No. 11904

Supreme Court of Illinois

Brown & Brown

vs.

McLagan

71641 7

79

Robert McLagan
vs
John H. Brown et al.

1850

11904

Refused
E.

State of Illinois
Sixth Judicial Circuit
Jo Daviess County

Pleas in the Circuit Court, begun and held in and for the County of Jo Daviess, aforesaid, on the first Monday of October, in the Year A.D. 1849, before the Judge of said Sixth Judicial Circuit Court, the Hon Benjamin R. Sheldon

John H. Brown &
James W. Brown
vs
Robert McLagan } In Ejectment

Be it remembered, that heretofore, to wit, on the 1st day of October A.D. 1849, the said Plaintiffs by their attorney, filed in said Circuit Court, their declaration and notice bond for costs, in Ejectment, against the said Robert McLagan, which are in the words and figures following, to wit,

State of Illinois } In the Circuit Court of October Term
Jo Daviess County } A.D. 1849

John H. Brown and James W. Brown complain of Robert McLagan, in a plea of trespass & Ejectment, that whereas the said John H. Brown and James W. Brown, on the first day of September in the Year of our Lord one thousand eight hundred and forty nine, were seized in fee ~~simple~~ of the following described tract or lot of land, and premises, situated in the City of Galena in the County and State aforesaid, to wit, Lot, number twenty five (25) on Water Street, on the plain, in the City of Galena, and the said Plaintiffs possessed of the same, on the day and Year aforesaid, and being so thereof possessed, the said defendant, afterwards, to wit, on the day

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you aforesaid, entered into the said tract of land and premises, and unlawfully withheld from the said plaintiffs the possession thereof to the great damage of the said plaintiffs, and against the peace of the people of the State of Illinois, whereon the said plaintiffs say they are injured, and hath sustained damages to the value of one hundred dollars, and therefore they bring their suit

Hempstead, Washburn & Campbell
Attys. for Plffs

To Robert McLagan

Sir

You will please take notice that on the first day of the next Circuit Court to be holden, within and for the County of Jo Daviess & State of Illinois at Galena, on the first Monday of October next the undersigned, Attorneys for the said Plffs in the said declaration mentioned, will file in said Court, the declaration, a copy of which is herewith served upon you.

And upon filing the same shall move said Court for a Rule upon you to appear & plead to said declaration, within twenty days thereafter, upon failing to appear and plead, to said declaration accordingly, a judgement by default will be entered against you, and said plffs will seize possession of the premises

Galena, Sept. 4th 1849. Hempstead Washburn & Campbell
Attys. for Plaintiffs

We do hereby enter ourselves as security for all the costs that may accrue in this case either to the opposite party, or to any of the officers of this Court,

Aug. 1st 1849. Hempstead & Washburn (Seal)

Approved,
Wm. H. Bradley Clerk

I, Marshall P. Price, do hereby certify that I did on this 19th day of September A.D. 1849 deliver a true copy of the within declaration & notice, to the within named Robert McLagan and told them the nature of the same,

Witness my hand and signature the day and date first above written

W. P. Price

Sworn to and subscribed before me, this 28th Sept. 1849
W. H. Bradley
Clerk

Fee, serving & return	$ .62½
Mileage	6¼
Certified Copy	25
	$ .93¾

Filed 1st Oct. 1849
Wm. H. Bradley Clerk

Hempstead & Washburn & Campbell
Plff's atty

And the said Defendant comes & defends the wrong & injury when &c, and says he is not guilty of unlawfully withholding the premises claimed by the Plaintiff as alledged in said declaration

And of this he puts himself on the country &c

M. H. Johnson
Deft. atty

Oct. 19, 1849

And ~~afterwards, to wit~~, on the 1st day of October, in the October term A.D. 1850 of said Circuit Court, in the record of the proceedings thereof in said cause, is the following entry to wit

John H. Ross and
James W. Ross
vs
Robert McLagan

Ejectment

The Plaintiff by their attorneys

comes, and files, their declaration and Notice, and on this motion, It is adjudged by the Court, that the cause be docketed, and that the defendant, be ruled to plead to said declaration within twenty days from this date,

On the trial, the following exceptions were made and allowed, to wit,

Circuit Court
May Term 1850

Brown et al
vs
M. Sagan

Ejectment

Be it remembered that on this the 6th day of June 1850 the above entitled Cause Came on to be heard, and the said parties waive the intervention of a Jury and for trial, put themselves upon the Court.

It is agreed, both parties Claim title to the lot in dispute under Cruikshank.

The Plaintiff to maintain the Issue on their part, produced a Judgement against Cruikshank in favor of A. L. Holms, in the words and figures following to wit.

In Jo Daviess County Court
October term A. D 1845

Thursday October 9th A. D. 1845

Alemas L. Holms
vs
John J. Cruikshank

Debt

Now at this day Came the plaintiff by his attorney, and the defendant, being three times solemnly called, Came not but made default. It is therefore Considered by the Court that the Plaintiff have and recover of the Defendant his debt, and damages, but as these damages are not Certainly known, and it appearing to the Court that this action was founded upon three promissory notes of hand for the payment of money only. It is ordered by the Court, that the Clerk assess the same, and the Clerk having reported the same at the sum of Three hundred and forty five Dollars and twenty Cents, which report is approved by the Court. It is therefore considered by the Court, that the Plaintiff have and recover of the Defendant for the sum of three hundred Dollars, his debt, on said promissory Notes, and that Execution be issued therefor to be satisfied by the Sheriff receiving the sum of Two hundred and

forty five dollars, and twenty cents, as aforesaid, assessed by the Clerk together with his costs by him, about his suit in this behalf expended

an Alias Execution, issued on said Judgement, together with the Sheriffs return thereon, is in the words and figures following to wit,

State of Illinois } Ss,
Jo Daviess County }

The People of the State of Illinois —
To the Sheriff of the County of Jo Daviess — Greeting
We Command you, again, that of the goods, ~~and~~ chattels, lands, and tenements of John, F, Cruikshank, you cause to be made the sum of Two hundred and forty five Dollars, and twenty cents, damages and seven Dollars and forty three 3/4 cents, costs, which Ardenas, S, Holmes lately recovered against him, in the Jo Daviess County Court, as appears of record, And this you are not to omit, under the penalty of what the law prescribes, And have these moneys at the Clerks office of said court at Galena within Ninety days from the date hereof, and also this writ,

Witness the Hon Hugh T. Dickey Judge of said Court, at Galena this 17th day of June A. D 1846,

Seal

Attest
Geo. W. Mitchell Clerk

The Sheriff will collect interest on the above from 9th Oct 1845
Geo. W. Mitchell Clerk

Endorsed,

Received, this Execution for collection, this 18th day of June in the Year of our Lord, one thousand Eight hundred and forty six at the hour of 1/2 past, 11 O'Clock, A. M,
W. P. Milland, Sheriff J. D. Co Ill

Levied upon Lot, Seventy five, Water Street on the Plaine, on which is a Steam Saw Mill erected, this 1st day of August 1846
Wm P. Milland Sheriff
by John, Words Deputy

Returned this 29th, of August, 1846 Satisfied, by selling the real Estate described in levy, to the Plaintiff in Execution
W. P. Milland
Shff

also a Judgement in favor of the Bruns vs. Cruikshank, which Said Judgement is in the words and figures following, to Wit,

In Circuit Court of Jo Daviess County
March Term A. D. 1847.

Wednesday, March 10. 1847.

John H. Bruns & James W. Bruns
vs
John J. Cruikshank. Impleaded with George Cruikshank

Debt,

Now, at this day came the Plaintiffs by their attorney, and the Defendant, John J. Cruikshank being three times Solemnly Called, Came not, but made default. It is thereupon ~~adjudged~~ considered by the Court, that the Plaintiffs have and recover of the Defendant, John J. Cruikshank, their debt, and damages ~~in this~~ but, as their damages are not certainly known, and it appearing to the Court, that this action was founded upon four bills of Exchange and one due bill for the payment of money only, it is ordered by the Court, that the ~~Court~~ Clerk, ascertain the same, and the Clerk having ascertained the same, the debt, at the sum of Six thousand Two hundred and Sixty two dollars and forty ~~two~~ eight Cents, and the damages at the sum of Twenty Six hundred and Twenty Six dollars, and Sixty five Cents, making together the sum of Eight thousand, Eight hundred and Eighty nine dollars, and thirteen Cents, which, report is approved by the Court. It is thereupon ~~considered~~ considered by the Court that the plaintiffs have and recover of the Defendant, John J. Cruikshank, the said sum of Eight thousand, Eight hundred and Eighty nine Dollars, and thirteen Cents, his debt, and damages so as aforesaid ascertained by the Clerk, together with their Cost by them about their suit in this behalf expended, and that Execution Issue therefor, and that a Scire facias Issue to every garnishee named herein, returnable to the next term of this Court.

An alias Execution, Issued on said Judgment, together with the Sheriffs return thereon is in the words and figures following, to Wit,

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State of Illinois } Ss
Jo Daviess County }

The People of the State of Illinois —
To the Sheriff of the County of Jo Daviess Greeting —

We Command you, again that of the good, Chattels, Lands and tenements of John C. Cunkelmans, Impleaded with George Cunkelmans You cause to be made the Sum of Eight thousand Eight hundred & Eighty Nine dollars, and thirteen Cents Damages, and Six Dollars and Ninety three 3/4 Cents Costs, which John H. Brown, and James W. Brown, lately recovered against him in the Circuit Court of said County, as appears of record, And this You are not to omit under the penalty of what the law prescribes, And have those moneys, at the Clerks Office of said Court at Galena, within Ninety days from the Date hereof, and also this writ

Seal

Witness, William H. Bradley Clerk of the Circuit Court of Jo Daviess County Illinois at Galena this 27th day of November A. D. 1847

Attest, Wm H. Bradley
Clerk

The Sheriff will collect Interest on the above from 10th March A.D. 1847.

Wm H Bradley Clerk

Endorsed.

Received this Execution for Collection, this 27th day of November in the Year of our Lord, one thousand Eight hundred and forty seven at the hour of 4 O'Clock P.M.

W. P. Milland Sheriff. J. D. Co. Ill

Levied, this Execution on Lot number Seventy five (75) on Water Street on the Rivier in the City of Galena, in Jo Daviess County and State of Illinois this 27th day of November 1847

Wm P. Milland Shff

The appraised Levy was made by John H. Brown and James W.

Brown, as Judgment Creditor of John S. Cruikshank, and the lot of ground had been sold under a previous Execution ~~in favor of~~ and bought in by Artemas L. Holmes, and now has been bought by John H. Brown and James W. Brown, for the ammount of bid made by A. L. Holmes with interest on said ammount, ammounting principal and interest to three hundred and thirteen 85/100 Dollars, nothing bid on this Execution, all cost ($9.37½) paid by Plaintiffs in this Execution

this December 24th 1847

W. P. Millard Sheriff

The deed executed by the Sheriff to John H. Brown & James W. Brown on redemption of said sale is in the words & figures following to wit

State of Illinois }
Jo Daviess County } ss

Whereas Artemas L. Holmes, did on the ninth day of October A.D. 1845. recover a Judgment in the Jo Daviess County Circuit Court of Jo Daviess County Illinois, for the sum of Two hundred and forty five dollars and twenty Cents, and costs of suit against John S. Cruikshank upon which Judgment, an Alias Execution, Issued dated the seventeenth day of June A.D. 1846 and, the property hereinafter described, levied upon and sold to the said Artemas L. Holmes, and Whereas John H. Brown and James W. Brown, did at the March Term A.D. 1847, recover a Judgment against John S. Cruikshank, Impleaded with George Cruikshank in the Jo Daviess County Circuit Court, for the sum of Eight thousand and Eight hundred and Eighty nine Dollars and thirteen Cents, and costs of suit, and the property sold under the first named Judgment having been Redeemed according to law, under the last named Judgment upon which last named Judgment of John H. Brown and James W. Brown against John S. Cruikshank, an Alias Execution was Issued dated the twenty seventh day of November A.D. 1847 directed to the Sheriff of Jo Daviess County to Execute, and by virtue of said Execution the said Sheriff levied upon the lot of ground, hereinafter described, and the same was struck off, and sold to John H. Brown and James W. Brown, they being the highest and best bidders therefor, and the time and place of sale being duly advertised, according to law. Now therefore Know all by this Deed, that I, William P. Millard Sheriff of the said County of Jo Daviess, in Consideration of the premises, have

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Granted, bargained, and sold, and do hereby convey to the said John H. Brown, and James W. Brown, their heirs and assigns the following described lot of ground, to wit: Lot number twenty five (25) on Water Street, on the Plain in the City of Galena in Jo Daviess County, and State of Illinois, To have and to hold the said described premises, with all the appurtenances thereto belonging to the said John H. Brown and James W. Brown their heirs and assigns forever.

Witness my hand and seal this twenty first day of December in the year of our Lord one thousand eight hundred and forty seven.

the word "Term" interlined before signing

Wm P. Millard
Sheriff of Jo Daviess Co. Ills

Seal

State of Illinois
Jo Daviess County }

I, William H. Bradley, clerk of the Circuit Court in and for said County do hereby certify that William P. Millard Sheriff of said Jo Daviess County, whose name appears subscribed to the foregoing deed and who is personally known to me to be the identical person who signed the same, this day appeared before me and acknowledged that he had executed the same freely and voluntarily for the uses and purposes therein expressed.

In Witness whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Galena in said County this 22nd day of December A. D 1847

Seal

Attest, William H. Bradley Clerk

State of Illinois
Jo Daviess County } ss.

Recorders office Galena, Decr 22nd A. D. 1847

I, Cyrus Aldrich Recorder in and for said County do hereby certify that the within of Conveyance and Certificate of acknowledgement are recorded in Book I. of Deeds folios 273 and 274

Cyrus Aldrich Recorder

It is also agreed that Brown et. al. claiming to be Judgement Creditors of Cruikshank, on the 27th of Nov 1847, paid to the Sheriff the amount of Holmes, his Interest and Costs, and that the lot in dispute was purchased and sold, and that the Plffs in the Execution purchased, at the amount of Redemption, and no more, on the 21. Decr 1847.

It is admitted that the Judgement of Brown, et al under which as Judgement Creditors of Cruikshank they claimed to redeem was reversed by the Supreme Court of Illinois, at the December term ~~of~~ A.D 1848, to wit, on the 23rd day of December, A.D 1848, and that the Plffs in the reversed Judgements were the purchasers under the sale made on redemption aforesaid, from the Holmes Judgement, and are the Plaintiffs in this suit, but that the redemption and purchase was before the said reversal, and that nothing additional was paid by them more ~~than~~ to redeem from the Holmes Judgement than the amount of Judgt. & Interest & Cost of the Holmes Judgt.

and that the last day of the term of Court at which the Brown et. al. obtained their Judgement against Cruikshank, was on the 22. day of March 1847.

It is admitted the defendant is in possession of the Ground in dispute at the Commencement of this suit,

And the Plffs. rested this Case

The Deft. to maintain the Issue on his part produced a deed from Cruikshank to John & Wm Holmes & Burgess,

which deed is in the words & figures following, to wit,—

This Indenture, made and entered into this Sixth day of March in the Year of our Lord one thousand Eight hundred and Forty Seven, by and between Wm. T. Cruikshank of the City of Galena, Jo Daviess County and State of Illinois of the first part, and William Holmes, John Holmes and Mary Burgess of the City of ~~Galena~~ Pittsburgh, Allegheny County, and State of Pennsylvania of the second part, Witnesseth, that the said party of the first part for and in Consideration of the sum of Fourteen Hundred and Twenty dollars and seven Cents in hand paid by the parties of the second part the receipt whereof is hereby acknowledged, have given granted, bargained

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Sold and Conveyed, and by these ~~presents~~ Indentures do give, grant, bargain Sell, and Convey unto the said parties of the Second part, their heirs and assigns, the following real Estate, Namely, All those Lots or parcels of Ground known and designated on the plat of the late town, now City of Galena as lots number Seventy four (74) and Number Seventy five (75) on Main Street fronting Fifty Six feet, Six inches, on that Street, and bounded on the South by Green Street lying and being in said City, County and State aforesaid, also Lot, number four (4) in block number Ten (10) fronting Fifty feet on Second Street, and Extending back one hundred and fifty feet lying and being Situate on the East side of Fever River in said City, County, and State aforesaid, Together with all and Singular the privileges and appurtenances thereunto belonging, or in any wise appertaining, To Have and To Hold, the above discribed premises unto the said parties of the Second part their heirs and assigns, For Ever, and the said party of the first part, do Covenant and agree with the said parties of the Second part, their heirs and assigns Forever to warrant and defend, the title to the above discribed premises against the Claim or Claims of all and Every person whatsoever Save and Excepting a Certain Mortgage held by the State Bank of Illinois on Lot number Seventy four (74), further a Certain Judgement and Claim owned and held by Thos Johnson Conway, on Lots 74 and 75, also against further a Certain Judgement against Lot, No, 74, owned and held by A. L. Holmes and further, Certain Judgements and Liens, on Lots, 74 and 75, owned and held by Robert Thomson, C. B. Herron, James Morris and Z, Osborn, and obtained, and recorded in the So Danip County, and So Danip Circuit Courts And against said party of the first part, and, amounting in all to about Twenty Seven Hundred and, Fifty dollars and the said party of the first part, guarantees to and with the said parties of the Second part, that there is no other Liens, debts or demands against said property Save And Except what is herein mentioned

In Testimony Whereof the said party of the first part has hereunto Set his hand, and affixed his Seal the day and Year first above written

Signed Sealed and delivered in presence of
Geo. W. Mitchell

John J. Cruikshank (Seal)

State of Illinois }
Ford County } ss

I, George W. Mitchell, Clerk of the Ford County Court in and for said County do Certify that John S. Crickshank whose signature appears to the foregoing Deed of Conveyance, and who is personally known to me to be the identical person who signed the same, this day appeared before me and acknowledged that he had signed sealed and delivered the same as his free act and deed for the uses and purposes therein expressed.

Seal

In Witness whereof I have hereunto set my hand and affixed my seal of Office at Paxton this 15th day of March A. D. 1847

Geo W. Mitchell Clerk

State of Illinois }
Ford County } ss

Recorders Office Paxton March 15th. 1847

I Jeremiah Bettis recorder in and for said County, do Certify that the within Deed of Conveyance and Certificate of acknowledgement are recorded in book H, of Deeds, pages 162 and 163,

Attest. Jeremiah Bettis, Recorder

Also an assignment of the Certificate of purchase under the Holmes judgment above, dated on the 29th August 1847, to C. Conney, and by Conney to Johnson, and a Sheriffs deed to the lot in dispute to Johnson. which said deed and Certificate of purchase, are in the words and figures following to wit,

State of Illinois }
Ford County } ss

I, William P. Willard, Sheriff of the County ~~of Ford~~, and State aforesaid, do hereby Certify, that by virtue of a writ of Execution in favor of Artemas L. Holmes, and against the goods chattels lands and tenements of John S. Crickshank, of the County and State aforesaid to me directed from the office of the Clerk of the Ford County Court of said County. I did on the the 29th day of August, A. D. 1847, Expose to public sale the following described lot, and premises, situated lying and being in Paxton County and State aforesaid to wit, Lot Number Seventy five (75). Water Street, and that Artemas L. Holmes, bid for the said lot and premises the sum of Two hundred and Sixty Dollars 8/100 which being the highest and best bid for said lot, was struck off to the said Artemas L. Holmes, and that the said Artemas L. Holmes will be entitled to a deed of said lot so sold to him, on the 29th day of November A. D. 1847

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unless the same shall be redeemed according to Law

Given under my hand and seal at my office in Galena this 29th day of August A. D. 1846.

Wm P. Millard (Seal)
Sheriff of Jo Daviess County

Endorsed

"For value Received. I do hereby assign this Certificate to Christopher Conroy

#5059 — Augt. 29, 1849 — A. L. Holmes"

"For value Received, I do hereby assign all my right, title, interest and claim, of to and in the within Certificate to M. V. Johnson, and authorize him to receive a deed for the same

Nov. 24, 1847, — Christopher Conroy (Seal)"

(Deed)

Whereas, Artemas L. Holmes, did at the term of the Jo Daviess County Court for the County of Jo Daviess and State of Illinois, held at Galena October 9th A. D. 1845 recover a judgement against, Wm. C. Cruikshank, for the sum of Two hundred and Forty five 25/100 Dollars and costs of suit, upon which judgement an Execution was issued, dated on the 17th day of June A D 1846 directed to the Sheriff of Jo Daviess County to execute, and by virtue of said Execution the said Sheriff levied upon the lands hereinafter described and the same was struck off and sold to Artemas L. Holmes, he being the highest and best bidder therefor, and the time and place of the sale thereof having been duly advertised according to law, and the said Artemas L. Holmes having duly assigned his Certificate of purchase to Christopher Conroy, and the said Christopher Conroy having duly assigned the same (or his) Certificate of purchase to M. V. Johnson. Now therefore Know all by this Deed, that I, Marshall B. Piper Sheriff of said Jo Daviess County and State of Illinois in consideration of the premises, have granted bargained, and sold, and do hereby convey to the said M. V. Johnson, his heirs and assigns, the following described tract of land to wit, Lot Number Seventy five (75) in Water Street situated lying and being in the City of Galena, County and State aforesaid, to have and to hold, the said described premises, with all the appurtenances thereunto belonging, to the said M. V. Johnson, his heirs and assigns forever

Witness my hand and seal, this Nineteenth day of February in the Year of our Lord one thousand Eight hundred and forty nine, at my Office in Galena,

M. B. Piper (Seal)
Sheriff of Jo Daviess County Illinois

the words and seals interlined before

State of Illinois }
JoDaviess County } I, William H. Bradley Clerk of the Circuit Court in and for said County do certify, that Marshall B. Rice Sheriff of said County, whose signature appears to the foregoing Deed, and who is personally known to me to be the identical person who signed the same, this day appeared before me and acknowledged, that he had executed the same freely and voluntarily for the purposes therein expressed ——— In testimony whereof I have hereunto set my hand and affixed the seal of said Court, at my office in Galena in said County, this 19th day of February A.D. 1849

Seal

Attest William H. Bradley Clerk

State of Illinois }
JoDaviess County } Recorders office Galena Feby 29th A.D 1849 —

I, Cyrus Aldrich Recorder in and for said County in and for said County, do certify, that the within Deed and certificate of acknowledgement are recorded in book K, of Deeds, on page 410,

Cyrus Aldrich Recorder

Also, a petition for a Mechanics Lien in favor of E. B. Osborn, and Judgement for same, in JoDaviess County Court, which petition and Judgement are in the words and figures following to wit,

State of Illinois }
JoDaviess County } Petition for Mechanics Lien, in the JoDaviess County Court, to October term A.D 1846

To the Honorable Hugh T. Dickey, Judge of the JoDaviess County Court in and for the State of Illinois, in said, County Sitting —

The petition of Enoch B. Osborn, respectfully represents to your Honor, that John B. Cruikshank (whom he prays may be made a defendant to this his bill and petition) is now and in possession of, and has a certain, legal, and Equitable estate, in and to a certain tract of land lying and being in the County of JoDaviess, State of Illinois and known and designated, as being Lot Nu Seventy five (75,) Water Street, on the west side of Fever River, in the City of Galena, that by verbal contract with the said John B. Cruikshank, he being at the time owner and in possession of said lot of ground, and having a certain Estate therein, to the said Cruikshank, did rent for, to wit, sometime in the month of October A.D 1845, agree to and with your petitioner, to do and perform work by the day as a miller might upon a certain Mill, situated upon said lot of ground, above described, and for a consideration of the doing and performing work upon the said Mill of the said Cruikshank by the day aforesaid, your petitioner, was to receive, one Dollar and fifty cents per day for all work done between the said month of Oct, A.D 1845, and the first day of March A.D 1846 ~~and for all~~

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and for all work done by your Petitioner after the said first day of March upon said Mill of the said John S. Cruikshank, your Petitioner was to receive one Dollar and Seventy five Cents per day therefor, which said wages were to be paid to your Petitioner by the said Cruikshank as fast as the same was Earned.

14 Your Petitioner further States that he was a —

Millwright did work upon said Mill of the said Cruikshanks from time to time from the said month of October A.D 1845 until in the month of June A.D. 1846 at the request and under the direction of the said Cruikshanks and in pursuance of the above stated Contract, and your petitioner further states and avers that there is yet due and owing to your petitioner from the said Wm. C. Cruikshanks for the said Millwright work by the days done by your petitioner upon said Mill in pursuance of said Contract the sum of Fifty four 75/100 dollars ($54,75) with interest thereon from the 23 day of June A.D 1846. as will more fully appear by reference to his bill of particulars herewith filed and which he prays may be taken as part of this petition.

Your petitioner therefore prays for a sale of all the interest of the said Wm. C. Cruikshanks in and to the said lot of Ground, Mill and premises herein before particularly described for the purpose of paying the amount due your petitioner,

E. B. Osborn
By Stevens,
his Solicitor

Wm C. Cruikshanks
To Enoch B. Osborn, Dr

Oct. 1845.

To fifty four & one half days work,
at — $1.50 per day — $81,75

up to June 23. 1846, nine days work
at — $1.75 per day — 15,75

Ballance due — $97,50
Cr. By cash & goods 42,75
Ballance due $54,75

Endorsed,

Filed 22nd August 1846.

Geo M. Mitchell Clerk

The Judgment for Mechanics Lien is in the words and figures following to wit,

To Dane County Court,
April Term A.D 1847

Friday Morning April 27. 1847

Enoch B. Osborn
vs
John J. Cruikshank } Petition for Mechanics Lien

The writ of enquiry heretofore ordered in this case was this day returned into Court Executed and thereupon came a Jury of good and lawful men to wit, Daniel Reider, Henry Ladd, C. Dodge, Thos Kelly, Wm Mugkew, L. L. Post, C. W. Hale F. W. Schwatka, James Barr, J. N. W. Spinger, M Simonds Charles Caffin, who were duly Elected, tried, and Sworn, well and truly to Enquire, of Damages and after hearing the evidence on the part of the plaintiff, on their oaths do say, We the Jury, find and assess the Damages of the plaintiff at the sum of Fifty Seven dollars and Twenty one cents. It is thereupon Considered by the Court that the plaintiff have and recover of the Defendant, the said sum of fifty Seven Dollars and twenty one cents so as aforesaid found and assessed by the Jury, together with his Costs by him about his suit in this behalf Expended, and that the premises described in the plaintiffs petition, to Wit, Lot number Seventy five (75) on Water Street on the East side of Fox River in the City of Yolyna be sold to satisfy the same and that a Special writ of fieri facias be awarded for that purpose

The Defendant then offered & proven by E. B. Osborn, and Submitted an agreement in the words and figures following to wit

Brown, et al
vs
McLagan } Ejectment

Circuit Court of Fo Dania County
May term 1850

It is agreed between the parties in this cause, that on the trial of the same, that Enoch B. Osborn, a Witness subpoenaed by said McLagan, in said Cause, will swear on the hearing of said Cause, if the Court shall adjudge such testimony admissable, that he has no interest in the event of this suit that he was the plaintiff in the suit in Mechanics lien, against John J. Cruikshank, rendered in the County Court of Fo Dania County at the April Term, A.D. 1847, and that the Contract was made with John J. Cruikshank, on the eleventh

day of October, A.D. 1845. to erect said "Mill." and under said Contract that he commenced the work on the fourteenth day of October A.D. 1845. and continued the work until completed, that the Contract was a parol Contract, and on this Contract this Lien was fastened and the Judgement in Mechanics Lien was reversed.

It is understood, in this Cause, if said facts are admissible in Evidence, that this Witness will swear to the same as above stated and the same is admitted, as if sworn to on the stand by said Witness

M. G. Johnson
atty of Deft

C & N. for pltff

It is agreed and understood that both parties, claim under the same title, and that Deft. was in possession of lot, at the time of suit brought,

Campbell & Washburn
for pltff

Johnson atty of deft

Endorsed
Filed in Open Court,
May 24th 1850
Wm H. Bradley Clerk

the special Execution issued on the last above recited Judgement, ~~and~~ together with the levy and sale, thereon, and the Certificate of purchase given by the Sheriff under said sale, are in the words and figures following to wit,

State of Illinois } ss
Jo Daviess County } The People of the State of Illinois
To the Sheriff of the County of Jo Daviess Greeting—

We command you, that of the goods, chattels lands, and tenements of, John S. Cruikshank, to wit Lot Number Seventy five on Water Street on the West side of Fever River in the City of Galena, you cause to be made the sum of fifty seven dollars and twenty one Cents, damages, and thirteen dollars and thirty one & ½ Cents Costs which, Enoch, B. Ashburn, lately recovered against him in the Jo Davies County Court, as appears of record, and this you are not to omit, under the penalty of what the law ~~directs~~ prescribes, and have

these moneys at the Clerks office of said Court at Galena within ninty days from the date hereof, and also this writ.

Witness the Hon. Hugh T. Dickey Judge of
said Court at Galena, this 5th day of May A.D 1847
Seal
Attest Geo. N. Mitchell
Clerk

The Sheriff will collect Interest on the above from 27th April 1847
Geo N. Mitchell, Clerk

(Endorsed)

Received, this Execution for Collection, this 8th day of May in the year of our Lord one thousand eight hundred and forty seven at the hour of 2 O'Clock P.M.

W. P. Milland Sheriff. Fees 60 Cts

Levied upon Lot number Seventy five (75) on Water Street on west side of Fever River in the City of Galena, this 8th day of May 1847,

W. P. Milland Sheriff,

Returned, this Ex. Fa, this 23rd day of June 1847, Satisfied by selling the within described real Estate to Enoch B. Osborn and Wm L. Harris

W. P. Milland Shff

(Certificate of purchase)

State of Illinois }
Jo Daviess County } Sets

I, William P. Milland, Sheriff of the County ~~of Jo Daviess~~ and State aforesaid do hereby Certify that ~~I am~~ by virtue of the special writ of Execution in favour of James Morris and Enoch B. Osborn, and against the goods, Chattels lands and tenments of John I Quickshank of the County and State aforesaid, to me directed from the office of the Clerks of the Jo Daviess County Circuit Courts of said County I did on the 23rd day of June A.D 1847 Expose to public sale the following described lot and premises situated, lying and being in ~~the~~ Galena, County and State aforesaid, to wit "Lot, Number Seventy five 75 on Water Street, on the west side of Fever River", and that William L. Harris and Enoch B. Osborn, bid for the said Lot and premises, the sum of one hundred and fifty seven 57/00 Dollars, which being the highest and best bid for said lot, was struck off to them the said William

L. Harris and E. B. Osborn, and that the said W. L. Harris and E. B. Osborn, will be entitled to a deed of said Lot, so sold to them on the 23rd day of September A. D. 1847, unless the same shall be redeemed according to Law

Given under my hand and Seal, at my Office in Galena this 23rd day of June A. D. 1847,

Wm P. Millard
Sheriff of Jo Daviess County Illinois

(Endorsement)

For and in Consideration of the sum of one hundred and fifty one 1/100 Dollars to me in hand paid by M. G. Johnson the receipt whereof is hereby fully acknowledged, we do hereby these presents assign transfer and set over unto him the said M. G. Johnson all our right title, interest & Claim to the within and foregoing Certificate of purchase in pursuance to Law

Galena Oct. 2nd 1847

Enoch B. Osborn
W. L. Harris

(Deed)

Whereas James Morris did at the term of the Circuit Court for the County of Jo Daviess Illinois holden in the month of March A. D. 1847 recover a Judgement against John J. Crinkshank, and whereas also Enoch B. Osborn did at the Term of the Jo Daviess County Court in and for the County of Jo Daviess Illinois holden in the month of April A. D. 1847 recover a Judgement against John J. Crinkshank, as follows, an Judgement in favor of James Morris for the sum of Sixty three dollars and Ninety seven Cents and costs of suit being eight dollars and Ninety three Cent, upon which Judgement, a Special Execution issued in favor of the said James Morris, dated on the 25th day of March A. D. 1847 and the other Judgement in favor of Enoch B. Osborn dated the 5th day of May, A. D. 1847 for the sum of Fifty seven dollars and Ninety nine Cents, and Cost being thirteen dollars and thirty nine Cents upon which Judgement a Special Execution was Issued directed to the Sheriff of Jo Daviess County to Execute and by virtue of said Special Executions, the said Sheriff levied upon the lot of ground hereinafter described, and the same was struck off and sold, to William L. Harris, and Enoch B. Osborn, they being the highest and best bidders therefor, and the time and place of the sale thereof being duly advertised according to Law, and the said William L. Harris, and Enoch B. Osborn having duly assigned their Certificate of purchase unto Madison G. Johnson Now

Know all by this Deed, that I, Marshall B. Peirce Sheriff of the County of Jo Daviess, in consideration of the premises, have granted, bargained and sold, and do hereby convey to the said Madison G. Wilson, his heirs and assigns, the following described lot of ground, lying and being in the County of Jo Daviess and State of Illinois, and particularly described as being lot Number Seventy five (75) on Water Street on the east side of Fever River in the City of Galena, to have and to hold the said described premises with all the appurtenances thereto belonging to the said Madison G. Wilson his heirs and assigns forever

Witness my hand and seal, this the 5th day of October A.D. 1848, at my Office in Galena

M. B. Peirce (Seal)
Sheriff of Jo Daviess County Illinois

State of Illinois
Jo Daviess County } ss

I, William H. Bradley Clerk of the Circuit Court in and for said County do hereby certify that Marshall B. Peirce Sheriff of said County, whose signature appears subscribed to the forgoing deed, and who is personally known to me to be the identical person who signed the same this day appeared before me and acknowledged that he had Executed the same, freely and voluntarily for the purposes therein ~~set forth~~ Expressed

(Seal)

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at my Office in Galena in said Jo Daviess County, this 5th day of October A.D. 1848

Attest William H. Bradley Clerk

State of Illinois
Jo Daviess County } ss

Recorders Office Galena October 6th A.D. 1848

I Cyrus Aldrich Recorder in and for said County do Certify that the within deed, and Certificate of acknowledgement, are recorded in Book K, of Deeds pages 213 & 214

Attest Cyrus Aldrich
Recorder

Also a petition for Mechanics Lien, in favor of James Morris in the Circuit Court of Ford County, which petition is in the words & figures following, to wit,

State of Illinois
Ford County } ss. In Circuit Court, to October term A. D. 1846

To the Hon. Thomas C. Brown Judge of the Sixth Judicial District, in and for the State of Illinois in said County Sitting —

The petition of James Morris, respectfully represents unto your Honor, that John J. Cruikshank (whom he prays may be made defendant to this his bill and petition) is in possession of and has a certain estate in and to a certain tract of land, being within the County of Ford and State of Illinois, and known and designated as upon the plat of the City of Gilman, as being Lot Seventy five, on Main street in said City — that by verbal contract with the said John J. Cruikshank, he being at the time, owner and in possession of said lot of ground and having a certain estate therein, he the said Cruikshank did hereto fore, to wit, in the month of May A. D. 1846 agree to and with your petitioner to furnish the metal for, mould, cast and deliver unto the said Cruikshank, from time to time all such castings as the said Cruikshank should want, and order for a Steam Saw Mill, Engine, and their appurtenances, which said Mill, Engine &c. was being put up and erected by the said Cruikshank upon said lot of land above described — For and in consideration of which your petitioner was to receive from the said John J. Cruikshank for all castings so by your petitioner made and delivered, to the said Cruikshank for the purposes aforesaid (at the time of delivery) so much money as the same should be reasonably worth, and your petitioner avers, that after the making of the contract above stated, and before the first day of July A. D. 1846 your petitioner did at the request and by order of the said Cruickshank make and deliver to him for the purpose aforesaid, large quantities of castings of great value, to wit, of the value of $81.22, your petitioner further avers, that the said castings, so by him delivered to the said Cruikshank were reasonably worth the sum of $81.22, your petitioner further avers

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that the said Castings so by him delivered to the said Cruikshank, was and has been by him used in and about the erection and repair of the said Mill and Engine and their appurtenances.

Your petitioner further avers that he has kept, performed and fulfilled all the Engagements on his part in the said premises to be kept & fulfilled.

Your petitioner further avers, that there is still due him from the said Cruikshanks, on said Contract, above stated, the sum of Eighty one 20/100 Dollars with Interest thereon from the first day of June 1846, as will more fully appear by his bill of Particulars herewith filed, and which he prays may be taken as part of this petition. Your petitioner therefore prays for a sale of all the Interest of the said John J. Cruikshank, in and to the said lot of land, Mill Engine, and their appurtenances, for the purpose of paying the Amount due your petitioner as by Law is provided

Stevens
for Pltf

Copy of account
Sued on

John J. Cruikshank
To James Morris, Proprietor of Galena Foundry Dr

May	13	"	To Cast Yoke Stand	104 lbs	$ 5.75
"	22	"	" Rail Road wheels	302 "	16.61
"	28	"	" 20 grate bars	1058 "	58.86
					$81.22
			Cr		
May 13	1846		By Scrap Iron	1663 lbs	20.00
				Ballance due	$ 61.22

Endorsed
Filed Sept. 29th 1846
Wm. H. Bradley Clerk

also a Judgment in favor of James Morris, in the Circuit Court for Mechanics Lien, which Judgment is in the words and figures following, to wit,

In Davis County Circuit Court
March Term A. D. 1847.

Saturday Morning March 13th. 1847

James Morris
vs
John S. Cruikshanks } Petition for Mechanic's Lien

The writ of Enquiry heretofore ordered in this Case, was this day returned into Court executed, and thereupon came a jury of good and lawful men, to wit, James Campbell, J. Nelson D. C. Alty, P. Wolcotting, Z. Bell, Van Higgins, John Barton James Chinchman, B. Shotwell, Isaac Waddle & Richard Donovan, who were duly Elected, tried and Sworn, well and truly to Enquire of Damages, on their oaths do say, we the Jury find and assess the damages of the plaintiff, at the sum of fifty three dollars and Ninety seven Cents, It is thereupon considered by the Court, that the plaintiff have and recover of the defendant the sum of fifty three dollars and Ninety seven Cents, so as aforesaid found and assessed by the Jury together with his Costs, by him about his suit in this behalf Expended, and that the premises described in the plaintiffs petition to wit, "A certain tract of land being within the County of Jo Daviess and State of Illinois & known and designated ~~as Lot~~ upon the plat of the City of Galena as being Lot Seventy six on Main Street in said City, be sold to satisfy the same, and that a Special writ of fieri facias be awarded for that purpose

The Special Execution, Issued in pursuance of the above recited is in the words and figures following, to Wit,

State of Illinois
County of Jo Daviess ~~County~~ } Sct.

The People of the State of Illinois
To the Sheriff of the County of Jo Daviess Greeting—

We Command You, that of the following described lands and tenements of John S. Cruikshanks, to Wit, Lot Number Seventy six on Main Street, on west side of Fever River, in City of Galena Jo Daviess County and State of Illinois You Cause to be made, the sum of fifty three dollars and Ninety ~~three~~ seven cents damages, and Eight dollars

[11904-13]

and Ninty three 2/4 Cents Costs, which James Morris lately recovered against him in the Circuit Court of said County, as appears of record and this you are ordered to make under the penalty of what the law prescribes, and have these moneys at the Clerk's office of said Court, at Galena within Ninty days from the date hereof, and also this writ.

Witness, William H Bradley Clerk of the Circuit Court, of Jo Daviess County, Illinois at Galena this 25th day of March 1847

Seal

Attest, Wm H. Bradley Clerk

The Sheriff will collect Interest on the above from March 13th A.D. 1847.

Wm H Bradley Clk

Received this Execution for Collection, this 25th day of March in the Year of our Lord one thousand Eight hundred and forty seven, at the hour of 1/2 past 4 O'Clock P. M.

W. P. Milland Shff. Jo. D. Cos. Ills

Levied upon Lot number Seventy five (75) Water Street on west side from River in the City of Galena, this 25th day of March 1847.

W. P. Milland Shff.

Returned this 23rd day of June 1847, Satisfied, by selling the within described real Estate to W. L. Harris and E. B Osborn

W. P. Milland, Shff.

Also the deft. showed by the record, that the last day of the term of Court at which Holmes obtained his Judgement was on the 17th of Octr. 1845, and on which the Sale, in favor of Holmes took place, and redemption took place by Brown et. al.

It is Claimed, and admitted that the Judgement, and proceedings under which Brown et. al. Claim to redeem from Holmes Judgt. was reversed and annulled by the Supreme Court of Illinois on the 23rd December. A. D. 1845, and the same Judgement, under

which Brown et al redeemed under the Holmes Judgement, was the same Judgement, that was revived, after said redemption, and that the plaintiffs in the revived Judgement, were the purchasers under the sale on redemption by them as Judgement Creditors from Holmes Judgt, but before the revival of said Judgement, and that nothing additional was bid by them above the amount of the redemption paid to the Sheriff by Brown et al to redeem

It is also admitted, that Each party excepted to the ~~evidence~~ admission of the evidence produced by the other on the hearing of said Cause and that all the above evidence was admitted under objection, with the exception of Osborns, which was excluded by the Court, and the defts, then and there excepted to ~~the~~ such decision of the Court,

And that this is all the evidence in the Cause

and on the 4th day May, in the May Term AD 1850 of the said Circuit Court for said St Davis County in the record of the proceedings thereof in said Cause is the following entry, to wit,

John H Brown
& James W. Brown
vs
Robert McLagan

Ejectment

Now at this day Came the parties by their attorneys and upon issue Joined, they waive the intervention of a Jury, and for trial put themselves upon the Court, and the Court, after hearing the evidence, takes the Case under advisement

And afterwards, to wit on the 6th day of Jun. AD 1850 in the said May term of the said Circuit Court, in the records thereof is the following entry, to wit,

John H. Brown
James N. Brown
vs
Robert McLagan } Ejectment

The Court, having fully considered, and being fully advised upon the Issue heretofore submitted to the Court, find the Issue for the plaintiff, and find the estate established on the trial to be an Estate in fee simple" to which finding of the Court the defendant, by his attorney, excepts and moves the Court, for a new trial, and files his reasons therefor, which motion is overruled by the Court, to which, the Defendant by his attorney excepts and the plaintiffs attorney moves the Court, for Judgment upon the finding of the Court.

It is therefore considered by the Court that the Plaintiffs, have and recover of the Defendant possession of the premises described in the declaration of the plaintiffs, "to wit, "Lot number Seventy five (75) on Water street on the Plain in the City of Galena & Jo Daviess County Illinois, and that a writ of possession Issue therefor together with their costs by them about their suit, in this behalf expended, and that execution Issue therefor, and the defendant by his attorney prays an appeal to the Supreme Court, which is granted conditioned that the said defendant enter into bond in the sum of one thousand dollars, with Christopher Berry as security within twenty days from this Date

The motion and reasons filed by said Deft, for a new trial, are in the words and figures following to wit,

"Brown et al
vs
McLagan } Ejectment

Circuit Court
May Term 1850

and now, at this time comes the defendant and moves the Court for a new trial in this cause,

because the verdict is contrary to Law & Evidence

because the verdict should have been for the defendant

Because the Court excluded the testimony of E. B. Osborn

Because the Court allowed improper testimony

Because the Court admitted the revised judgment in favor of Brown v. Cruikshank

and for other reasons

Thus a

Filed Jan 5th 1850 by W H Bradley Clk

all pro deft

To all of which Ruling and decision the Court the deft excepts and prays that this his Bill of exceptions may be signed and sealed, in pursuance to Law

Bill agreed upon by Counsel

Benj. R. Sheldon, (Seal)

Endorsed

Filed Jan 6th 1850

Wm H Bradley Clk

State of Illinois }
Ford County }

I William H Bradley Clerk of the Circuit Court in and for said County, do hereby certify the foregoing transcript, to be a true and correct copy from the record of all the proceedings, which were had in said Circuit Court in said cause of, John H Brown and James W. Brown against Robert McLagan except

[11904-15]

the end of the first trial of said cause, which is omitted by agreement of the parties by their attorneys

In testimony whereof, I hereunto set my hand, and affix the seal of said Court, at my office in Galena, this 15th day of Jun A D 1850

Attest William H Bradley Clerk

Fees for this transcript 9.15
Certificate & seal .35
$9.50 Paid by
defds atty
M L Johnson Esq
Wm H Bradley Clk

Robt McLagan
vs
Brown & Brown

Supreme Court
June Term 1850

And now at this time comes the defendant and for an assignment of Errors as to the matters and things set forth in the Record & proceedings aforesaid, and in the rendition of the Judgment aforesaid, says there is manifest error and prays this Hon Court to review reverse and correct the same

And for special causes of Error shows to the Court the following

1st The Court improperly considered as evidence in this cause the reversed Judgment of Brown et al They being the Plffs in the Judgment & purchasers under the redemption had notice of all irregularities

2nd Because Brown et al were not Judgment creditors as to the lot in dispute and had no right to redeem

3rd Because the Court improperly rejected the Evidence of E B Osborne

4th Because the finding and Judgment is contrary to Law and Evidence

5th Because the verdict and Judgment should have been for the defendant

6th Because the Court rejected proper evidence, and admitted improper evidence

7th Because the Court refused and overruled a motion for a New Trial

And for other reasons

M Y Johnson
Pltff Atty

And now come the said defendants in error and say that in the record & proceedings aforesaid & in the rendition of the judgment aforesaid no error hath intervened to the prejudice of the said plaintiffs in manner and form above alleged. And this they are ready to verify by the record aforesaid, &c Wherefore they pray that the judgment aforesaid may be in all things affirmed &c.

Campbell & Rootwell
pd

[11904-14]

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Supreme Court

Brown & Brown

vs

McLaughlin

from Jo Dan & 60

Filed June 21. 1850.
L. Leland Clk.

Ent. pd. Clk. on this by
Ch. G. Johnson —