 Cater (Ind.) 100.

Rockhill et al v. Hanna et al, 15 Howard, 189.

Reroes v. Johnson, 7 Halstead, 29.

“Judgment liens did not exist at common law nor until the statute of Westminster 2, 13 Edward I, which gave the *elegit* and subjected real estate to the payment of debts; and as judgments were entered generally of the term, and as the term was considered in law as one day, and by intendment judgments related to the commencement of the term, the lien which the courts deduced from the statutes giving the *elegit*, necessarily attached on the first day of the Term.”

Holt, C. J., Salkeld, 212.

So the law continued till the statute of 29th Charles II, directed a date to be given to the judgment *when signed* and the lien was shifted and fixed to that date.

4 *Kent Com.*, 490, note (a).

II

In this State by the revised statutes, 1845, page 300, judgments are liens upon lands from the *last day* of the term of the Court in which the same are rendered. All judgments against the same defendants recovered at the same term of Court are therefore equal liens upon the lands of the judgment debtor, as at common law, and in most of the States by express statute, or by making them refer or relate to the first or last day of the term.

By the act of 1853, regulating the practice of the Cook county Circuit Court, and Cook county Court of Common pleas, judgments in either of said Courts are made liens from the time of being entered on the judgment docket providing that there shall be no priority between liens of judgment recovered at same term, or on same day in vacation, leaving the equality of such judgments in the same situation as before the act of 1853 was passed, and as they were under the statute of Westminster II, and the laws of the various States, which make these refer to the first or last day of the term.

The language of the act of 1853 does not alter the law as to equality of judgments recovered at the same term of Court. The liens of *such judgments* are equal in Cook county, as are the liens of all judgments recovered at the same term in the circuit Courts of *every other county* in this State. The only difference being that in this county judgments as liens upon real estate relate to the *time of the recovery of the judgment*, and in other counties to the *last day of the term*.

The priority is obtained by the writ *which is first begun to be executed* and is entirely independent of any statutory regulation.

The equality which the law gives is in *lien of the judgment*.

There is certainly no injustice in giving such advantage (as the cases decide belongs) to that judgment creditor who being precisely equal to another in point of lien, uses superior diligence in making the levy and sale; the right of

redemption, and of re-sale of the property, belongs to the other judgment creditors.

In this case the acts constituting the superior diligence are fully stated in the affidavit, and we rely upon the facts thus stated as bringing us directly within the principles of the decisions cited.

The affidavit shows that *the records were investigated*; an abstract made of all the defendant Lind's property, and every effort made at the sole cost and expense of the plaintiff to discover real estate belonging to defendant, and that it was through those efforts alone that the real estate sold was discovered, and that said sheriff was directed to levy upon that specific real estate under the execution in this case alone, and that under that execution alone the real estate was levied on and sold.

III.

between
The difference ~~upon~~ liens upon real estate and personal property is this: *Executions* constitute the liens upon personalty and the priority of the lien is determined by the time of their delivery to the officer; and no subsequent action or non-action of the officer, or the plaintiff, can change or affect the rights of the parties.

Rogers v. Dickey, 1 Gilman, 644.

On the other hand, it is the *judgment* which constitutes the lien upon real estate, and the priority once acquired by judgment, can never be lost by any lack of diligence or otherwise on the part of the plaintiff or party. In the first case, a levy upon personalty under a junior execution and a sale under the levy pass title, and is entirely regular, and leaves the subject of sale clear of any lien of the senior execution, but *the proceeds* of sale must be applied by the sheriff upon the execution first in his hands.

Crocker on Sheriff's, 178. *Gwynn on same*, 219, 210.

under a Senior Judgment leaves the Lien
In the other case the levy and sale of real estate under the first judgment in full force upon the property sold, passing title, however, subject to the lien, and the proceeds of sale belong to the judgment under which the levy and sale were made.

In neither case does the *levy and sale* under one execution enure to the benefit of the other, although, in the one case, the proceeds must be applied upon the first execution, or the sheriff becomes liable therefor.

IV.

Where judgment liens are precisely equal upon real estate, and one of the judgment creditors, (both executions having been issued and placed in the hands of the sheriff,) discovers, and directs a levy upon, real estate belonging to the judgment debtor, and the same is levied upon and sold under that execution *alone*. No levy, or direction to levy, having been made or given under the other execution, the question arises, (and it is the only point in this case,) does such levy and sale enure to the benefit of the other judgment creditor who does *no act, uses no diligence*, and for whom nothing is done, by the sheriff, or is the diligent creditor rewarded for his diligence by the entire proceeds of such sale.

Let us admit (as seems reasonable) that the *race of diligence* does not commence until both judgments are obtained, when rendered at the same term of the Court. *In this case both parties were in condition to use diligence before any action was taken*, and after both executions were in the hands of the officer, the act constituting diligence was done by one judgment creditor, and omitted by the other, and just such acts as those done in this case, the decisions before cited decide, give the party doing them the preference.

It is not a question here, as to whether the sheriff performed his duty in omitting to levy under all executions in his hands upon the real estate. If the other judgment creditors have any claims against him on such account they can be prosecuted, but in answer to such claim it might well be urged that it is not the duty of the sheriff to search the records for real estate titles but simply to levy upon what property is turned out by defendant, or pointed out by plaintiff.

See Crocker on Sheriffs, 256.

To hold that the levy under one execution enures to the benefit of another, where the liens of two judgment are equal, and executions issue under both, is simply to overrule the law as laid down in the cases cited, by making a distinction without a difference.

BLODGETT & WINSTON,
For Plaintiff in Error.

CHICAGO, April 3d, 1862.

180
Supreme Court

George Smith

or
Silvester Smith

Brief

Filed April 21st
S. Leland
Clerk.

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Plas, before the Honorable George Manure Judge of the Seventh Judicial Circuit of the State of Illinois, and sole presiding Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof begun and held at the Court House in the City of Chicago, in said County, on the 17th day of February in the year of our Lord One Thousand Eight Hundred and Sixty two and of the Independence of the said United States the Eighty fifth

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

Carlos Warren States Attorney.

Anthony L. Keating Sheriff of Cook County.

Attest, William L. Church Clerk.

Be it remembered, that heretofore to-wit on the twenty fifth day of February in the year aforesaid there was filed in said Court, a certain affidavit and motion for rule upon the Sheriff of said County in words and figures following to-wit

Cook Co. Circuit Court
February Term. A.D. 1862
George Smith }
Dilbert Lind }

State of Illinois }
County of Cook }

Fredrick W. Winston being first duly sworn deposes and says, that he is the Attorney of George Smith plaintiff in the above entitled Cause that on the 27th day of June last, said plaintiff

recovered a judgment in said court against said defendant for the sum of seven thousand and fifty-nine dollars and seventy two cents and costs of suit, upon which judgment an execution was issued on same day and placed immediately in hands of the Sheriff of said county. That said judgment was the first entered in any of the courts of said county against said kind and non satisfied. And ^{said execution} was the first against said kind issued and placed in the hands of said Sheriff. And deponent further states that on the day after the rendition of said judgment (to-wit 28th day of June 1861.) other judgments were entered against said kind in said court - one in favor of the Chicago Firemen's Insurance Company for the sum of Twenty Eight hundred and fifty one ²²/₁₀₀ dollars and costs, and one in favor of Robert D. Ross for the sum of Twenty five thousand + fifty dollars and costs, and that after wards on the 29th day of June 1861. another judgment was recovered in said court in favor of said George Smith for the sum of Sixty three hundred + seventy ³⁴/₁₀₀ dollars and costs, and that upon said judgments in favor of said Chicago Firemen's Insurance Company and George Smith Executions were issued and placed in the hands of said Sheriff on the same day as said judgments were respectively rendered, but that upon said judgment in favor of said Robert D. Ross no execution was issued and placed in the hands of said Sheriff. till the 13th day of January A D 1862. And deponent further states

2

That all of said Judgments aforesaid, were recorded at the June term A.D. 1861. of this Court and that no other Judgment was recorded at said Term, against said Land, and that afterwards, and on the 9th day of September A.D. 1861. this deponent as attorney of said Smith having thoroughly and diligently Examined the Records of Cook County for Real Estate in the name of said Land at the time of the recording of said first named Judgment, discovered the following described Real Estate in the name of said Land, and clear of all incumbrances at that time, to-wit - Lot Number Twenty three (23) in Block Thirty seven (37) in Carpenter's addition to Chicago - Lot seventy six (76) in Rossiter's Subdivision of part of the North East quarter of section thirty four (34) Township thirty nine (39) North of Range fourteen (14) together with some other property and that deponent thereupon directed said Sheriff to levy upon said real estate under said first named Execution in favor of said Smith, and that said Sheriff did thereupon levy upon said real estate under said Execution, and advertised the same for sale according to law, and that a part of said property so levied on, and not above described was afterwards and on the 5th day of December A.D. 1861. sold for the sum of Five hundred and six dollars, and as to said piece of Land above described, said Execution was returned by said Sheriff unsold for want of bidders - And deponent further states that afterwards to-wit. on the 28th day of January A.D. 1862, a writ of

"Auditiqni Erponas" was sued out of paid Court in behalf of said Smith in this Case by this deponent. directed to the Sheriff of said County Commanding him to sell said above described piece of land so levied on by virtue of said Execution, to satisfy said Judgment in favor of said George Smith and against said Oliver said, and said Sheriff thereupon proceeded to advertise said land; and the same having been duly advertised according to law was on the 18th day of February A D 1862 offered for sale, and the said George Smith being the highest and best bidder, said pieces of land were struck off and sold to him as follows. Lot No Twenty three (23) in Block Thirty seven (37) in Carpenters addition to Chicago. for the sum of Seven hundred and fifty dollars - Lot seventy six (76) in Rossiter's subdivision of part of the North East quarter of section thirty four (34) Township thirty nine (39) North of Range Fourteen (14) for the sum of One hundred dollars and that the costs and fees of said Sheriff in advertising and selling said property have been paid by said George Smith, and this deponent has demanded of said Sheriff that he apply the proceeds of said sale upon said Judgment in favor of said George Smith and that he execute and deliver to said Smith or to this deponent as his attorney a Certificate of purchase of said property according to law, which said Sheriff declines to do, and pretends that a sheriff

paid proceeds of sale belongs and should be applied upon the judgment in favor of said Chicago Firemen's Insurance Company before mentioned and the deponent annexes hereto the return of said Sheriff of his acts and doings in the premises, and makes the same a part of this affidavit marked "Exhibit"

"Exhibit"

By virtue of a certain writ of Venditioni Exponas No 1769 issued from the Circuit Court of Cook County in favor of George Smith and against Sylvester Lind, dated 28th January 1862, commanding me to sell certain Real Estate therein mentioned and described, a part of which Real Estate is as follows, to wit: Lot twenty three (23) in Block thirty seven (37) in Carpenter's addition to Chicago, also Lot seventy six (76) in Rosettes subdivision of part of the North East quarter of section thirty four (34) Township thirty nine (39) North Range fourteen (14) East 3^d P. M. in the County of Cook and State of Illinois, and on the 18th day of February A. D. 1862 between the hours of Nine in the morning and the setting of the sun of the same day, at the North door of the Court House in Chicago in said County of Cook (the time and place of sale having been duly advertised for sale according to law.) - I offered for sale the property advertised as aforesaid in separate parcels and George Smith by his attorney bid on said parcels of land the sum of Eight hundred and fifty dollars, and

paid parcels of land were struck off to said George Smith which the said Smith claimed the right to receipt on said writ of Venditioni Exponas, and refused to pay the bid in Cash, and having been notified by the Chicago Firemen's Insurance Company another Judgment-creditor of said land not to deliver the Certificate of sale without the pro rata share of said Chicago Firemen's Insurance Company Judgment shall first be paid in Cash, therefore the Certificate is withheld until the further order of the Circuit Court in the premises

A. L. Weising Sheriff
By J. M. Bradley deputy

and deponent further states that the first and only levy made upon said Real Estate so sold was made under and by virtue of said Judgment and execution in favor of said Smith, and that the sum of Forty Four Hundred dollars and ^{upwards} afterwards is still due and unpaid upon said Judgment after all credits allowed, and deponent prays that an order may be entered by said Court directing said Sheriff to issue to said Smith said Certificate of sale and to endorse the amount of said sale upon said writ in his hands in favor of said George Smith

Subscribed & sworn to before
me this 25th day of February
A. D. 1862, J. M. Church, Clerk

A. W. Winston

George Smith }
 Debra Linn } Book Co. Sec Court

And now Comes paid plaintiff
 and moves for rule upon Sheriff in accordance
 with prayer contained in foregoing affidavit
 Feby 25, 1862 } F. W. Winston plffs Atty

And thereupon Do=rit. at the February
 Term of said Court. Do=rit on the 25th day of February in
 the year last aforesaid, the following proceedings, among
 others were had and entered of record. Do=rit

George Smith }
 Debra Linn } Motion for rule upon Sheriff

20791

On motion of F. W. Winston of counsel for
 said plaintiff, it is ordered that the Sheriff of Leake
 County be and he hereby is ruled to show Cause by Thursday
 Morning next, why the rule prayed for by plaintiff in
 affidavit filed herein should not be made absolute

7

And afterwards Do-writ, on the sixth day of March
in the year last-aforsaid, H. L. Wesing Sheriff and
the Chicago Firemans Insurance Company, filed in
by their Attorneys filed in said Court, then Certain
Answer, in words and figures following. Do-writ,
"Ancient Court of Cook County
Of the February Term 1862.

George Smith

Severest Lind

Motion for Sheriff to issue Certif-
icate to plaintiff, on his purchase of real Estate
sold by Sheriff on Execution issued in said Cause,
and to endorse amount bid for said real Estate
on said Execution. less the fee for selling -

And now comes the paid Sheriff
H. L. Wesing, by Matthew Bates and Tapt his attornies
and also the paid Chicago Firemans Insurance Company
by the same Attornies, and for cause shew to the Court,
That on the 28th day of June 1861. in the June Term
of said Court, a Judgment was rendered in said
Court in favor of the paid Chicago Firemans Insurance
Company and against the paid above named
Severest Lind and one W. P. Murphy for the sum
of \$ 2871.22 damages, and \$ 6.00 Costs upon which
judgment, Execution was forthwith issued and on
the same 28th day of June 1861. placed in the

8

hands of said Sheriff of Cook County Illinois -
And these replicants further say that it is true, that a Judgment was rendered in said Court on the 29th day of June 1861. against said Lind and in favor of George Smith, and one other judgment in favor of said Smith and against said Lind on the 29th day of June 1861. and also one other judgment in favor of Robert W. Foss and against said Lind on the 28th day of June 1861. all of which were rendered in the same June Term of said Court in the year 1861, and that no other judgments were rendered against said Lind at the said June Term of said Court; and upon all of which judgments executions were issued as stated in the affidavit of Frederick W. Winston filed in said Cause of George Smith vs Silvester Lind -

And these replicants further say that it is true that the said Sheriff levied the Execution in favor of George Smith and against the said Silvester Lind upon said real estate, and that the said Sheriff sold the said real Estate upon a Venditioni Exponas, and that the said George Smith became the purchaser of said real Estate at such sale, as stated in the Affidavit of Frederick W. Winston filed in said Cause of George Smith vs Silvester Lind

9
And these repliants further say that all of said judgments against said Land were rendered at the June Term of said Cook County Circuit Court 1861. That by statute of this State entitled, "An act to regulate the practice in the Circuit Court of Cook County, and the Cook County Court of Common Pleas approved February 12, 1853. It is provided that — "all judgments rendered in either of said Courts shall become liens from the time such judgments shall be entered on the Judgment docket of such Court; Provided that as between judgment creditors and other parties claiming under the lien of such judgment rendered at the same term of the Court, or on same day in vacation, there shall be no preference or priority of the lien of one judgment over that of another" see sec 7 of said act — which statute still remains in full force —

And the said Sheriff further says that he has been notified by the said Chicago Firemen Insurance Company, one of the Judgment Creditors aforesaid, that they claim a pro rata distribution of the proceeds of the real Estate sold, or that may be sold on the Execution in favor of George Smith and against said Silvester Land, as specified in the affidavit of Frederick H. Minster filed in said Cause, and that he is advised by Counsel, that under said statute said Chicago

Firemen's Insurance Company are entitled to such distribution by virtue of their equal lien without priority or preference as judgment-Creditors of said Lind at same term of Court—

And the said Chicago Firemen's Insurance Company shew to the Court that the note upon which the first judgment, ~~rendered~~ ^{rendered} June 27, 1861. in favor of the said George Smith and against the said Decker Lind, was rendered, was secured by a Trust deed on certain real estate in the City of Chicago, County of Cook and State of Illinois, other than that paid on any Execution of the said George Smith against the said Lind and that on the 23^d day of September A. D. 1861. the said real estate so secured by said Trust deed was sold under and by virtue of the power contained in said deed of trust, and that said George Smith realized from such sale the sum of \$ 2566. 00; which said sum the said Chicago Firemen's Insurance Company claim should be applied by the said George Smith towards the payment of said judgment, before the said George Smith shall be entitled to any pro rata distribution of the proceeds of the sale of the real estate mentioned in the affidavit of Frederick W. Winston, filed in said Cause

And the said Chicago Firemen's Insurance Company further state to the Court, that the said George Smith claims certain deductions from the said sum of \$ 2566. 00 as Expenses of sale and otherwise as shown in the account hereto annexed marked

11

Exhibit "A", to all which items so claimed to be deducted from the paid sum of \$ 2566.00, the paid Chicago Firemen Insurance Company object and pray that they be not allowed to the said George Smith.

And the paid Chicago Firemen Insurance Company further shew to the Court, that there has been paid to the said George Smith by the paid Sheriff of Cook County Illinois on his paid Judgment of June 27 1861, against the said Silvester Lind, and previous to the said sale of real estate mentioned in the affidavit of Frederick W. Winston filed in said Cause, the sum of Three Hundred and Eight-dollars and sixty-four Cents, said sum having been received by the said Sheriff of Cook County on account of sale of real Estate and personal property on Execution against said Silvester Lind which said sum is receipted on the Execution issued on the judgment of June 27, 1861, in favor of George Smith and against the said Silvester Lind, as received by the said George Smith on said Execution, which said sum of Three hundred and eight-dollars and sixty-four Cents the paid Chicago Firemen Insurance Company claim should be applied by the said George Smith towards the payment of said Judgment before the said George Smith shall be entitled to any pro rata distribution of the proceeds of the sales of the real estate mentioned in the affidavit of Frederick W. Winston filed in said Cause.

And the paid Chicago Firemen Insurance Company further

7
12

show to the Court, that the note upon which the second judgment rendered June 29, 1861 in favor of the said George Smith and against the said Silvester Laid was rendered was secured by several deeds of trust on certain real Estate situated in the County of Cook and State of Illinois, other than that sold on any Executions of the said George Smith against the said Silvester Laid, and that since the entering up of said judgment, the said real Estate so secured by said deeds of Trust have been sold under and by virtue of the powers contained in said deeds of Trust, and that said George Smith realized from such sales the sum of One thousand & fifty two dollars, which said sum the said Chicago Firemen's Insurance Company claim should be applied by the said George Smith towards the payment of said judgment - before the said George Smith shall be entitled to any pro rata distribution of the proceeds of the sale of the real estate mentioned in the affidavit of Frederick W. Weston filed in said Cause

And the said Chicago Firemen's Insurance Company further state to the Court that said George Smith claims certain deductions from the said sum of One thousand and fifty two dollars as expenses of sale and otherwise as shown in the account hereto annexed marked Exhibit "B." to all which items he claimed to

13

be deducted from the paid sum of One Thousand and fifty two dollars the paid Chicago Firemen Insurance Company object and pray that they be not allowed to the paid George Smith -

And the paid Chicago Firemen Insurance Company further shew to the Court that since the rendering of the paid Judgment the paid George Smith has received from Collaterals in his hands and otherwise the sum of \$ 3340.33 which will more fully appear by schedule "B" hereto annexed which the paid Chicago Firemen Insurance Company crave leave to refer, and make the same a part of this their answer -

And the paid Chicago Firemen Insurance Company further shew to the Court that there has been paid to the paid George Smith by the said Sheriff of Cook County Illinois, on the paid last mentioned Judgment, and previous to the said sale of real estate mentioned in the affidavit of Frederick W. Winston filed in said Cause the sum of One hundred and sixty five dollars and fifty five Cents, paid sum having been received by the paid Sheriff of Cook County on account of sale of real estate an execution against said Sylvia Lind, which paid sum is receipted on the Execution used on the paid last named judgment as received by paid George Smith on said Execution, which paid sum of \$ 3340.33

14

and paid sum of \$165.65 the said Chicago Firemen's Insurance Company Claim should be applied by the said George Smith towards the payment of the said last named judgment. Before the said George Smith shall be entitled to any pro-rata share distribution of the proceeds of the sale of the real Estate mentioned in the affidavit of Frederick H. Munster filed in said Cause.

And the said Chicago Firemen's Insurance Company further shew to the Court, that the said George Smith holds as collateral security to the notes upon which the said last named judgment was rendered \$3500. of the First Bonds of the St James Church of Chicago which bear interest at the rate of 7 per cent per annum; also four notes of John T. De Wayne of the City of Chicago, one for the sum of \$1600, and the others for the sum of \$1000, each, and each dated March 15. 1861 and due five years after the date thereof, and all secured by Trust-deed on Loyds Block, so called, situated on the North West corner of Randolph and Wells Streets fronting on both streets, in the City of Chicago, also on a House and lot on Illinois Street in the City of Chicago, which said Collateral the said Chicago Firemen's Insurance Company believe to be of great value more than sufficient to pay the balance due on said last named judgment. And the said Chicago Firemen's Insurance ^{Company} Claim that the

said George Smith should be required to sell the said Collateral and Convert the same into money and to apply the proceeds arising from such sale upon his said last named judgment before the said George Smith shall be entitled to any pro-rata distribution of the proceeds of the sale of the real estate mentioned in the affidavit of Frederick W. Winston filed in said Cause

And the said Chicago Firemen's Insurance Company further shew to the Court that they have received on their said Judgment the sum of \$ 137,912, that they have received no other or further sum on account of said Judgment.

Wherefore these repliants pray that said motion may be overruled, and that the said George Smith be required to pay over the amount of his said bid to the said Sheriff, and that he the said Sheriff may be directed to pay over the pro-rata share of the proceeds of the sale of the real estate sold under the Execution of said George Smith against said Director and to the said Chicago Firemen's Insurance Company and the said George Smith, after the said George Smith shall have applied on his said Judgment the several payments herein before stated to have been made on account of the same, and after he shall have converted the said Collateral and also applied the proceeds on his said Judgment.

7
16

H. C. Wessing Sheriff, by Walter Bates and Tapt-
his attorneys

Chicago Firemen Insurance Company.

By Walter Bates and Tapt- their attorneys
State of Illinois }
Cook County }

Charles N. Wolden being first duly sworn says that he is the secretary of the said Chicago Firemen Insurance Company, and that the matters and things stated and set forth in the foregoing writing or answer are true, except when stated on information and belief, and as to such matters and things, he believes them to be true
Subscribed and sworn to before } Charles N. Wolden
me this 6th day of March }

A. D. 1862,

Seal

William F. Fleetwood

Notary Public

(Exhibit A)

Judgment vs

17
D 1861

June 27

Judgment obtained in Circuit Court of Cook County on your note is

Note	7000
Int to date	44.72
Court Costs	6
Attorneys fee	75
	<hr/>

Making abstract of title to Real Estate	50
Recording Trustees deed	175
	<hr/>
	7127.47

1861

J. Lind

Sept 23

By amt recd from sale of the following Real Estate under Trust-deed for the

South West 1/4 B 40 Carpenters add	21
lots 24 & 25 B 69 O Torr	1850
E 27 feet - lot 7 Blk 524 O T	695
	<hr/>
	2566

less costs removing one Trustee and substituting another 70.70

Paid M M M by insurance in name of T Deed 50.00

A Hurry for drawing notes & sale & Trustees charges of Company for selling advertising sale	65.25
	16

State & County taxes on above property 1861.	20.15
	11.81
	11.81

Recording Trustees deed	1.50
By Balance	<hr/>
	227.22
	2338.78
	4788.69
	<hr/>
	7127.47

(Exhibit B)

1861

18

Dr. 1861.
June 29

Judgment vs. S. Lind impleaded with B. W. Thomas.

So judgment obtained in Circuit Court of Cook Co this day on note S. Lind and B. W. Thomas, due Dec 4, 1860.

3357.00

Interest to date

165.64

And on note S. Lind & B. W. Thomas due April, 1861

Balance

2757.

Interest to date

79.70

Court costs

6

Attorneys fees

25

2860.70

July 12

Paid Clerk Circuit Court for transcript of above judgment

3.00

P. Geddes expenses to Grand Jurors to obtain attachment

14.60

W. H. Parks Atty at Law Grand Jurors for services in attachment
vs Geo Smette & S. Lind

20.10

Aug 1

Paid Recording Deed Lind to Thomas

1.25

Oct 19

F. W. Minster for drawing special Trust Deed from
B. W. Thomas to him as trustee dated June 28, 61.

5.00

Paid F. W. Minster Trustee for selling property embraced
in Trust deed from B. W. Thomas to him

5.00

Paid F. W. Minster for drawing special Trustee deed

14.00

Paid advertisement of sale under Trust deed

B. W. Thomas to F. W. Minster

20.00

Paid for acknowledging & recording deed from
F. W. Minster Trustee

2.25

Aug 17

Paid per charter for examining title to E 2 Lot 6 &
the West 5 feet of Lots 5 & 6 Belk & Malcott adn to sundry Lots in
subdiv Belk & Suncans addn Belk 1 in 1 1/2 & 1 1/2 W & E
of Sec 17 T 39 R 14

17.00

Oct 19

Paid F. W. Minster for drawing notice of sale of

19 Real Estate embraced in trust deed from
B. W. Thomas to him

5,
6479.44
21,142.11

1861 Nov 30. To Balance

60

1861
Aug 1 By Recd of Werry Anthony - Half-annual interest
collected by them on Bonds of St James Church 588.00

Oct 1 " Six months interest on St James Church of St Bonds 122.00

" 19 " Amt recd from sale on the 18th Oct - 1861 under trust deed
made by B. W. Thomas to M. W. Minister trustee of the following
described real Estate in EK Rogers subdivision of the N¹/₂
of the West 1/2 of Sec 17 T 39 R 14 E 3d S 11e

Recd for lot 54 5

" " " 55 5

" " " 56 5

" " " 57 5

" " " 58 5

" " " 59 5

Also the following lots in said EK Rogers subdivision
of the interior part of out-lot on Block 3

Recd for lot 90 1.

" " 91 1.

Also received for the E 1/2 of lot 6 + the N 1/2 of lot 5
in Block 9 of Wolcotts addition to Chicago 10,

" 26 Recd one months rent from 6 Schollenful owners
of B W Thomas 29.16

" 20

Mar. 8. " Amt realized on balance note of V Se Wayne held
As Collateral security 2600.67

" 29 " Amt realized from sale of the following described
Real Estate on the 29th inst. under trust deed
made by Silvester Lind & Ediza Anna Lind his
wife, Benjamin W Thomas & Anna Augusta Thomas
his wife to Frank W. Winston Trustee dated
1st June 1860 and recorded in the Recorder
Office of Cook Co in Bk 197 of deed page
623 ~~at~~ the E² of N E⁴ of sec 17 T40 N R 13
E of 3^d PM sold to D S Roberts for \$ 1000.
less Atty fee for drawing notice of sale 5
Trustee fees selling 30
Commission making deed -
advertising sale in Post newspaper 21.55

959.00

" 31 " Balance due 3142.11
6479.44

And afterwards. Do=mit. at the
March Term of said Court. Do=mit. on the first
day of March in the year of our Lord Eighteen hundred
and fifty two. the following proceedings, among others,
were had and entered of record. Do=mit-

George Smith }
' ' }
Silvester Lind } Notice for rule upon Sheriff &c

And now comes the plaintiff in the
above entitled cause, and also A. G. Keeney Sheriff

of said County, and the Chicago Fireman Insurance
 Company, mentioned in the affidavit heretofore filed
 in this Cause, by their respective Attorneys, and it
 appearing to the Court from affidavit and answer
 of Sheriff on file that on the 27th day of June A.D. 1861
 said plaintiff recovered a Judgment in this Case
 against said Lind for the sum of Seven thousand
 and seventy five dollars and seventy two Cents, and
 that an Execution was issued on the same day
 aforesaid, and placed in the hands of said Sheriff
 and that on the 28th day of June A.D. 1861 being the
 day after the rendition of said Judgment and the issuing
 of said Execution - the Chicago Fireman Insurance Company
 recovered a Judgment against said Director Lind and
 one Wiam. P. Murphy for the sum of Twenty Eight hundred and
 seventy seven dollars and twenty two Cents (\$ 2877²²) upon
 which said Judgment - execution was issued and placed
 in the hands of said Sheriff on the same day aforesaid on
 which said Judgment was rendered, and that on said
 28th day of June A.D. 1861 one Robert W. Hoess recovered a
 Judgment against said Lind, in said Court for the sum of
 Twenty five thousand and fifty six dollars (\$ 25,056⁰⁰)
 but that no execution was issued and placed in the
 hands of said Sheriff under said last named Judgment
 until the 13th day of January A.D. 1862, and that on the 29th
 day of June A.D. 1861. the said George Smith recovered another
 Judgment against said Director Lind in this Court for the
 sum of Six thousand three hundred and seventy six dollars

and thirty-four cents, (\$ 6376.³⁴) and that an Execution was issued upon said last named Judgment upon the day last aforesaid, and that all of said Judgments were recovered at the June Term, A. D. 1861. of this Court, and that no other Judgments were recovered against said Lind at said term. — And it further appearing to the Court that under the Execution issued in said first named Case in favor of said plaintiff said George Smith by the special direction of his Attorney a levy was, on the 13th day of July, A. D. 1861 made upon Certain Real Estate as the property of said defendant Lind (which said real estate is described in the affidavit of Frederick W. Winston filed in this Case) and that said Execution was afterwards returned said property unsold for want of bidders, and that on the 28th day of January, A. D. 1862 a writ of Venditioni Exponas, was issued in said Case to said Sheriff commanding him to sell said property to levied on, and that under said writ said property was advertised and sold by said Sheriff and that said plaintiff George Smith became the purchaser thereof for the sum of Eight-hundred and fifty dollars, and that he has paid the costs of advertising and selling said property, and that said Sheriff retains the Certificate of sale subject, to the order of Court to be made in this Case as to the application of said proceeds of sale.

It is therefore ordered, adjudged and decreed by this Court, that said sum of Eight-hundred and fifty dollars, after deducting the sum of

28

Twenty four $\frac{20}{100}$ dollars paid by said Smith to said Sheriff for Costs of Execution, be applied upon said several Judgments in favor of said George Smith and Chicago Firemen Insurance Company, and endorsed upon said Executions pro rata in proportion to the amounts due upon said respective judgments, as said judgments stood at the date of said sale being as follows - There was due upon said first named Judgment in favor of said George Smith at that date after Credits allowed the sum of \$ 4648²⁸ and upon said second Judgment in favor of said George Smith the sum of \$ 2101.³⁶ and upon said Judgment in favor of said Chicago Firemen Insurance Company the sum of \$ 2857. ^{$\frac{44}{100}$} and that there be endorsed upon said two first named Judgments the sum of \$ 597⁵⁶ as follows - on the first - \$ 411.⁵³ and on the second \$ 186⁰³ - And upon said last named Judgment in favor of said Chicago Firemen Insurance Company; the sum of \$ 352⁴⁴ and that said last named sum shall be paid by said Smith out of the proceeds of said Real Estate sale, and that after the payment by said Smith of said last named sum, said Certificate of sale be issued by said Sheriff to said Smith to which order of the Court the Plaintiff then and there excepted.

I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of the said Verdict for return of the jurors in the case of George Smith vs Robert Smith and all proceedings in relation thereto in a certain cause now pending in said Court, on the Common Law side thereof, wherein George Smith was Complainant and Robert Smith was Defendant



In Witness Whereof, I have hereunto set my hand, and affixed the Seal of said Court, at Chicago, this Second day of April A. D. 1867.

Wm L Church Clerk.

George Smith
Plaintiff in Error
vs

Sylvester Lind
Def't in Error

In the Supreme Court of Illinois
3rd Grand Division of the April Term 1862
Error to last 10.
And now comes the said George Smith,
Plaintiff in error and assigns the following
causes of error to the preceding and Judgment
within behoofth. that is to say.

First. The Court erred in refusing to direct that the whole
proceeds of said Real Estate should be applied upon said jud-
gment of George Smith first recovered, the execution of
which was levied upon said Real Estate, and said Real Estate
sold thereunder on account of the superior diligence exercised
in making said levy and sale.

Second. Said Court erred in ordering any portion of said proceeds of
real Estate to be paid to the Chicago Fire and Insurance Company to be applied
upon the said judgment -

Third. Said Court erred in refusing to make the rule absolute upon the
Sheriff as prayed for by the Plaintiff.

Fourth. The Court erred in refusing to compel the Sheriff to issue
to the plaintiff a certificate of purchase of the land levied on & sold.

Fifth. The Court erred in making the entire order as
accepted to. Wherefor for said errors against
said plaintiff in error insists and avers said
Judgment and proceeding on it to be reversed ann-
ulled and further held for nothing &c.

W. B. Dyer & M. W. Weston
Attys for Def't in Error

George Smith
Plff in Error
vs

Sylvester Lind
Def't in Error

In the Supreme Court of
Illinois

3^d Grand Division

of April Term 1862

And now at this day that is to say on the 22^d
day of April in the Term of April A.D. 1862
comes the said Sylvester Lind defendant in
error in the above case and says that in
the record & proceedings aforesaid and in
giving the judgment aforesaid upon the
motion of the plaintiff in error there is no
error and the said defendant in error
prays that the judgment aforesaid upon the
motion so made & decided in the Court below
be in all things affirmed &c.

Mather Bates & Taft

Attys for Def't in
Error

1862
Sup. Courts
of Illinois

George Smith
vs
Charles Lind

Record
+
Index in Error

Blodgett & Munton
Plffs atty -

Matthew Bates & Duff
Defts atty

Filed April 26, 1862
L. Leland
Clerk