No. 8533

# Supreme Court of Illinois

M. Keith et al

vs.

H. H. Horner

71641 7

pg 1

At a circuit court began and held at the court house in Carlyle in and for the County of Clinton and state of Illinois on Monday the fifth day of August AD 1861, present the Hon. Silas L. Bryan Judge of the second Judicial Circuit of the state of Illinois of which the said Clinton County forms a part, Amos Watts States attorney, Edward C. Dew shriff of said County, and Thomas J. Smith Clerk. officers holding said court, when the following proceedings were had and orders made by said court to wit:

Henry H. Horner, Complainant
vs } Bill in Chancery to enforce Vendors lien
Michael Keith & John Gedney, defendants

On the 20th day of July AD 1861 the said Henry H. Horner filed his bill in Chy. in this cause in the words & figures following that is to say.

State of Illinois } Of the August term of the Clinton
Clinton County ss } Circuit Court AD 1861, In Chancery

To the Hon. Silas L. Bryan judge of the Clinton Circuit court.

Humbly Complaining, your orator Henry H. Horner respectfully shows unto your honor that on or about the twenty third day of May AD 1859 one John Gedney sold and

[8533-1]

conveyed by deed to one Michael Keith, certain real estate with the improvements thereon, known and designated as being lot number six, in Block number sixteen, in Sanger, Camp & Co's Addition to the town of Trenton in the county of Clinton and in the state of Illinois which said lot at the time of said sale thereof the said Gedney was the owner thereof, and in part payment of the purchase money for said premises the said Michael Keith executed and then and there delivered to the said John Gedney two promissory notes in writing in words & figures following to wit:-

" $233.33 Trenton May 23d 1859

Two years after date for value recd. I promise to pay to John Gedney or order the sum of two hundred and thirty three 33/100 dollars with ten per cent interest from date till paid.

Witness N. H. Johnson Michael his X mark Keith "

$233.33 Trenton May 23d 1859

Two and one half years after date for value recd. I promise to pay to John Gedney or order the sum of two hundred and thirty three 33/100 dollars with ten per cent interest from date till paid.

Witness N H Johnson Michael his X mark Keith

which said promissory notes afterwards to wit on the day and year aforesaid the said John Gedney endorsed sold and delivered to

pg. 3

your orator for a valuable consideration, and that the interest and principal of said notes amount to, at this time, to about five hundred and seventy two dollars. Your orator further shows that the first mentioned promissory note has been long since due and payable, and that the said Michael Keith although often requested so to do has wholly refused and and neglected to pay said note or any part thereof. Your orator further shows that said premises would not sell for are not worth any more than the claim of your orator, and that said premises can not be subdivided and a part thereof sold without manifest prejudice to the parties interest therein. Your orator further shows that both said John Gedney and the said Michael Keith are insolvent, and have no property liable to execution as your orator is informed and believes. Your orator prays that the said Michael Keith and the said John Gedney may be summoned and made defendants to this bill of complaint, and that they ~~they~~ may be compelled to answer all the material allegations herein set forth, but their answers under oath are hereby expressly waived, ~~For~~ as much as the said promissory notes were given in part payment

[8533-2]

pg 4.

of said premises, as a part of the purchase money as aforesaid, and the first mentioned promissory note has been long since due, your orator prays that your honor will order and decree that your orator may have a vendor's lien on said premises, that your honor will order and decree that the said Michael Keith shall pay the amount of the first mentioned promissory note which is now due within a time limited by the Court, and in default of the payment of the same as ordered by the Court, in that case your honor will order and decree the sale of said premises for the purpose of paying said first mentioned promissory note that is now due, and that the overplus arising from said sale, if any, may be appropriated to the payment of the said promissory note herein set forth that is not due, and that in case the said premises should be sold, that the same may be sold without redemption and that the purchaser at said sale may be put into immediate possession of said premises, and that your orator may such other and further relief as justice and equity may require as your orator will ever pray &c

N. H. Horner, Complainant

pg 5

Upon the back of said bill was indorsed the following praecipe, that is to say:-

"The clerk will issue on the above returnable on the Monday of the August term of Clinton circuit court AD 1861 & send process to Clinton and St Clair Counties. H. H. Horner

And upon the filing of said bill and praecipe, a summons was issued in the words and figures following that is to say:-

"State of Illinois } The People of the state of
Clinton County } ss } Illinois to the Sheriff of said County - Greeting.

We command you that you summon Michael Keith and John Gedney if they shall 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 Carlyle in said Clinton County, on the first Monday of August next to answer unto Henry H. Horner in his certain bill of complaint for vendors lien on real estate and general relief filed in the said court on the chancery side thereof, and have you then and there this writ with an indorsement thereon in what manner you shall have executed the same

Witness T. S. Smith Clerk of said

[8533-3]

pg. 6.

court and the seal thereof at Carlyle this 20th day of July AD 1861

J. Smith Clerk

which writ was returned into said court with the following indorsement thereon. "I have executed the within writ by delivering a true copy of the same to Mary Ann Keith wife of said Michael Keith the within named defendant, at his residence, and I informed the said Mary Ann Keith (who is a white person above the age of ten years) the contents of the within writ this July 26th 1861

E. C. Dew Sheriff
by P N Amos Dept.

Whereupon at the said August Term of said court a decree was ~~entered~~ made by the court in this cause and entered of record in the words and figures following that is to say. (Names of parties)

Now at this time to wit the first Tuesday of this term a rule is taken on the defendants to answer by first Thursday. On the first Thursday the defendants failing to answer in compliance with the rule of the court the said bill is taken for confessed by them, whereupon the cause is referred to the master in Chancery to make computation and take evidence. The master

pg 7

having reported the evidence and the court having heard evidence and being fully advised of and concerning the premises finds that the two promissory notes set out in complainants bill were executed and delivered by said Michael Keith to said John Gedney in part payment of the purchase money of lot number six (6) in block sixteen (16) in Sawyer Leamy & Co's Addition to the Town of Sunton in the county of Clinton and state of Illinois as set forth in complainants bill, The Court also finds that there is now due said complainant on the first mentioned promissory note the amount of two hundred and eighty five 24/100 dollars and that the principal of said second promissory note is two hundred and thirty three 33/100 dollars bearing date May 23d A.D. 1859 and due two years and one half years after date with ten percent interest thereon from date until paid, and that the said second promissory note will be due on the ~~twenty~~ third day of November A.D. 1861. The Court further finds that said promissory

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notes were duly indorsed by said Polen Gedney and transferred to said Complainant who is now the owner of the same, Thereupon the Court orders and decrees that said Complainant shall have a vendors lien on said lot No Six (6) in Block No sixteen (16) in Sanger Camp & Co's Addition to the town of Trenton in the County of Clinton and State of Illinois for the amount of each of said promissory notes and the Court orders and decrees that the said Michael Keith shall, within thirty days, pay said Complainant the sum of two hundred and eighty five 24/100 dollars, the amount of the first mentioned promissory note set forth in said Complainants bill and in default of the payment of the same that the master in Chancery shall proceed to sell said premises or so much thereof as shall be necessary for cash at public vendue, at the front door of the Court house in the town of Carlyle after first giving four weeks notice of the time place and terms of said sale, in some weekly newspaper printed nearest

said premises, which said sale shall be subject to the lien on said premises for the payment of the amount of said second promissory note, and the Court further orders and decrees that the said Michael Keith, shall on the 23d day of November AD 1861 pay to said Complainant the further sum of two hundred and ninety one 66/100 dollars, the same being the amount due at said time of the principal and interest of said second mentioned promissory note, and in default of the payment of the same, the master in Chancery shall proceed to sell said premises or so much thereof as shall be necessary for the payment of the said last mentioned sum of two hundred and ninety one 66/100 dollars after having given public notice of the time place and terms of the sale as hereinbefore directed, and the Court further orders and directs that the Master in Chancery shall deliver to the purchaser at the sale of said premises a certificate of the purchase of said premises and in case the said Keith shall fail to redeem the same within the

pg 10

time limited by the statute in such case made and provided, then the master in Chancery shall convey to the purchaser at said sale all the right title and interest of said Keith in and to said premises and all right title and interest in said premises which the said Gedney conveyed to the said Keith by a good and sufficient deed of conveyance. And the Court further orders and decrees that the sheriff of Clinton County Illinois shall place the purchaser of said premises in possession of the same whenever the said purchaser shall have received a conveyance of said premises from the Master in Chancery as aforesaid. It is further ordered by the court that the said Michael Keith pay all the costs of this suit, and that execution issue therefor, and that this cause be continued.

The report of the master referred to in the above order of court is in the words and figures following, that is to say:-

State of Illinois } Of the August Term of the
Clinton County ss } Clinton circuit court AD 1861

Henry W. Horner, } Bill in Chancery to enforce
vs } vendors lien on real estate
Michael Keith, John Gedney } and genl relief.

pg 11

Alexander H. Johnson produced on the part of the complainant and sworn identifies two promissory notes dated 23d of May 1859 for two hundred and thirty three dollars and thirty three cents each, one payable two years after date, and the other payable two years and one half after date executed by Michial Keith and payable to John Gedney or order and both drawing ten per cent interest from date until paid, as having been executed by the said Keith as part consideration for the purchase money of lot number six (6) in Block No 16 in Sawyer Camp & Company's Addition to the Town of Trenton in the county and state aforesaid, true copies of which said promissory notes are set forth in the complainants bill and that from inspection of said notes the same are assigned to the complainant in the above entitled cause.

Computation of note now due,

Principal $233.33

Interest 2 yrs 2 mo & 21 days @ 10 per ct 51.91

$285.24

Computation of note due 23d Nov. 1861

Principal $233.33

Interest due 23d Nov next 2½ yrs 58.33

$291.66

All of which is respectfully submitted

Zophar Case

Master in Chancery

[8533-4]

And afterwards at the March Term AD 1862 of said Court the following order was made by the Court and entered of record in this case in the words and figures following that is to say.

"Now at this time to wit the eleventh day of March comes the master in Chancery and makes his report in this cause in the words and figures following to wit:-

State of Illinois } At the August Term of the Clinton
Clinton County } ss } Circuit Court AD 1861
Henry A. Homer } Bill to enforce
vs } Vendors lien.
Michael Keith & John Gedney }

By virtue of an order or decree of the Clinton Circuit Court made and entered at the August Term of the Clinton Circuit Court AD 1861 I advertised the following described Town lot in the "Carlyle Weekly Reveille" a newspaper printed and in general circulation in said County, a printed notice whereof is hereto attached, and also by posting up written notices in four of the most public places in said County to wit lot number Six (6) in Block number sixteen (16) in Langer Camp & Co's Addition to the Town of Trenton in the County of Clinton and state of Illinois for four successive weeks prior to the day of sale and on the tenth day of February

pg 13.

A.D. 1862 between the hours of ten o'clock in the forenoon and the setting of the sun of the same day at the front door of the Court house in Carlyle I offered said lot at public sale and Henry H. Horner bid the sum of four hundred and thirty eight dollars and sixty five cents for said Town lot or tract of land he being the highest and best bidder became the purchaser at that price and having complied with the terms of the sale I gave him a certificate of purchase and he will be entitled to a deed in fifteen months if not redeemed. All of which is most respectfully submitted.

John B. Roper
Master in Chancery

which report is approved by the court and ordered to be recorded and cause removed from the docket.

State of Illinois }
Clinton County } ss

I, Thos. S. Smith Clerk of the Circuit Court in and for said County do hereby Certify that the above is a true perfect and Complete Copy of the record in said Cause as appears to me from the records

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and files now in my said office —

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Carlyle this the 25th day of August AD 1863

Thomas S. Smith

Clerk

State of Illinois } Supreme Court November term AD
Jefferson county } ss } 1863. First Grand Division

And the said Michael Keith and John Gidney, defendants, plaintiffs in Error, by Buxton & White their attorneys says there is manifest error in the record and proceedings hereinbefore set forth appearing in the foregoing cause and for the assigning thereof the said plaintiff in Error sets down and shows the following errors therein to wit:—

1st The court below erred in entering the decree for complainant below in manner & form aforesaid. Whereupon and by reason of which said plaintiff in Error prays that the decree of of said Circuit Court may be reversed and that supersedeas may issue, and as in duty bound &c

Buxton & White
Solicitors for plaintiff in Error

The writ of error will be made a supersedeas in this cause on the plaintiff in error, Michael Keith executing a bond with John W. Duggan his security in the sum of one thousand dollars conditioned according to law.

Given under my hand this 3rd day of September 1863

Sidney Breese

[F-33-2]

Michael Keith & John Gadney
pltffs in Error
vs
Henry H. Homer
Deft in Error

15

8533

Filed Sept. 3 1865.
N. Johnston Clk

Paid by Buxton $11.50

25 t. 250 ms

$3.00

Entered here

LEBANON
FEB 3
'59

N. Johnson Esq
Clerk Supreme Court
Mt. Vernon
Illinois

Keith & Phinney

[6633-9]

Lebanon Ill Feb 2d 1864

N Johnson Esq

Dear Sir, Your favor came to hand; In regard to the costs in the case of Keith vs myself in your court, if you will send me the amount I will send the same to you either by draft on St Louis or New York or in any manner that you may direct; I always meet such demands without the intervention of Bills

Yours Truly

N. W. Horner

November term - Supreme Court - 1863.

| | | |
|---|---|---|
| 15. | Michael Keith and John Gadney - Plaintiffs in error. vs Henry A. Homer. Defendants in error | Error to Clinton. Decree Reversed and Bill Dismissed - |

Pltffs Costs - Collectable of Deft.

| | | |
|---|---|---|
| 1863. | To filing Transcript 20 - Docketing Cause 12. | 32. |
| | " Writ of Error - with Stamps | 1.25 |
| | " Sci fa | 1.00. |
| | " filing Papers | 50. |
| | " Abstracts - furnished (500 words each) | 7.00 |
| | " Entering Motion and order | 1.00 |
| | " " Opinion of Court. | 70. |
| | " Docket fee | 6.00 |
| | " Costbill & entering Decree | 37. |
| | " Executions 50 - Postages 15 | 65. |
| | | $18.79 |
| | Circuit Clk. Thos. S. Smith - fee for Transcript - Estimated here by request of Bunton | 3.00 |
| | | $21.79 |
| | If Pd. without fees, take off | 50 |
| | Due | $21.29 |

Deer Pltffs when collected.

Aut. of advanced fees - $11.50.
Abstracts furnished - 1.00
$12.50

Ans to write Homer at Lebanon May 7 - 1864.

Rec'd from 15-64. of Deft $21-29 - and same have a receipt therefor

[8-583-11]

Keith & Gridley
vs
H. H. Hewin

Costbill

Entered on page 574.
of fee book & Paid
& Receipt sent to
Hewin from 15-64

State of Illinois }
Jefferson county ss } Harvey P. Buxton being duly sworn deposes and says that John W. Digger, proposed security for Michael Keith and John Gedney plaintiffs in error in a suit vs. Henry H. Horner defendant in error in the Supreme Court of the state of Illinois, is worth one thousand dollars over and above all indebtedness homestead exemptions and exemption laws of this state and that he is a resident of the county of Clinton, state of Illinois and further deponent saith not.

H. P. Buxton

Subscribed & sworn to before me this 3d day of Sept 1863
Noah Johnston Clk

Amended by inserting "in debtedness" and again sworn to before me this 3d day Sept. 1863

Sidney Breese
Judge Sup. Court

[8033-13]

Affidavit

Keith & Gedney

vs

Howes.

15

Aff'd.

Filed Sept 3 - 1863 -

N. Johnston Cl

**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* Clinton 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* Clinton *county, before the Judge thereof between*

Henry H. Horner *plaintiff and*

Michael Keith & John Gaffney

*defendants it is said manifest error hath intervened to the injury of the aforesaid* Michael Keith and John Gaffney *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 Sunday after the 2d Monday in 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. Caton *Chief Justice of the Supreme Court and the seal thereof, at* MOUNT VERNON, *this* third *day of* September *in the year of our Lord one thousand eight hundred and* Sixty-three.

Noah Johnston
Clerk of the Supreme Court.

[8533-13]

15

SUPREME COURT.

**First Grand Division.**

Michael Keith and
John Gedney

*Plaintiffs in Error,*

vs.

H. H. Homer

*Defendant in Error.*

WRIT OF ERROR.

Issued - Sealed, Stamped

and FILED - Sept.
30. 1863 -
N. Johnston Cl

Supreme Court of Illinois
First Grand Division - November Term 1863.

Michael Keith & } pltffs in Error
John Pedney } defendants below

vs

Henry H. Homer, deft. in Error, and
complainant below.

Error to Clinton Cir cuit court
August Term AD 1861 on
Bill in Chancery to enforce vendors
lien,

The Clerk of the Supreme
Court will please issue sci. fa. &
supersedeas in this case directed
to Shff. St Clair Co. & oblige

Buxton & White
Attys for pltffs in Error.

[85533-14]

15

Michael Keith &
John Gedney
Pltffs in error

vs

Henry H. Homer
Deft in error —

Praecipe

Filed Sept 3 - 1863
N. Johnston Clk

# SUPREME COURT OF ILLINOIS.

## First Grand Division—November Term, 1863.

———o———

| | |
|---|---|
| MICHAEL KEITH and JOHN GEDNEY, Plaintiffs in Error. *versus* HENRY H. HORNER, Def't in Error. | Error to Clinton. |

### *ABSTRACT OF THE RECORD.*

This was a bill in chancery, filed in the Clinton Circuit Court, July 20th, 1861, by the defendant in error *vs.* the plaintiffs in error, to enforce a vendor's lien on real estate, as the assignee of the vendor. ( R. 1. )

The bill sets out that, on the 23d day of May, 1859, said Gedney sold and conveyed to said Keith, a certain town lot, therein described, and in part payment therefor Keith executed and delivered to Gedney two promissory notes, of that date, for $233 33 each, one due in two years, and the other in two years and a half after date, and both drawing ten per cent. interest; that afterwards, to wit, on the same day, Gedney, for value received, indorsed said notes to Horner; that one of said notes was due and both unpaid; that said lot was not worth more than the amount of said notes, and that said Keith and Gedney were insolvent. The bill prays for a vendor's lien, in favor of said Horner, on said lot, to the amount of said notes, for a sale thereof, without redemption, and for general relief. ( R. 2—4 )

At the August Term, 1861, of the Circuit Court, Hon. SILAS L. BRYAN, presiding, a decree, *pro confesso,* was entered, against the plaintiffs in error, that said Horner have a vendor's lien on said lot to the amount of said notes; that said Keith pay to said Horner the sum of $285 24, the amount of the note first due, in thirty days, and the sum of $291 66, the amount of the note last due, on the 23d day November, 1861, and in default of such payments that said lot be sold for cash, by the master in chancery, to satisfy the same, and if not redeemed according to law, that he convey the same to the purchaser, and that said Keith pay the costs. ( R. 6—12. )

At the March Term, 1862, of the Circuit Court, the master in chancery reported a sale of said lot, made to said Horner, by virtue of said decree, on the 10th day of February, 1862, for the sum of $438 65, which report was approved by the Court. ( R. 12—13. )

### *ERROR ASSIGNED.*

The Court below erred in entering the decree for the complainant below, in manner and form aforesaid. ( R. 14. )

### *BRIEF OF PLAINTIFFS IN ERROR.*

A note given for the purchase of real estate, if transferred, does not carry with it to the assignee, the vendor's lien, so that the assignee can enforce it in his own name; nor does the law authorize the vendor to transfer this lien with the note, taken for the purchase money, even though he expressly professes to do so. *Richards* v. *Leaming et al.* 27 Ill. R. 431.

BUXTON & WHITE,

Attorneys for Plaintiffs in Error.

[8533-19]

Abstract & Error & Brief

Michael Keith et al

v

Henry H. Horner

15

Filed Sept. 22. 1863

N. Johnston Cl

11

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

**The People of the State of Illinois,**

To the Sheriff of St Clair 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 Clinton county, before the Judge thereof between

Henry H. Homes plaintiff and

Michael Keith and John Gedney were defendants it is said that manifest error hath intervened to the injury of said Michael Keith ~~Gedney~~ & John Gedney as we are informed by ~~these~~ 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 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 Henry H. Homes

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 Henry H. Homes 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 three day of September in the year of our Lord one thousand eight hundred and Sixty three.

Noah Swayne
Clerk of the Supreme Court.

[8533-16]

15

SUPREME COURT.

**First Grand Division.**

Michael Keith ~~&~~ &
John Gurney

*Plaintiff in Error,*

VS.

H. H. Homer

*Defendant in Error.*

SCIRE FACIAS.

Fees $1.40 pd by Buxton & White to Aff. St Clair Co.

FILED.

Served by leaving the within to H. H. Homer this Oct 26th 1863
John Galbraith Shff
By A. H. Hook Dep. S.C.
S.H. 40
Fees 26 $1.40

# SUPREME COURT OF ILLINOIS.

## First Grand Division—November Term, 1863.

MICHAEL KEITH and JOHN GEDNEY,
Plaintiffs in Error.
*versus*
HENRY H. HORNER,
Def't in Error.

Error to Clinton.

### *ABSTRACT OF THE RECORD.*

This was a bill in chancery, filed in the Clinton Circuit Court, July 20th, 1861, by the defendant in error *vs.* the plaintiffs in error, to enforce a vendor's lien on real estate, as the assignee of the vendor. ( R. 1. )

The bill sets out that, on the 23d day of May, 1859, said Gedney sold and conveyed to said Keith, a certain town lot, therein described, and in part payment therefor Keith executed and delivered to Gedney two promissory notes, of that date, for $233 33 each, one due in two years, and the other in two years and a half after date, and both drawing ten per cent. interest; that afterwards, to wit, on the same day, Gedney, for value received, indorsed said notes to Horner; that one of said notes was due and both unpaid; that said lot was not worth more than the amount of said notes, and that said Keith and Gedney were insolvent. The bill prays for a vendor's lien, in favor of said Horner, on said lot, to the amount of said notes, for a sale thereof, without redemption, and for general relief. ( R. 2—4 )

At the August Term, 1861, of the Circuit Court, Hon. SILAS L. BRYAN, presiding, a decree, *pro confesso,* was entered, against the plaintiffs in error, that said Horner have a vendor's lien on said lot to the amount of said notes; that said Keith pay to said Horner the sum of $285 24, the amount of the note first due, in thirty days, and the sum of $291 66, the amount of the note last due, on the 23d day November, 1861, and in default of such payments that said lot be sold for cash, by the master in chancery, to satisfy the same, and if not redeemed according to law, that he convey the same to the purchaser, and that said Keith pay the costs. ( R. 6—12. )

At the March Term, 1862, of the Circuit Court, the master in chancery reported a sale of said lot, made to said Horner, by virtue of said decree, on the 10th day of February, 1862, for the sum of $438 65, which report was approved by the Court. ( R. 12—13. )

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BUXTON & WHITE,

Attorneys for Plaintiffs in Error.

Abstract of Record X
Pltfs Brief

Michael Keith et al.
vs
Henry H. Homer

15

Filed Sept. 22. 1863.
N. Johnson Clk

8533


Noah Johnson
Clerk of Court
Mount Vernon
Jefferson county
Illinois
[8503-10]

Lebanon Ill June 15th 1864

A Johnson

Dear Sir, Enclosed I send you $21.30 the amount of costs in the Kuth case, Please acknowledge receipt of same

Yours respectfully
H. H. Horner

[8533-19]

# SUPREME COURT OF ILLINOIS.

## First Grand Division—November Term, 1863.

| | |
|---|---|
| MICHAEL KEITH and JOHN GEDNEY, Plaintiffs in Error. *versus* HENRY H. HORNER, Def't in Error. | Error to Clinton. |

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The bill sets out that, on the 23d day of May, 1859, said Gedney sold and conveyed to said Keith, a certain town lot, therein described, and in part payment therefor Keith executed and delivered to Gedney two promissory notes, of that date, for $233 33 each, one due in two years, and the other in two years and a half after date, and both drawing ten per cent. interest; that afterwards, to wit, on the same day, Gedney, for value received, indorsed said notes to Horner; that one of said notes was due and both unpaid; that said lot was not worth more than the amount of said notes, and that said Keith and Gedney were insolvent. The bill prays for a vendor's lien, in favor of said Horner, on said lot, to the amount of said notes, for a sale thereof, without redemption, and for general relief. ( R. 2—4 )

At the August Term, 1861, of the Circuit Court, Hon. SILAS L. BRYAN, presiding, a decree, *pro confesso,* was entered, against the plaintiffs in error, that said Horner have a vendor's lien on said lot to the amount of said notes; that said Keith pay to said Horner the sum of $285 24, the amount of the note first due, in thirty days, and the sum of $291 66, the amount of the note last due, on the 23d day November, 1861, and in default of such payments that said lot be sold for cash, by the master in chancery, to satisfy the same, and if not redeemed according to law, that he convey the same to the purchaser, and that said Keith pay the costs. ( R. 6—12. )

At the March Term, 1862, of the Circuit Court, the master in chancery reported a sale of said lot, made to said Horner, by virtue of said decree, on the 10th day of February, 1862, for the sum of $438 65, which report was approved by the Court. ( R. 12—13. )

### *ERROR ASSIGNED.*

The Court below erred in entering the decree for the complainant below, in manner and form aforesaid. ( R. 14. )

### *BRIEF OF PLAINTIFFS IN ERROR.*

A note given for the purchase of real estate, if transferred, does not carry with it to the assignee, the vendor's lien, so that the assignee can enforce it in his own name; nor does the law authorize the vendor to transfer this lien with the note, taken for the purchase money, even though he expressly professes to do so. *Richards* v. *Leaming et al.* 27 Ill. R. 431.

BUXTON & WHITE,

Attorneys for Plaintiffs in Error.

[9533-30]

Abstract of Record &
Plaintiffs Brief

Michael Keith et al
vs
Henry H. Horner

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Filed Sept. 22. 1863.
N. Johnston Clk

15—7

M. Keith et al

vs

H. H. Horner

Error to Clinton

1863

8533

15—7

Keith & Gidney

vs

H. H. Horner

Error to Clinton

Reversed & Bill Dismissed

Reported

Nov. T. 1865

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