

8494

No. \_\_\_\_\_

# Supreme Court of Illinois

<sup>v</sup>  
Guitean~~x~~

---

vs.

Joseph Wisety

---

71641  7

State of Illinois }  
Randolph County } S.S. Be it Remembered that at  
the April Term A. D. 1868, of the circuit court  
within and for the county and State aforesaid, the  
Hon. Silas L. Bryan Judge presiding, J. P. Johnson  
State attorney John R. Shannon Sheriff and  
S. St. Vrain Clerk Officers of said Court. the  
following proceedings were had, in a certain  
cause in Ejectment of which the following is  
the Declaration <sup>known</sup> filed in said cause to-wit.

State of Illinois }  
County of Randolph } S.S. In the Randolph County  
Circuit Court,  
of November Special Term,  
in the year of our Lord one thousand Eight Hundred  
and Sixty Seven, Benjamin J. Guilian Plaintiff  
by Mulkey Wall & Wheeler his attorneys comes  
and complains of James L. Wisely defendant,  
who is notified by notice and copy of declaration ac-  
cording to the statute in a Plea of Ejectment,  
For that whereas the said Plaintiff Benj. J. Guilian  
on the First day of January in the year of our Lord,  
One thousand Eight Hundred and Sixty Seven, was  
possessed of a certain parcel of Land with the ap-  
purtenances situate in said county, and known, designated  
and described as follows. *viz.*  
The East half of the South west Quarter of Section  
No. Eleven, Township No four, South Range Five  
except of the 3<sup>rd</sup> P. M. (E. S. N. 11. 41. 5) which said

Premises, the said Plaintiff Benj. J. Guiléau stands in fee and the said Plaintiff Benj. J. Guiléau being so possessed thereof the said Defendant, after ward to-wit, on the said first day of January in the year of Our Lord One thousand Eight Hundred and Sixty Seven, Entered into the said premises, and Ejected the said Plaintiff Benj. J. Guiléau therefrom and unjustly withheld from the said Plaintiff Benj. J. Guiléau the possession thereof, to the damage of said Plaintiff of Fifty dollars, and therefore he brings the suit, etc.

Mulkey Wall & Wheeler

Attorney for Plaintiff

To James L. Wisley

The above named defendant:  
You are hereby Notified, that the Declaration with a copy whereof you are now here with served, and to which copy this notice is subjoined will be filed in the circuit court of Randolph county on the 22d day of November 1867, being the second day of the Nov. Special Term 1867, of the said Randolph County Circuit Court,

That upon filing the <sup>same</sup> a rule will be Entered requiring you to appear and plead to the said Declaration within twenty days after the Entry of such rule, and that if you neglect so to appear and plead a judgment by default will be entered against you, and the Plaintiff will recover possession of the

Premises specified in the said Declaration  
Dated this 15<sup>th</sup> day of Nov. A.D. 1867.

Whitney Wall & Wheeler

Attorney for Plaintiff

State of Illinois )  
Perry County ) ss. J. Benjamin J. Guiteau being  
first duly sworn on his oath says that on the 15<sup>th</sup>  
day of November 1867, at said county of Randolph he did  
serve a true copy of the Declaration and Notice  
of which the within and foregoing are copies upon  
James L. Wisely, aforesaid the said Defendant by de-  
livering the same personally to him, he the said James  
L. Wisely then and there being in the actual pos-  
session of the said premises sued for, further says not.

Subscribed & sworn to before me  
this 16<sup>th</sup> Nov. - 1867

Wm. Elston

Notary Public

Filed this 22<sup>d</sup> day of Nov. 1867

S. St. Train Clerk

Benj. J. Guiteau

The following is a copy of the Plea.

State of Illinois ) In the Circuit Court to the  
Randolph County ) April term A.D. 1868.

Benj. J. Guiteau  
vs  
James L. Wisely } Ejectment

And the said defendant by Wall & Michan  
his attorney's comes & defends the wrong & injury  
when &c. & says that he is not guilty of unlawfully  
with holding the said premises claimed by  
said plaintiff in manner & form as alleged  
in said declaration and of this he puts him-  
self upon the country &c.

Wall & Michan  
Attys for Deft;

And said Jeff doth

the Like Geo. W. Hall

Atty for Jeff

Filed December 10<sup>th</sup> 1867, }  
S. St. Vrain clk } }

The following is a copy of the order of court,  
Randolph County circuit court. November Special term 1867

The following is the copy of Nov. 21<sup>st</sup>, 1867,

Benjamin J. Guilian )  
vs. ) Ejectment  
James L. Wisely )

And now at this day to wit:

Thursday Nov. 21<sup>st</sup> 1867. Came the plaintiff  
by Mulkey Wall & Wheeler his attorneys and asks that this  
suit be docketed which is done and it appearing that the de-  
fendant had been properly served &c, On motion  
of the plaintiff by his attorneys the defendant is ruled  
to plead to this declaration within forty days under the Statute &c.

The following is a copy of the order of Court

Randolph Circuit Court April term A. D. 1868.

April 24<sup>th</sup> 1868,

Benjamin S. Guilan	} Ejectment
James L. Wisely	

And now at this day comes the plaintiff by Melkey Wall & Wheeler his attorneys and the defendant by Watt & Mishan his attorneys and this case being called and by agreement of parties is submitted to the court for trial without a jury. Whereupon the court after hearing the Evidence and arguments of counsel and being fully advised of and concerning the premises Enters judgment for the defendant of not guilty, and for costs of suit. Whereupon the plaintiff by his attorneys Moves the court for a New trial which Motion is by the court overruled and refused. Thereupon the plaintiff by his attorneys prays an appeal to the Supreme court. a appeal granted with an order for a bond to be filed in the sum of two hundred dollars with security to be approved by the clerk of this court within thirty days from this date, and that bill of Exceptions was presented and signed during term time &c

The following is a copy of the Bill of Exceptions  
State of Illinois } In circuit court of the  
Randolph County } ss. April Term 1868,

Benj. J. Guiléau }  
vs. } Ejectment  
Jas. L. Wisely }

Be it remembered that on the trial  
of this cause the same having been by the consent  
of parties submitted to the court without the inter-  
vention of a jury the said plaintiff to sustain the issues  
on his part offered in Evidence the following  
Stipulation of facts.

State of Illinois }  
Randolph Co. } ss. In circuit court April Term 1868.  
Benj. J. Guiléau }  
vs. } Ejectment  
Jas. L. Wisely }

It is agreed by the parties hereto  
that this cause shall be submitted to the court on  
the following Statement of facts which for the pur-  
poses of trial we agree to be true,  
that Jess. was on 30<sup>th</sup> March 1860. the owner  
of Land in question (E. S. W. 11. 4. 5.) in Randolph  
county having derived by regular chain of con-  
veyances from the Patentee. That on that day he  
conveyed the same to James M. Dill by Warranty  
deed which was recorded June 1<sup>st</sup> 1860, and to secure  
payment of \$430 being an unpaid balance of purchase

Money took back from said Mr. Dill on that day  
a Mortgage which was not recorded until Feby.  
7<sup>th</sup> 1861, when it was duly Recorded in Book 2. 2.  
p. 13. of the record of said county. That at Sept. Term 1860  
in circuit court of said county J. & R. Stevenson for  
use of L. A. C. Brown obtained a judgment in an  
action of assumpsit against the said James M.  
Dill for \$103<sup>00</sup> and costs on which judgment an Execu-  
tion issued to the Sheriff of Randolph co, which  
on 23<sup>d</sup> Jan'y, 1861, was leased on the said Land -  
That on 28<sup>th</sup> Jan'y, 1861 said J. & R. Stevenson who  
lived at Eden in said county wrote to /self who  
then lived at Du Quoin in Perry Co, the  
following Letter.

Sir we have a judgement against James M. Dill  
<sup>11000</sup>  
+ ~~levied~~ on a tract of Land 80 acres which Mr.  
J. Kerr informs me you sold to Mr. Dill and  
that you hold a Mortgage unrecorded on the  
same, This Land is the E. S. W. Sec. 11, T. 4, S. R. 5. west,  
You have the Numbers of the Land levied  
on and to be sold on the 16<sup>th</sup> day of Feby, 1861, at  
the st<sup>h</sup> court House between the hours of 9 o'clock  
& the setting Sun, if the above Land is same Land  
You have a Mortgage on you had better at-  
tend to it, and save yourself as it will be sold  
on that day. We have Notified you of this Sale as  
we do not want any person to close by our action,  
that on 16<sup>th</sup> February 1861, the land was sold  
under said Execution and purchased by said



J. V. R. Stevenson for \$130.<sup>23</sup>/<sub>100</sub> and Sheriff  
 give said J. V. R. Stevenson a certificate of pur-  
 chase therefor in usual and due form,  
 That Jas. M<sup>o</sup> Dill died, March 7<sup>th</sup> 1862  
 and John Hodson was at March Term 1862  
 of the Probate court of said county appointed  
 Admr. of Estate of M<sup>o</sup> Dill  
 That at the Nov. Term 1863. of the Supreme court,  
 of Illinois said John Hodson having sued out  
 a writ of Error and said J. V. R. Stevenson  
 having been duly served with process obtained a  
 reversal of the said judgment of J. V. R. Stevenson  
 vs. said James M<sup>o</sup> Dill  
 That afterwards said indebtedness mentioned,  
 in said Mortgage being due and unpaid, the  
 plaintiff filed his bill in chancery in the cir-  
 court of Randolph county, making the admr.  
 widow & heirs of M<sup>o</sup> Dill defendants and having  
 duly obtained service therein procured a decree  
 of foreclosure of said Mortgage under which  
 decree the Land in question was sold by the  
 Master in chancery to self, and premises  
 not having been redeemed within 15 months  
 from the day of sale obtained a deed for premises  
 from Master in chancery which was Executed  
 and recorded, Apr. 11-1865, in Record of said  
 Co. That said certificate of purchase given at said  
 Sheriff's Sale on 16<sup>th</sup> July 1861, was by said J. V. R.

Stevenson assigned March 14, 1862, to J. C. Cole & Co. and was by Cole & Co. on 17<sup>th</sup> May, 1862, assigned to David C. Campbell and said premises not having been redeemed from said sale the said Campbell on 30<sup>th</sup> May 1862, received a deed from the Sheriff for said Land which was on same day recorded. and that on 1<sup>st</sup> Jan'y 1864, the said Campbell sold and conveyed said Land to Defendant by deed which was on same day recorded, under which deed the said Dft. Entered on said <sup>Land</sup> and was in possession of the same, when this suit was commenced.

It is further agreed that the said Mortgage and all the conveyances above mentioned were regular in form and duly Executed and acknowledged and are all to be regarded in Evidence accordingly.

If on above facts the court shall be of opinion that the Law is with the p<sup>l</sup>ff. Judgment shall be given for p<sup>l</sup>ff accordingly. If the court shall be of the Opinion that on the above facts the Law is with Dft. Judgment shall be given for the Said defendant accordingly. Both parties having the same right of appeal & writ of Error as in other cases.

Geo. W. Wall

Attorney for p<sup>l</sup>ff

Watt & Michan

atly for dft.

Filed April 24<sup>th</sup> 1863

S. St. Train clk

This was all the Evidence offered in the case by either party and the cause was submitted by both parties on this stipulation.

The court thereupon found the issues for defendant the plaintiff then Entered his motion for a New trial as follows

State of Illinois }  
 Randolph Co } In circuit court April term 1868,  
 Benj. S. Guillem }  
 vs } Ejectment  
 Jas L. Wisly }

The plff moves for a new trial for the following reasons.

- 1<sup>st</sup> Because the verdict is contrary to Law,
  - 2<sup>d</sup> Because the verdict is contrary to Evidence
  - 3<sup>d</sup> Because the verdict is contrary to Law & Evidence
  - 4<sup>th</sup> Because the verdict should have been for plff.
- And for divers other good and sufficient reasons appearing herein

Geo. W. Wall

Atty For plff

Filed April 24<sup>th</sup> 1868

L. St. Vrain clk

But the court overruled said motion to which the plaintiff then and there excepted and the court thereupon rendered final judgment for defendant to which plaintiff then and there excepted

17  
And now comes the plaintiff and presents this bill of Exceptions and asks that the same may be signed sealed and made a part of the record which is done accordingly:

Silas L. Ryan   
Judge 2<sup>d</sup> Judge, Circ.

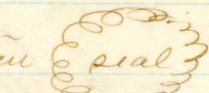
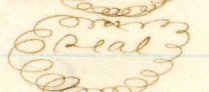
Filed April 24<sup>th</sup> 1868 }  
S. St. Train clk }  
11

The following is a copy of the Appeal Bond

Know all men by these presents that we Benjamin J. Guiteau and Geo. W. Wall are held and firmly bound unto James L. Wisely in the penal sum of Two Hundred dollars lawful Money of the United States for the payment of which well and truly to be made we bind ourselves our heirs and legal representatives jointly severally and firmly by these presents sealed with our seals and dated the 27<sup>th</sup> day of April 1868.

The condition of the above obligation is such that whereas on the 24<sup>th</sup> day of April 1868, in the Circuit Court of Randolph county Illinois the said James L. Wisely did in a certain action of Ejectment instituted by said Guiteau against him recover a judgment against the said Benj. J. Guiteau for the costs of said cause from which judgment the said Benj. J. Guiteau

Has taken an appeal to the Supreme court  
of the State of Illinois. Now if the said Benj.  
F. Guiteau shall prosecute his appeal and  
in case of the affirmance of the said judgment,  
shall pay said judgment and all costs and dam-  
ages that may be awarded against him by said  
Supreme Court then this obligation shall be  
void otherwise to be and remain in full  
force and Effect.

Benj. F. Guiteau   
Geo. W. Hall 

Taken and approved  
by me this 29<sup>th</sup> day of April A.D. 1868  
S. St. Vrain clerk

Filed April 29<sup>th</sup> 1868  
S. St. Vrain clerk

State of Illinois }  
Randolph County } *ff*

I Savinia F. Vrain Clerk of  
the Circuit Court within and for the County and  
State aforesaid do hereby Certify that the forego-  
ing twelve pages contain a full true and complete  
copy of the Declaration and Notice plus Order of  
Court, Bill of Exceptions and Appeal Bond in the  
Case of Benjamin F. Guiteau vs James S. Wisely

as appears of record and on the files in my office

In testimony whereof I have hereunto  
subscribed my hand and affixed the official  
seal of my Office, at the City of Chester, Illinois  
this 26<sup>th</sup> day of May A D 1868  
J. F. Quinn Clerk

And the said Benj: F. Luntan comes  
and says that in the record & proceedings  
there is manifest error that is to say

1<sup>st</sup> The Court erred in finding for defendant  
below

2<sup>d</sup> The Court erred in finding against plaintiff  
below

3<sup>d</sup> The Court erred in overruling motion  
for new trial

4<sup>th</sup> The Court erred in overruling motion  
in arrest

5<sup>th</sup> The Court should have found for  
plaintiff below

Wherefore and for divers other good and  
sufficient reasons said Benj: F. Luntan  
prays that said judgment may be reversed

Wm H. Hall

for Plaintiff

67 - 13

Benjamin F. Gentian

vs  
James L. Mosely

Appeal from Randolph

Record

Filed and June 1868  
A. H. Williams  
clerk

cost per \$5.00

*delivered the opinion of the court.*  
*Mr. Chief Justice Bless, Ch. J. This was an action of ejectment*  
*in the Randolph Circuit Court brought by Benjamin*  
*F. Guiteau against James L. Wisely and*  
*tried by the Court without a jury on the*  
*following facts:*

That plaintiff was on 30th of March, 1860, owner of the land in question, and on that day sold it to James McDill by Warrantee Deed which was recorded June 1st, 1860, and to secure payment of \$430, due him for purchase money, took back from ~~the~~ McDill, on same day, a Mortgage which was not recorded until Feb. 7th, 1861. At September term, 1860, of Randolph Circuit Court, J. & R. Stevenson, for the use of L. A. C. Brown, recovered a judgment in an action of assumpsit against ~~the~~ McDill for \$103 00, on which judgment ~~an~~ an execution issued, and on 22d of January, 1861, it was levied on ~~the~~ <sup>the</sup> land.

On 28th of January, 1861, J. & R. Stevenson, who then lived at Eden, wrote the following letter to the plaintiff below, who then lived at Du Quoin:

"SIR:—We have a judgment against Jas. McDill, and have levied on a tract of land, 80 acres, which Mr. J. Kerr informs us you sold to McDill, and that you hold a mortgage, unrecorded, on the same. This land is E, SW, Sec. 11, T. 4, S R 5, W. You have Nos. of land levied on and to be sold on 16th of February, 1861, at Chester Court House between the hour of 9 A. M., and setting sun.

"If the above land is the same you have mortgage on, you had better attend to it and save yourself, as it will be sold on that day.

"We have notified you of the sale as we do not wish any person to lose by our action."

That on 16th February, 1861, the land was sold under ~~the~~ <sup>the</sup> execution and purchased by ~~the~~ J. & R. Stevenson for the amount of their judgment and costs, and Sheriff gave them a certificate of purchase.

James McDill died March 7th, 1862, intestate, and at March term, 1862, of Probate Court, John Hodson was granted letters of Administration.

At November term, 1863, of Supreme Court, the judgment of J. & R. Stevenson vs. McDill was reversed, a writ of error having been sued out by the Administrator of McDill.

That afterwards the plaintiff Guiteau filed his bill in Randolph Circuit Court for foreclosure of his mortgage, and having obtained a decree, the land was sold by Master in Chancery and purchased by plaintiff Guiteau, and not having been redeemed within fifteen months, was conveyed to plaintiff Guiteau by Master, and which deed was executed and recorded April 11th, 1865.

That the certificate of purchase given at ~~the~~ <sup>the</sup> Sheriff's sale, February 16th, 1861, was by the said J. & R. Stevenson, assigned March 14, 1862, to H. C. Cole & Co., and was by Cole & Co. assigned, on the 17th of May, 1862, to D. C. Campbell, and ~~the~~ <sup>the</sup> premises not having been redeemed from ~~the~~ <sup>the</sup> sale, ~~the~~ <sup>the</sup> said Campbell secured a deed from the Sheriff, and on the 1st of January, 1864, Campbell conveyed to the defendant Wisely, ~~the~~ <sup>the</sup> deed being recorded the same day, under which deed, defendant Wisely, then entered and took possession of the land and has held it ever since.



On these facts, the court found the  
issue for the ~~defendant~~ <sup>defendant</sup> and ordered judg-  
ment accordingly, to reverse which the  
record is brought here by appeal.

The court divided correctly. As the  
mortgage was not recorded until some months  
after the judgment had been obtained against  
McDill, <sup>the</sup> ~~therefore~~ <sup>therefore</sup>, was the elder lien. The  
judgment creditor had no notice of the mortgage  
as would appear from the facts agreed, until  
~~after the~~ <sup>after the</sup> afternoon, until he was about to  
sell the land on ~~the~~ execution.

The judgment creditor purchased  
the land under his execution. Had he remained  
his purchaser up to the time of the removal  
of the judgment, his purchase would not  
have avoided him, as this court has  
repeatedly decided, ~~that a purchaser~~  
~~of the land under a judgment is not bound~~ <sup>though</sup>  
<sup>by a party to a judgment is presumed</sup>  
to be privy to all defects in the mortgage.

The assignment of the <sup>Certificate of purchase</sup> ~~judgment~~ was  
made to Cole and Co. before the removal of the  
<sup>judgment</sup> and so was the assignment to Campbell who  
obtained the sheriff's deed. Neither of these  
parties were privy to any defects in the  
judgment. If upon Cole and Co. had  
been the purchaser at the execution sale,

Could any <sup>one</sup> doubt that under the repeated  
Orders of this Court, the title they obtained  
by such purchase, would not be affected  
by the removal. It was said in Wright  
vs Love 13 M. 485 that the rights of  
third parties acquired under an erroneous  
judgment, are not divested by the reversal  
of such judgment. In such case the defen-  
dant in the execution, must look to the  
plaintiff for redress. McLagan vs Brown  
11 M. 519 - Clark vs Pinney & Co  
297 - Hubbard vs Woodruff's Adm. 8 Ohio  
120 - Goodwin vs Mix 38 M. 115. These opinions  
were ~~in~~ <sup>for</sup> third parties:

The judgment here having been  
perfected before that of the first case,  
was, <sup>thereby</sup> entitled to priority. The assignees  
of the certificate of purchase took it,  
when there was a valid judgment on  
record, and <sup>we</sup> not presumed to be cognizant  
of any defects or irregularities therein  
and before it was reversed by the  
Superior Court, consequently, on the  
principles of the cases cited, the removal  
could not operate to their disparagement  
of the party or of any party holding a valid  
deed executed on the land under such judg-  
ment.

The judgment of the Circuit Court is affirmed.

Approved

67 — 13

Guiteau Guiteau  
vs  
as Joe Musely

Kidly

Opinion

Pres. Ch. J.

AK

$\frac{11}{2}$

8494

$$\begin{array}{r}
 29 \\
 \hline
 174 \\
 8 \\
 \hline
 182 \\
 20 \\
 \hline
 202
 \end{array}$$

Bellerive Ill Jan. 31. 1862

A. D. Johnson Esq.

Dear Sir

How has  
the case of Horner & Hypes  
been decided if the case  
has been reversed please  
send the order of the  
Court to the Monroe Co  
Circuit Clerk & oblige

Yours truly  
W. H. Underwood

Belleville Mo. July 30, 61

Dear Sir,

Enclosed please  
find record in a case  
of ~~Bornes & Hayes~~ vs Adams  
of ~~Starking~~ - Please file  
the same and issue  
Sci. fa. to the Sheriff of  
Madison County. Enclosed  
you will also find ~~you~~  
~~for~~ five dollars fee  
for your services.

Yours truly

H. H. Underwood

P. S. Send the License as  
Atty. for Louis Hauck  
a student in my office.

Tulsa Aug. 1. 1861  
St. John St. John St. John

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 Monroe 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 Monroe county, before the Judge thereof between

Nathan Horner and Benjamin Hypes  
plaintiffs and Mary  
A. Stuckey Amix of Mrs. C. Stuckey

Deceased defendants it is said manifest error hath intervened to the injury of the aforesaid Nathan Horner and Benjamin Hypes as we are informed by their 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 1<sup>st</sup> Tuesday after the 2<sup>d</sup> 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.

WITNESS, the Hon. John D. Catron Chief Justice of the Supreme Court and the seal thereof, at MOUNT VERNON, this first day of August in the year of our Lord one thousand eight hundred and Sixty One.

Josh. Thurston

Clerk of the Supreme Court.

SUPREME COURT.  
First Grand Division.

Nathan Homer &  
Benjamin Hypes  
Plaintiffs in Error,

VS.

Mary C. Starkey - Adm  
of Mrs. C. Starkey  
Defendant in Error.

~~Starkey~~

WRIT OF ERROR.

Issued and  
FILED August  
12<sup>th</sup> 1861 -  
N. Johnston M  
8495



State of Illinois  
SUPREME COURT  
First Grand Division

To the Clerk of the Circuit Court for the County of \_\_\_\_\_  
The People of the State of Illinois  
Greeting:

*[Faint, mostly illegible handwritten text, likely the body of the writ or a related document.]*



# IN THE SUPREME COURT.

First Grand Division, June Term, 1868.

BENJ. F. GUYTEAU,

vs.

JAS. L. WISELY.

} Appeal from Randolph.

## Brief for Appellant.

1  
The reversal of the judgment below placed the parties in *statu quo*, and if the plaintiffs in the judgment had purchased the land in question it would have operated to set aside the sale. See *McJilton vs. Love*, 13th Ill., 494. The plaintiffs did buy the land but they assigned the certificate of purchase to a third party. What rights did this third party take? He took the same in *every respect*, and we insist the same only, as the purchaser. See Revised Stat., chap. LVII., sec. 18, page 303. The judgment was reversed before the assignee parted with the title to the land.

2  
The land in question was sold by appellant to McDill, and a mortgage for unpaid balance of the purchase money was taken at the time, but it was not recorded until after the recovery of the judgment against McDill. Knowledge of this mortgage was received by the plaintiffs in the judgment before the sale—(see their letter)—and they knew it was given for purchase money. The mortgage was recorded before the sale.

Appellant insists that the judgment creditor was affected with notice, and that the holder of the prior unrecorded mortgage for purchase money should be preferred to the subsequent judgment creditor. See *Met. Bank vs. Godfrey*, 23d Ill., 579; *Martin vs. Knox College*, 32d Ill., 165.

3

New trial should have been given

Geo W. Howell

Atty for Appellant

Gintan  
Wesley

By for Appellant

IN THE SUPREME COURT

First Grand Division, June Term, 1868.

Judge for Appellant

Filed 26<sup>th</sup> Aug 1868  
R. A. Willbanks  
clerk

judgment was reversed before the original parties with the title to the  
the purchase. The husband's debt, 1771, was 12 years 3000. The  
debt. He took the note in his own name and he held the same until 1774  
before of purchase to a third party. What rights did this third party  
have?  
The point in question was well by appellant to McCall and a most  
clearly in his favor. The mortgage was recorded by the plaintiff in  
1850. Knowledge of this mortgage was required by the plaintiff in  
the judgment before the sale. (see this point) and that fact is not  
disputed by the plaintiff. The mortgage was recorded before the sale  
and it was not recorded until after the recording of the judgment against  
the plaintiff's judgment of the purchase money was taken at the time  
of sale.  
The point in question was well by appellant to McCall and a most  
clearly in his favor. The mortgage was recorded by the plaintiff in  
1850. Knowledge of this mortgage was required by the plaintiff in  
the judgment before the sale. (see this point) and that fact is not  
disputed by the plaintiff. The mortgage was recorded before the sale  
and it was not recorded until after the recording of the judgment against  
the plaintiff's judgment of the purchase money was taken at the time  
of sale.

Wesley  
Gintan  
1868

June Term, A. D. 1868.

BENJ. F. GUYEAU }  
vs. } Appeal from Randolph.  
JAS. L. WISELY }

ABSTRACT.

1 This was an action of Ejectment commenced by Appellant against Appellee, for the E  
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day,) under which deed defendant Wisely then entered and took possession of the land and has  
held it ever since.

ERRORS ASSIGNED.

- 1st. Court erred in finding against plaintiff below.
- 2d. Court erred in overruling motion for new trial.

MULKEY, WALL & WHEELER,  
For Appellant.



# IN THE SUPREME COURT.

First Grand Division, June Term, 1868.

BENJ. F. GUTEAU,  
vs.  
JA'S. L. WISELY. } Appeal from Randolph.

## Brief for Appellant.

1 The reversal of the judgment below placed the parties in *statu quo*, and if the plaintiffs in the judgment had purchased the land in question it would have operated to set aside the sale. See *McJilton vs. Love*, 13th Ill., 494. The plaintiffs did buy the land but they assigned the certificate of purchase to a third party. What rights did this third party take? He took the same in *every respect*, and we insist the same only, as the purchaser. See Revised Stat., chap. LVII., sec. 18, page 303. The judgment was reversed before the assignee parted with the title to the land.

2 The land in question was sold by appellant to McDill, and a mortgage for unpaid balance of the purchase money was taken at the time, but it was not recorded until after the recovery of the judgment against McDill. Knowledge of this mortgage was received by the plaintiffs in the judgment before the sale—(see their letter)—and they knew it was given for purchase money. The mortgage was recorded before the sale.

Appellant insists that the judgment creditor was affected with notice, and that the holder of the prior unrecorded mortgage for purchase money should be preferred to the subsequent judgment creditor. See *Met. Bank vs. Godfrey*, 23d Ill., 579; *Martin vs. Knox College*, 32d Ill., 165.

3 A new trial should have been given

Geo W Hall  
Att'y for Appellant

Gorton  
Wesley

By for Appellants  
and Abstract

Recd Aug. 29 / 58

IN THE SUPREME COURT

Filed 26<sup>th</sup> Aug. 1858  
R. D. Williams  
clerk

9  
The judgment was reversed before the appellate court with the title to the  
the judgment. See Methodist v. State, 17 H. 400. It is held that the  
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A new title to be given to the

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# Supreme Court of the State of Illinois.

## SECOND GRAND DIVISION.

B. F. GUILTEAU, Appellant,  
vs.  
J. L. WISLY, Appellee, | Appeal from Randolph.

On the 30th day of March, 1860, Appellant being the owner of the land in question, conveyed to McDill, taking back a mortgage of same date, which was not recorded until February 7, 1861.

At the September Term of the Randolph Circuit Court, 1860. J. & R. Stevenson, for the use of Brown, recovered a judgment against McDill, on which an execution issued and was levied on the land January 23, 1861.

On the 28th day of same month, J. & R. Stevenson wrote to Appellant informing him of the levy, and asking for information as to his having a mortgage on the same land. February 16, 1861, the land was sold under the execution, J. & R. Stevenson becoming purchasers, and receiving a certificate of purchase, which they assigned on the 14th of March, 1862, to H. C. Cole & Co., and H. C. Cole & Co. assigned the certificate to Campbell on the 17th day of May following. On the 30th of the same month, Campbell received the Sheriff's deed for the land, and conveyed it to Appellee, January 1, 1864.

At the November Term, 1863, of this Court, the J. & R. Stevenson judgment was reversed for non joinder in error, afterwards Appellant foreclosed his mortgage, bid in the land and received the Master in Chancery's deed, which was recorded April 11, 1865.

It will be noticed that at the time J. & R. Stevenson became judgment creditors of McDill they had had neither actual nor constructive notice of the mortgage in favor of Appellant, and having acquired a *bona fide* lien on the land, no after acquired notice could prejudice it, or prevent them from perfecting it by a sale of the premises, nor did putting the mortgage on record between the levy of the execution and day of sale effect the title of the purchaser. But it is claimed that though the title might otherwise be good, the reversal of the judgment had the legal effect of restoring it back to the judgment debtor regardless of all intervening rights of third parties. This position, we think, not well taken. In the case of *McLagon vs. Brown, et al* 11th Ill. 523. This Court gives a very qualified assent to the broad doctrine claimed that in all cases a reversal of a judgment has the legal effect of restoring the property to the judgment debtor where the judgment creditor has been the purchaser, and this case presents a state of facts that will not warrant the application of the general rule applied in other cases.— J. & R. Stevenson were only the nominal and not the beneficial plaintiffs in the reversed judgment. They are not supposed to have been present in person, or by Attorney, and cannot be supposed to have been cognizant of any errors that may have crept into the record, they had no control over the judgment, nor would their deaths have abated the suit. Except in name, they were nothing more than strangers to the record; it would therefore seem but right that they should be permitted to enter the market as competitors on equal footing with other bidders. But it will be observed that the certificate of purchase had passed through Cole & Co. to Campbell, who held the Sheriff's deed for the land at the date of the reversal of the judgment.

I suppose it will be conceded that had Campbell bought the land at the Sheriff's sale himself, the reversal of the judgment would not have effected his title. Then on what principle can it be claimed that the bidding it in by the Stevensons and assigning through Cole & Co., the certificate of purchase to Campbell will transmit to him a defection of title he would have been free from if he had attended the sale in person and bid for himself. Can it be presumed that in the former case he would have been advised of defects and errors in therecord of which he would have remained ignorant in the latter? Whatever is done under an erroneous judgment, so long as it remains unreversed, is valid and binding so far as the rights of strangers are concerned. *Bank of the United States vs. Bank of Washington*, 6th Pet. 15. In this case those who had a right to complain of errors in the reversed judgement were resting on their rights while strangers and third parties were investing their money on the faith that the adjudication was final, and should Appellant recover their interests will, in all probability, be seriously affected thereby.

WATT & MICHAH, Attorneys for Appellee.

*John Hancock*

*vs*

*Wesley Appellee*

*Appellee Brief*

*Filed Dec 1808  
P. H. Willmets  
Clerk*



# IN SUPREME COURT.

The State of Illinois, First Grand Division,

June Term, A. D. 1868.

BENJ. F. GUTEAU }  
vs. } Appeal from Randolph.  
JAS. L. WISELY. }

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MULKEY, WALL & WHEELER,  
For Appellant.

IN SUPPLEMENTARY VOLUMES

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1. *Case* *vs.* *Case* in certain matters...  
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*Quitau*  
*or*  
*Wisely*

*Abstract*

*Case* *vs.* *Case* in certain matters...  
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*Filed 25th June 1868*  
*A. M. M. M.*  
*clh*

LENO KINGS, V. D. 1868.

THE STATE OF GEORGIA, First Grand Jurisdiction.

IN SUPPLEMENTARY VOLUMES

# IN SUPREME COURT.

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June Term, A. D. 1868.

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MULKEY, WALL & WHEELER,

For Appellant.

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*Quitian  
or  
Nisely*

**Abstract**

THE N. W. CORNER OF THE SECTION OF LANDS BELONGING TO THE STATE OF CALIFORNIA, CONTAINING THE LOTS OF JOHN W. MEDILL & JOHN MEDILL, SENIOR.

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FILED 25<sup>th</sup> JUNE 1868  
R. D. WILLIAMS  
Clerk

**IN SUPREME COURT**  
The State of California, Plaintiff, vs. John W. Medill & John Medill, Defendants.  
JUNE TERM, A. D. 1868.

**REPORT MADE BY THE CLERK OF THE SUPREME COURT**

Abstract of the proceedings in the case of the State of California, Plaintiff, against John W. Medill & John Medill, Defendants, in the Supreme Court of the State of California, June Term, A. D. 1868.

State of Illinois Supreme Court  
First grand session to June term 1868

James L. Wisely  
vs

Benjamin F. Quisenberry vs

And the said  
James L. Wisely defendant in  
error now comes and says that  
there is no error, either in the  
record and proceedings aforesaid  
or in giving judgment  
aforesaid in manner & form  
as is above assigned and  
therefore he prays that the  
said judgment may be  
affirmed and that his  
costs may be adjudged to  
him &c

Wald & Michou  
attys for appellee

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Wesley  
Sts  
Guiteau

Journal in notes

from June 1868

W. H. Williams  
et al