No. 8586

Supreme Court of Illinois

Skein & Gay

vs.

W. A. Hughes

71641 7

Pleas at Auth Calendar
before the Circuit Court of Pulaski
County in the State of Illinois, at
a Circuit Court begun and held
(a Special Term thereof, Commencing)
on Monday the 30th day of August
in the Year of our Lord one thousand
eight hundred and fifty eight (1858)

Be it remembered, that heretofore, to wit on the 14th day of August
in the Year aforesaid, at the Rules held
in the Clerks office of said Circuit Court
Bill filed — came William A Hughes by his Solicitor and filed his certain Bill against Henry Phillips, Jacob Klein and Thomas B Gary, which Bill, is in the words and figures following, to wit,

In the Circuit Court of Pulaski
County State of Illinois. of the September
Term A D 1858

To the honorable Nelson Sloan
Judge of said Court sitting in Chancery
Humbly complaining showeth unto
your honor, your orator William A Hughes, that on the 27th day of February
1857, one thousand eight hundred and
fifty seven, Henry Phillips, Jacob Klein
and Thomas B Gary Copartners in
the Milling Business, doing business
under the name style and description of Phillips, Klein & Gary, Citizens of the
said County Illinois, became and
was indebted to your Orator in

[X586-1]

(Bill Con)

in the sum of Three Hundred Dollars
and being so indebted in order to secure the
payment of the said sum of money the said Hen-
ry Phillips, Jacob Stein & Thomas Blyay, by
the description and style of Phillips, Stein & Blyay
did make execute and deliver unto your orator
their certain writing obligatory commonly called
a promissory note, under seal, dated the 27th
day of February A.D. 1857 and payable on or
before the 27th day of May next following
the date thereof that is to say on or before
the 27th day of May 1858 which is here shewn
to the Court marked [A] and made part
of this bill And your orator further
shewth that the said Phillips, Stein
and Blyay, in order further to secure the
payment of the said sum of money and
being or pretending to be seized and
possessed of certain personal property
and mixed property or leasehold estate
hereinafter mentioned executed and
delivered unto the said William A. Hughes
your orator, a certain deed of mortgage
hereunto filed marked [B], bearing date
the 27th day of February 1857 made by the said
Phillips, Stein & Blyay of the County of Pulaski
of the first part and William A. Hughes
of the second in and by which said
deed of mortgage the said party of the first
part in consideration of Three dollars
to them in hand paid by your orator
as well as for and in consideration

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of the premises hereinafter mentioned and
described, bargained, sold, transferred and con-
veyed to your orator the moiety in the said mill
seat conveyed to Henry Phillips and Lindsey S. Smith
by A. Ainer, Trust Emporium Real Estate
and Manufacturing Company South End
Commercial Avenue North bank of Cache
river in Pulaski County Illinois together with
the steam saw mill thereon situate, its en-
gine, boilers, fixtures, tackle and appurtenances
of whatsoever nature or kind. Also ten yoke
of cattle with yokes, chains, timber wheels and
wagon, to have and to hold forever. Provided
always and the said deed of mortgage to be there-
in declared to be upon the express condi-
tion, that if the parties of the first part
should within three months from the date
of said mortgage, well and truly and without
defalcation, pay, or cause to be paid to
your orator or his proper representative
fifty hundred dollars, being the amount
of a certain promissory note of even date
with said mortgage, executed by the said
defendants to your orator and payable
on or before the 24th day of May 1858
And your orator further shows
that after the execution of said mortgage
the same was duly form of law and
recorded on the 24th day of February
A.D. 1857 before Jamuel Dandy a justice
of the peace in and for said of Pulaski, and
duly recorded in the office of the Recorder
at Mound City in Pulaski County
on the 24th day of February 1857. to which
deed of mortgage and recording, your

Bill
Can

[8526-2]

Bill Con)

for Orator certainly hope leave to refer

And your Orator further shew
unto that the sum of five hundred
dollars and interest from the
day of agreed verbally to be
paid thereon, yet remains due and
unpaid to your Orator by reason other
of the said deed of mortgage and the estate
thereby mortgaged have become absolute
in your Orator subject only to the equity
of redemption in this honorable court
And your Orator avers that he
has frequently applied to said defend-
ant and requested payment of the money
so due your Orator upon the said mortg-
age - but the said defendant has
wholly neglected and still do neglect
and refuse to pay the same or any part
thereof & your Orator therefore solicits
the aid of this honorable court in
the collection thereof And to that
end prays that the said defendant
may be informed and required to make
true, full and perfect answers to all
and singular the allegations aforesaid
fully and particularly according to the
best of their knowledge information and belief
as if the same were herein again
repeated and they interrogated thereof,
And that the said defendant may
be decreed to pay to your Orator
the principal sum of money above
mentioned, with all arrears of interest

Bill
Con

"at that may be found due or hereafter to become due or payable thereon together with costs and charges in this behalf expended, by a day to be appointed by this honorable court and in default thereof that said mortgaged premises or a sufficiency of the same to satisfy your orators demand may by the order and decree of this honorable court, be sold, and out of the money arising from the sale thereof your orator may be paid the full amount of the principal sum due on the said promissory note and decree of mortgage, and all interest money due or to become due thereon, together with all costs and charges by your orator in this behalf expended. And that your orator may have such other and further relief in the premises as may seem proper and shall be agreeable to equity and good conscience. And may it please your honor to grant unto your orator the most ordinary process of subpoena issuing out of, and under the seal of this honorable court directed to be returnable at the next term thereof to answer all and singular the premises contained in this your orators bill of complaint and to stand to, and abide by such order and decree in the premises as shall seem meet and agreeable to equity and good conscience.

Wm J Allen Solr for
Complainant

[8581-3]

Memorandum – The following is a true Copy of the Promissory Note and Mortgage referred to in the Bill. viz

Promissory Note to wit } " $500.00/100
" " On or before the 27th day
" of May next we jointly promise to pay
" William A Hughes Five Hundred Dollars
" value received Witness our hands &
" Seals this 27 Feb 1857
" (Signed) Phillips Shein & Gary (Seal)
" upon the back of which is the following
endorsement, viz
Thirty (A, Peru Aug 1st 1858
I do hereby extend
this note to extend to the 27 day of August
next and interest paid till that time
June 12 1857 (Signed) W A Hughes

Mortgage to wit } Know all men by these presents that
Henry Phillips, Jacob Shein and Thos
B Gary of Peoria County Illinois, trading and
doing business in the name and style of
Phillips, Shein & Gary In consideration of
One dollar to them paid by William A
Hughes of the County and State aforesaid
as well as for and in consideration of
the premises hereinafter named mentioned
and expressed, have bargained sold, conveyed, trans
ferred (and conveyed) and do hereby bargain
sell transfer and convey to William A Hughes
and assigns their interest in the saw mill
set conveyed to Henry Phillips and Lenard
T Smith by A Haines Pres Empressum

7

Real Estate and Manufacturing Company
South and Commercial Avenue North
bank of Cache river in Pulaski Co Ill, together with the steam saw mill thereon
situate, as engine, boilers, pistons, belts
and appurtenances of whatsoever nature
or kind, also sixty pieces of cane with gears
cleaners, lumber wheels and wagons, to have
and to hold forever Provided however
that this instrument shall be void
if the parties of the first part shall
within three months from the date
hereof well and truly and without
defalcation pay or cause to be paid
to the said William A Hughes or his proper representative the sum of five hundred
and dollars, being the amount of a
certain promissory note executed herein
the parties of the first part
herein to William A Hughes and payable
on or before the 25th day of May next
and it is understood that until default
shall be made the parties of
the first part shall have use and retain
in their possession the premises goods
& chattels hereinbefore mentioned
Witness our hands and seals
this 25th day of February 1851

Phillips, Sheridan & Co

State of Illinois }
Pulaski County } ss

Personally appeared before the undersigned a
Justice of the peace in and for
said county, Henry Phillips, one

[00786-4]

of the firm of Phillips Klein & Gary who is personally known to me, and signed and acknowledged the foregoing mortgage as their free and voluntary act of himself and his copartners. The firm of Phillips Klein & Gary. Given under my hand and seal this 27th February A.D. 1857

(Signed) Samuel Davidge (SD)

On the back of said mortgage is the following endorsements

Filed (B)

Phillips Klein & Gary

Chattel Mort

to

Wm A Hughes

I certify that this Mort gage was recorded 27 February 1857. Book II, page 264

Signed Jas M Davidge Clerk

Cir Ct & Recorder

Filed Aug 14th 1858 (for suit)

J M Davidge Clerk

Whereupon subpoena issued as prayed for in the said Bill, which subpoena or summons with the endorsement and return thereon made, is in the words and figures following,

State of Illinois } ss
Shelby County }

The People of the State of Illinois to the Sheriff of said County (Greeting), We command

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you that you summons Henry Phillips, and Reinhard Thomas Blyay trading and doing business in the name firm and style of Phillips & Reinblay, to be and appear before the circuit court of Pulaski County, on the 1st day of the next term thereof to be holden in the Court House at Northe Caledonia within said County on the 1st Monday in the month of September next, to answer William A Hughes a certain Bill in said court filed on the chancery side thereof to foreclose mortgage against certain Real and mixed property in said mortgage specified and mentioned, and have you then and there this writ

Witness Jas M Dooley clerk of said circuit court and the seal thereof hereto affixed at office in North Caledonia this 16th August A D 1858

(Signed) James M Dooley clerk

Return } I served by reading and delivering
to wit } a true copy to the within
named defendants, this Aug 21st
A D 1858 (Signed) Thomas Smith Sheriff
pr A. C. Bantum Dept

Sheriff's fees
Serving process 1.65
Mileage 50 miles 1.82
$3.47

And now on this day

Wednesday the 3rd day of the term & being the 14th day of September in the year 1854 the following proceedings and order or rule of the Court was made in matter of record in the cause viz;

William A Hughes vs Henry Phillips Jacob Shein & Thomas B Gay	Bill to foreclose Mortgage On motion of Complainant by his Solicitor, the defendants are called to plead by tomorrow morning 9 o'clock

And at another day in Thursday of this term & being the second day of September in the year 1854 the following order was made in the cause viz

William A Hughes vs Henry Phillips Jacob Shein Thomas B Gay	Bill to foreclose Mortgage And now on this day came the complainant by his Solicitor and the defendants having failed to plead agreeably with the order and rule of this Court entered up on yesterday and although thro times solemnly called came not but made default whereupon

11 the said Bill was taken as confessed and referred to the Master in Chancery to take proofs —

And afterwards to wit on Friday of this term, it being the 3rd day of September in the year AD 1858 the following order and decree of the said court was made and entered as of record viz

William A Hughes
vs
Henry Phillips
Jacob Stein
Thomas Bryant

Bill to foreclose Mortgage

And now on this day came James M Sandage Master in Chancery to whom was referred the proofs in this cause and made the following report, viz

[September term AD 1858] Aug 1st term AD 1858.

Chancery Court

W A Hughes
vs
Hen Phillips
Jacob Stein
Thos Bryant

Bill to foreclose mortgage

This Bill having been referred to the undersigned to take the proofs

The proofs in the cause are as follows, presumption not from examination thereof I find due the complainant the sum of Dollars principal and cents on dollars and cents interest — in all $561.11

(Signed) Jas M Sandage Master in Chancery

whereupon it is ordered, adjudged and decreed, that said report and all things therein contained be and same ratified and confirmed — and it is further ordered, adjudged and decreed that the defendants pay the amount, to wit, Seven hundred ~~Dollars~~ and sixty ~~cents~~ dollars and eleven cents and costs of suit within "twenty days" that if default be made in the payment thereof at the time herein stated, that all and singular the mortgaged premises mentioned in the Bill of Complaint in this cause, viz, the interest of the defendants in the Saw Mill Dam conveyed to Henry Phillips and Lindsey O. Smith by H. Hamer Pres & Emporium Real Estate & Manufacturing Company, South side Commercial Avenue, north bank of Cache river in Pulaski County Illinois, with the steam saw mill thereon situated, & engine, boilers, fixtures, castle, and appurtenances of whatsoever nature or kind. Also six yoke of cattle with yokes, chains, lumber chains, and wagon, or so much thereof as may be necessary to satisfy the amount due to the complainants for the said principal and interest as well as costs of this cause, which may be sold separately without material injury to the parties interested — be sold as

public auction by Samuel Davis who is hereby appointed special Commissioner of this court to sell at the court house door in Notts Calidonia, that the same be made in manner and form as sheriffs sales under executions at common law, and the special commissioner to pay the complainants out of the proceeds of said sale costs in this cause to be taxed and also the amount so reported due as aforesaid, together with legal interest from the date of the said report or so much as the purchase money of the mortgaged premises will pay of the same and the surplus if any bring into court and for report this cause is continued.

On the 10th day of Dec A D 1858 the certificate of sale in this cause was filed which together with the endorsements thereon is as follows viz

State of Illinois } ss
Pulaski County }
of the City The term A D 1858
Circuit court

In chancery
William A Hughes
vs } Bill to foreclose Mortgage
Henry Phillips
Jacob Shein
Thos B Gary
L. Scott Davidge

Special Commr. in the above styled cause
duly appointed by the Circuit Court of Pulaski
County, Ferrara. do hereby certify that in
pursuance with the decree of the said Circuit
Court. made and entered up in the above
styled cause at the Aug. Term. 1888 A.D.

I did on the first Saturday in the month
of Dec 1888 at and between the hours of
10 O'clock and eleven O'clock of said day
A. M. at the courthouse door in Nova
Dalesania expose to public sale the in
terest of the defendants in the said mill seat
conveyed to Henry Phillips and Lenard Smith
by A. Haines Port Emporium Real Estate
and Manufacturing Company South and
Commercial Avenue North bank Cather
ine River in Pulaski County Ferrara. together with
the steam saw mill thereon situate, & engine
boiler, fixtures, tackle and appurtenances of the
tower nature or kind. and the time and place
of the sale thereof having been duly advertised
by publication in the Emporium a weekly
newspaper published at Clearfield and by
posting written notices thereof in other pub
lic places in the county for more than twenty
days previous to the day of sale thereof, stating
the time, place and terms of the sale, did on
said day & previous & between the hours of five
and seven the same to William A. Wagner
the complainant at and for the sum
of seven hundred and fifty dollars
being the highest and best bid
appearing for the same - and now

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unless the same shall be redeemed within 15 months said Hughes or his assigns will be entitled to a deed for the same. Given under my hand and seal this 10th day of Dec A D 1858

Jas M Davidge Sheriff
Camp Co

Duplicate

Endorsement, Clerk
Duplicate certificate of purchase
Jas M Davidge Camp
to
W A Hughes
Filed Dec 10th A D 1858
Jeff Davidge Clerk

Bill of Plaintiffs costs

Dob Summons Ins apprs atts 15	25
Sums & fees 40 Filg papers 20 Entg 20	80
Ent on docket 20 Decree 75 Seal 15	1 10
Bill 30 Copies 30 Copy decree & seal 1.00	1.60
	$3.75
Master Commissioner's report	50
Sheriff fees " Sum Sums Mileage Fees	3.45
Clerks fee	2 50
Commissioners fees	
Advertising 25 Commissioner on 200 @ 3% 6 00	6 25
Commissioner on $550 @ 1½ per centum	8 12
	$24.57

[2072-B]

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State of Illinois } I Jarrell Daniels
Pulaski County } Clerk of the Circuit
Court in and for said County hereby
certify the foregoing to be a true and
Complete ~~copy~~ transcript from
the records and files of my office
of the Orders, decree and pro
ceedings in the within styled
cause as fully wholly and com
pletely as the same do appear
and on the files of my office
In Testimony whereof
I hereto subscribe my
name and affix the seal
of said Circuit Court at
office in Caledonia this 10th
day of February A.D. 1859

Jas H Daniels Clerk,

Transcript to
Pulaski

William A Douglas
vs
Henry Phillips
Jacob Spears
Thos B Gray

Clerks fees
for records
$ 19.00
Paid
Mr Blackburn

Jacob Stein and
Thomas B. Goy
Plaintiffs in Error
vs
William A Hughes
Defendant in Error

From Pulaski Circuit

To the Honorable Judges of the Supreme Court of the State of Illinois

Jacob Stein and Thomas B. Goy of Pulaski County Illinois complain that at a special term of the Circuit Court within and for the County of Pulaski and State of Illinois aforesaid begun and held at the Court house in North Caledonia in said County and State on the thirtieth day of August in the year of our Lord one thousand Eight hundred and fifty Eight (1858) William A Hughes obtained a decree against Henry Phillips Jacob Stein and Thomas B. Goy under their firm name of "Phillips Stein and Goy" on a petition in Chancery to foreclose a mortgage for the sum of $56 1. 11. That said decree is unjust and erroneous as will appear by the transcript of the Record in said cause herewith filed and attached the said Jacob Stein and Thomas B Goy therefore pray that a writ of Error may issue in said cause and respectfully assign the following Errors

[8582-97]

(Continued on next page)

The court erred in entering a decree against Jacob Stein and Thomas B. Gay and in favor of William A. Hughes

First Because there was no service of process on the said Stein and Gay ten days prior to the sitting of the Court at the term when the Decree was entered. They were summoned to appear on the first monday in the month of September next. and the date of the process 16th August 1858 which process was returned served on the 21st of August 1858. The Court at which the decree was entered was a special sitting and as the Record shews commenced on the 30th of August 1858 leaving but nine days between the service and the sitting of the Court.

Second Because the service is void in not stating what was read to defendants and of what a true copy was delivered and naming the defendants served.

Third Because the Mortgage on which the suit was brought - and on the petition to foreclose which the decree was entered is void It is signed by "Phillips. Stein & Gay" in their firm name with one seal attached and acknowledged before James. M. Davidge J.P. by Henry Phillips only for himself and the other members of the firm.

Fourth Because the note which the mortgage was given to secure the payment of is void - being an instrument under seal signed by the firm name of "Phillips

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Stein & Bay" and shows on the back that it was "extended (meaning the payment thereof) to the 27th day of August and interest paid till then" - without showing on the mortgage which was given to secure its payment.

Fifth. Because the Report of the Master in Chancery as to the amount due complainant as well as the amount entered of Record in the decree is erronious - It being entered $561.11 when in fact the amount due complainant was $530.58

The Decree entered of Record is void.

Sixth Because the Court had no jurisdiction of the Persons of the defendants.

Seventh Because the decree is for the sale of personal property & orders the same to be sold at the Court House door.

Eighth Because the final decree was entered without previous service of a decree nisi

That the said decree was entered in favor of the said William A Hughes when by the law of the land it should have been rendered in favor of the said Jacob Stein and Thomas Bloy they therefore pray that the decree may be reversed

Joinder in Error

William Hunter
Atty for Plff in Error

Allen for Deft Hughes

[9532-17]

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Supreme Court Illinois
First Grand Division

Jacob Stein and
Thomas B. Gay
Plaintiffs in Error
vs
William A Hughes
Defendant in Error

Transcript of Record
Petition in Error &
assignment of Errors

Filed October 28. 1859.
N. Johnston Clk

Paid on Rec — $5.00

State of Illinois,
SUPREME COURT,
First Grand Division. } SS

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Pulaski 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* Pulaski *county, before the Judge thereof between*

William A Hughes *plaintiff and* Henry Phillips, Jacob Stein and Thomas B Gray *defendants it is said manifest error hath intervened to the injury of the aforesaid* Jacob Stein and Thomas B Gray — — *as we are informed by* this *complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay send to our Justices of our Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at* **Mount Vernon,** *in the County of Jefferson, on the* 1st Tuesday after the 2d Monday of November next *next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.*

WITNESS, *the Hon.* John D Caton *Chief Justice of the Supreme Court and the seal thereof, at* MOUNT VERNON, *this* twenty eighth *day of* October *in the year of our Lord one thousand eight hundred and* fifty nine

Noah Johnston
Clerk of the Supreme Court.

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SUPREME COURT.

First Grand Division.

Jacob Stein and
Thomas B Gray

Plaintiffs in Error,

VS.

William A Hughes

Defendant in Error.

WRIT OF ERROR.

Issued & FILED 28 Oct 1859
N. Johnston Clk

Mansfield Sept 29th 1859

Noah Johnston Esqr
Clk Sup Ct Mt Vernon

Dear Sir

I herewith send papers in case of Stein & Stoy - as Hughes in which please issue and send process to me and I will have it served. Am anxious to have the Cause heard at the November term. If I have intimated that I wish to have the Abstracts printed here I wish now to correct it - I expect them to be printed at Mount Vernon - Presume you will attend to it. I also send Abstract in case of Frozier as Recvr & I was laboring under the impression that it was on file - Will you be kind enough to inform me if process has been returned in proper manner in these two cases of mine - the one named and the case of Morgan as Mans. I believe Abstract was filed in the last named case with the other papers. I have one other case but do not know as I can get it ready. Hoping to hear from you soon

I am yours Very Truly
William Hunter

[8561-13]

State of Illinois,
SUPREME COURT,
First Grand Division. } SS

The People of the State of Illinois,

To the Sheriff of Pulaski 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 Pulaski county, before the Judge thereof between

William A Hughes plaintiff and Henry Phillips, Jacob Skrin and Thomas B Gray

defendants it is said that manifest error hath intervened to the injury of said Jacob Skrin and Thomas B Gray 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 Mount Vernon, before the justices thereof; to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said William A Hughes

that he be and appear before the justices of our said Supreme Court; at the next term of said Court, to be holden at **Mount Vernon**, in said State, on the first Tuesday after the second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if he shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said William A Hughes notice together with this writ.

WITNESS, the Hon. John D Caton Chief Justice of the Supreme Court and the seal thereof, at MOUNT VERNON, this twenty eighth day of October in the year of our Lord one thousand eight hundred and fifty-nine.

Noah Johnston
Clerk of the Supreme Court.

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SUPREME COURT.

First Grand Division.

Jacob Skein and
Thomas B Gacy

Plaintiffs in Error,

VS.

William A Hughes

Defendant in Error.

SCIRE FACIAS.

FILED.

Served the within Scire Facias by reading and delivering a true copy thereof to the within named defendant in Error William A Hughes this second day of November A.D. 1859.

A. C. Bartlett Sheriff of Tulare
by C. W. Howell deputy

Serving and return 60cts
Mileage 3.50
$4.10

Sheriff's Office County of Tulare

State of Illinois In the Supreme Court
First Grand Division November Term AD 1859

Jacob Stein and Thomas B. Gay Plaintiffs in Error	Error to Pulaski
as	
William A Hughes Defendant in Error	Trascribe of Plaintiffs in Error

The Clerk of the Supreme Court of Illinois for the First Grand division will please issue a writ of Error in favor of Jacob Stein and Thomas B. Gay the Plaintiffs in Error and against William A Hughes the defendant in Error in this cause to reverse a decree rendered at a special Term of the Pulaski Circuit Court Begun and held at the Court House in said County on the 3rd of August AD 1858 in favor of the said William A Hughes and against Henry Phillips - Jacob Stein and Thomas B. Gay - for the sum of $561.11 - Dobey

William Hunter
Atty for Plaintiffs in Error

[8586-15]

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Supreme Court Illinois
First Grand Division

Jacob Skinner and
Thomas B. Gray
Plaintiffs in Error
vs
William A. Hughes
Defendant in Error

Praecipe of Plffs in Error

Filed October 28. 1857.
N. Johnston Clk

PLAINTIFF'S BRIEF OF POINTS AND AUTHORITIES.

STATE OF ILLINOIS—IN THE SUPREME COURT—FIRST GRAND DIVISION—OF NOVEMBER TERM, 1859.

JACOB SKIEN & THOMAS B. GAY, Plaintiff's in Error, vs. WILLIAM A. HUGHES, Defendant in Error.	Error to Pulaski.

Plaintiff's assign for Error.

FIRST—That the Court below erred in entering a decree against Jacob Skien and Thomas B. Gay, because it was entered by default and there was no service of process on them, ten days prior to the sitting of the Court at the term when the decree was rendered. They were summoned to appear on the first Monday in the month of September next, after the date of the writ, the 15th of August, 1858, and which was returned, served on defendants August 21st, 1858.

The Court at which the decree was entered was a special term of which proclamation was made on the 22d of June, and commenced on the 30th day of August, 1858, having but nine days service prior to the term.

Statute 242, IV Scam. 541, XVII Ills. 276 483,
XVIII Ills. 551, III Scam. 575, III Scam. 152.

Because the service is void in not stating the names of the Defendants served nor how many of them were served, in not stating *what* was read to them or of what he (the Sheriff) delivered a copy. Ibid.

XVI Ills. 299, XVII 276, XVIII 551.

Because the Mortgage on which the decree was rendered was void, that it was signed in the firm name of Philips, Skien & Gay, with one seal affixed, and acknowledged before James M. Davidge as a Justice of the Peace, by Henry Philips only, on behalf of himself and Skien & Gay, that the said James M. Davidge, at the time was also Clerk of the Circuit Court of Pulaski county.

Statute 813, Hilliard on Mortgages, 2d Vol. 156, Sec. 15,
Story on Partnership 145, 149, 173, 180, Story on Agency
Chap. 14, Sec. 351.

Because the note on which said decree was rendered was void in being under seal, signed by the firm name, and shows upon the back that the time of payment was extended by Hughes without any endorsement on the Mortgage or agreement of Skien and Gay. Ibid.

SECOND—That the decree entered of Record was void.

Because the Court had no jurisdiction of the persons of the defendants, Philips, Skien & Gay or either of them.

XVIII Ills. 551.

Because the decree is for the sale of personal property which was ordered to be sold at the door of the Court House.

XV Ills 58, Freeman 999.

Because the Mortgage upon which decree was rendered was a Chattel Mortgage.

XIX Ills. 594-6.

Because the final decree was entered without personal service of a decree Nisi.

I American Chan. Dig. 805.

WM. HUNTER, *Attorney for Plaintiff in Error.*

State of Illinois 32
Supreme Court,
First Grand Division

Skien & Gay
vs
Wm A Hughes

Plaintiffs Brief

Filed Nov. 16. 1859
N. Schuetz Clk

STATE OF ILLINOIS — IN THE SUPREME COURT — FIRST GRAND DIVISION — NOVEMBER TERM, 1859.

Page of Record.

Error to Pulaski—Abstract of Plaintiffs in Error.

JACOB SKEIN and THOMAS B. GOY, plaintiffs in error.

vs.

WILLIAM B. HUGHES, defendant in error.

This was a bill in chancery, filed in the Circuit Court of Pulaski county, filed on the 14th day of August, 1858, by Wm. A. Hughes against Henry Philips, Jacob Skein, and Thos. B. Goy—co-partners under the name, style and description of Phillips, Skein & Goy, stating, in substance,

1.—2. That on the 27th day of February, 1857, Phillips, Skein & Goy were indebted to complainant in the sum of $500, and in order to secure the payment of the same to complainant, Phillips, Skein & Goy executed and delivered to complainant a promissory note under seal, dated 27th Feb'y, 1857, and payable on or before the 27th May, 1858, note here referred to as filed marked "A," and made part of complainants bill.

That Phillips, Skein & Goy, in order to better secure the payment of the said sum of money executed and delivered to complainant, Wm. A. Hughes, a certain deed of mortgage, which is here referred to as filed and marked "B," dated the 27th Feb'y, 1857,

3. by which said deed of mortgage the said Phillips, Skein & Goy in consideration of $1 in hand paid by complainant, as well as in consideration of other promises afterwards to be mentioned and expressed, bargained, sold, transferred, and conveyed to complainant their interest in the saw mill seat conveyed to Kenny, Phillips & Lindsley T. Smith by H. Hainer, Pres't Emporium Real Estate & Manufacturing Co., south end Commercial avenue, north bank Cache River, in Pulaski county, Illinois, together with the steam saw-mill thereon situate, its engines, boilers, fixtures, tackle and appurtenances of whatever nature or kind; also, six yoke of cattle with yokes, chains, timber wheels and wagon, to have and to hold forever, provided that if Phillips, Skein & Goy should within three months from the date of the mortgage deed pay or cause to be paid to complainant or his proper representative the sum of $500, then the mortgage to be void.

That the mortgage deed was afterwards on the 27th Feb'y acknowledged before Jas. M. Davidge, a Justice of the Peace, and duly recorded in the Recorder's office of Pulaski county.

4. Charges that the $500, and interest verbally agreed to be paid thereon, remained due and unpaid, whereby the estate mortgaged became absolute in complainant, subject only to equity of redemption, prays that defd'ts may be made to answer—that they may be

5. decreed to pay complainant the sum mentioned, with arrears of interest together with costs and charges of suit, by a day to be appointed by Hon. Court, and in default that said mortgaged premises, or a sufficiency of the same, to satisfy complainants demand by the order and decree of this Hon. Court be sold, and out of proceeds of sale complainant may be paid the full amount due him on said mortgage, and interest together with

[6586-17]

Page of Record.

costs and charges of suit.

6. Prays writ of subpœna returnable, &c., Copy of note referred to as marked "A," $500. On or before the 27th day of May next we jointly promise to pay Wm. A. Hughes five hundred dollars, value received. Witness our hands and seals this 27th February, 1857. Signed, PHILLIPS, SKEIN & GOY. [SEALS.]

On the back of which note is the following endorsement: This note is extended to the 27th day August next and interest paid till that time. [Signed,] W. A. Hughes, June 12th, 1857.

Mortgage referred to as marked "B," recites that Phillips, Skein & Goy in consideration of $1, and other consideration, mortgaged to Wm. A. Hughes the following property: Their interest in the saw-mill seat conveyed to Henry Phillips and Lindsley T.

7. Smith by H. Hainer, Pres't E. R. E. & M. Co., south end Commercial avenue, north bank Cache River, Pulaski county, Ills., together with the steam saw-mill thereon situate, its engines, boilers, fixtures, tackle and appurtenances of whatsoever nature or kind; also, six yoke of cattle, with yokes, chains, timber-wheels and wagons—to have and to hold forever—provided that if Phillips, Skein & Goy paid within three months from the date thereof the sum of five hundred dollars, then the mortgage to be void; and also provided that the property was to remain in possession of the mortgagers. Witness our hands and seals this 27th day of February, 1857.

PHILLIPS, SKEIN & GOY, [SEALS.]

STATE OF ILLINOIS, PULASKI COUNTY, SS.

Personally came before the undersigned, a Justice of the Peace in and for the said

8. county, Henry Phillips, one of the firm of Phillips, Skein & Goy, who is personally known to me, and signed and acknowledged the foregoing mortgage as the free and voluntary act of himself and his co-partners, the firm of Phillips, Skein & Goy. Given under my hand and seal this 27th February, 1857. JAS. M. DAVIDGE, J. P.

On the back of said mortgage is the certificate of Recorder that it was filed for Record 27th Feb'y, 1857, and duly recorded in Book I, page 264.

9. 16th of August, 1858, subpœena in chancery issued out of the Clerk's office, directed to the Sheriff of Pulaski county, commanding him to summon Phillips, Skein & Goy to be and appear before the Circuit Court of Pulaski co., on the 1st Monday in the month of September next, which was returned by the sheriff with the following endorsement thereon: "Served by reading and delivering a true copy to the within named defd's, this, Aug. 21st, A. D., 1853. THOMAS SMITH, Sheriff.

[Signed,] By A. C. Bartleson, Dpt'y.

Shff's Fees—serv'g & ret. $1 65; mileage 50 miles, $1 82—$3 47.

10 On the 3d day of special term, it being the 1st of Sept., on motion of complainant's counsel defdt's were ruled to plead by to-morrow morning at 9 o'clock.

11. On the 2d day of Sept., a default was taken against Phillips, Skein & Goy, and cause

Page of Record.

referred to master to take proofs.

On the 3d day of Sept., 1858, the master made his report, who reported that upon examination he found to be due the compln'nt from the defdt's the sum of $561 11

Signed, JAS. M. DAVIDGE, Master in Chancery.

12. Decree entered of record on the 3d day Sept., 1858; which is in substance as follows :—

That the defdt's pay the sum of $561 11, with costs of suit, within "twenty days," in default that all the mortgaged premises be sold as mentioned in the bill of complaint.

13 To be sold at public auction by Jas. M. Davidge, Special Comm'r, at the court-house door in North Caledonia, and that the same be made in the same manner as Sh'ffs sales under execution ; that compln'nt be paid out of the proceeds of said sale, together with costs and legal interest from the date of report, and the surplus, if any, bring into Court and for report cause continued. On the 10th Dec., 1858, certificate of rule was filed which is in substance as follows :

14 Special Commissioner on the 1st Saturday in the month of December, 1858, at the court-house door in North Caledonia, after giving notice of the time and place of sale in the Mound City Emporium, did sell the property mentioned in the bill of complaint to Wm. A. Hughes, the complainant, for the sum of $750 00, being the best bid offered for the same. Signed by Jas. M. Davidge, Special Comm'r.

16. Transcript certified. WM. HUNTER, Att'y for pltff's in error.

[9656-17]

33

Isaac Shain and
Thomas B. Gay
vs
William A. Hughes

Abstract

Filed Nov. 11. 1859.
A. Johnston Clk

In the Supreme Court of the State of Illinois
First Grand Division November Term AD 1859

Jacob Stein &
Thomas B. Gray
Plaintiffs in Error
vs
William A Hughs
Defendant in Error

} From Pulaski Circuit
} Cost Bond

I William Hunter of Pulaski County Illinois hereby enter myself as security for all costs which the Plaintiffs in Error in the above entitled cause may be adjudged to pay - in pursuance of the laws of this state or the rules of this Court

William Hunter

Pulaski County Sept 28th 1859-

[8584-30]

82

Supreme Court Illinois

First Grand division

Jacob Stein and
Thomas B Gray
Plaintiffs in error
vs
William A Hughes
Defendant in error

Cash Bond

Filed October 28. 1859
N. Johnston Clk

PLAINTIFF'S BRIEF OF POINTS AND AUTHORITIES.

STATE OF ILLINOIS—IN THE SUPREME COURT—FIRST GRAND DIVISION—OF NOVEMBER TERM, 1859.

JACOB SKIEN & THOMAS B. GAY, Plaintiff's in Error, vs. WILLIAM A. HUGHES, Defendant in Error.	Error to Pulaski.

Plaintiff's assign for Error.

FIRST—That the Court below erred in entering a decree against Jacob Skien and Thomas B. Gay, because it was entered by default and there was no service of process on them, ten days prior to the sitting of the Court at the term when the decree was rendered. They were summoned to appear on the first Monday in the month of September next, after the date of the writ, the 15th of August, 1858, and which was returned, served on defendants August 21st, 1858.

The Court at which the decree was entered was a special term of which proclamation was made on the 22d of June, and commenced on the 30th day of August, 1858, having but nine days service prior to the term.

Statute 242, IV Scam. 541, XVII Ills. 276 483,
XVIII Ills. 551, III Scam. 575, III Scam. 152.

Because the service is void in not stating the names of the Defendants served nor how many of them were served, in not stating *what* was read to them or of what he (the Sheriff) delivered a copy. Ibid.

XVI Ills. 299, XVII 276, XVIII 551.

Because the Mortgage on which the decree was rendered was void, that it was signed in the firm name of Philips, Skien & Gay, with one seal affixed, and acknowledged before James M. Davidge as a Justice of the Peace, by Henry Philips only, on behalf of himself and Skien & Gay, that the said James M. Davidge, at the time was also Clerk of the Circuit Court of Pulaski county.

Statute 813, Hilliard on Mortgages, 2d Vol. 156, Sec. 15,
Story on Partnership 145, 149, 173, 180, Story on Agency
Chap. 14, Sec. 351.

Because the note on which said decree was rendered was void in being under seal, signed by the firm name, and shows upon the back that the time of payment was extended by Hughes without any endorsement on the Mortgage or agreement of Skien and Gay. Ibid.

SECOND—That the decree entered of Record was void.

Because the Court had no jurisdiction of the persons of the defendants, Philips, Skien & Gay or either of them.

XVIII Ills. 551.

Because the decree is for the sale of personal property which was ordered to be sold at the door of the Court House.

XV Ills 58, Freeman 999.

Because the Mortgage upon which decree was rendered was a Chattel Mortgage

XIX Ills. 594-6.

Because the final decree was entered without personal service of a decree Nisi.

I American Chan. Dig. 805.

WM. HUNTER, *Attorney for Plaintiff in Error.*

State of Illinois 32
Supreme Court
First Grand Division

Skien & Gay
vs
Wm A Hughes

Plaintiffs Brief

Filed Nov. 16. 1859
N. Johnston Clk

STATE OF ILLINOIS — IN THE SUPREME COURT — FIRST GRAND DIVISION — NOVEMBER TERM, 1859.

Page of Record.

Error to Pulaski—Abstract of Plaintiffs in Error.

JACOB SKEIN and THOMAS B. GOY, plaintiffs in error.

vs.

WILLIAM B. HUGHES, defendant in error.

This was a bill in chancery, filed in the Circuit Court of Pulaski county, filed on the 14th day of August, 1858, by Wm. A. Hughes against Henry Philips, Jacob Skein, and Thos. B. Goy—co-partners under the name, style and description of Phillips, Skein & Goy, stating, in substance,

1.—2. That on the 27th day of February, 1857, Phillips, Skein & Goy were indebted to complainant in the sum of $500, and in order to secure the payment of the same to complainant, Phillips, Skein & Goy executed and delivered to complainant a promissory note under seal, dated 27th Feb'y, 1857, and payable on or before the 27th May, 1857, note here referred to as filed marked "A," and made part of complainants bill.

That Phillips, ~~Simpson~~ Skein & Goy, in order to better secure the payment of the said sum of money executed and delivered to complainant, Wm. A. Hughes, a certain deed of mortgage, which is here referred to as filed and marked "B," dated the 27th Feb'y, 1857,

3. by which said deed of mortgage the said Phillips, Skein & Goy in consideration of $1 in hand paid by complainant, as well as in consideration of other promises afterwards to be mentioned and expressed, bargained, sold, transferred, and conveyed to complainant their interest in the saw mill seat conveyed to Kenny, Phillips & Lindsley T. Smith by H. Hainer, Pres't Emporium Real Estate & Manufacturing Co., south end Commercial avenue, north bank Cache River, in Pulaski county, Illinois, together with the steam saw-mill thereon situate, its engines, boilers, fixtures, tackle and appurtenances of whatever nature or kind; also, six yoke of cattle with yokes, chains, timber wheels and wagon, to have and to hold forever, provided that if Phillips, Skein & Goy should within three months from the date of the mortgage deed pay or cause to be paid to complainant or his proper representative the sum of $500, then the mortgage to be void.

That the mortgage deed was afterwards on the 27th Feb'y acknowledged before Jas. M. Davidge, a Justice of the Peace, and duly recorded in the Recorder's office of Pulaski county.

4. Charges that the $500, and interest verbally agreed to be paid thereon, remained due and unpaid, whereby the estate mortgaged became absolute in complainant, subject only to equity of redemption, prays that defd'ts may be made to answer—that they may be

5. decreed to pay complainant the sum mentioned, with arrears of interest together with costs and charges of suit, by a day to be appointed by Hon. Court, and in default that said mortgaged premises, or a sufficiency of the same, to satisfy complainants demand by the order and decree of this Hon. Court be sold, and out of proceeds of sale complainant may be paid the full amount due him on said mortgage, and interest together with

[8586-22]

Page of Record.

costs and charges of suit.

6. Prays writ of subpœna returnable, &c., Copy of note referred to as marked "A," $500. On or before the 27th day of May next we jointly promise to pay Wm. A. Hughes five hundred dollars, value received. Witness our hands and seals this 27th February, 1857. Signed, PHILLIPS, SKEIN & GOY. [SEALS.]

On the back of which note is the following endorsement: This note is extended to the 27th day August next and interest paid till that time. [Signed,] W. A. Hughes, June 12th, 1857.

Mortgage referred to as marked "B," recites that Phillips, Skein & Goy in consideration of $1, and other consideration, mortgaged to Wm. A. Hughes the following property: Their interest in the saw-mill seat conveyed to Henry Phillips and Lindsley T.

7. Smith by H. Hainer, Pres't E. R. E. & M. Co., south end Commercial avenue, north bank Cache River, Pulaski county, Ills., together with the steam saw-mill thereon situate, its engines, boilers, fixtures, tackle and appurtenances of whatsoever nature or kind; also, six yoke of cattle, with yokes, chains, timber-wheels and wagons—to have and to hold forever—provided that if Phillips, Skein & Goy paid within three months from the date thereof the sum of five hundred dollars, then the mortgage to be void; and also provided that the property was to remain in possession of the mortgagers. Witness our hands and seals this 27th day of February, 1857.

PHILLIPS, SKEIN & GOY, [SEALS.]

STATE OF ILLINOIS, PULASKI COUNTY, SS.

Personally came before the undersigned, a Justice of the Peace in and for the said

8. county, Henry Phillips, one of the firm of Phillips, Skein & Goy, who is personally known to me, and signed and acknowledged the foregoing mortgage as the free and voluntary act of himself and his co-partners, the firm of Phillips, Skein & Goy. Given under my hand and seal this 27th February, 1857. JAS. M. DAVIDGE, J. P.

On the back of said mortgage is the certificate of Recorder that it was filed for Record 27th Feb'y, 1857, and duly recorded in Book I, page 264.

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Shff's Fees—serv'g & ret. $1 65; mileage 50 miles, $1 82—$3 47.

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On the 3d day of Sept., 1858, the master made his report, who reported that upon examination he found to be due the compln'nt from the defdt's the sum of $561 11

Signed, JAS. M. DAVIDGE, Master in Chancery.

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13. To be sold at public auction by Jas. M. Davidge, Special Comm'r, at the court-house door in North Caledonia, and that the same be made in the same manner as Sh'ffs sales under execution; that compln'nt be paid out of the proceeds of said sale, together with costs and legal interest from the date of report, and the surplus, if any, bring into Court and for report cause continued. On the 10th Dec., 1858, certificate of rule was filed which is in substance as follows:

14. Special Commissioner on the 1st Saturday in the month of December, 1858, at the court-house door in North Caledonia, after giving notice of the time and place of sale in the Mound City Emporium, did sell the property mentioned in the bill of complaint to Wm. A. Hughes, the complainant, for the sum of $750 00, being the best bid offered for the same. Signed by Jas. M. Davidge, Special Comm'r.

16. Transcript certified. WM. HUNTER, Att'y for pltff's in error.

32

Jacob Shirr and
Thomas B Gay
vs
William A Hughes.

Abstract

Filed Nov. 11. 1859 —
N. Johnston Clk

No 32

1859

Skein & Gay

Skein & Gay

vs

W. A. Hughes

Error to Pulaski –

Error confessed and
Judgment Reversed and
Cause Remanded –

See final Order. Book "B" Page 76 –

Court bill on Page 373 –

32

Jacob Skein and
Thomas B Gray
Plffs in Error

vs

William A Hughes
Deft in Error

Error to Pulaski