No. 8708

Supreme Court of Illinois

Jesse K.Dubois, et al,

vs.

Daniel L.Gold

71641 7

State of Illinois S.S.

In Supreme Court of said State
First Grand Division
November Term 1858

Jesse H. Marlois, James
M. McCann, and Jacob
May Pltffs

against Error from Lawrence.

Harriet L. Force Administratrix
of the estate of John C. Riley
and Eleanor J. Rogers Defts

And now at this day comes the
said plaintiffs by W. Thomas their
Attorney, and files the Record of
the proceedings and judgment
of the circuit court herein, and
says that in the said Record
and judgment manifest Errors
have intervened to their prejudice,
and they have set down the following.
First: The Court Erred in permitting the
Record of the March of September Term
1849 to be read as evidence in the cause,

Second; The Court Erred in overruling
the motion to quash the Execution
and set aside the sale made by virtue
thereof, and also in overruling the
motion, for an order requiring
credit to be entered on the judgment
according to the March of September
1849

[8108-1]

Thirdly: The court Erred in overruling the motions as submitted.

Wherefore they pray that by reason of these and other Errors apparent on the Record, the said judgment may be Reversed, set aside, and for nothing holden. —

W M Thomas
for plffs in Error.

To the Clerk.

Joseph B Moulton, James McMillan and Jacob Mack against Daniel E Foster as Administrator of the estate of John C Riley and and in his own right, and Elanzer Z Ryan impleaded with said Foster.

} Error from Judgment of May Term 1858 of the Lawrence circuit court,

File the Record, issue the Writ of Error, and issue Summons against defendants as above directed to Sheriff of Lawrence County, returnable to November Term 1858 of the court.

W M Thomas

Pleas began and held before the Hon
Circuit Court of Lawrence County Illinois
at the the October term AD 1857

State of Illinois Lawrence County
Circuit Court October term AD 1840

John C Reiley
vs
Jesse R Dubois Daniel
Paine Ebenezer Ryan
James W McLean and
Jacob May

} Judgment 28th Oct 1840
for $1791.64 and
Cost $15.48

To Daniel L Gold administrator
of the Estate of John C Reiley deceased and
purchaser of Real Estate sold under
Execution issued on the above entitled
Judgment

You are hereby notified that
motion will be entered this morning
upon the meeting of the Court now in
session to quash the Execution Issued
on the 22nd May 1854 also to set aside
the sale made under said Execution
and also for an order directing the
above Judgment to be credited by
Seventeen Hundred and thirty Eight
Dollars in favor of said Defendants as
of 25th September 1843 as required by a
Decree of this Court sitting in Chancery
at the September term 1845 in a suit

[5709-2]

John Lee and James Webb administrators
of John C Reiley against the Administrators
Daniel Paine Lawrenceville 20th Oct 1857

Jesse K Dubois
By Wm Thomas atty

The grounds of the above motion are
that the Execution was issued in favor
of John C Reiley after he had departed
this life without any proceedings making
his personal representatives parties to the
Judgment and this Court sitting in
Chancery at the September term 1845
decreed the credit above to be entered
which has not been Entered 20th October
1857 Wm Thomas Atty

Lawrenceville Ills 20 October 1857
I this day delivered to the within
named Daniel C Cole a true copy
of the foregoing notice
G W Whittaker Sheriff
of Lawrence County

October 20th 1857
John C Reiley Plff
vs
Jesse K Dubois Daniel
Paine Ebenezer Z Rogers
James W McLean & Jacob May

Judgment of 28th
October 1840 for $1991.64
& $15.48 costs

And this day the above named defendants Jesse K Dubois Ebenezer & Ryan James W McLean and Jacob Meay by William Thomas their Attorney comes and moves the Court to quash an Execution Issued on the Judgment above entitled on the 23rd May 1854 also to set aside a sale of Real Estate made by virtue of said Execution And also for an order directing the above Judgment to be credited by $1758 in favor of said Defendants as of 25th September 1843 as required by a Decree of this Court Sitting in Chancery at the September term 1845 in a Suit of John Lee and James Nabb Administrators of the Estate of John C Reiley deceased against the Administrators of the Estate of Daniel Paine deceased and thereupon filed the motion of said motion upon the entry of the foregoing motion William Harrow appeared as attorney for said Lee and by consent this cause is continued to the next term

And afterwards at the May term AD 1855 of said Court the following pleas was had and entered of Record to wit

John C Reiley

[8704-B]

vs

Jesse R Dubois Ebenezer Z Ryan James W McLean Daniel Pound & Jacob May

Judgment of September term 1840 for $1991.64 & $15.48 cost

The motion entered in this cause at the last term of the Court to quash an Execution and set aside a sale made thereon and also to direct a credit on the above entitled judgment coming on for hearing and the said Ebenezer Z Ryan being present in Court and saying that he had not authorized and did not desire his name to be used as a party to this ~~motion~~ motion It is ordered on motion of Mr Thomas that the name of Ebenezer Z Ryan be withdrawn from the Records as such party and the motion aforesaid being heard It is ordered that they be overruled whereupon the said Dubois McLean and May presented their bill of exceptions which was signed and sealed and ordered to be made part of the Record

J Harlan (Seal)

State of Illinois Lawrence County } ss

In the Circuit Court of said County May term 1858

John C Kirby Plff

against

Jesse R Dubois Daniel
Paine Ebenezer Z Ryan
Jacob May & James M McLean

} Judgment of Oct 1840 for $1991.64 & $15.48 cost

Be it remembered that on the hearing of the motion submitted in the above entitled cause at the last term of this Court by Defendants Jesse R Dubois Ebenezer Z Ryan James M McLean and Jacob May by Mr Thomas their Attorney the said Ryan being in Court and saying that he had not authorized and did not desire his name to be used as a party to said motion his name was on motion of said Thomas withdrawn and thereupon the following evidence was introduced in support of said motion first the Judgment recited in the caption as follows to wit

John C Reiley
vs
Daniel Paine Jesse R Dubois Ebenezer Z Ryan James M McLean and Jacob May partners &c

} Assumpsit

At this day came the Plaintiff by his attorney and the Defendants came in their own proper person and

[870044]

and confessed themselves to owe to the Plaintiff the sum of One thousand nine hundred and ninety one Dollars and sixty four cents his damages sustained by reason of the nonperformance of the said Defendants of their premises and mean takings therefore it is further considered by the court that the Plaintiff Recover of the Defendants the said sum of One thousand nine hundred and ninety one dollars and sixty four cents together with his costs in this his suit in this behalf expended and thereof have execution &c. Sworn the Record of ~~said~~ a suit in chancery in which John Lee and James Nabb Administrators of the Estate of John C Reiley deceased was complainant and the Administrators of the Estate of Daniel Paine Deceased were Defendants in which a Decree was Entered in September 1845 as follows to wit

In the Lawrence Circuit Court

September term 1845

To the Honorable Williams Wilson sole judge of the said Court in chancery sitting Humbly complaining Sheweth unto your Honor your Orators John Lee and James Nabb Administrators of the Estate of John C Reiley deceased that John C Reiley

in his life time on or about the 8 day of October in the year of Our Lord ~~One~~ 1840 Recovered a Judgment in the Lawrence circuit Court for the sum of One thousand Nine hundred and ninety one Dollars and Sixty four cents against Our Daniel Paine Jesse K Dubois Ebenezer Ryan James W McLean and Jacob May that after said Judgment was obtained by said Riley against said Defendants the said Daniel Paine paid to the said John C Riley on said Judgment the sum of One thousand five hundred dollars on or about the 17th day of December in the year of Our Lord 1840 and took the said Riley receipt for the amount of said payment and that he the said Riley failed and neglected to enter a credit on said Judgment for the amount of said payment and that on the 25th day of September 1843 the said Daniel not having received a credit on said Judgment for the amount of said payment brought suit against your Orators ~~on~~ said Receipt and Recovered a judgment against them as the Administrators of said Riley for the sum of One thousand Seven hundred and thirty

[8708-57]

dollars both of which said Judgments still remains in full force in nowise receipted or satisfied that since the recovery of said last mentioned Judgment on or about the day of 184 the said Daniel Paine departed this life intestate and that since his death One Joseph Stewart and Perry Lewis have been by the Probate Justice of the Peace in and for the county of Lawrence appointed administrators of the Estate of the said Daniel Paine your Orators hereby consent on their part that said Judgment of said Paine against your Orator may be set and allowed as a credit on the Judgment of the said Reiley in his life time against the said Paine Dubois Ryan McLean and May as aforesaid Your Orators therefore pray that the said Joseph Stewart and Perry Lewis administrators of said Daniel Paine may be made Defendants to this their Bill of complaint and that they may be compelled to answer this your Orators Bill of complaint and that on a final hearing of this cause that your honorable court would Order and Decree that the said Judgment or credit on the said Judgment of the Reiley may

be cancelled to the extent of said receipt and payment as aforesaid and that the judgment of the said Paine as your Orator may be receipted and cancelled and entered as satisfied and such other and further Relief in the premises as shall seem just and right and to Equity belongs and your Orator as in duty bound will ever pray

J Harlan Sol for. compt

The answer of Joseph Stewart and Perry Lewis Administrators of Daniel Paine deceased to the Bill in Chancery of John Reed and James Nabb Administrators of John C Reiley Deceased in the Lawrence Circuit Court September term 1845

The said Joseph Stewart and Perry Lewis Administrators of Daniel Paine deceased being made Defendants to said Complainants Bill waving the service of process and all further notice entered their appearance to said cause and for answer say that matters and allegations as to the judgments and the times of their recovery in said Bill mentioned are true and correctly set forth as said respondents

[8709-2]

believes that it is true that the said sum of fifteen hundred dollars paid by said Daniel Paine to John C Reiley at the time stated and for which said Reiley receipt was taken was intended as a credit upon the judgment of the said Reiley against the said Paine Dubois Ryan McLean and May your ~~Orator~~ Respondents therefore submitting to this Honorable Court whether the said judgment of the said Paine against the said Reiley can be applied as a credit upon the judgment of the said Reiley against the said Paine Dubois Ryan et al to take effect as from the time of the payment of said money by Paine to Reiley and if it be the opinion of the Court that said judgment can be so transferred and the credit so applied then your Respondents are willing that the said judgment of Paine be so transferred and the said payment of fifteen hundred dollars applied as a credit upon the judgment of the said Reiley against the said Paine Dubois et al so as to take effect from and at the time of the said payment to wit

the 17th December 1840 and having answered fully all that is material for them to answer they pray the Order of the court in the premises and that they be discharged

Joseph Stewart
Perry Lewis

John Reed and
James Nabb Administrators
of John C Reiley deceased
vs
Joseph Stewart and Perry
Lewis Administrators of
Daniel Paine Deceased

In Chancery

Now at this day comes the complainants and file their Bill and the Defendants also waiving the service of process and further notice enter their appearance and answer and it appearing from said Bill that the said John C Reiley deceased in his lifetime to wit at the October Term of the Lawrence Circuit court 1840 Recover a Judgment against Jesse R Dubois Daniel Paine & Ezra Ryan James M McLean and Jacob May Partners &c for the sum of One thousand Nine hundred and ninety One dollars and

[8703-9]

Sixty four cents and that said Daniel Paine deceased in his lifetime to wit on the Seventeenth day of December 1840 paid to the said John C Reiley upon the said Judgment the sum of One thousand five hundred dollars for which the said Paine got a receipt but which the Reiley failed to credit upon said Judgment all of which facts are admitted by the answer of said Defendants It is therefore considered ordered and adjudged by the Court that the said sum of One thousand five hundred Dollars so paid by the said Daniel Paine upon the Judgment aforesaid be taken and applied as a credit on the same to take effect from the date of such payment to wit the seventeenth day of December 1840 so as effectually to stop the Interest on so much of said Judgment from that date and it is further ordered and adjudged that the Judgment recovered by the said Daniel Paine Deceased against the administrators of the said John C Reiley viz James Tabb Henry H Shepherd and John Lee for the sum of One thousand ~~seven~~ hundred & thirty eight Dollars at the September term of the said Lawrence Circuit

cent 1843 be and the same is hereby
cancelled and taken as fully satis
fied the said judgment being
Received aforesaid $1500, so paid upon
the first above named judgment
Shall an Execution issue upon the
judgment at law on the 23rd May 1854
as follows to wit

State of Illinois Lawrence County ss

The People of the State of Illinois
To the Sheriff of Lawrence county Greeting
Whereas by our writ of fieri facias No
1372 we lately commanded you that
of the goods and chattles lands and
tenements of Jesse K Dubois Daniel Pine
Jacob May James W McLean and
Ebenezer Z Ryan late of your bailwick
you cause to be made the sum of
Nineteen hundred and Ninety One
Dollars and Sixty four cents with Interest
from the 28th day of October 1840 till
paid which John C Reiley in our
Circuit Court recovered against them
for damages and also the sum of
Fifteen Dollars forty Eight cents which
to the said Plaintiff were adjudged
for his costs And you having made
return of said writ that you had
taken by virtue thereof on the 6th day

of October 1847 the following Real Estate to wit the Mill tract at and near the Town of Lawrenceville described as follows on the records of this county namely begining at a post on the South Bank of the Embarras River the same being the North West corner near two maples thence South 6 West 11 chains to a post the corner from which ~~two maples~~ a Sugar tree 24 Inches diameter bears South 80 p East 41 links distant and a Sugar tree 30 Inches in diameter bears 89 West fifteen links distant thence North 81 p East 24 chains & 30 links ~~distant~~ to a post from which a Sugar tree 20 Inches diameter bears South 26 West 12 links distant and a Sugar tree 24 inches diameter bears North 12 p West 83 links distant thence North 6 chains & 50 links to a post on the bank of the River from a maple 12 inches diameter bears North 47 p West 23 links distant and a maple 15 inches diameter bears north 19 West 25 links distant thence down the River with the meandering thereof to the line of the original Shoals tract of land

thence North West with the original Shoals line crossing the river 28 chains and 47 links from the North Bank of the River to a corner of the Original Shoal tract thence S W with said line 21 chains and forty links to another corner of the Original tract thence N W with said line 16 chains to another corner thence South West with said line 13 chains to a corner on the Bank of the River and down the same with the meanderings thereof to the place of begining It being all the original Shoals tract of land on the North side of the River and about 18 acres on the South side containing about 75 acres except the ground main fence whereon Mrs Susan Reiley now resides Also another tract of land bounded as follows on the North by the tract last above described and on the West by main Street with 50 feet on said Street and running back East as far as said lot or tract last above described

And also that other lot or parcel of Land containing 3 acres lying immediatly East of that part of the Mill tract that lies on the South

side of the said River bounded on the South and East by the lands of Ezra Baker and on the North and West by the mill tract the same being known as the distillery tract all of which Real Estate so levied upon Remains unsold but and excepting the following, that part of the mill tract of Land part of the Original Shoals tract which lies within the following boundaries that is to say beginning at a post on the South Bank of the River Embarras from which a maple 12 Inches in diameter North 47½ West 23 links distant thence South six chains & fifty links to a post from which a Sugar tree 30 Inches diameter bears North 12½ West 83 links distant thence West by South on the line of the Original Shoals tract One hundred & ten feet thence North to the line of the Mill tract on the River thence East with the line and the River to the place of begining which by virtue of Venditioni writ No 1512 and return thereon you sold to Henry H. Shepherd on the 30th day of January AD 1849 for the sum of One hundred Dollars, We therefore comm

and you by this alias Venditioni Exponas
writ to expose to sale the ballance of
the Real Estate levied on by you
as aforesaid and described in the
writ (excepting that tract sold to
Henry H Shepherd and above descri
bed) for the best price you can obtain
for the same and have those sums
of money Ready at the clerks office
in Lawrenceville within Ninety days
from the date hereof to render to
the said John C Reiley or his represen
tatives and have then there this writ
with an endorsement thereon as to
the manner in which you have
Executed the same

Witness the clerk of our
said Circuit Court at
Lawrenceville this May
AD 1854

Fee

John C Reiley clk

upon which Venditioni Exponas appears
the following return to wit
In obedience to the commands of the
within writ I have offered to public
sale at the door of the Court house
in Lawrenceville all of the within described
lands on the 10th day of June 1854 and

at said Sale Daniel L Gold became the purchaser as follows to wit the price first described for the sum of Four Hundred Dollars the second for Five Dollars the third for Five Dollars the fourth for ten Dollars

Joel Johnson Sheriff &c

Fourth It was admitted that John Seeds and James Nabb ceased to be the Administrators of the Estate of John C Reiley after 1849 and that Daniel L Gold was appointed and now is Administrator of said Estate and that neither of the Letters of Administration on the Estate of Reiley have ever been recorded in this court the said Gold by his attorney contesting the right of said May Dubois & McLean to the credit as claimed in the notice and motion introduced as evidence though the same was objected to the Record of a suit in Chancery in favor of the Administrators of Paine against the Administrators of Reiley in which a Decree was entered in October 1849 as follows to wit

State of Illinois Lawrence County

& Circuit Court September Term AD 1849
To the Hon Justice Harlan Sole Judge
of the Lawrence Circuit Court In
Chancery Sitting Humbly complaining
Your Orators Joseph Stewart and
Perry Lewis Administrators of the Estate
of Daniel Paine deceased under Order
of the court first obtained would respectf
ully represent unto your Honor that at
the September Term of the Lawrence
Circuit Court AD 1845 James Nabb and
John Seed administrators of the Estate of John
C Reiley Deceased exhibited in said
Court in the chancery side thereof
their Bill of complaint against your
Orators in substance as follows, To the
Hon William Wilson Sole Judge of said
court in Chancery Sitting Humbly
complaining sheweth unto your Honor
your Orators John Seed and James
Nabb administrators of the Estate of John
C Reiley deceased that John C Riley in
his lifetime on or about the 8th day of
October AD 1840 recover a judgment in
the Lawrence Circuit Court for the sum
of $1991.64 Dollars on Daniel Paine
Jesse R Dubois Ebenezer Z Rynn and
James M McLean and Jacob May that
after said judgment was obtained

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by said Riley vs said Defendants the said Daniel Paine paid to the said Riley on said Judgment the sum of $150 on or about the 17th day of December 1840 and took the said Riley receipt thereof but that said Riley failed and neglected to enter a credit on said Judgment for the amount of said payment and that on the 25th of September 1843 the said Paine not having received a credit on said Judgment for the amount of said payment brought suit against your Orators on said receipt and recovered a Judgment against them as the Administrators of said Riley for the sum of $178 both of which said Judgments still remain in full force and in nowise reversed or satisfied, that since the recovery of said last Judgment on or about the day of the said Daniel Paine departed this life intestate and that since his death one Joseph Stewart and Perry Lewis have been by the Probate Court of said County of Lawrence aforesaid appointed the administrators of the Estate of the said Daniel Paine your Orators hereby consent on their part that the said Judgment of the said Paine against your Orators

set and allowed as a credit on the Judg
ment of the said Riley in his lifetime
against the said Paine Dubois Ryan
McLean and May aforesaid your Orators
therefore pray that the said Joseph
Stewart and Perry Lewis administrators
of the said Daniel Paine may be
made defendants to this their Bill
of complaint and that they may be
compelled to answer this your Orators
Bill of complaint and that on a final
hearing hereof that your Honorable Court
will order and decree that the said payme
nt be credited on the said judgment
and that judgment of the said Reiley
may be canceled to the extent of said
receipt and payment as aforesaid and
that the judgment of the said Paine
against your Orators may be vacated
and cancelled and entered satisfied
and such other and further Relief
in the premises as shall seem just
right and to equity belongs and you
as in duty bound will ever pray &c
To which said Bill your Orators
submitted in substance the following
answer The said Joseph Stewart and
Perry Lewis administrators of the Estate
of Daniel Paine being made Defendants

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to said complainants bill having the service of process enter their appearance to said cause and for answer say that the matters and allegations as to the judgments and times of their recovery in said Bill mentioned are true and correctly set forth and said respondent believes that it is true the said sum of fifteen hundred dollars paid by the said Daniel Paine to John C Reiley at the time stated and for which said Reiley Receipt was taken was intended as a credit upon said judgment of the said Riley against Paine Dubois McLean Ryan and May, Your Respondent therefore submitting to this Hon.d Court whether the said judgment of the said Paine as the said Reiley can be applied as a credit upon the judgment of the said Reiley against the said Paine Dubois Ryan McLean and May to date as from the time of the said payment of the money by Paine to Reiley and if it be the opinion of the court that said judgment can be so transferred and the credit so applied then your respondents are willing that the said judgment of Paine be so transferred and the said judgment-

of fifteen hundred dollars applied as a credit upon the Judgment of the said Reiley against Paine et al so as to take effect from and at the time of said payment to wit 17th December 1840 and having answered all that is material for them to answer they pray the aid of the Court in the premises and that they be discharged &c

Your Orators represent that at the said term of the Circuit Court upon the Bill and answer as above set forth a certain order or decree was then had and made agreeable to the prayer of said Bill (a copy of which from the Records of said Court is herewith filed marked A and prayed to be taken as a part of this Bill) Your Orators present that since the proceedings herein before stated had been made they have been advised that the said sum of fifteen hundred dollars represented as having been paid by the said Paine to the said Reiley and upon which the Judgment of the said Pains aaur against Reileys administrators was formed was not so paid as set forth but that the said Reiley was pushing the said Paine as one of the parties of the Judgt

of the said Reiley against Paine Dubois et.al to make payment of the same and the said Paine being unable to make said payment he deposited with the said Reiley certain funds being Illinois State Script as your Orators are informed and believes as collateral security upon said Judgment against Paine Dubois et al and the same was not intended by the said Paine or received by said Reiley as payment but only as security as aforesaid Your Orator further presents that it was upon the Receipt given by the said Reiley for the funds deposited that your Orators instituted proceedings and Recovered a Judgment at Law against the said Reiley Administrators Your Orators further presents that since the proceedings herein have as set forth One Jesse K Dubois by proceedings instituted in the District Court of the United States in and for the District of Illinois recovered the premises from the said Paine et.al for the purchase money of which the said Reiley Recovered the judgment before mentioned against the said Paine Dubois. et.al and that such recovery solly and entirely

defeats the cause of action of the said judgment upon which the judgment of your Orators against the said administrators was ordered to be credited your Orators represents that the said fifteen hundred dollars so credited was the individual funds of the said Paine in which the said Dubois et al had no sort of interest and the same was deposited as aforesaid to permit your Orators intestate from being harrassed by the said ~~judgment~~ Reiley for the payment of the judgment as aforesaid and the said Reiley held the said as deposited of the same and rendered no account therefor before his death that at the time of his death the said judgment against the said Pain Dubois et al remained in full force and unsatisfied no credit having ever been given thereon shewing that the said Reiley never regarded the said fifteen hundred dollars as a payment your Orators represent that after the death of said Reiley being unable to procure an adjustment of the said sum they entered suit at law against the Administrators of the said Reiley and recovered the judgment before

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mentioned therein. Your Orators further represent that the judgment of Reiley against Paine Dubois et al was due and owing by all of said company in the condition of the purchase aforesaid from Reiley to said company, Your Orators further present that the Estate of the said Paine has proved largely insolvent and that to apply the credit as aforesaid of the judgment of your Orators against said Reiley's administrators upon the judgment of Reiley against Paine Dubois et al will work great injustice to the individual creditors of said Paine and that the same is a fraud upon them and was consented to by your Orators only under opinion of the Court upon the matter stated in said Bill filed against your Orators and at the time believed to be true, Your Orators charge that the said Paine has never received any benefit from said Reiley and that the judgment against him et al in said Court is against Equity and good conscience and ought not to be collected and more especially should not be collected of the individual funds of said Paine and that if the said Order or decree made as aforesaid

be suffered to remain and continue in full force your Orators will be greatly injured and entirely without Redress and insist that said original Bill filed for the appropriation of the judgment ought to have been dismissed and would have so disposed of by the Court but for the ignorance of your Orators in the premises and the want of full fair and proper investigations of the matters therein set forth wherefore inasmuch as your Orators are without remedy at law and can only be relieved in a Court of Equity where matters of this kind are proper to be heard they would pray your Honor will take cognizance of their cause and when said cause of the Administrators of Reiley aforesaid vs your Orators and that the said order and decree made therein be reconsidered and reversed and that the original Bill of the Administrators be dismissed and that your Orators be permitted to proceed to collect their said judgment of fifteen hundred dollars in same manner as if no such order for placing the same as a credit upon the judgment of Reiley against Paine et al was not made. To the end therefore that the prayer of

this Bill may be granted you Orators pray the Said John Seed and James Nabb administrators of Said Reiley be made defendants hereto and may answer the premises and that the said suit and proceeding had originally herein may stand mained against the said parties or that they may shew good cause to the contrary that the said cause may be heard upon such supplemental matter as aforesaid at the same time that it is unheard on said Original Bill and that the said decree may be reversed and the said original Bill be dismissed out of this Honorable court and that you Orators may have such relief other and further in the premises as under the circumstances hereinbefore particularly mentioned to your Honor shall seem meet and the nature of the cause may require May it please your court to grant the peoples most gracious writ of Subpoena in Chancery to the said John Seed & James Nabb directed & commanding &c Returnable &c as in duty bound they will ever pray &c

Harmon & Sol

Joseph Stewart &
Perry Davis

State of Illinois Lawrence County ss

The People of the State of Illinois
to the Sheriff of Lawrence County Greeting

We command you to summon
John Seed and James Nabb administrators
of all and singular goods and chattles
rights credits monies and effect that
were of John C Reiley deceased if they can
be found in your County to be and app
ear before the judge of our circuit court
on the first day of the next term thereof
to be holden at the court house in Law
renceville on the Nineteenth day of September
next to answer Joseph Stewart and Perry
Lewis Administrators of all and singular
the rights credits monies and effects that
were of Samuel Paine deceased the charges
and allegations contained in their
Bill of complaint in our said court
exhibited And have you then and there
this writ with return thereon as to the
manner in which you execute the
same Witness Frederick A Thomas
clerk of our said court at
Lawrenceville this 18th day
of August AD 1849

Exd
Ex

F A Thomas clk

Upon which summons there appears
the following return to wit

[8708-16]

Served the within writ on James Nabb on the 21st day of August AD 1849 by delivering a copy of the same to him and served the same on John Seed on the 24th day of August 1849 by delivering a copy of the same to him

J Young S.L.C.

And afterwards at the september term AD 1849 of said Court the following decree was had and entered of Record to wit

Joseph Stewart & Perry Sewis
Administrators of Daniel Paine dec'd
vs } In Chancery
John Seed & James Nabb
Administrators of John C Reily dec'd

Now at this day comes the parties by their solicitors when the cause was submited to the court upon Bill & Exhibits whereupon it is ordered and decreed by the court here that the matters and things in complainants bill be taken for confessed and that the said decree heretofore rendered in this court in the cause wherein James Nabb and John Seed administrators of John C Reiley deceased were complainants and the said Joseph Stewart

and Perry Sims Administrators of the Estate of Daniel Paine deceased were Defendants at the September term 1845 of this court be reconsidered reversed and for naught esteemed and that the said complainants defendants in said suit be allowed to withdraw their answer in the same since that the original Bill filed in the said cause by James Nabb and John Seed Administrator of John C Reiley deceased as aforesaid be dismissed and the entire proceedings in said cause be considered as void and without effect It is further ordered and decreed that the complainants in this cause be permitted to enforce their fragment heretofore received by their interest against administrators of John C Reiley deceased as fully and summarily as if no proceeding had heretofore been had in said suit instituted as aforesaid at the September Term 1845 It is further ordered and decreed that the complainants recover of the Defendants their cost and charges about their suit in this behalf expended &c,

upon which evidence introduced by

the parties as aforesaid, and which was all the evidence in the cause the Court overruled the motion aforesaid to which opinion and decision of the Court overruling said motion the said Dubois May and McLean except and pray that this their Bill of exceptions may be signed & sealed & which is accordingly done

J Harlan (Seal)

State of Illinois }
Lawrence County } ss

I Silas J Stiles clerk of the Circuit Court in and for the County of Lawrence and State of Illinois do hereby certify that the foregoing 32 pages contains a full and complete copy of the Records and proceeding in the foregoing action

In testimony whereof I have hereunto set my name and affixed the seal of said Court at Lawrenceville this 16th day of June AD 1858

S. J. Stiles clk

J C Reiley
vs Injunction
Jesse R Dubois
et ao

Copy

Fee $7.50
Postage 27
$7.77

Filed October 12, 1858.
N. Johnston Clk
Paid $5.00

STATE OF ILLINOIS
SUPREME COURT,

SS. 1st Grand Division

WRIT OF ERROR.

THE PEOPLE OF THE STATE OF ILLINOIS;

To the Clerk of the Circuit Court for the county of Lawrence GREETING,

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Lawrence county, before the Judge thereof, between Isaac K. Dubois, James M. McLean and Jacob May - - - - - plaintiffs, and Daniel L. Gale - Administrator of the estate of John C. Riley and Ebenezer G. Ryan - - - - - - - defendants it is said manifest error hath intervened, to the injury of the aforesaid Isaac K. Dubois, James M. McLean and Jacob May as we are informed by their complaint, and we being willing that error, should be corrected if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay, send to our Justices of the Supreme Court, the record and proceedings of the plaint, aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Mount Vernon, in the county of jefferson, on the 1st Tuesday after the 3d Monday of November next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law:

John D. Caton

Witness, the Hon. ~~WALTER B. SCATES~~ Chief Justice of our said court, and the seal thereof, at Mount Vernon this twelfth day of October in the year of Our Lord One Thousand Eight Hundred and Fifty-eight

Noah Johnston
Clerk Supreme Court.

[8768-12]

Isaac K. Dubois,
James M. McLean &
Jacob May
Plaffs in erro

vs } Writ of erro

Daniel L. Coller
Administrator of the
estate of John C. Riley &
Ebenezer G. Rayner
Defts in erro

Issued office Oct. 12, 1858.
N. Johnston Clk

Jacksonville 5 October 1858

Noah Johnston Esq.

D.S. — I have write Enclose a Bond to be filed with the P.M., please open, without delay, and Enclose Sums to Sheriff of Lawrence County by mail.

I shall be at Lawrenceville the 3rd Monday of this Month, and will obtain the Sums. — I will have the printing done here,

Respectfully
your obt Servt.
W. W. Thomas

[8708-20]

Letter.
W Thomas
To
N. Johnson
5 Oct '58

Filed October 12, 1858.
A. Johnston Clk

STATE OF ILLINOIS, } ss. 1st Grand Division
SUPREME COURT. }

THE PEOPLE OF THE STATE OF ILLINOIS,

To the Sheriff of Lawrence **County,**

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the Circuit Court of Lawrence County, before the judge thereof, between Jesse K. Dubois, James M. McCann and Jacob May, Plaffs, and Daniel L. Gale, Administrator of the estate of John C. Riley and Ebenezer J. Ryan — — — — — — — — — defendant, it is said that manifest error hath intervened to the injury of said Jesse K. Dubois, James M. McCann and Jacob May as we are informed by their complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Mt. Vernon, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said Daniel L. Gale Adm. of the estate of the said John C. Riley and Ebenezer J. Ryan — —

that they be and appear before the Justices of our said Supreme Court, on the first day of the next term of said Court, to be holden at Mount Vernon, in said State, on the ~~Second Monday in November next~~ first Tuesday after the, to hear the records and proceedings aforesaid, and the errors assigned, if they shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Daniel L. Gale & E. J. Ryan notice, together with this writ.

John D. Caton

Witness, the Hon. ~~Sidney H. Breese~~, Chief Justice of our said Court, and the seal thereof, at Mount Vernon, this twelfth day of October in the year of our Lord, one thousand eight hundred and fifty-eight.

Noah Johnston
Clerk of Supreme Court.

[8708-21]

I have serve this writ by reading the same to the within named Daniel L. Gale & Ebenezer E. Ryan on this 18th day of Oct 1858

G. M. Whittaker S.C.

Jesse K. Dubois,
James M. McLean
and Jacob May
Pltffs in Com
vs } Lei fac
Daniel L. Gale
Administrator of the
estate of John C. Riley &
Ebenezer E. Ryan
Defts in com

fees for serving 1.00
paid by W. Thomas

G. M. Whittaker
S.C.

State of Illinois, in Supreme Court.

FIRST GRAND DIVISION.

JESSE K. DUBOIS, JAMES L. MCLEAN, AND JACOB MAY.

AGAINST

DANIEL L. GOLD, ADMINISTRATOR OF THE ESTATE OF JOHN C. REILEY, DECEASED, AND EBENEZER Z. RYAN.

ERROR FROM LAWRENCE.

The facts of this case as presented by the Record are as follows:

At the October term, 1840, Lawrence Circuit Court, John C. Reiley obtained a judgment against Jesse K. Dubois, Daniel Paine, Ebenezer Z. Ryan, James M. McClean, and Jacob May, for $1,991, 64 cts., and shortly thereafter departed this life.

At the September term, 1843, of said court the defendant, Daniel Paine, recovered a judgment against John Seeds and James Nabb, administrators of the estate of John C. Reiley, for the sum of $1730 and costs, and shortly thereafter died intestate.

At the September term, 1845, of said Court, the said John Seeds and James Nabb, as such Administrators, filed their bill in Chancery against Joseph Stewart and Perry Lewis, Administrators of the estate of said Daniel Paine, for the purpose of compelling a set off of the amount of the judgment obtained against them against that amount of the judgment in favor of said Reiley. They set out the existence of the judgment in favor of John C. Reiley, and state "that after said judgment was obtained by said Reiley against said defendants, the said Daniel Paine paid to the said John C. Reiley on said judgment, the sum of $1500 on or about the 17th of December, 1840, and took the said Reiley's receipt for the amount of said payment; and that he the said Reiley, failed and neglected to enter a credit on said judgment for the amount of said payment, and that on the 25th of September, 1843, the said Daniel Paine, not having received a credit on said judgment for the amount of said payment, brought suit against them on said receipt and recovered judgment against them as the administrators of said Reiley, for the sum of $1730, both of which said judgments still remain in full force, in nowise receipted or satisfied; that since the recovery of the last mentioned judgment, the said Daniel Paine departed this life and Joseph Stewart and Perry Lewis have been appointed Administrators, &c.

They then state their "willingness, that the judgment in favor of Paine may be set off against that amount of the judgment in favor of Reiley, and pray the Court to decree the same."

Stewart and Lewis Answer the Bill admitting the truth of the statements thereof, and submitting to the court the question as to allowing the offset between the two estates.

Upon the hearing of the cause, the court decreed that the offset should be allowed, and that the judgment should be credited by the payment of $1500, as of the 17th December, 1840.

To the September term, 1849, of the Circuit Court, the said Joseph Stewart and Perry Lewis as Administrators of Daniel Paine, filed their bill in chancery against said John Seed and James Nabb administrators of John C. Reiley, setting out the facts; first of the existence of the two judgments at law, and second of the decree, requiring the one to be credited on the other and then state in substance, first, that since the said decree, they have been advised that that the said sum of $1500 was not paid on said judgment in favor of said Reiley, but the said Reiley was pushing the said Faine as one of the parties to the judgment, to make payment of the same, who being unable to make such payment, deposited with said Reiley certain funds, being Illinois State Scrip, as collateral security upon said judgment, and the same was not intended by the said Paine nor received by the said Reiley as payment, but only as security as aforesaid.

Second; that since the proceedings, as before set forth, one Jessee K. Dubois by a proceeding in the Circuit Court of the United States for the District of Illinois, recovered the property from Paine and others, for the purchase money of which, the said Reiley recovered the judgment against Dubois, Paine, &c., and that such recovery soley and entirely defeats the cause of action upon which the judgment in favor of said Reiley was obtalned.

Third; that the $1500 so ordered to be credited was the individual funds of said Paine, in which the other parties to the judgment had no interest, and that the judgment was due and owing by all the parties against whom it was rendered.

Fourth; That the estate of said Paine has proved largely insolvent, and that to allow the credit as required by said decree will work great injustice to the individual creditors of said Paine; that the same is a fraud upon said creditors, and was consented to by them only under the opinion of the court, upon the matters stated in the bill, which at the time was believed to be true.

Fifth; That said Paine has never received any benefit from said Reiley, and that the judgment is against equity and good conscience, and ought not to be collected, and more especially should not be collected of the individual funds of said Paine.

Sixth; That the bill filed by the administrators of Reiley, for the purpose of obtaining the set off, ought to have been dismissed, and would have been so disposed of but for the ignorance of your orators in the premises, and the want of full, fair and proper investigation of the matter.

Whereupon they pray, that the decree requiring the offset may be set aside and for nothing held, and tha they be permitted to collect the judgment against the estate of Reiley &c.

Upon the filing of this bill a summons was issued against, and served upon, the administrators of Reiley, who failed to appear and answer, and at the first term of the court, the bill was taken as confessed, and a decree was passed according to the prayer thereof.

On the 22d May, 1854, an execution was issued on the judgment in favor of John C. Reiley, of the October term, 1840, on which, on the 10th of June, 1854, four parcels of real estate were sold and the said Daniel L. Gold became the purchaser.

At the October Term, 1857, of the court, a motion was submitted in behalf of Jesse K. Dubois, Ebenezer Z. Ryan, James M. McLean, and Jacob May, to quash the said execution issued 22d May, 1854, and set aside the sale made by virtue thereof, upon the ground, that the execution was issued in favor of John C. Reiley after he had departed this life, without any proceedings making his personal representatives parties to the judgment.

And also for an order directing the judgment to be credited by $1730 as of 25th September, 1843, as required by the decree of September, 1845.

Upon the entering of the motion the said Daniel L. Gold appeared to the same and the matter was continued to the next term.

At the May term, 1858, the motion was heard, when it was admitted that John Seeds and James Nabb ceased to be the administrators of the estate of John C. Reily, after 1849, and that Daniel L. Gold was appointed and was at the time of said hearing the administrator of said estate, also that neither the letters of administration on the estate of said Reiley, had ever been recorded in said court.

Upon this hearing the said Gold offered as evidence the record of the decree of September 1849, which was objected to by the opposite party, but the objection was overruled, to which exception was taken.

The said E. Z. Ryan appeared in person in court at said hearing and represented that he had not authorized, and did not wish his name to be used as a party to said proceeding, and his name was therefore stricken out as such party.

The court upon consideration overruled the motions submitted as aforesaid, to which the said Dubois, McLean and May excepted.

The errors assigned are:

First; The court erred in permitting the record of the decree of September, 1849, to be used as evidence in the case;

Second; The court erred in overruling the motion to quash the execution and set aside the sales made by virtue thereof, and also in overruling the motion for an order requiring credit to be entered on the judgment according to the decree of September, 1845.

Third; The court erred in overruling the motions as submitted.

WILLIAM THOMAS, for Plffs.

No 32.

Dudoir, McLean & May.

vs Abstract

Error to

8708

M Thomas

for Pltff

1856

State of Illinois, in Supreme Court.

FIRST GRAND DIVISION.

JESSE K. DUBOIS, JAMES L. MCLEAN, AND JACOB MAY.

AGAINST

DANIEL L. GOLD, ADMINISTRATOR OF THE ESTATE OF JOHN C. REILEY, DECEASED, AND EBENEZER Z. RYAN.

ERROR FROM LAWRENCE.

The facts of this case as presented by the Record are as follows:

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At the September term, 1843, of said court the defendant, Daniel Paine, recovered a judgment against John Seeds and James Nabb, administrators of the estate of John C. Reiley, for the sum of $1730 and costs, and shortly thereafter died intestate.

At the September term, 1845, of said Court, the said John Seeds and James Nabb, as such Administrators, filed their bill in Chancery against Joseph Stewart and Perry Lewis, Administrators of the estate of said Daniel Paine, for the purpose of compelling a set off of the amount of the judgment obtained against them against that amount of the judgment in favor of said Reiley. They set out the existence of the judgment in favor of John C. Reiley, and state "that after said judgment was obtained by said Reiley against said defendants, the said Daniel Paine paid to the said John C. Reiley on said judgment, the sum of $1500 on or about the 17th of December, 1840, and took the said Reiley's receipt for the amount of said payment; and that he the said Reiley, failed and neglected to enter a credit on said judgment for the amount of said payment, and that on the 25th of September, 1843, the said Daniel Paine, not having received a credit on said judgment for the amount of said payment, brought suit against them on said receipt and recovered judgment against them as the administrators of said Reiley, for the sum of $1730, both of which said judgments still remain in full force, in nowise receipted or satisfied; that since the recovery of the last mentioned judgment, the said Daniel Paine departed this life and Joseph Stewart and Perry Lewis have been appointed Administrators, &c.

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Second; that since the proceedings, as before set forth, one Jessee K. Dubois by a proceeding in the Circuit Court of the United States for the District of Illinois, recovered the property from Paine and others, for the purchase money of which, the said Reiley recovered the judgment against Dubois, Paine, &c., and that such recovery soley and entirely defeats the cause of action upon which the judgment in favor of said Reiley was obtained.

[87 08-24]

Third; that the $1500 so ordered to be credited was the individual funds of said Paine, in which the other parties to the judgment had no interest, and that the judgment was due and owing by all the parties against whom it was rendered.

Fourth; That the estate of said Paine has proved largely insolvent, and that to allow the credit as required by said decree will work great injustice to the individual creditors of said Paine; that the same is a fraud upon said creditors, and was consented to by them only under the opinion of the court, upon the matters stated in the bill, which at the time was believed to be true.

Fifth; That said Paine has never received any benefit from said Reiley, and that the judgment is against equity and good conscience, and ought not to be collected, and more especially should not be collected of the individual funds of said Paine.

Sixth; That the bill filed by the administrators of Reiley, for the purpose of obtaining the set off, ought to have been dismissed, and would have been so disposed of but for the ignorance of your orators in the premises, and the want of full, fair and proper investigation of the matter.

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Upon this hearing the said Gold offered as evidence the record of the decree of September 1849, which was objected to by the opposite party, but the objection was overruled, to which exception was taken.

The said E. Z. Ryan appeared in person in court at said hearing and represented that he had not authorized, and did not wish his name to be used as a party to said proceeding, and his name was therefore stricken out as such party.

The court upon consideration overruled the motions submitted as aforesaid, to which the said Dubois, McLean and May excepted.

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Second; The court erred in overruling the motion to quash the execution and set aside the sales made by virtue thereof, and also in overruling the motion for an order requiring credit to be entered on the judgment according to the decree of September, 1845.

Third; The court erred in overruling the motions as submitted.

[708-25]

WILLIAM THOMAS, for Plffs.

No 32

Nov. A.D. 1858

Isaac K. Dubois and
others — Plffs in Error
vs

D. L. Gold & Trust. & C &
E. J. Ryan
Defts in Error

Error to Lawrence

Reversed for
Misjoinder — and
Remanded

8708