

11913

No.

Supreme Court of Illinois

Germaine

vs.

Steam Tug Indiana

71641 7

38

Ira V. Germaine
vs
Steam Tug Indiana

1850

Prepared
W.D.

11913

United States of America }
State of Illinois }
County of Cook } P.

Plas before the Honorable Giles Spring
Judge of the Cook County Court of Common Pleas,
within and for the County of Cook and State of
Illinois aforesaid, at a regular term of said Court
begun and holden at the Court House in the City
of Chicago in said County and State on the first
Monday being the fourth day of February in
the Year of Our Lord one thousand eight hun-
dred and fifty and of the Independence of the
United States the Seventy third.

Present, the Honorable Giles Spring Judge
Daniel Mc Gray, Prosecuting atty,
Isaac Cook Sheriff

Attest, Walter Kimball Clerk

Be it Remembered that heretofore, to wit,
on the sixteenth day of October in the Year of Our Lord
One thousand eight hundred and forty nine, came
Mannings & Meeker Attorneys for Ira N. Senniman
and filed in the office of the Clerk of said Court
an Affidavit, which said Affidavit is in the words
and figures following, to wit,

State of Illinois } Of the February term of the
Cook County } Cook County Court A.D. 1850
Ira N. Senniman, being first duly
sworn, doth depose and say that the above signed

diana is justly indebted to him in the sum of One Hun-
dred and eighteen Dollars and forty nine Cents for supplies
of fuel furnished by this Department to the said Steam boat
from the first to the thirtieth day of September last
past at the instance and request of the Captain or Master
of said Boat: And this Department further saith that said
supplies were so furnished to said Boat while she was
navigating upon the navigable waters of the State of
Illinois and within the Jurisdiction of said State: And
that the proper names of the owner or owners of said
Boat, are unknown to this Department: And this Department
further saith that the said boat is now within the County
of Cook aforesaid and within the Jurisdiction of
this Honorable Court, and that the said sum of One
hundred eighteen ⁴⁹/₁₀₀ Dollars is now due and unpaid
and further saith not.

Shown to & Subscribed }
before me this 16th day }
of October A D 1849 }
Walter Kimball }
Clerk }

And did also file in the office of the Clerk of said
Court on the said sixteenth day of October, in the year
aforesaid an Attachment Bond, which said Bond
is in the words and figures following to wit,

Know all men, by these presents, that we John W
Sommers and John P Chapin are held and firmly
bound unto the People of the State of Illinois for the use
benefit of the owner or owners of the Steam Slog Boat
Indiana in the penal sum of Two Hundred & thirty six
Dollars & Ninety eight Cents lawful money of the United

States, for the payment of which said sum, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 16th day of October A D 1849.

The Condition of the above obligation is such, that whereas the above bounden Ira V Gensman has on the day of the date hereof, prayed an attachment out of the Cook County Court of said County, at the suit of the said Ira V Gensman against the above named Steam Sloop Boat Indiana for the sum of One Hundred & Eighteen Dollars & forty nine cents, and the same being about to be tried out of said Court, returnable on the first Monday of February next to the term of the said Court then to be holden, Now, if the said Ira V Gensman shall prosecute his said suit with effect, or in case of failure therein, shall well and truly pay and satisfy the said Sloop of the State of Illinois for the use of the owner or owners of said Steam Sloop Boat Indiana all such costs in said suit and such damages as shall be awarded against the said Ira V Gensman his heirs executors, or administrators, in any suit or suits which may hereafter be brought for wrongfully suing out the said attachment, then the above obligation to be void, otherwise to remain in full force and effect.

Approved

Oct 16th 1849

W Kimball

Ira V Gensman

John P Chapin

Seal

Seal

And upon the said day to wit the sixteenth day of October in the year last aforesaid, there was issued out of the office of the Clerk of said Court a writ of attachment, which said writ is in the words

and figures following to wit,

State of Illinois
Cook County

The People of the State of Illinois to the Sheriff of
Said County, Greeting:
Whereas Ira V. Germain hath complained on oath
to Walter Kimball Clerk of the Cook County Court of
Cook County, that the Steam Tug Boat Indiana
is justly indebted to the said Ira V. Germain in the sum
of One Hundred and Eighteen Dollars & Forty Nine Cents
for fuel furnished for said Boat at the request of the
Captain or Master of said Boat while she was running
upon the Navigable Waters of and within the Jurisdiction
of the State of Illinois and that the names of the owner
or owners of said Boat are unknown to the said Germain
and that said Boat is now within the County of Cook aforesaid,
And the said Ira V. Germain having given
Bond and security according to the act in such cases
made and provided: We therefore Command
You that you attach the said Steam Tug Boat Indiana
her Engine, Machinery, Sails, Rigging, tackle, Apparel
& Furniture to be found in your County, as shall be of
Value sufficient to satisfy the said Debt and Costs, ac-
cording to the said Complaint: and such estate, so
attached, in your hands to secure, or so to provide that
the same may be liable to further proceedings thereupon,
according to law, at the term of the Cook County Court
to be holden at the City of Chicago within and for the
County of Cook on the first Monday of February
next: so as to compel the said Steam Tug Boat Indiana
her owner or owners to appear and answer the Com-
plaint of the said Ira V. Germain.

When and Where you shall make known to the
said Court how you have executed this writ, And
have you then and then this writ

Witney Walter Kimball Clerk of our said
Court, and the Seal thereof at Chicago this 16th
day of October in the Year of our Lord one thou-
sand eight hundred and forty nine
Walter Kimball, Clerk

Which said writ of Attachment was afterwards returned
into the office of the Clerk of said Court by the Sheriff
of said County with an endorsement thereon in the
words and figures following to wit,

"By virtue of the within writ of Attachment, I have
attached the following described property to wit, the
Steam Boat Indiana this 16th day of October AD
1849, and all her furniture and apparel

Isaac Cook Sheriff.

By Owen McCarthy Deputy."

And afterwards to wit on the twenty fifth day of
January AD 1849 the said Mannion & Meeker filed
in the office of the Clerk of said Court a Declaration
in said cause, which said Declaration is in the words
and figures following to wit,

State of Illinois } In Cook County Court
County of Cook } of the February Term thereof
Cook County, sp. } in the Year Eighteen hundred & fifty
Ira N. Senman who has
heretofore to wit on the sixteenth day of Octo-
ber in the Year Eighteen hundred and forty nine
caused a writ of Attachment to be issued out of

and under the seal of this Court against the Steam
 Jug Indiana a Vessel running upon the Navigable
 Waters of the State, and within the jurisdiction of
 the State of Illinois, by the name and description
 of Steam Jug Indiana, Her owners being to some
 unknown, States and avers that the Master of
 the said Steam Jug Indiana at divers times be-
 tween the eighth and twenty fourth days of Sep-
 tember in the Year eighteen hundred and forty
 nine including those days purchased and re-
 ceived of the said German, for the use of the said
 Steam Jug Indiana, divers Cords of Fire wood
 amounting to the sum of One Hundred & eighteen
 Dollars and forty nine Cents, and that such de-
 mand remains unpaid, and the said Ira V
 German further avers, that at the time said
 firewood was furnished to the said Steam
 Jug Indiana at the request of Her Master
 aforesaid, the said Vessel was running upon
 the Navigable Waters within the jurisdiction
 of the State of Illinois, to wit upon the Chicago
 River, and that the Suit in this Case to enforce
 the lien upon said Vessel was instituted within
 three months after such indebtedness accrued.

Mannin & Meeker

atty for Ira V German

Bill of Particulars.

Steam Jug Indiana
 or Owners

In acct with Ira V German dr

Sept 8 th	For 2 7/8 Cords Wood		
" "	" 8 3/8 do do	11 2/3	325 \$ 37 78
" 17	" 8 3/8 do do		\$ 325 — 26.41

18	7 ¹ / ₃	3.25	23 83
24	9 ³ / ₄	"	30 47
			<u>53 30</u>
			118 49

And afterwards to wit, on the Seventh day of February A D 1850 being one of the days of the February term of the Cook County Court of Common Pleas, for the Year aforesaid came George W Lay Jr and filed in said Court a Plea of Intersplicer in which said Plea of Intersplicer is in the words and figures following to wit;

Cook County Court of
Common Pleas

vs
Ira B. Germain

Attachment

of February Term 1850

George W Lay Jr in his own proper person comes and as to the suit of the said Plaintiff defends the wrong and injury when &c. and for intersplicer saith that on the 16th day of October A D 1849 a writ of attachment issued from the Clerk's office of the Cook County Court in & for the County of Cook & State of Illinois at the suit of the said Plaintiff, and against the said Steam Ship Indiana directed to the Sheriff of said County, by virtue whereof the said Sheriff did on the said 16th day of October A D 1849 levy upon the Steam Ship Indiana. And the said George W Lay Jr saith that previous to the issuing and levying the said Writ of Attachment, in manner and form aforesaid to wit on the 10th day of October A D 1849 Mary A Clark, Adoniram S Woodbury and Henry R Payson and George A Robt. Comprising the firm of Payson & Robt had several liens in & upon the said Steam Ship Indiana under the virtue of the provisions of the Act, en-

titled "Attachment of Boats and Vessels" on that day
caused then several writs of attachment to be issued by
Henry S. Ruelter a Justice of the peace in & for the said
County of Cook which said several writs were substituted
to enforce such liens within three months after the said
indebtedness accrued became due, returnable on the
16th October 1849 said Justice having jurisdiction
thereof under & by virtue of the provisions of the said act,
the one of said Attachments in favor of Mary A. Clark
for the sum of Seventy Six Dollars for fire wood furn-
ished said Boat. One in favor of Adoniram S. Wood-
bury for the sum of Seventy three Dollars and eighty
seven Cents for firewood furnished said Boat and
one in favor of the said firm of Payson & Robb for
thirty Seven Dollars and one Cent for materials and
supplies furnished said Boat, and that such proceed-
ings were afterwards had before the said Justice,
in & upon the said claims that several judgments were
rendered upon the said claims against the said boat
on the 26th day of October 1849 and the said Boat un-
der & by virtue of such judgments & under & by virtue of
certain executions issued upon said judgments, so as afove
said rendered, was sold by Michael McGuire a Con-
stable in & for the said County of Cook, after due notice
of the time & place of such sale on the 19th day November
1849 and struck off to George W. Lay Jr. by the said
Constable for the sum of Two hundred Dollars that being
the highest sum bid therefor, whereby the said Steam
Tug Indiana and every part thereof became and was
the property of the said George W. Lay Jr. to wit at the
County aforesaid, and that he is ready to verify
wherefore he the said George W. Lay Jr. prays judg-
ment whether the Court will grant judgment and

arrange execution directing a sale of the said Steam
Sug. Indiana as to satisfy the said Ira V German
of his debt and costs in the said attachment, men-
tioned
George W Lay Jr in pro pro

And afterwards to wit on the nineteenth day
of February A D 1850 then was filed in said cause
by Mannure & Meeker attorneys for the said Ira V
German a Demurer to the said Plea of Interpleader
in which said Demurer is in the words and figures
following to wit

Subject Matter of Com Pleas

Ira V German

vs
Steam Sug Indiana

} Attachment

And the said plaintiff by Mannure &
Meeker his attorneys comes and demurs to the plea
of Interpleader filed herein by George W Lay Jr and
says that he ought not to be barred from having or
maintaining his aforesaid action against said
Steam Sug Indiana by reason of any thing in said
plea alleged, because he says the same is insuffi-
cient in law and therefore prays judgment &c
Mannure & Meeker
Plffs attys

And the said plaintiffs assign the following spe-
cial Causes of Demurer:

1st That said Plea is double.

And afterwards to wit on the twenty seventh
day of February A D 1850 the said day being one
of the days of the February Term of the Court of Common
Pleas for the Year aforesaid

The following proceedings were had in said cause
and entered of Record to wit,

Geo W German

vs
Steam Boat Indiana

Att,

And now comes the
plaintiff by his attorneys Mannino & Meeker and
George W Lay & who hath filed his interpleader in
in this cause by his attorney Arnold also comes. And
the Demurrer of the said Plaintiff to the interpleading
of said Claimant George W Lay Jr came on to be heard,
and was argued by Counsel, and the Court now
here being fully advised thereon are of the opinion
that the said interpleading is sufficient, in Law, and
overrule the said Demurrer. And the said Plain-
tiff elects to stand by his Demurrer, except to
the opinion of the Court in overruling the same.


It therefore is considered that the right of prop-
erty in the said Steam Boat Indiana & the property attached
under the writ issued in this cause is in the said
George W Lay Jr, and that this suit upon the said
writ of attachment, be dismissed, that the said
George W Lay Jr recover against the said Plain-
tiff his Costs by him in this behalf expended and
have execution therefor.

And thereupon the Plaintiff prays an appeal
which is granted, upon his entering into bond in
the usual form and conditions in the sum of Two
Hundred Dollars with John P Chapin as security
in thirty days from the adjournment of this Court,

State of Illinois
Cook County

J. Walter Kimball Clerk
of the Cook County Court of Common Pleas
within and for the County and State aforesaid
do hereby certify that the foregoing is a full true
and correct copy and Transcript of the Papers and
of the Records of said Court now on file in my
office in the case of Ira V. Sennings vs Steam
Tug Boat Indiana.

In Testimony Whereof I have hereunto
set my hand and affixed the Seal of
said Court at Chicago in said County
this 24th Day of February A.D. 1850

Walter Kimball Clerk


Cook County, Ill. Can. Pass

Ira V. Germain

vs

Steam Ferry Boat Indiana

Transcript

Of June Term 1850.

Ira V. German,
vs
Steam Fug Indiana.

And the plaintiff in Error, Ira V. German by Mancine & Meeker his attorneys, comes and says that there is error in the record in the above entitled cause, apparent, and assigns the following, to wit:

- 1st The Judge erred in overruling the said demurrer.
- 2^d The Court erred in not sustaining said demurrer on account of the insufficiency of the plea of Interpleader as a legal defence to the plaintiff's action against the said boat.
- 3^d The Court erred in not sustaining the same for the special cause assigned in said demurrer.
- 4th The Court erred in not sustaining said demurrer on the ground that the facts set forth in the plea of Interpleader are not well pleaded.
- 5th The Court erred in dismissing the plaintiff's suit against the said vessel.

Mancine & Meeker,
Plfs Attys.

In Supreme Court for the
Third Grand Division

State of Illinois

Steam Eng. Judiana

vs.

Ira V. Germanis

And the said ^{who interpleads, &c.} George W. Day Sr. ^{by}
J. N. Arnold his Attorney comes and says, that there is
no error in the record and proceedings aforesaid;
and he prays that the court now here may proceed
to examine as well the record and proceedings aforesaid,
as the matters aforesaid above assigned for error, and
that the judgment aforesaid given, may in all things
be affirmed. &c.

J. N. Arnold Attorney
G. W. Day Sr.

Cook Co. Ct. of Com. Pleas.

Ira V. Germain

vs.

Steam Tug Indiana.

Transcript.

Pay \$15.00

W. G.

Filed June 12. 1850.

L. Kel and Clerk.

Sup Court
Ira V. Germaine

vs.

Stearns & Ludinard

} Dr. Manieris & Meeker
Gent.

I take notice that on Saturday
the 13th inst. I shall file a ~~petition~~ motion & petition for rehearing
in the above entitled cause. Yrs.

July 9, 1850

Arnold Day

We have no copy of the above notice at Chace July 11, 1850.

Manieris & Meeker.

Sup. Court

Mr. V. Gennard,

17.

Steam Ship Indiana

Copy notice of motion
for discovery by

For Wilson
4th Mo. for
re-hearing -

Case of Harris Bros,
Case I am to submit
on matter of -

If you do this
on Devese &
will help you
Arnold

Sup. Court

Stam Yag. Indiana
appell

^{as}
Joa. V. Gorman

The importance of this case as a
Commercial question induces me
as Counsel for the person
intending to ask for a
re-hearing.

You can well see
seriously affect the Commercial
Community of Chicago. That in
the usual proceedings for
a lien would not ^{be} ~~an~~
absolute title has been ^{seriously} ~~universally~~
considered by our bar, & generally
practised. There are a
very great number of papers
the title of which will be
affected by the decision. Both
our Courts have held that
such sales would not
be absolute title.

In addition to the authorities
cited in the argument - It
is held in Re -

" The sale of a building by a
Sheriff under a Mechanics
lien affects all prior Mechanics
liens. Ausbury vs McCallum

5 Wats 487-

24490 185-
Maddock v. Sul 1 Mils 254-

"When a provision made
for a division of proceeds
among all who come
in at same time.

What in judicial sale, directs all
other liens is directed in
Soback v. Case 6 Mils 167-

"a judicial sale of a legacy payable
in annual instalments directs it
of the lien of the instalments
not due & payable at time
of sale."

The object of the law
is to protect purchaser at
judicial sales.

Without regarding
the case, I respectfully
ask in consideration of the
importance of the question,
the amount of property
to be affected by the

24490 185-
24490 185-

chasing, the charge that it
will fund in. that the
court will grant a re-hearing
& permit a re-argument
of questions -
July 14. 1850

J. N. Bowler
per appelles-

Sup. Court

Stamm Yag Iron
Appell

ad

Geo T. Gerwin

Petition of
M. Kearney

Demind.

Filed July 25. 1850.
L. Leland Clk.

[Faint handwritten notes and numbers in the left margin, including '1850', '1851', '1852', '1853', '1854', '1855', '1856', '1857', '1858', '1859', '1860', '1861', '1862', '1863', '1864', '1865', '1866', '1867', '1868', '1869', '1870', '1871', '1872', '1873', '1874', '1875', '1876', '1877', '1878', '1879', '1880', '1881', '1882', '1883', '1884', '1885', '1886', '1887', '1888', '1889', '1890', '1891', '1892', '1893', '1894', '1895', '1896', '1897', '1898', '1899', '1900']

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