8637

No._____

Supreme Court of Illinois

Jonathan Brown

vs.

Wm.H.Brents

71641 7

Supreme Court of the State of Illinois

William H. Brents, plaintiff in Error.

vs.

Jonathan Brown, defendant in Error.

James Mitchell being first duly sworn states on oath that he verily believes that James M. Warren the attorney who caused the writ of error in this case to be sued out, and who is now assuming to act as the attorney for the plaintiff in this case, had no authority whatever from said plaintiff to sue out the said writ.

Affiant further states that said Brents has no interest in the lands described in the mortgage mentioned in ~~this case~~ the record sued on. And does not and did not at the time the said writ was sued out claim any interest therein as affiant verily believes. But on the contrary one John Mitchell, the brother of affiant, and Lucinda Jane Mitchell, the wife of said John Mitchell ~~is and~~ are and were ~~was~~ at the time said writ of error was sued out the owners in fee simple of all of said land except a small portion thereof which was laid off by said Brents into town lots and streets - and that said Brents does not now own - nor did he ~~nor has he~~ at the commencement of this suit ~~for the last two years~~ owned any of said lots

Affiant also states that said Brents removed from this State more than two years since, and the last time affiant heard from him he was

[8637-D

residing in the State of California. Wherefore affiant charges that at the time the said writ was sued out the said Brents was a non resident of the State of Illinois, and that he is now a non resident of this State. Affiant also states that he is the agent of said John Mitchell

James Mitchell

Subscribed and sworn
to before me this 13th Novr
1858. N. Johnston CM

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Filed Nov. 13. 1858.
N. Johnston Clk

IN THE SUPREME COURT—STATE OF ILLINOIS—FIRST GRAND DIVISION—TO NOVEMBER TERM, A. D. 1858.

WILLIAM H. BRENTS,
vs.
JONATHAN BROWN.
} In Error.

This was a seirefacias brought by Jonathan Brown against William H. Brents in the Hardin Circuit Court to foreclose mortgage, executed by Brents to brown. A default was taken against Brents and a judgment entered against him for $221 85 cents, and ordered a special FI FA execution to sell the mortgaged premises, describing the lands.

JAMES M. WARREN, for Pl'ff. in error.

A Scirefacias on a Mortgage, is a proceeding in rem, and the Judgment should direct the sale of the Mortgaged premises, The direction that a special execution issue therefor according to the statute in such cases made and provided is not sufficient — See Revised laws of 1857. 976. sec 23. — Also See Marshall vs Maurey. 1st Scam 231.

89

Brents
vs
Brown

25

82
1,2
126
90
88,20

84
7
588
10
588,0

Filed Nov. 11. 1858
A. Johnston Clk

Supreme Court State of Illinois

William H. Brents, plff in Error

vs.

Jonathan Brown, deft. in Error

The said defendant moves the Court to dismiss this cause for the following reasons

1st That the attorney who sued out the writ in this case had no authority from said plaintiff in Error for so doing

2. Because the plaintiff in this case was at the time said writ was sued out a non-resident of the State of Illinois.

Freeman & Olney for deft.

Filed Nov. 13. 1858.

N. Johnston Clk

Elizabethtown 13th Oct. 58.

The clerk will please file this Record and send the writ to the Sheriff of Hardin county.

Inclosed find $5. Please have the abstract printed.

Yours Truly

Jas McNamee

[4137-8]

35

Rents
of
Brooks

Pruyn

Filed 25th October
1858.
N. J. Hustis Clk

Abstract of the case

William H Brents } November Term
vs. } Supreme Court
Johnathan Brown

This was a scire facias brought by Johnathan Brown against William H Brents in the Hardin circuit court to foreclose Mortgage executed by Brents to Brown, A default was taken against Brents and a general Judgment entered against him for $221.85 and ordered a special fi fa execution, to sell the Mortgaged premises, discribing the land.

Jos M Harrison atty for
Plaintiff in error

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Brutz
vs
Brown

Abstract

Filed 20th October 1858.
A. Johnston Clk

STATE OF ILLINOIS } SS. 1st Grand Division WRIT OF ERROR.
SUPREME COURT, } THE PEOPLE OF THE STATE OF ILLINOIS;

To the Clerk of the Circuit Court for the county of Hardin 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 Hardin county, before the Judge thereof, between — —

Johnathan Brown — — — — — — —

plaintiff, and William H. Brents — — — — —

defendant it is said manifest error hath intervened, to the injury of the aforesaid William H. Brents — — — — — — — — — — — — — — — — — — as we are informed by his — 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 Count, 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 first Sunday after the 2d 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. Catron

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

Noah Johnston
Clerk Supreme Court.

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William H. Brents
Pltff in Error
vs
Jonathan Brown
Deft. in Error

Issued and filed
October 20th A.D. 1858.
A. Johnston Clk

IN THE SUPREME COURT—STATE OF ILLINOIS—FIRST GRAND DIVISION—TO NOVEMBER TERM, A. D. 1858.

WILLIAM H. BRENTS,
vs.
JONATHAN BROWN.
} In Error.

This was a scirefacias brought by Jonathan Brown against William H. Brents in the Hardin Circuit Court to foreclose mortgage, executed by Brents to brown. A default was taken against Brents and a final judgment entered against him for $221 85 cents, and ordered a special FI FA execution to sell the mortgaged premises, describing the lands.

JAMES M. WARREN, for Pl'ff. in error.

A Scire facias on a mortgage, is a proceeding in rem and the judgment should direct the sale of the mortgaged premises, the direction that a special execution issue therefor according to the statute in such cases made and provided, is not sufficient. See Revised laws of 1857 976.— Section 23. Also see Marshall vs Maury 1st Scam 231.

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Brents
vs
Brown

Filed Nov. 11. 1858.
A. Johnston Clk

STATE OF ILLINOIS, } ss. First Grand Division
SUPREME COURT.

THE PEOPLE OF THE STATE OF ILLINOIS,

To the Sheriff of Hardin 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 Hardin - - - County, before the judge thereof, between Johnathan Brown - Pltff.

and William H. Brents - - - -

defendant, it is said that manifest error hath intervened to the injury of said William H. Brents - - - - - - - - - - - - as we are informed by his 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 Johnathan Brown

that he 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~~ first Tuesday after the 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 Jonathan Brown notice, together with this writ.

Witness, the Hon. ~~Samuel H. Treat,~~ John D. Caton Chief Justice of our said Court, and the seal thereof, at Mount Vernon, this twentieth day of October in the year of our Lord, one thousand eight hundred and fifty-eight.

Noah Johnston
Clerk of Supreme Court.

[2637-9]

Returned served by Reading the same to the within named on the 24th day of October 1838

John W Ralph Shff H C Ills

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William H. Brents
Pltff in error
vs } Sci fa
Johnathan Brown
Deft in error

Shuffs Fees

Serving 50
Mil & return 85
$1.35

J. W. Ralph Shff H C Ills

39.

William H. Brents

Pltff in Error

vs

Jonathan Brown

Deft in Error

Error to Hardin

8637

Dismissed Nov. 1858 – By request of Pltff in Error & Error withdrawn by Leave of Court –