No. 11897

Supreme Court of Illinois

Sebree, et al.

vs.

Plum

71641 7

Cfo #3

Wm. J. Sebree et als.
vs
William V. Plum

1850

1/8 Gt

Pleas before the Hon John Dean Caton one of the Justices of the Supreme Court of the State of Illinois and Presiding Judge of the ninth Judicial Circuit, at a Term of the Circuit Court holden in and for the County of De Kalb and State aforesaid, commencing on the thirteenth day of September A.D. 1847 and of the independence of the United States the Seventy first

Present the Hon John Dean Caton, Judge,
" B. C. Cook, States Attorney
" E. P. Young, Sheriff,
" Jesse C. Kellogg, Clerk.

Be it remembered that on the eleventh day of August in the Year of our Lord one thousand eight hundred and forty seven, William V. Plum filed in our said Court a certain Bill in Chancery in which the said William V. Plum was complainant, and William G. Sebree, John S. Sebree, Mary Sebree, Gilly M. Miller, Samuel Miller heirs of Robert Sebree deceased & Horace W. Fay Admr of the estate were defendants, which said Bill was in words and figures as follows, to wit:

"In Chancery } To the Hon John D. Caton presiding
State of Illinois } Judge of the De Kalb Circuit Court
De Kalb County ss } In Chancery &c.

Your Petitioner William V. Plum of the County of Kane and State of Illinois shows unto your honor that on or about the eighteenth day of November A.D. 1846, Robert Sebree late of the County of De Kalb aforesaid deceased in his life time to secure the payment of the sum of three hundred eighty six dollars and ninety eight cts, three

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months from date with interest did make and execute under his hand deliver unto your Petitioner a promissory note dated on that day for the sum aforesaid as by said note ready to be produced as this Court shall direct will appear. and the said Robert Sebree to secure the payment of the said sum of money and interest as aforesaid, did, on the same day duly execute under his hand and seal and deliver unto said Petitioner a mortgage a copy of which is hereunto annexed and marked (A) which your Petitioner prays may be taken as a part of this Bill and your Petitioner further shows that the said sum of money with the interest thereon still remains due to him and that the said Robert Sebree during his life time and those claiming under him since his decease, have from the time of making the said mortgage possessed and enjoyed and still do possess and enjoy the said premises and the profits thereof and that no proceedings at law or otherwise have been had for the ~~money~~ recovery of the said sum of money or any part thereof —

And your petitioner further shows that in describing the premises mentioned in said mortgage the words "first principal meridian" were inserted by mistake, that it should have been third principal meridian — and was so intended by the parties to said deed — that the said Robert Sebree was not the owner of nor did he intend to convey lands in the first principal meridian —

And Your Petitioner further shows that the said Robert Sebree died intestate in the month of March AD. 1847 that Mary Sebree is the widow and administratrix that Horace W. Hay is administrator of said estate

of the said Robert that John S. Sebree William G. Sebree Gilley M. Miller and Samuel Miller are the heirs of the said Robert residing in the County of De Kalb aforesaid

Your Petitioner therefore solicits the aid of this Court to correct the said mistake in said deed and to compel the said Administratrix and heirs upon their oaths true full and perfect answer to make to all and singular the matters and things herein stated according to the best of their knowledge information and belief and that they may be decreed to pay to your petitioner the sum of money due on said mortgage with the costs and charges in this behalf expended and that in default thereof they and all persons claiming under them or either of them or otherwise may be foreclosed of and from all equity of redemption and claim of in and to said mortgaged premises and every part thereof and that said premises may be sold under a decree of this Court and that out of the moneys arising from the sale thereof he may be paid the sum due him on said mortgage together with all costs and charges by him in this behalf sustained and that he may have such other and further relief in the premises as may be agreeable to equity and good conscience.

May it please the Chancellor to grant the proper writ of Summons to be issued out of this Court to be served on the said administratrix and heirs commanding them to appear before this Court at the next Term thereof then and there to answer this Bill and to abide by such orders and decree as may be made in the premises.

W. B. Plato
Sol. for Complt

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(Copy of Mortgage) (marked "A.")

Robert Sebree
To
William V Plum

This Indenture made this eighth day of November in the Year of our Lord one thousand eight Hundred and forty six Between Robert Sebree of the County of De Kalb and State of Illinois party of the first part and Wm V. Plum of the County of Kane and State of Illinois party of the second part, Whereas the said party of the first part is justly indebted to the said party of the second part in the sum of three Hundred eighty six Dollars and ninety eight cents secured to be paid by a certain promissory Note bearing even date herewith executed by the said party of the first part to the said party of the second part or order due three months from date

Now therefore this Indenture Witnesseth that the said party of the first part for the better securing the payment of the money aforesaid with interest thereon according to the tenor and effect of the said promissory Note above mentioned And also in ~~further~~ consideration of the further sum of one Dollar to him in hand paid by the said party of the second part at the delivery of these presents the receipt whereof is hereby acknowledged hath granted bargained sold and conveyed and by these presents doth grant bargain sell and convey unto the said party of the second part his heirs and assigns forever, All the following described Lots of land, to wit: The west half of the South west quarter of Section Fourteen, and the East half of the South East quarter of Section Fifteen Township

thirty eight North Range five east of the first principal meridian containing one hundred and sixty acres in the district of lands subject to sale at the Chicago Land Office in the County of De Kalb and State of Illinois Also twenty six acres and forty eight Hundreths of an acre, on the South east quarter of section fifteen Township and Range aforesaid and bounded as follows Beginning at a stake on the South line of said quarter five chains and twenty seven links from the South west corner and ~~extending~~ running thence North Fourteen degrees and thirty minutes east on the claim line twenty two chains and twenty two links to Samuel Millers South line thence North twenty nine degrees east on said South line nine chains and thirteen links to the east line of the west half of said quarter thence South twenty minutes west on said east line twenty three chains and sixty two links to the South line of said quarter thence west on said South line fourteen chains and fifty links to the place of beginning To have and to hold the same together with all and singular the tenements hereditaments privileges and appurtenances thereunto belonging or in any wise appertaining And also all the estate interest and claim whatsoever in Law as well as in equity which the party of the first part hath in and to the premises hereby conveyed unto the said party of the second part his heirs and assigns to their only proper use benefit and behoof Provided always and these presents are upon this express condition that if the party of the first, his heirs executors or administrators shall well and truly pay or cause to be paid

to the said party of the second part his heirs executors administrators or assigns the aforesaid sum of money with such interest thereon at the time and in the manner specified in the above mentioned promissory Note according to the true intent and meaning thereof that then and in that case these presents and every thing herein expressed shall be absolutely null and void

In witness whereof the said party of the first part hereunto set his hand and seal the day and year first above written

Sealed and delivered
in presence of
Edward L. Mayo
State of Illinois
DeKalb County ss

Robert Sebree (Seal)

I Edward L Mayo Probate Justice of the peace in and for the said county in the state aforesaid do hereby certify that Robert Sebree who is personally known to me as the real person whose names are subscribed to the annexed Deed appeared before me this day in person and acknowledged that they executed and delivered the said deed as their free and voluntary act for the uses and purposes therein set forth

Given under my hand and seal this fifth day of December in the year of our Lord one thousand eight hundred and forty six

Edward L Mayo
Probate Justice of the Peace

(Seal)

And thereupon a summons issued in words

and figures following, to wit:

State of Illinois } The People of the State of Illinois
De Kalb County ss } To the Sheriff of said County Greeting:

We command that you summon William G. Sebree, John S. Sebree, Mary Sebree Gilley, Mc Miller Samuel Miller heirs of Robert Sebree deceased & Horace W. Hay administrator of the estate, if to be found in your county personally to be and appear before the Circuit Court of said County on the first day of the next Term thereof to be holden at the Court House in Sycamore on the third monday after the fourth monday in August Inst., then and there to answer to a certain Bill in Chancery against them filed in our said Court, on the Chancery side thereof by William V. Plum on the day of the date hereof and have you then and there this Writ with your return hereon endorsed; Witness Jesse C. Kellogg Clerk of said Court & his private seal (no official seal provided) at Sycamore this 11th day of August A.D. 1847.

Seal

Jesse C. Kellogg Clerk"

On which said Summons is endorsed as follows, to wit; "Served by reading to the within named defendants & giving them an attested copy of the within Summons this 20th day of ~~Aug~~ Aug 1847

Fees Ser $3.00 mil $6.25 Ret 12½ = $9.37½

E. R. Young Shff.
By W. P. Dulton D. Sfly."

And afterwards, to wit Tuesday September 11th 1847 being the second day of the above mentioned Term of the aforesaid Court, the following among other proceedings in said Court was had, to wit:

William V. Plum
vs
William G. Sebree John S. Sebree
Mary Sebree, Gilley M. Miller &
Samuel Miller heirs ~~at Law~~ of
Robert Sebree deceased & Horace
W. Fay administrator of the Estate

} Bill for foreclosure of Mortgage

This day came the Complainant by Plato his Solicitor

and the defendants being three times solemnly called came not but made default; and it appearing to the Court that Process of Summons had been served on said defendants more than ten days prior to the first day of the present term of this Court, It is ordered that the said Complainants Bill be taken for confessed; and the facts set forth in the Complainants Bill having been proved to the satisfaction of the Court, and it appearing to the Court that a mistake occured in the making of the said mortgage in describing said land as being in the first principal meridian and that it should have been and was intended by the parties to be the third principal meridian and it also appearing to this Court that there is due the said Complainant on the said note and mortgage for principal and interest the sum of four hundred and six dollars and thirty eight cents; It is ordered adjudged and decreed that the mistake in describing said lands in said mortgage be corrected so as to read in the <u>third</u> principal meridian instead of the <u>first</u> principal meridian. And it is further Ordered adjudged and decreed that all and singular the said mortgaged premises mentioned in the Bill of Complaint and therein described as follows, to wit: the West half of the South west

quarter of Section fourteen and the east half of the of the South east quarter of Section Fifteen Township thirty eight North Range five East of the third principal meridian containing one hundred and sixty acres in the District of lands subject to sale at the Chicago Land Office in the County of De Kalb and State of Illinois. Also twenty six acres and forty eight hundreths of an acre on the South east quarter of Section Fifteen Township and Range aforesaid and bounded as follows, Beginning at a stake on the south line of said quarter five chains and twenty seven links from the south west corner, and running thence North fourteen degrees and thirty minutes East, on the claim line twenty two chains and seventy two links to Samuel Millers south line, thence north seventy nine degrees east on said south line, nine chains and thirteen links to the east line of the west half of said quarter, thence south twenty minutes west on said east line twenty three chains and sixty two links to the south line of said quarter, thence west on said south line fourteen chains and fifty links to the place of beginning: be sold at public auction under the direction of Zeloles B. Mayo one of the Masters of this Court unless previous to said sale the said defendants pay the said sum of four hundred and six dollars and thirty eight cents and interest thereon from the thirteenth day of September one thousand eight hundred and forty seven and the Complainants costs of this suit to be taxed - that the said sale be made in the the County of De Kalb where said premises

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are situated that said master give public notice of the time and place of said sale by putting up notices in three of the most public places in the County and that the complainant or any of the parties in this cause may become purchasers of said premises, on the said sale and that the said master pay to the complainant or to his Solicitor out of the proceeds of such sale his costs to be taxed, and also the said sum of four hundred and six dollars and thirty eight cents together with the legal interest thereon from the date of this decree, and that the said master bring the surplus money arising from said sale, if any there shall be, into Court at the next term thereof to abide the order of this Court.

And it is further Ordered and decreed that the said master give a certificate of Purchase to the purchasers of said premises and that unless said premises shall be redeemed within six months according to the statute in such case made and provided from the date thereof the said master execute and deliver to the legal holder of said certificate a Deed of conveyance of said premises — and it is further Ordered and decreed that the purchaser of said premises be let into the possession thereof at the expiration of the said fifteen months and that any of the parties in this cause who may be in possession of the premises or any part thereof and any person who since the commencement of this suit has come into possession under them or either of them, deliver possession thereof to such purchaser on production of the masters deed for such premises — and that the said defendant ~~pay~~ all costs pay all costs and charges to be taxed in this suit" —

And afterwards, to wit, at the May Term of the aforesaid Court, to wit on on Monday being the first day of May A.D. 1848 the following among other proceedings in said Court was had, to wit:

"William V. Plum
vs
William J. Sebree John S. Sebree
Mary Sebree Gilley M. Miller
Samuel Miller heirs of Robert
Sebree dec'd & Horace W. Fay
Admr of said Estate

} Bill for foreclosure of Mortgage

This day came the Complainant by Plato his Solicitor and on his motion It is ordered by the Court that the Report of the master filed in this cause be approved"

The Masters Report is in words and figures following, to wit:

"To the Hon. John Dean Caton Chancellor of the ninth Judicial Circuit in the State of Illinois.

In the matter in Chancery wherein Wm V Plum is Plaintiff and William J. Sebree John S. Sebree Mary Sebree Gilley M. Miller Samuel Miller heirs of Robert Sebree deceased and Horace W Fay administrator of the said Estate - I Charles B. Mayo Master in Chancery would report that on the 13 day of day of September A.D. 1847 I posted up three written notices particularly describing said land and that in the County of De Kalb and that I should expose at the door of the Court House in said County the same to Sale on the 14th day of October 1847 and that I did expose at public Sale on said day, the lands described in said

Notice a copy of which herewith annexed marked (A) and that said land as described in said notice was sold to William V. Plum for the sum of Four Four hundred and fifty Dollars he being the highest & best bidder and that the said William V. Plum has paid my fees as master in said suit but the fees of the offices of this court remain unpaid all of which is respectfully submitted

Zebolon B. Mayo
Master in Chancery
for De Kalb County

"A"

"Master in Chancery Sale.
By virtue of a decree in favor of William V. Plum and against William J. Sebree John S. Sebree, Mary Sebree, Gilley M. Miller Samuel Miller heirs of Robert Sebree deceased and Horace W. Fay administrator of said estate by the Hon John D. Caton Chancellor of the ninth Judicial Circuit in the State of Illinois I shall expose to sale at the door of Court House in Sycamore in said County of De Kalb on the 14th day of October next between between the hours of ten o'clock A.M. and sun set of said day the following described lots of land to wit, the West half of the South West quarter in Section Fourteen and the East half of the South East quarter of Section fifteen in Township thirty eight north range five east of the third principal meridian, containing one hundred and sixty acres in the District of lands subject to sale at the Chicago Land Office in the County of De Kalb and State of Illinois —

Also twenty six acres and forty eight hundredths of an acre on the South east quarter of Section Fifteen Township and Range aforesaid and bounded as follows, Beginning at a stake on the South line of said quarter five chains and twenty seven links from the South West corner and running thence South fourteen degrees and thirty minutes East on claim line twenty two chains and seventy two links to Samuel Millers South line thence north seventy nine degrees east on said south line nine chains and thirteen quarter thence south twenty minutes west on said east line twenty three chains and sixty two links to the south line of said quarter thence West on said South line fourteen chains and fifty links to the place of beginning to the highest bidder for cash in hand, The Purchaser will be entitled to a certificate of Purchase which will entitle him to a Deed and possession of the premises in fifteen months after date of said sale unless redeemed according to law

Dated at Sycamore this 13th day of September AD. 1847.

Zeloles B. Mayo
Master in Chancery"

State of Illinois }
De Kalb County ss } I, Jesse C. Kellogg Clerk of the Circuit Court of said County do hereby certify that the foregoing contains a correct copy of the Bill, Mortgage Summons and the return of the Sheriff thereon, the decree and all record entries, the Masters Report and notice of sale in a certain cause lately pending in the Circuit Court of said County on the Chancery side thereof, to wit, at the September Term A.D. 1847 in which William V. Plum was complainant, and William J. Sebree John S. Sebree Mary Sebree Gilley M. Miller Samuel Miller, heirs of Robert Sebree deceased, & Horace W Fay Admr. of the Estate were defendants, as the same appear of Record on file now remaining in my office.

In Witness whereof I have hereunto set my hand and private seal (no official seal provided) at Sycamore this 22nd day of September A.D. 1848

Seal

Jesse C. Kellogg, Clerk

William J. Sebree John S. Sebree
Mary Sebree, Gilley M. Miller
Samuel Miller, heirs of Robert Sebree
& Horace W Fay Administrator of Robert Sebree
William V. Plum deceased Crt

plffs in Error

Now come the above named defendants in the above cause upon a plaintiff in error and assign the following errors in the foregoing cause and record

1st The Court erred in decreeing that the defendants pay costs

2 The court erred in decreeing that an defendants and all claiming under them

surrender possession of the premises described in the decree

3d The Court erred in decreeing that Mary Selene should surrender the possession of the premises aforesaid

4 The Court erred in rendering the decree in this cause in manner & form as ~~attest~~ above set forth in this record

5 The Court erred in rendering the decree in this cause for the complainant when it should have been rendered for the defendants

Hoard & Cook
Solicitors for pltff in Error

and the said defendants comes and says there is no such error in said decree as above assigned and prays the decree may be affirmed

Hoits & Leland for deft

Let the writ of Error in the foregoing cause be made a supersedias upon the Plaintiffs in Error filing a bond with the Clerk of the Supreme Court in the penal sum of seven hundred dollars conditioned as the law directs with the said plaintiffs as principles and John Eastbrooks as security

Sept 29. 1848

S D Caton

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4

William N. Plum

vs

William J. Sebree
and others

Trans. of Record
from De Kalb Co

Filed Sept. 29th 1848.
Neland Clk.

Clerks Fees—
50 Fol. @ 2 words
Cert & Seal $ 6.75
Rec'd payment of Saml
Miller Jno C Kilbourn

State of Illinois, Set.

The People of the State of Illinois,
To the Clerk of the Circuit Court for the County of DeKalb,
Greeting:

Because in the record & proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court DeKalb County, before the judge thereof, between William V. Plum Complainant and William J. Sebree, John S. Sebree, Mary Sebree, Gilley M. Miller, Samuel Miller heirs of Robert Sebree decd. & Horace N. Fay admr. of Robert Sebree, defendants, it is said manifest error hath intervened to the injury of the aforesaid Defendants as we are informed by their complaint, & we being willing that error, if any there be, should be corrected in due form & manner, & that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly & openly without delay, send to our justices of our Supreme Court the record & 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 Ottawa in the County of La Salle, on the first Monday of February next, that the record & 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. William Wilson, Chief Justice of our said Court, & the seal thereof, at Ottawa, this 29th day of September A.D. 1848.

Lorenzo Leland Clerk of the Circuit Court of La Salle County & ex officio Clerk of the Supreme Court of said State.

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William J. Schuyler & others
vs
William V. Plum

Writ of Error

Supreme Court.

Filed Sept. 29. 1848.
J. Leland Clk.

State of Illinois }
Supreme Court } ss.

The People of the State of Illinois,
To the Sheriff of Kane County — Greeting:

Because in the record & proceedings, & also in the rendition of the judgment, of a plea which was in the Circuit Court of DeKalb County, before the Judge thereof, between William T. Plum Complainant and William J. Sebree, John S. Sebree, Mary Sebree, Gilly M. Miller, Samuel Miller heirs of Robert Sebree deceased & Horace W. Fay adm^r. of Robert Sebree, defendants, it is said that manifest error hath intervened to the injury of the said Defendants as we are informed by their complaint, the record & proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form & manner according to law; therefore, We command you, that by good & lawful men of your County, you give notice to the said William T. Plum that he be & appear before the Justices of our said Supreme Court, at the next Term of said Court, to be holden at Ottawa, in said State, on the first Monday of February next, to hear the records & proceedings aforesaid, & the errors assigned, if he shall think fit; and further to do & receive what the said Court shall order in this behalf; and have you then & there the names of those by whom you shall the said notice, together with this writ.

Witness, the Hon. William Wilson, Chief Justice of our said Court, & the seal thereof, at Ottawa, this 29th day of September A.D. 1848.

Lorenzo Leland Clerk of the Circuit Court of La Salle County & ex-officio Clerk of the Supreme Court of said State —

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No. 4

William J. Sebrest.
al.
vs
William V. Plum

Sci. fa.

To February Term 1849
Supreme Court.

Filed Nov. 6th 1848.
Leland Clk.

Service by reading to the within named Wm. V. Plum this Oct 17th 1848

B. C. Yates, Sheriff
by Geo. E. Lewis Deputy

Fees
Ten miles travel
Return
Postage

.50
62½
12½
1.50