

9569 mms

Injunction bill To the Hon. Andrew McCampbell Chancellor R of the Western Division
of the State of Tennessee sitting at Clarksville

Humbly ^{complaining} your orator Joshua R Killebrew a citizen of Stewart County
Tennessee, would most respectfully represent to your Honor that in the
year 1842-3. The following Judgments were obtained against him in the
Stewart Circuit Court- To wit- one Judgment in favor of Atkinson & Shemwell
on the 29th day of October 1842. for two Hundred and fifteen dollars and
seventy one cents (\$215.71) one other Judgment in favor of Elliott & Lee
on the 3rd. day of Nov. 1842 for the sum of twenty eight dollars and
eighteen cents (\$28.18) and costs upon both- Also two Judgments
of Condemnation upon which writs of Venditioni Expona, issued
from the clerk of the Circuit Court of Stewart County on the 1st
day of May 1843- one in favor of D. C. Atkinson for the sum
of one hundred and fifty dollars and ninety five cents (\$150.95)
and costs- Also one other in favor of Atkinson & Shemwell for the
sum of fifty two dollars and fifty nine cents & costs. The executions
upon the two Judgments first above mentioned were issued on the 1st
day of April 1843. and came to the hand of the deputy Sheriff of
Stewart County, together with the two writs of Venditioni Exponas above
mentioned and was by him levied upon the following described tract of
land (to wit, (It being the property of your orator, Beginning at E. A Lee's
South west corner, thence west 58. poles to a Hickory Post oak & maple, South
150 poles to a stake, thence 214 poles to a stake on Boyds line, thence west
one hundred and fifty six poles to the beginning containing 200 Acres
more or less. The said Sheriff exposed said tract of land to sale at
the Court House door in the town of Dover. on the 26th day of June
1843. and sold the land to N. D. Elliott for the sum of fifty dollars
He being the highest and best bidder- Your Orator would further show
to your Honor. that the said N. D. Elliott agreed with your orator
and faithfully promised him that if He (your orator) would employ
one Geo. C. Boyd Esq. a gentleman learned in the law and able in Coun-
-sel to defend a suit then pending in the Chancery Court at Clarksville
Tenn against your orator and in favor of the Heirs of Joshua Cates & others
in which your orator's title to the above described tract of land was placed
in jeopardy, and the lien of ^{your} orator's creditors thereby become lost- that he
the said N. D. Elliott would in consideration thereof- permit your orator
to remain unmolested and without suit or molestation upon said land
during the two years allowed to your orator for redemption-
Your orator here avers and charges that, he in consideration of this
proposition on the part of said Elliott did- immediately secure
the services of the said Boyd as stipulated and that the said Boyd
has, and still does defend the title of your orator to said land-
Your orator further States to your Honor. that the said N. D.
Elliott in utter Violation of his solemn Contract with
your orator did in the month of July 1844 commence an action of

Ejectment against your orator for the purpose of ejecting your orator from the above described tract of land and that said action is now pending against your orator in the Stewart Circuit Court - and that said cause was continued upon the affidavit of said Elliott at the February term of the Stewart Circuit Court 1845. Your orator further sheweth to your Honor that on the 22nd day of February 1845 and divers days since that day your orator has tendered to the said N. D. Elliott the amount of his bid together with ten per cent per annum thereon and all legal interest and charges (which are contemplated in the various acts of redemption now in force in this State) in specie (i.e. silver coin) at all of which times your orator demanded of the said Elliott a release of his claim upon said Tract of Land - At all of which times the said Elliott refused to relinquish his claim upon ~~the~~ said land or receive the redemption money so tendered - Your orator further sheweth to your Honor that he produced said redemption money in court at the calling of said cause at the February term 1845 and then and there desired to pay the same into court, which was refused by the court - At which time your orator tendered said redemption money to the said Elliott and all costs and charges, and desired said Elliott to receive the same and discontinue his said action of ejectment against your orator, all of which the said Elliott refused to do - your orator has deposited said redemption money with A Goodrich in Dover at which place he has informed the said Elliott that he can at any time receive his said purchase money and charges thereon - Your orator would further state to your Honor that the said Elliott pretends to have - Increased his original bid upon said land to the sum of five Hundred ~~dollars~~, thirty five dollars (\$35.00) Exclusive of the sum of fifty dollars bid at the Sheriff's Sale, your orator further sheweth to your Honor that said Judgment in favor of Elliott and Lee was satisfied as appears from the return of the Sheriff endorsed upon the back of said Execution on the day of sale, (By this your Honor will see that the said Elliott was no longer a bonafide creditor) - your orator would further shew to your Honor that all the above named Judgments (Save the one in favor of Elliott & Lee) and the executions which have issued from the same stand open and unsatisfied against your orator, they having never received any credit save that of fifty dollars at the Sheriff's Sale above mentioned, neither is there to this day, any credit of record, Neither is there any transfer of record by said Judgment creditor to your orator, to the said Elliott or any one else But all stands open against your orator and in favor of the above named Judgment creditors - your orator is informed and believes that the said Elliott did not attempt to increase his bid until after the laps of the 20 days allowed by the act of the legislature of Tennessee passed the 14th of November 1842 - your orator further sheweth to your Honor, that the said Elliott is not now, nor was he at the time of ~~increasing~~ his bid, or of ~~increasing~~ his action of ejectment against your orator a bonafide creditor

was was he at the time of increasing his bid, or of instituting
 his action of replevin against your orator a bonafide creditor,
 Your orator further sheweth to your Honor that a copy of the above
 mentioned Judgment, the executions and venditions exponas together
 with the sheriff's return thereon - and also a copy of the said
 Elliott's quasi bid &c are herewith filed Marked (A) for the inspection
 of your Honor and prayed to be ^{taken} as a part of this bill - your orator
 is informed and believes, and so charges that the said Elliott
 never had made any bonafide purchase of the ~~claims~~ above
 named judgments from said Judgment Creditors prior to the ninth
 day of July 1843 the day on which said quasi Bid purports to
 have been filed in the clerk's office - Your orator charges said
 Elliott, with an attempt fraudulently to appropriate him and that
 he has made this advance collusively and fraudulently for the
 purpose of aiding said Judgment Creditors in incumbering &
 harassing your orator and without any Bonafide purchase of
 said Judgments & to these charges your orator is peculiarly
 anxious that the said Elliott and Atkinson & Shemwell
 respond - The premises considered and as your orator is only
 relievable in a Court of equity where matters of this nature
 are, cognizable - your orator prays your Honor to permit him to
 redeem said tract of land on such terms as to your Honor
 shall seem just and equitable; your orator is desirous that
 all of the above named Judgment Creditors shall at the earliest
 possible period receive their pay; and that the same be received in
 such manner as shall comport with the conscience of your Honor
 and not in accordance with the doings of the said Elliott - Your
 orator further prays that the said N. D. Elliott & J. C. Atkinson
 and A. J. Shemwell late Merchants and ~~partners~~ Trading in Stewart
 County under the name and style of Atkinson & Shemwell, & now
 Citizens of the State of Tennessee and County of Stewart and
 Dickson, the said Elliott and Shemwell being Citizens of
 Stewart County, and the said Atkinson a Citizen of Dickson be
 made parties defendants to this Bill that they severally answer
 upon their Corporal oaths and say whether the matters & things
 set forth in this bill are not strictly true and if not how otherwise
 And in an especial manner if the said pretended advance
 Bid of N. D. Elliott was filed on the ninth day of July 1843
 and if not at what time said Memorandum or Bid was
 filed in the office of the Clerk of Stewart Circuit Court
 and further, if the said Elliott has at any time obtained
 transfers of said Judgments to himself and if so at what
 time said transfer was made - Stating the time place and
 manner of said transfer and the consideration which passed
 between the respective parties - Your orator prays your Honor
 that the stated most gracious writs of Subpoena & injunction

Issue enjoining the said Elliott from further prosecuting his said action of ejectment against your orator, and that upon a final hearing of this cause your Honor perpetuate said Injunction and grant your orator all such other and further relief as the nature of his case may require— and as in duty bound your orator will ever pray R

This is the first application for an injunction in this cause —

Goodrich Sol

State of Tennessee } personally appeared before me P. Lynch
Stewart County } an acting justice of the peace in and
for said County Joshua R Killebrew
who made oath in due form of law that the matters in the foregoing Bill as stated of his own knowledge are true and ^{that} those stated on the information of others he believes to be true

Mar. 26. 1845.

Joshua R Killebrew

P. Lynch JP.

To the Clerk & Master of the chancery Court at Clarksville On Complainant giving bond and security in the sum of \$500. Conditioned to pay all costs & damages as the Defendants may sustain by reason of wrongfully suing out this injunction, let an injunction Issue according to the prayer of this Bill

M. A. Martin. Judge

Exhibit A

State of Tennessee } Be it remembered that at a Circuit Court began
Stewart County } and held for said County at the October Term
1842. present and presiding the Honorable M A Martin Judge
R on the 29th day of said term the following proceedings were had in this cause to wit;

Atkinson & Shemwell

v. d

Debt

Joshua R Killebrew

This day came the parties by their attorneys, and there upon came a jury of good and lawful men to wit Richard Cooley, James Lewis, John Lee, John Parker, John H Petty, James Lee, James Senney David Moore, Iethu Bass, J F Bailey, Morgan Lee & M. H. McGee who being duly elected tried and sworn the truth to speak upon the issue joined on their oaths do say that the defendant hath not paid the debt of one hundred and ninety five dollars and six cents the debt in the declaration mentioned, and they assess the plaintiffs damages by reason of the detention thereof to twenty dollars and fifteen cents, therefore it is considered by the Court

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that the plaintiffs recover of the defendant their debt aforesaid and the damages by the Jury in the form aforesaid assessed and their costs by them about their suit in this behalf accrued for which execution may issue

There was an execution issued which are in the words and figures following to wit

State of Tennessee; To the Sheriff of Stewart County greeting
You are hereby again Commanded that of the goods and chattels lands and tenements of Joshua R Killebrew in your County you cause to be made the sum of two hundred and fifteen dollars + 21 Cents to satisfy a debt and damages which Atkinson and Shumwell lately recovered against the said Joshua R Killebrew before the Circuit Court for Stewart County at the October term 1842 upon an action of Debt, also the sum of eight dollars and 87 Cents which was adjudged by the Court for expenses and costs in this behalf expended whereof the said J. R. Killebrew is convicted as appears to us of Record and have the Money before the Judge of the 7th Circuit at our next Court to be held for the County of Stewart at the Court House in the town of Dover on the 4th Monday in June next ready to render unto the said Atkinson & Shumwell for their judgment and costs as aforesaid and have you then and there this writ, Witness J. J. Shumwell Clerk of our said Court at office in the town of Dover the 4th Monday in July 1843 and 67th year of the independence of the United States
By J. Shumwell clerk

On the back of ^{the} Execution is the following endorsement - to wit Issued 1st April 1843. Came to hand 3rd day of April 1843. - No personal goods or chattels of the defendant in my County to be found whereon to levy, to satisfy this execution, I therefore levy the same upon a tract of land containing 200 acres more or less bounded as follows Beginning at E. A. Lee's South west corner thence west 58 poles to a hickory post oak and maple, South 150 poles to a stake, thence East 214 poles to a stake in Boyds line, thence ^{next} 156 poles to the Beginning said land levied on as the property of J. R. Killebrew to satisfy this execution This the 6th day of May 1843.

The above land was sold to A. D. Elliott the 26th of June 1843 for fifty dollars and this fifa returned not satisfied
John H. Mockbee Dy Shff

And also heretofore to wit on the 3rd day of November 1842 Nov. Term 1842. of said Court there was another Judgment to wit
Elliott & Lee

v. J. R. Killebrew } appeal

This day came the parties by their attorneys and the defendant as on

affidavit filed continue the cause until the next term of the Court therefore it is considered by the Court that the plaintiff recover of the defendant the cost by their at this term of the Court for which Execution may issue

There was an Execution issued which is in the words & figures following to wit

State of Tennessee. To the Sheriff of Stewart County Greeting- you are hereby commanded that of the goods and chattles, lands and tenements of Joshua R Killebrew in your County again you cause to be made the sum of twenty Eight Dollars and 18 cents to satisfy the damages which Elliott & Lee lately recovered against the said J R Killebrew before the Circuit Court for Stewart County at their October term 1842 upon an action of Appeal also the sum of — which was adjudged by the Court for expenses and costs in this behalf expended whereof the said J. R. Killebrew is convicted as appears to us of record and have these moneys before the Judge of the 7th Circuit at our next Court to be held for the County of Stewart- at the Court House in the town of Dover on the 4th Monday in June next ready to render unto the said Elliott and Lee for their Judgment and cost as aforesaid and have you ~~then~~ and then this writ Witness by J Shemwell Clerk of our said Court at office in the town of Dover the 4th Monday in February 1843. and 67 year of the independence of the United States

By J. Shemwell Clerk

on the back of said Execution is the following endorsement To wit
Issued 1st April 1843 came to hand the 3rd day of April 1843. No. personal goods or chattles of the defendants in my County to be found wherewith to levy to satisfy this Execution therefore levy the same upon a tract of land containing 200 Acres more or less bounded as follows Beginning at E A Lees South west corner thence West 58 poles to a hickory post oak and Maple, South 150 poles to a Stake, East 214 poles to a Stake on Boyds line, thence West 156 poles to the Beginning, said land levied on as the property of J R Killebrew to satisfy this Execution this 6th day of May 1843.

The above described land was sold for fifty Dollars to N D Elliott being the highest and best bidder 26th June 1843. John H Mockbee Sheriff - Satisfied
John H Mockbee Sheriff

And also heretofore to wit, on the 28th day of February Term 1843 of said of said Court there was another Judgment, to wit,

Atkinson & Shemwell

v. J.

Motion to Condemn Land

Joshua R Killebrew

This day came the parties by their attorneys and it appearing to the satisfaction of the Court that the matter and things of this motion the following papers were filed to wit

\$47.99 One day after date I promise to pay Atkinson & Shemwell the

7.

Sum of forty seven dollars and ninety nine cents it being the balance
of my own and B. F. Frasers a/c with them Vam Renewed
October 7th 1840 Joshua R Nillebren Seal

There was a warrant issued on said note which is as follows to wit
State of Tennessee }
Stewart County } To any lawfull officer to Execute and return, you are
hurbly Commaned to Summon Joshua R Nillebren to appear before
me or some other Justice of the peace for said County to answer the Compl-
aint of Atkinson + Shemwell in a plea of debt under two hundred
dollars herein fail not given under my hand and Seal this the 5th day
of May 1842 E W Smith J.P.

Came to hand when issued, executed and returned for trial the
14th day of May 1842 before Esqr Smith J.P. J R Elkins Constable

The Judgment in this case is as follows to wit
No 257 May 21. M. 1842 Atkinson and Shemwell vs Joshua R Nillebren
\$52.29 B F Fraser Mayor note I give Judgment against the defendant
for the above amount and all costs for which execution may issue

E. W. Smith J.P. Constable Elkins serving Warrant 50¢ fife 37 1/2
I do certify that the above is a true Copy of a Judgment J R Nillebren
in favor of Atkinson + Shemwell E W. Smith J.P. Seal

There was an execution issued in this cause which is as follows
State of Tennessee }
Stewart County } To any lawfull officer to Execute + return, you
are hurbly Commaned that of the goods and chattels, lands and
Tenements of Joshua R Nillebren and Benjamin F Fraser his Stay to
Execution if to be found in your County you make the Sum of Fifty two
dollars + 59. cents to satisfy a Judgment that J. C. Atkinson and
J Shemwell obtained against him before me on the 21st day of
May 1842. and all legal Costs and pay over the same as the
Law as the law directs, fail not therein 28th day of September
1842 E W Smith J.P. for Stewart County-

On the back of said execution is the following endorsement to wit
Came to hand the same day issued no personal property found in
my County whereon I can levy this execution I therefore levy this
Execution on a certain Tract ^{or parcels} of land situated and lying in
the County of Stewart and State of Tennessee and ^{on} the waters of
the green tree grove Creek and bounded as follows, Beginning at
Edward A Lucys South west Corner, thence West 58 poles to a Hickory
Post oak and maple, South 150 poles to a Stake, thence East 214
thence poles to a Stake, thence North 150 poles to a Stake in Boyds
line, thence West 156 poles to the beginning Containing two
hundred acres more or less, this 24th October 1842. J R Elkins const.

It is therefore Considered by the Court that the lands described in the
levy aforesaid be sold to satisfy the debt aforesaid Interest + Costs
as well before the Justice as in this cause for which venditionis exponas
may Issue, there was also a venditionis Exponas which is as follow to wit

State of Tennessee, To the Sheriff of Stewart County Greeting Whereas herebefore to wit, on the 28th September 1842. an execution was issued from the office of E. W. Smith a Justice of the peace for said County in favor of Atkinson & Shimmell and against the goods and chattels lands and tenements of Joshua R. Milliken and B. F. Fraser in consequence of a Judgment rendered May 21st 1842 for the sum of fifty two dollars and fifty nine cents & costs of suit which for the want of personal property was on the 24th October 1842 by J. M. Elkins a Constable for said County levied on the undivided interest the defendant has in a tract of land lying and being in the County of Stewart and State of Tennessee on the north side of Cumberland River on the waters of Green Tree Grove Creek butted and bounded as follows Beginning at Edward A. Lee, South West Corner Thence ~~thence~~ West 58 poles to a Hickory Post oak & maple. South 150 poles to a Stake, Thence East 214 poles to a Stake Thence north 150 poles to a Stake on Boyds line, Thence West 156 poles to the beginning Containing two hundred acres more or less Oct. 24. 1842 and Whereas the Stewart Circuit Court at their February term 1843 Ordered that the Sheriff of Stewart sell the before mentioned tract of land agreeably to law to satisfy said Judgment Thence said Circuit Court accrued

These are therefore to command you to sell the before mentioned tract of land agreeably to law to satisfy the said Judgment and costs as well before the Justice as in this Court accrued and that you have the money arising from said sale before the Judge of our seventh Judicial Circuit in the Court House in the town of Dover the 4th Monday in June next ready to render to those entitled to it Witness my J. Shimmell Clerk of our said Court at office in the town of Dover the 4th Monday in February 1843 and 67th year of the independence

J. Shimmell Clerk

On the said venditionis Exponas is the following endorsement to wit Issued 1st May 1843. Came to hand same day (spons) - No personal goods or chattels of the defendants in my County to be found where on to levy to satisfy this execution I therefore levy the same upon a tract of land containing two hundred acres more or less bounded as follows Beginning at E. A. Lee, South West Corner, Thence West 58 poles to a Hickory Post oak and maple, South 150 poles to a Stake Thence East 214 poles to a Stake in Boyds line Thence West 156 poles to the beginning said land levied on as the property of J. R. Milliken to satisfy this Execution this the 16th day of May 1843

The above land was sold to A. D. Elliott the 26th day of June 1843. for fifty dollars and this writ returned not satisfied

John H. Mockler Sheriff

And also heretofore to wit on the 28th day of February Term 1843 of said Court there was another Judgment, to wit

D. C. Atkinson

v.^s

Motion to Condemn land

Joshua R. Killebrew

This day came the parties by their attorneys and it appearing to the ~~satisfaction~~ of the Court that the matters and things of this Motion - the following papers were filed to wit.

Twelve months after date I promise to pay John Hutchinson one Hundred and twenty four dollars for value received of him this 2nd day of October 1838.

Joshua R. Killebrew *Seal*

On the back of said note is the following endorsement, to wit For Value Received I assign the within note to A. J. Fraser

July 16. 1839.

John Hutchinson

For Value Received I assign the within note to John^d Greenwood

September 20th 1839.

Wm. M. Greenwood

For Value Received I assign the within note to Allen & Grant and guarantee the Collection of same September 24th 1840. W. M. Greenwood

There was also a warrant issued which is as follows, to wit State of Tennessee

Stewart County } To any lawful officer to execute and return,
You are hereby commanded to summons Joshua R. Killebrew to appear before me or some other Justice of the peace for said County to answer the Complaint of Allen & Grant assignees of William Greenwood & A. J. Fraser assignees of John Hutchinson for the benefit of D. C. Atkinson on a plea of debt under two hundred dollars, herein filed not given under my hand and Seal this the 5th day of May 1842

E. W. Smith J. P.

On the back of said Warrant is enclosed as follows, to wit D. C. Atkinson Warrants J. R. Killebrew and Allen & Grant assignees of William Greenwood and A. J. Fraser assignees of John Hutchinson Issued 5th day of May 1842. came to hand when issued Executed on Joshua R. Killebrew and no assignee found in my County and returned for trial the 14th day of May 1844. before Esquire Smith J. P.

J. R. Elkins Const.

The Judgment in this cause is as follows, to wit May 21st 1842 D. C. Atkinson v.^s J. R. Killebrew \$150.95 B. F. Fraser Stayer I give Judgment in this case against the defendant for the above amount and all costs of suit for which Execution may issue

E. W. Smith J. P.

I do certify that the above is a true copy of a Judgment rendered by me against J. R. Killebrew in favor of D. C. Atkinson

E. W. Smith J. P.

The execution issued in this cause is in the following words and figure, to wit

State of Tennessee

Stewart County To any lawfull officer to execute and return, that the goods and chattles lands and tenements of Joshua N Killebrew and B F Fraser stay to execution if to be found in your County you make the sum of one hundred and fifty dollars and ninety five cents to satisfy a judgment that Z C. Atkinson assins obtained before me on the 21 st day of May 1842 and all cost and pay over the same as the law directs fail not this the 28th day of September 1842.

E W Smith J P for Stewart County

On the back of said execution is the following endorsement, to wit Z C Atkinson v. J N Killebrew + B F Fraser issued the 28th September 1842. Came to hand same day issued. No personal property found in in my County to levy this execution on I therefore levy this execution on a tract or parcel of land situated lying & being in the State of Tennessee County of Stewart on the waters of Green Tree Grove Creek and bounded as follows, to wit Beginning at Edward A Lums south west corner, thence west 58 poles to a Hickory Post oak and Maple, South 150 poles to a Stake, thence east 214 poles to a Stake thence North 150 poles to a Stake in Boyds line thence West 156 poles to the beginning, Containing two hundred Acres more or less, this the 24th of October 1842

J N Elkins Constable

It is therefore Considered that the lands described in the levy aforesaid be sold to satisfy the Debt aforesaid interest and Costs as well before the Justice as in this Court for which execution may issue

There was also a venditionis exponas which is as follows, to wit State of Tennessee to the Sheriff of Stewart County greeting, Whereas as heretofore to wit on the 28th day of September 1842 an execution was issued from the office of E W Smith a Justice of the peace for said County in favor of Z C. Atkinson and against the goods & Chattles lands and tenements of Joshua N Killebrew and B F Fraser in consequence of a Judgment Rendered May 21 st 1842 for the sum of one hundred & fifty dollars ninety five cents and costs, which for the want of personal property was on the 24th October 1842 by J N Elkins a Constable of said County levied on the undivided interest the defendant has in a tract of land lying and being in the County of Stewart on the North Side of Cumberland River on Green tree grove Creek butted and bounded as follows, beginning at Edward A Lums south west corner, thence West 58 poles to a Hickory post oak & Maple, South 150. poles to a Stake thence east 214 poles to a Stake, thence North 150 poles to a Stake in Boyds line thence West 156 poles to the beginning, Containing two hundred Acres more or less 24th Octo. 1842. and Whereas the Stewart Circuit Court at their February Term 1843. Ordered that the Sheriff of Stewart County sell the before mentioned tract of land agreeably to law, to satisfy the said Judgment and costs as well before the Justice therein said Circuit Court accrued

These are therefore to command you to sell the before mentioned Tract of land agreeably to law to satisfy the said Judgment & cost as well before the Justice as in this Court accrued and that you have the money arising from said sale before the Judge of our Seventh Judicial Circuit in the Court House in the Town of Dover the 4th Monday in June next ready to render to those entitled to it, Witness My J Shemwell Clerk of our said Court at office in the Town of Dover the 4th Monday in February 1843 and 67 year of the Independence
J. J. Shemwell Clerk

On the back of said venditioni Exponas is the following (to wit) Issued the 1st day of May 1843. Came to hand the same day issued No personal goods or chattels of the defendants in my County to be found wherupon to levy to satisfy this execution, I therefore levy the same upon a tract of land containing two hundred acres more or less bounded as follows, Beginning at E A Lees South west corner, thence West 58 poles to a Hickory Post oak and maple, South 150 poles to a State thence East 214 poles to a State on Boyds line thence West 156 poles to the Beginning said land levied on as the property of J. N. Killebrew to satisfy this Execution, this the 6th day of May 1843.

The above land was sold to A D Elliott the 26th June 1843 for fifty dollars and this fifer returned not satisfied

J H Mockler D^y Sheriff

And also heretofore to wit, On the 9th day of July 1843 A. D. Elliott one of the plaintiffs filed his Receipt and advances his bid upon the land which is in the words and figures following to wit

Pursuant to an act of the General Assembly passed the 14th day of November 1842. I Newel D Elliott having become the purchaser of a tract of land belonging to Joshua N Killebrew under two Executions issued by the clerk of the Stewart Circuit Court on the 1st day of April 1843. one in favor of Atkinson & Shemwell and against said Killebrew for the sum of two hundred fifteen dollars and twenty one cents, the other in favor of Elliott and Lee for the sum of twenty eight dollars and eighteen cents and costs upon both, and also to two venditioni exponas issued by the clerk of the Court aforesaid on the first day of May 1843 against said Joshua N Killebrew one for the sum of one hundred & fifty dollars and ninety five cents and costs in favor of Zebulon C Atkinson the other in favor of Atkinson & Shemwell for the sum of fifty two dollars and fifty nine cents and costs under which executions and venditioni Exponas the Deputy Sheriff of Stewart County sold a tract of land belonging to the said Joshua N Killebrew as is described in the levy made by the Sheriff and in the face of said venditioni Exponas to the said Newel D Elliott on the 26th day of June 1843 for the sum of fifty dollars it being the last highest and best bid for the same the Sheriff struck off said land to me at that

Sum and I being a Bona Fide Creditor of said Killebrew to the amount of five Hundred and thirty five dollars exclusive of the sum of Fifty dollars bid for said land upon the day of sale do make an advance of the sum of five hundred and thirty five dollars upon my original bid and agree by these presents to credit the said Executions Vendition Expenses and debts due me from said Killebrew with the aforesaid last mentioned sum and this shall operate as a receipt in the hands of the clerk of the Stewart Circuit Court for the said sum of five Hundred and thirty five dollars given under my hand this 9th day of July 1843

Attest J. J. Shemwell

N. D. Elliott

On the back of said advance bid is the following endorsement, to wit Filed in the office of the circuit clerk of Stewart County 9th day July 1843

J. J. Shemwell clerk

State of Tennessee }
Stewart County } I, J. J. Shemwell clerk of the Stewart ^{County} Circuit Court do certify that the foregoing is a true copy of the Judgments and Executions in the before mentioned cases to wit one in favor of Elliott and Lee, Two in favor of Atkinson & Shemwell and one in favor of L. C. Atkinson June 17, 1845.

J. J. Shemwell clerk

I further certify that the fifty dollars is all the credits that the Executions referred to have up to this date June 17, 1845.

J. J. Shemwell clerk

Exhibit B & C

Issued 1st May 1843 } Atkinson & Shemwell
vs

Judgment 28th Feb'y 1843 for \$ 52. 89
Bill costs 5. 20

J. R. Killebrew & B. F. Fraser

Returned not satisfied by J. H. Mockbee Dshff

N. D. Elliott advanced upon original bid the 9th of July 1843
See Receipt filed with file for the same

Issued 1st May 1843 } L. C. Atkinson
vs

Judgment 28th Feb'y 1843 for \$ 150. 95
Bill costs 5. 45

Joshua R. Killebrew & B. F. Fraser

Returned not satisfied by
J. H. Mockbee Dshff

N. D. Elliott advanced upon original bid the 9th of July 1843
See Receipt filed with file for the same

Issued 1st April 1843 } Atkinson Shemwell
vs

Judgment 20th October 1842 for \$ 215. 21
Bill costs 8. 25

J. R. Killebrew

Returned not satisfied by J. H. Mockbee Dshff

N. D. Elliott advanced upon original 9th July 1843
See Receipt filed at that time

Issued 14 April 1843 Elliott & Lee Judgment 4th November 1842 for Costs Junior
 1843 Bill Costs \$27.55
 J. R. Killebren Returned not Satisfied by J. H. Mockler & Shffr
 N. D. Elliott advanced upon original bill 9th July 1843
 See Receipt filed at that time

The above executions was levied on J. R. Killebren's land and the land sold for fifty dollars to N. D. Elliott; I certify that the above is a true Copy of the entries of the returns of the above executions on my Execution docket also the date of N. D. Elliott's advance upon original bid Sept 1st 1845.

Test by J. Shemwell Clerk of the
 Stewart Circuit Court

Injunction bond

Know all men by these presents that we Joshua R. Killebren and Isaac Garrett are held and firmly bound unto Newell D. Elliott, Allen J. Shemwell and Quintus C. Atkinson in the penal sum of five hundred dollars which payment well and truly to be made we bind ourselves, our, and each of our heirs Executors and administrators jointly and severally, firmly by these presents, Sealed with our seals & dated this 20th day of June in the year of our lord 1845.

The condition of the above obligation is such, that whereas the above bound Joshua R. Killebren hath this day obtained from the Hon M. A. Martin an order that an injunction issue Enjoining Newell D. Elliott from further prosecuting his action of ejectment against said Joshua R. Killebren which said action of ejectment is now pending in the Stewart Circuit Court untill the future order of our Court of Chancery at Clarksville Montgomery County Tennessee

Now if the said Joshua R. Killebren shall prosecute said injunction with effect, or in case the same shall be dissolved, he will pay to the said Newell D. Elliott all such damages as he may sustain by reason of wrongfully seeing out an injunction in this Cause in any suit or suits hereafter to be brought for such purpose against him his heirs or assigns and shall moreover prosecute his said Bill with effect or in failure therein shall pay all such costs as may be adjudged by the Court upon a final hearing of said Cause and shall abide by, perform and discharge such judgment as said Court may make upon a final hearing; then the above obligation to be void otherwise to remain in full force and effect

Attest
 R. Priestley C & M

Joshua R. Killebren (Seal)

Isaac Garrett (Seal)

Injunction

State of Tennessee To Newell D. Elliott his Counsellors attorneys Solicitors and agents and each and every one of them. Greeting

Whereas it has been represented to us in our Court of Chancery at Clarksville in a certain suit in Chancery between Joshua R. Killebren Complainant and Newell D. Elliott & J. Shemwell & Quintus

to Atkinson Defendants, on the part of the said Complainant, that at a sale as set out in the bill N. D. Elliott became the purchaser of his tract of Land in the bill mentioned for the sum and bid of fifty Dollars - that he subsequently advanced on his bid, since which time he has by himself and others tendered to said Elliott the amount of his bid with ten percent thereon & one of which tender was made in Court that said Elliott has commenced his action of ejectment in the Stewart Circuit Court against Complainant for said land which is now pending in said Court - Praying that said Elliott be enjoined from further prosecuting said suit till the questions in said Bill can be heard and determined in our Court of Chancery at Clarksville Tennessee We therefore, in consideration of the premises aforesaid do strictly enjoin and command you the said Newell D. Elliott and all and every, the persons before mentioned, under the penalty prescribed by law, of your and every of your goods, lands and tenements to be levied to our use, that you and every of you, do absolutely desist from further prosecuting said action of ejectment against our Complainant untill the hearing of this cause in our said Court of Chancery Witness Philander Priestley Clerk and Master of our said Court at office in the town of Clarksville the third day of March in the year of our lord 1845. and in the sixty ninth year of the Independence of the United States

P. Priestley C. & M.

Answer of
N. D. Elliott

The separate answer of Newell D. Elliott to the Bill of Complaint of Joshua R. Killebrew filed against himself and others in the Chancery Court at Clarksville in the State of Tennessee

This defendant now and at all times saving to himself the benefit of all just exceptions to the said Bill for answer thereto or so much thereof as he is advised is material for him to make answer unto answers and says he admits judgments were rendered against the complainant in the Circuit Court of Stewart County in favor of Atkinson & Shemwell and in favor of Elliott and Lee as alleged in the Bill; It is also true that executions in favor of D. G. Atkinson and Atkinson & Shemwell and in favor of against the complainant were issued by Justices of the peace in Stewart County and were levied upon the land mentioned in the Bill and were returned to the Circuit Court for said County and venditioni exponas were awarded thereon, these writs of venditioni exponas and executions upon the judgments aforesaid were levied upon the complainant's land and it was sold and purchased by ^{this} defendant as alleged in the Bill for the sum of fifty dollars - In a short time after the sale this defendant called upon the complainant and demanded possession of the premises, He refused to give possession or to claim possession as this defendant's tenant alleging that he had a right to hold the possession for the term of two years allowed by law for the redemption of said land, This defendant denied to the complainant any right to the possession, and he thereupon promised

to consult with Messrs. Shuckelford & Rivers attorneys; and to give possession if they should advise him that this defendant was entitled to it. The complainant promised this defendant that he would consult with said attorneys and give him an answer within ten days he was told that he would and if he did not give him answer within ten days he was told that he would be sued for the possession - This defendant waited till after the expiration of the ten days and hearing nothing further from the complainant he was reluctantly compelled to sue him - He did not ~~promise~~ ^{promise} or agree with ^{the} complainant to allow him to retain possession of the premises for the two years upon the condition of his employing counsel to defend a suit on the Chancery Court in which the title to the said tract of land was involved. He is informed that said complainant had employed counsel in said suit before the land was levied upon and sold under the aforesaid executions and that the same counsel continued to defend the said complainant's title after the sale - This defendant ~~admits~~ admits He commenced an action of ejectment against the complainant to recover possession of said land and that the same is still pending and undetermined in said Court.

In February last the complainant called upon this defendant with a sum of money and told him he wished to redeem the land that he was ready and willing to pay the amount bid and interest thereon - to this proposition this defendant replied that he might redeem the land if he would pay him the amount of his advanced bid which was some five hundred and odd dollars besides the fifty bid at the Sheriff's sale. The complainant refused to pay that sum and this defendant refused ^{to accept} the fifty dollars and interest. This defendant at the time of the sale of the land was acting as the agent of Atkinson and of Atkinson & Shemwell and they had given him full power and authority to sell transfer or assign their said judgments if he thought proper to do so - When the sale took place he applied to the said Shemwell and told him that he would take the judgments and pay him the money at the end of two years. This was agreed to and from that day this defendant considered himself the owner of said judgments, at the end of the two years he paid the money called for upon said judgments - He admits the judgments were not transferred to him upon the records but they were assigned to him upon a separate paper which is hereto annexed Marked A and prayed to be taken as a part of this answer. This defendant on or about the 9th of July 1843 and within twenty days after the sale of the land called upon the Clerk of the Court and told him he wished to advance his bid to the full amount of the several judgments and costs mentioned in the Bill and directed the said Clerk then and there to make all the necessary entries to make his advance bid effectual, this the Clerk promising him to do, and he supposed he had done all that the law required of him - This defendant herewith files a copy of the entries made by the Clerk upon the record together with his receipt a copy of which he prays may be taken as a part of this answer and which he is advised is at least a substantial compliance with the requirements of the act of assembly said

Copies are marked B & C. This defendant was then the owner by contract of the several judgments herein before mentioned, and he avers that the Judgment of Elliott and Lee was not and is not now fully satisfied until it is so by his advanced Bid. The execution and Venditioni exponas were issued from the same term of the Court they were all levied upon the land and the whole bid of fifty dollars when divided according to law would not satisfy either of said debts. Allen Shemwell was the agent of L. C. Atkinson and he transferred to this defendant the Judgment of L. C. Atkinson against the Complainant. This defendant admits that at the February term of the Circuit Court in 1845. he was driven to a continuance of his action of ejectment against the defendant in consequence of the absence of his counsel and at that term of the Court a tender of 50 dollars and interest was made to this defendant and he was notified that the money would be left on deposit with A. Goodrich Esqr. Since this bill was filed this defendant demanded the money of said Goodrich but he refused to pay it over to this defendant so this defendant denies that the money is left for him in the hands of A. Goodrich Esqr. - It is not true that he had no interest in the several judgments herein before mentioned when he made his advanced bid. He had contracted for said judgments and he has since paid the money for them according to his contract. This defendant is advised that the complainant conveyed all his interest in the land in controversy to one Isaac Garrott by deed duly registered before this bill was filed and he submits that ~~standing~~ ^{no} ~~his~~ interest in the land whether he can maintain a suit for the title. This defendant further states that one James Clark a judgment creditor of complainant tendered to this defendant the amount of his bid and interest and also the amount of the judgment of Elliott & Lee and this defendant avers that said Clark & not complainant should have the land if the same case be redeemed without the payment of the amount of his advanced bid. This defendant avers that he called upon the clerk and made his advance bid within the 20 days after the sale and he is informed by the clerk that the entry was made within the 20 days. This defendant now having fully answered, denies all fraud and prays hence to be dismissed with his costs.

State of Tennessee } This day N. D. Elliott the defendant personally appeared
Montgomery County } before me P. Priestley clerk and made oath that the
matters and things stated in the foregoing answer as they are therein
stated as of his own knowledge are true and those stated upon infor-
-mation he believes to be true

Subscribed & sworn to before

N. D. Elliott

me P. Priestley clerk 10th Aug. 1845

Exception

J. N. Stillebrun

Complainant excepts to the answer of Deft Elliott
for the following cause, the Bill calls upon
N. D. Elliott et al, Respondant in his answer to state the time
and Place at which certain transfers were made, Defts answer does not

respond as to place

Goodrich Sol

Is allowed 19th September 1845

Complainant appeals from the decree of the Clerk & Master
Goodrich -

The Separate Answer of Allen Shemwell to the Bill of Complaint of Joshua R Killbren filed against himself and others in the Chancery Court at Clarksville

16 X

This defendant saving the benefit of all just exceptions to the said bill for answer thereto states that he admits the rendition of the several judgments, the issuance of executions thereon the issuance of the writs of Venditioni Exponas and the sale and purchase of the complainants land as he has alleged in his bill; The defendant N D Elliott was the agent of Atkinson and Shemwell and of J C Atkinson for the collection of said debts at the time when the judgments were rendered and the land sold for the payment thereof, and as such agent he had authority to transfer assign or sell the same, he might if he thought proper have taken the same to his own account, and have rendered an account thereof to the said Atkinson or Atkinson & Shemwell at any time; at the day of sale or at furthest within three or four days after it, this defendant was spoken to upon the subject by said Elliott, and he sold to him said judgments for the amount and interest called for by them to be paid for at the end of the two years from the sale. This was a bona fide fair sale and no collusion about it; this defendant had full authority to sell and dispose of the judgments in favor of J C Atkinson and that judgment was also transferred in the same contract; This defendant admits he made no assignment of these judgments either upon the records of the Court or upon the executions, but he gave a written transfer upon a separate piece of paper which he supposes is in possession of his Co-defendant Elliott and he refers to his answer for the purport thereof this defendant considered the judgments to be the property of said Elliott from the time of the contract, the written ^{transfer} ~~contract~~ was not drawn up on the day the contract was made, but some days afterwards. He has no copy of it and cannot give the precise date but refers to the paper for the date thereof, this defendant denies all fraud and collusion, said Elliott accounted to the owners for said judgments at the end of the 2 years according to his contract. This defendant has no personal knowledge of the alleged tender he refers to & adopts the answer of his Co-defendant Elliott for this and for all other things not responded to in this answer. He adopts said answer upon the subjects as his own, and now having fully answered he denies all fraud & says hence to be dismissed with costs

State of Tennessee

Stewart County

This day Allen J. Shemwell the deft personally appeared before me W. L. Jones an acting justice of the peace for said County and made oath that facts stated in the foregoing answer as they are therein stated as of his own knowledge are true and those stated upon the information of others he believes to be true given under my hand this the 1st September 1845

Wm L Jones J.P.

A. J. Shemwell

Exception

Joshua R. Niblebren

v.

N. D. Elliott et al

Complainant Excepts for the following Cause -
The Bill calls upon respondents to state the time & place at which, certain Transfers were made - Respondant is silent upon this subject - he does not respond as to place
Goodrich for Compl

Exception allowed 18th Sept 1845

R. Priestley C & M

Separate Answer
of
Z. C. Atkinson

The Separate Answer of Z. C. Atkinson to the bill of Complaint of Joshua R. Niblebren filed against N. D. Elliott himself and A. J. Shemwell in the Chancery Court at Clarksville Tennessee

This respondent saving and reserving to himself now and at all times, all benefit and advantage of exception to the error and misstatements in said bill contained. For Answer thinks or to so much thereof as he is advised is material for him to make answer unto says that he believes such demands and judgments as is set forth in said bill are all correct & supports the sale of the land took place as mentioned; But knows nothing about it only as informed, so far as he was concerning or interested in the claim of Atkinson and Elliott and his own, he trusted the collection to N. D. Elliott as a partner and Shemwell as agent whether after the purchase of the land Elliott agreed not to molest complainant in the possession of the land till the end of the two years or for any other time upon the consideration stated or for any other, he has no knowledge information or belief nor does he know or has he any information of the terms or circumstances of Elliott increasing his bid on the land or whether he did, or of his having obtained a transfer or not a transfer of the demands and judgments stated in the Bill if Shemwell made a transfer he had authority to do so, residing at a great distance mostly and being much engaged in other pursuits and paying no sort of attention to the matters of this bill, confiding all to Mr Elliott. Nor does he know any thing of Complainant tendering the amount or any other amount in redemption of the land as he charges or otherwise and not knowing but being wholly ignorant, adopts the answer of N. D. Elliott as a defence to Complainants Bill Supposing, what he states to be the truth of the transactions involved. And here relies upon the same. Denying all fraud &c and having answered prays to be dismissed. Nimble & Foster sol

State of Tennessee

Montgomery County

This day personally appeared Quintus L. Atkinson before me Philander Priestley Clerk & Master of the Chancery Court at Clarksville and made oath that the matters and things stated in the foregoing answer are true as stated

Subscribed and sworn to

Q. L. Atkinson

before me 22 Aug. 1846

P. Priestley C. & M.

Replication to
Q. L. Atkinson's
Answer

The replication of Joshua R. Nillebren Complainant to the answer of Quintus L. Atkinson defendant

This repliant saving and reserving unto himself all, and all manner of advantage of exception which may be had and taken to the manifold errors, inaccuracies and insufficiencies of the answer of the said defendant for replication thence, says that he doth and will aver, maintain and prove his said Bill to be true certain and sufficient in law to be answered unto by the said defendant and that the answer is very uncertain evasive and insufficient in law to be replied unto by this repliant without that, that any other matter or thing in said answer contained, material or effectual in the law to be replied unto, and herein, and hereby, well and sufficiently replied unto, confessed or avoided, traversed or denied is true: all which matters and things this repliant is ready to aver, maintain and prove, as this honorable Court shall direct, and humbly prays as in and by his said bill He hath already prayed

Goodrich Sol

De cree

Joshua R. Nillebren v. Be it remembered that this day this cause came on to be heard before the Hon. J. H. Leake Chancellor & upon the appeal of the Complainant from the decision of the Clerk and Master disallowing Complainant's Exception to the answer of Defendant N. D. Elliott - And the Argument of Counsel and the Court being fully advised as to the matters and things arising thereon - doth see proper to order and decree and the Court doth order and adjudge and decree that the decision of the Master be reversed - that Complainant's Exception be allowed and that defendant answer the allegations in Complainant's Bill as to the place where the transfer was made; and Defendant Elliott pay the cost of this appeal for which Execution may issue

Amended Answer
of N. D. Elliott

The amended answer of N. D. Elliott to the bill of complaint of J. R. Nillebren filed against him & others as to the matter excepted to and denied upon at the April term of this Court 1848. His answer thence respondent says he has no distinct recollection as to the place where the transfer of the judgments mentioned in the pleadings was made, but to the best of his recollection the transfers were made at the counting room Ingram & May in the town of

Dover Tennessee

Subscribed and sworn to
before me the 16th June 1848

N. Priestley Clerk

N. D. Elliott

Amended Answer
of A. J. Shumwell

The Answer of A. J. Shumwell to that portion of the Bill of J. R. Killebrew filed against N. D. Elliott himself & others in the Chancery Court at Clarksville Tenn not answered by said Shumwell in his first Answer, being excepted to

This respondent for answer to the matter excepted to by Complainant, answers and says that his recollection is not distinct as to the place where the transfers of the claims spoken of in the Bill to Elliott were made, his best recollection is that they were made at the counting room of May & Ingram in the town of Dover Stewart County; it may be that they were made at Tobacco port in said County, but his strongest persuasion is at Dover

A. J. Shumwell

State of Tennessee

This day personally appeared before me Philander Priestley Clerk & Master of the Chancery Court at Clarksville Allen J. Shumwell who made oath that the facts stated in this ^{his} answer to the exception to his former answer of J. R. Killebrew filed in said Court against N. D. Elliott himself and others, so far as they are stated of his own knowledge, are true and those stated on the information of others he believes to be true
Subscribed and sworn to
before me the 16th March 1849.

N. Priestley Clerk

A. J. Shumwell

Decree

Joshua Killebrew

v.

N. D. Elliott } This cause is remanded to the rules and the parties have leave to take any step in it they may desire for five months

Affidavit

Elliott

v.

Killebrew

{ In this cause Killebrew makes oath that he cannot come
come safely to trial at this term of the court for want
of the testimony of John Fraser Nathan Brandon, William
Boyard & William Howell & Benj Johnson. Affiant states that
he prepared his notices to Elliott to take the depts since the last term
and gave them to the Sheriff of Stewart County where Elliott lives, twice
& both times the officer returned them not executed and the affiant
was disappointed in getting his proof. He has not had sufficient
time since his last effort to give another notice & get the proof in

time for this term, Affiant expects to prove the material allegations in his Bill by these witnesses wherefore he asks a continuance & Sworn to & Subscribed
J. M. Killebren
in open Court 20 Octo 1849.

P. Priestley C + M

Decree

Ordered this Cause be remanded to the Rules & Continued as on affidavit of Killebren, and either party have leave to take testimony, other matters Reserved

Order to take the deposition of
A. J. Shemwell

Joshua K. Killebren vs. A. J. Shemwell
On application of N. D. Elliott, leave is given him to take the deposition of A. J. Shemwell a co-defendant, to be read in this Cause but to be subject to all Legal exceptions, Given under my hand 15th March 1850

P. Priestley C + M

The deposition of
Nathan Brandon
Witness for Compl't

Question by Complainants Counsel. Be pleased to state whether or not you were present when Killebren the Complainant tendered to Elliott any money, state when and where it was, and all the attendant circumstances?

Answer

I was present when Killebren tendered to N. D. Elliott, money, my recollection is that was 70. or 70 odd Dollars - The money was counted in my presence - the money was tendered to Elliott in the counting room of Shemwell and Shaw in line Port in Stewart County Tennessee - I am not positive, but think was in the forepart of the year 1845. Say January or February - Killebren said to Elliott that he had come there to pay him the money he had bid on his land which had been sold by an order of Court, or execution or something of that sort - I do not remember that Elliott made any reply, but got up and walked off. - Thomas Shaw counted the money - on a subsequent occasion A Goodrich Esqr. pulled out a bag of money in Court, I do not know how much there was, and said he tendered them to redeem that land, I cannot state how the matter went off - but Goodrich as he ~~left~~ the Court, said the money could at all times be found deposited in his office for that purpose. It was proposed by the Counsel on the other side to take the money and receipt for it, but refused to take it and release the land

Nathan Brandon

Deposition of

Wm. J. Bogard
Witness for Compl't

Question by Complainants Counsel

State whether or not you were present when Killebren the Complainant tendered to Elliott any money, state when and where it was - and any thing else you know about the matter.

Answer

I was present when the money was tendered in Court as stated by N. Brandon - and the money was refused on the ground of Elliott

or his attorney stating that Elliott had an order in his pocket to raise the bid. - Goodrich said the money would be at his to redeem the land whenever it should be called for

W. J. Bogard

Deposition of Question by the plaintiff

John Fraser Mr John Fraser Be pleased to state whether or not you were present when Killbuck the Complainant tendered to Elliott any money, State when and where it was and all the attending circumstances

Answer

I was present when Joshua K Killbuck counted out some money (Specie) at Line Port, the date I do not precisely recollect, I suppose it to be some five years ago the money was tendered for the redemption of the land that said Killbuck lived on, so stated on that day and was said to more than cover the bid made by said Elliott with cost accruing thereon - but while the money was being counted the said Elliott left the room and never more appeared while I remained there altho we waited some time and sent out to hunt him up for to receive the money but he could not be seen or was not by me any more while I remained there
John Fraser.

Deposition of Dr 1st By defendant

Thos. Shaw State if you were present when Mr John Fraser and Nathan Brandon came with J K Killbuck to Line Port who had some Specie and state if N D Elliott was present at any time when said money was presented and state if you counted any money for Killbuck at any time

Answer

I saw John Fraser and Brandon when they came to Line Port with Killbuck I heard Killbuck say he had money But no recollection of seeing any money nor never did count any for him at any time that I have any recollection of and further this deponent says no
Thomas Shaw.

Deposition of

A. J. Shumwell

Witness for deft

Taken 11th April 1859

Dr 1st By the same

Do you not know that N D Elliott had full power and authority to collect or transfer any or all the notes and accts of Atkinson and Shumwell and G. L. Atkinson and did he not have authority to convert any of the notes or accounts or judgments to his own use so he kept and account of it

Answer

He had at that time full power to dispose of the notes and accounts as he thought best

Question 2nd By same

were not the endorsed judgments legally transferred to N D Elliott by you

Answer

Self

It was— further the deponent sayeth not

A. J. Shumwell

Decree

Joshua R. Killebrew

v.

Newell D. Elliott

Be it remembered that on this day this cause came on to be heard before the Honorable Jerry H. Leake Chancellor upon the Bill answer replication and proofs in the cause, and it appearing to the Court that the land sold of the Complainant as mentioned in the pleadings on the 26th of June 1843 was purchased by N. D. Elliott the defendant, that before the Complainant tendered the fifty dollar bid for the land with the interest thereon, the defendant had become the owner of the judgments of Atkinson & Shumwell against the Complainant for fifty two dollars & fifty nine cents & five dollars & twenty cents costs, the judgment of Quentin & Atkinson against Complainant for one hundred and fifty dollars & ninety five cents with five dollars and fifty five cents costs, the judgment of Atkinson & Shumwell against Complainant for two hundred and fifteen dollars and twenty one cents and eight dollars and twenty five cents, and had advanced upon his said bid the whole amount of said judgments with interest up to the 9th of July 1843, the day on which the advanced bid was made, and the Court being of opinion the defendant had a right to advance upon his bid the amount of said judgments, and that the Complainant hath not entitled himself to have the title of the land decreed to him and divested of the defendant, It is therefore ordered and decreed by the Court that the injunction in this cause be dissolved and the defendant allowed to prosecute his action of ejectment mentioned in the bill— That the Complainant's Bill be dismissed and that he and Isaac Ganote his security in the bond pay the costs of the cause

Decree of
Supreme CourtState of Tennessee December Term A.D. 1850 Present Judges
Green McKinney & Totten

Joshua R. Killebrew Complainant

v.

N. D. Elliott

Defendant

Be it remembered that this cause came on to be heard, on a former day and also on this 17th January 1851 before the Supreme Court of the State, sitting at Nashville, upon the transcript of the record from the Chancery Court at Clarksville, and argument of counsel,

On consideration whereof, this Court is of opinion, that his Honor the Chancellor erred, in dismissing Complainant's Bill, it not appearing that the defendant was a bona fide purchaser of the judgment in the pleadings mentioned, at the time of his purchase

of the land. - It is therefore ordered, adjudged and decreed, that the decree of the Chancellor be reversed, annulled and for nothing held, and that said Cause be remanded back to the chancery Court at Clarksville for further proceedings to be had therein, as indicated by the opinion of this Court. And it is further ordered and decreed by the Court, that N. D. Elliott pay the costs of this Court, and that execution issue

under copy of opinion of the Court

On the 26 June 1843. the plaintiff's land, two hundred acres in Stewart County, was sold by the Sheriff to the defendant, at fifty dollars in virtue of several Executions, in favor of several creditors, against the Plaintiff. On the 22nd July 1845, the Plaintiff proposed to redeem his land from said sale and tendered to defendant the proper amount of money as he alleges, for that purpose, which was refused. On the 9th July 1845 the defendant advanced his bid by five hundred and thirty five dollars, in addition to the fifty dollars bid at the sale, and he insists that the plaintiff should have paid or tendered this further sum to entitle him to redeem; and this is the issue involved in the case. - The defendant was not a judgment creditor to the amount of his advanced bid; but he alleges, that he was the purchaser of the several judgments on which said executions issued and being the owner thereof, had the right to advance his bid. - The act 1842. Ch. 6. makes very material change in the law, in reference to the redemption of real estates. - It declares in the 1st section that real estates made redeemable by law, may "be redeemed by paying, "to the purchaser or to any one claiming under him, the amount "bid or paid by him, with interest thereon, at the rate of six per cent "per annum, and it shall not be lawful for the holder of such "real estate to advance on the bid or sum paid by him, and keep "the property, Provided, that in any case, when a bona fide creditor shall "become the purchaser of any real estate at execution, ^{or other} sale, ^{he may at any time within 20} make an "advance on his bid, and credit the execution, judgment, decree or debt "acknowledged by debt, with such advance, and upon such credit being "in the manner herein prescribed, he shall hold the property, subject to "redemption, at the price bid and such advance, in the same manner as though he had bid the whole sum at the time of said sale." In the 9th section it is also provided, that "in no case shall the holder or claimant "in case his bid against the ~~debtor~~ or any bona fide creditor, offering to "redeem the real estate, except as provided in this act." -

In construing this statute, we may observe, that it is only one class of purchasers, who are entitled to advance their bid: and they are bona fide creditors who may purchase "any real estate at Execution or other sale" Such creditors may advance their ^{bids} to the extent of their debt, provided it be done "within twenty days after such sale" in the manner prescribed by the statute. -

Two things are requisite to entitle the party to advance his bid, first, that that he be a bona fide creditor, that is, a creditor by judgment or decree; and second, that he be the purchaser. - He may be a bona fide creditor within the

meaning of the Statute if a judgment or decree be assigned to him, and he be the owner thereof at the time he makes the purchase of the land. But having made the purchase, it would not be competent for him to procure the assignment of other debts against the debtor; and to advance his bid upon them. - He can only advance upon such debts as he held at the time he made the purchase; and this right is conceded to him so that he may be enabled to secure his debt, if it should be found the property is a sufficient security for its payment, or for the payment of any greater sum, than was bid at the sale. But having purchased the land he may not ~~transfer~~ in other claims and advance upon them; as that would not answer any purpose intended by the Statute, but would enable the purchaser to speculate upon the rights of both the debtor & other Creditors. It is not material that the land should have been sold at the instance of the purchaser, who is also a Creditor; it is sufficient to authorize him to advance his bid, that he ~~was~~ the purchaser and a bona fide creditor - If a creditor have the land of the debtor sold for the payment of his debt; another creditor may become the purchaser, and advance upon his bid - He is strictly within the description of that class of creditors, to whom this privilege is given - A creditor who may have redeemed the land, has no right to advance upon his debt, because he is not the purchaser, within the meaning of the Statute - Now in the present case, it does not distinctly appear, at what time the defendant became the owner of the judgments upon which he advanced his bid.

If he were in good faith, the owner thereof, at the time of the sale, when he became the purchaser of the land; then, he had the right to advance his bid upon those judgments, but not otherwise; - We are inclined to think, from the facts now before us, that he was not the owner of the judgments at that time; and if this should be the case, his advance upon them, should impose no obligation on the debtor to pay that amount; in order that he may be entitled to redeem. - The amount bid at the sale and interest thereon, would be all that the purchaser could demand -

The decree assuming that defendant had the right to make the advance, but does not assume that he was the owner of the judgments at the time of the sale; nor do we think that the facts in the case would have warranted such a conclusion.

The decree dismissing the bill is therefore erroneous. But we think it proper considering the indistinct character of the proof in regard to the time when defendant became the owner of the judgments, not to decree at present for the plaintiff, but to remand the suit for further proceedings in the Chancery Court.

Let the decree be reversed, and the suit be remanded.

Totten

State of Tennessee

I Saml P. Belant Clerk and Master of the Supreme Court of Errors and appeals for the middle division of said State at Nashville do certify that the above and foregoing is a true copy of the decree and opinion of the Court in the above cause as the same remains on file

in my office.

In testimony whereof I hereunto set my hand and affixed the
Seal of said Court, at office in Nashville, this the 21st day
of February A. D. 1857. + of American Independence the 75th year
J. P. Clark C. & M.

Affidavit of Joshua R. Killbren
Defendants v.^d

Newell D. Elliott & others

H. S. Nimble attorney for defendant this day appearing
before me P. Priestley Clerk and Master of the Chancery Court at Clarksville
and made oath that Allen J. Shemwell one of the defendants in this cause
is a material witness for his codefendant N. D. Elliott, and that owing
to the non attendance of said Newell as affiant is informed, by himself
and counsel witnesses attention was called to the points desired to be proved
where his deposition was taken heretofore, and asks leave to retake his
deposition

H. S. Nimble

Subscribed & sworn to before

me the 21st March 1857.

P. Priestley C. & M.

Order at Joshua R. Killbren
April Rules 1857. v.^d

N. D. Elliott & others

Upon the foregoing affidavit of H. S. Nimble attorney
It is ordered by me P. Priestley Clerk and Master in
Chancery at Clarksville, that defendant Newell, retake the deposition of his
codefendant Allen J. Shemwell subject to just exception to be read as
evidence in this cause, done at April Rules 1857

P. Priestley C. & M.

Decree
April 1857.

Joshua R. Killbren

v.^d

N. D. Elliott

This cause is continued on the application of Compt's
counsel, with leave to both parties to take proof, the
cause for this purpose is remanded to the ruled

Deposition of
B. H. Fraser

Witness for Compt's.

Answer

Question by Complainant.

Are you acquainted with the parties to the above named suit?

I am

Question 2nd Were you present at the time of the sale of complainant's land under
execution when it was bid off by defendant?

Answer

I was

Question 3.

Do you know the amount bid for said land by defendant, if so state the
amount as near as you can?

Answer ²⁶

Fifty dollars was the ^{amount} bid as well as I recollect

Question 4th Did you hear defendant say at or about the time said land was bid off by him any thing relative to the amount of complainant's indebtedness to him at that time if so state what that conversation was?

Answer I was standing by when the said land was bid off by S^r Elliott and I stepped up to him and asked him why he did not bid more for that land he said that that was the amount of his claim against him (S^r Killbuck) and that was all he came for.

Question 5th Was there any further conversation on that subject between you and defendant Elliott at that time if so state what it was?

Answer I further asked him (S^r Elliott) if he intended to hold that land for that amount, he said he did and should dispossess S^r J. M. Killbuck as soon as the law could allow him to do so.

Question 6th Were you an acting Justice of the peace for S^r County at the time of the sale of said land?

Answer I was.

Question 7th Did you receive instructions from any of the judgment creditors of S^r Killbuck subsequent to the sale of said land, or at any time to transfer any of the judgments on your docket against said Killbuck to defendant Elliott if so state when and by whom?

Answer I did receive an order on the 1st day of July 1843 from McClure H^c and file the same as a part of this deposition.

Cross Examined Question by defendant
Who was the Sheriff that offered the land for sale?

Answer A Wallace I think was the Sheriff.

Question 2nd Who was present, you asked me why I did not bid more the land.

Answer I cannot name any person particularly but the Court yard was full.

Question 3rd Have you not been Killbuck's advisor for the last ten years?

Answer No I have been no mans law adviser.

Answer Fifty dollars was the ^{amount} bid as well as I recollect

Question 4th Did you hear defendant say at or about the time said land was bid off by him any thing relative to the amount of complainants indebtedness to him at that time if so state what that conversation was?

Answer I was standing by when the said land was bid off by S^d Elliott and I stepped up to him and asked him why he did not bid more for that land he said that that was the amount of his claim against him (S^d Killbuck) and that was all he cared for.

Question 5th Was there any further conversation on that subject between you and defendant Elliott at that time if so state what it was?

Answer I further asked him (S^d Elliott) if he intended to hold that land for that amount, he said he did and should dispossess S^d J. R. Killbuck as soon as the law could allow him to do so

Question 6th Were you an acting Justice of the peace for S^d County at the time of the sale of said land?

Answer I was.

Question 7th Did you receive instructions from any of the judgment creditors of S^d Killbuck subsequent to the sale of said land, or at any time to transfer any of the judgments on your docket against said Killbuck to defendant Elliott if so state when and by whom?

Answer I did
McClure

Cross Examined Question Who is
Answer A N

Question 2nd Who is
the

Answer I cannot name any person particularly but the Court yard was full

Question 3rd Have you not been Killbuck's advisor for the last ten years

Answer No I have been no mans law adviser

Mr B F Frayer
Will please transfer the judgts we obtained
against Josh R Killbuck to A. D. Elliott said judgts
having been Rend^d + execution issued + served on Killbuck
land
Clarksville July 1. 1843
J + N S McClure R
William S McClure R
upon which is enclosed
Rec^d this order July 21st 1845
B F Frayer

Question 4th Has not Killebren the complainant, has he not been hopelessly insolvent ever since the land was sold by the Sheriff?

Answer I know not.

Question 5th Are you not his security now for hundreds of dollars yet unpaid

Answer Not that I know of

Question 6th State as near as you can the N^o of Executions levied on the land by virtue of which it was sold

Answer There were several executions levied on the land but it was sold by virtue of Elliotts alone as well as I recollect

Question 7th Did you not know that I owned and had the control of Judgments amounting more than fifty dollars

Answer I did not as well as I recollect

Question 8th Please state if you have not been an intimate friend of Mr. Killebren, ever since myself and him has been at law.

Answer Yes and long before, and ^{have} no objection of being the friend of all up-
right and honest men. further this deponent sayeth not
B. F. Fraser

Transcript filed
by defent
Oct 9th 1851

State of Tennessee }
Stewart County } Be it remembered that herefore to wit at a circuit Court
Began and held for the County and state aforesaid at the Court house in
the Town of Dover on the 4th Monday in October 1842. - Present Presiding
the Court Mortimer A Martin Judge R of the 4th Judicial Circuit
of said State when the following proceedings were had to wit
James Clark

v^s }
Joshua R Killebren & others } Debt

This day came the Parties by attorney and on motion
a Nollepross. is entered as to Edward Boyd and thereupon come a jury
of good and lawful men to wit, J. H. Ingram Jos Pinner, Vincent Myatt
A. Kleniard, Miriah Tomlinson, Albert Bingham N. L. Bailey John Lisenty
A. S. Scarborough, E. W. Smith W. A. Rushing James Barnett who being duly
elected tried and sworn well and truly to try the issues joined between the
Parties who being upon their oaths do say, that they find the issues in favor of
the plaintiff and that the defendants have not paid the debt of Five hundred and
eighty five dollars and two cents in the declaration ^{mentioned} & they award the plffs damages
by reason of the detention thereof to twenty one dollars and thirty eight Cents therefore
it is considered by the Court that the plaintiff recover of the defendants the

Debt aforesaid and his damages — by the Jury aforesaid & the cost by him about this suit in this behalf expended for which Execution may issue —
and from said Judgment an alias Execution issued from the office of said Court on the first day of April 1843. which is in the words & figures following.

State of Tennessee

To the Sheriff of Stewart County Greeting, you are hereby again commanded that of the goods and chattels, lands and tenements of Joshua R. Killebrew and B. F. Fraser in your County you cause to be made the sum of ^{the} hundred and six dollars and forty cents to satisfy a debt and damages which James Clark lately recovered against the said Joshua R. Killebrew & B. F. Fraser before the Circuit for Stewart County at their October Term 1842. upon an action of debt also the sum of Ten dollars and 37 cents which was adjudged by the Court for expenses and cost in this behalf expended whereof the said J. R. Killebrew & B. F. Fraser is convicted as appears to us of record and have those moneys before the Judge of the 7th Circuit at our next Court to be held for the County of Stewart at the Court House in the Town of Dover on the 4th Monday in June next ready to tender unto the said James Clark for his judgment and cost as aforesaid and have you then and there this writ Metamp By J. Shumwell Clerk of our said Court at office in the Town of Dover the 4th Monday in February 1843. and 67 year of the independence of the United States

By J. Shumwell Clerk

On the back of said Execution the following Bill of cost is endorsed to wit
Judgment 4th November 1842. for \$606.40
Bill cost

State Tax	2.25
Summons 75¢ bond and Recording 40¢	1.15
Judgment 75¢ filing papers 75¢ plea 50¢ motion 37¢ order 25¢	
Jury 12¢ order execution 25¢ &c 37¢ bill cost 25¢ Calling Cause 6¢	3.68 3/4
Mallard 2 Summing 100¢ extra non est 50¢ Jury 16¢	2.66 1/4
alias Bill cost 25¢ execution 37¢	62
	\$19.37

On the back of said Execution is the following endorsement (to wit James Clark

Issued 1st April 1843
V. P. alias }
J R Killebrew & }
B F Fraser }
came to hand the 3rd day of April 1843. No personal goods or chattels of the defendants in my County to be found whereon to levy to satisfy this Execution, I therefore levy the same up a tract of land containing 200 acres more or less bounded as follows. Beginning at E. A. Lee's South West Corner thence West 58 poles to a Hickory West oak & Maple South 150 poles to a stake thence East 214 poles to a stake on Boyds line thence West 156 poles to the beginning, said land levied upon as the property of J R Killebrew to satisfy this Execution this 6th day of May 1843

The above land was sold to N. D. Elliott on the 26th day of June 1843 for fifty dollars he being the highest and best bidder, I also levied four other executions on the above land in favor of N. D. Elliott &c & others & the fifty

Dollars did not satisfy the other Executions and consequently left no money to satisfy this fifa. Returned not satisfied

John W. Mockbee & Shumell

Transcript filed
by Deft's Counsel
13th Decr. 1851.

State of Tennessee
Stewart County

Be it remembered that heretofore to wit at a circuit Court Began and held for the County and State aforesaid at the Court House in the Town of Dover on the 4th Monday in October 1842 present & presiding the Honorable Mortimer A. Martin Judge R. when the following proceedings were had to wit

Atkinson & Shumell

v. s.

Debt

Joshua R. Killebrew } This day came the parties by their attorneys and
Thompson came a jury of good and lawful men to wit, Richard Beasley
James Lewis, John Lee, John Parker, John W. Petty, James Lee, James Dunn,
David Moore, Jethro Bap, J. T. Bailey, Morgan Lee & M^{rs} M^{rs} Lee who being
duly ~~selected~~ tried and sworn the truth to speak upon the issues joined
on their oaths do say that the defendant hath not paid the debt of
one hundred and ninety five dollars and six cents the debt in the
declaration mentioned and they assess, ~~the~~ plaintiff's damages by
reason of the detention thereof to twenty dollars and fourteen cents therefore
it is considered by the Court that the plaintiff recover of the defendant
their debt as aforesaid and the damages by the jury in the form aforesaid
assessed and their cost by them about this suit in their behalf ~~expended~~ for
which Execution may issue

And afterwards to wit on the 1st day of April 1843. An alias Execution issued by the clerk of the aforesaid ~~Court~~ from the aforesaid Judgment which is in the words & figures following to wit

State of Tennessee

To the Sheriff of Stewart County greeting. You are hereby again commanded that of the goods & chattels, lands, and tenements of Joshua R. Killebrew in your County you cause to be made the sum of Two hundred and fifteen dollars and 21 cents to satisfy a debt and damages which Atkinson & Shumell lately recovered against the said Joshua R. Killebrew before the Circuit Court of Stewart County at their October term 1842. upon an action of debt also the sum of eight dollars and 87 cents which was adjudged by the Court for expenses and cost in this behalf expended, whereof the said J. R. Killebrew is convicted as appears to us of record and have those moneys before the Judge of the 7th Circuit at our next Court to be held for the County of Stewart at the Court House in the town of Dover on the 4th Monday in June next ready to ready to render unto the said Atkinson & Shumell for their judgment and costs as aforesaid, and have you then and there this writ Mitus by J. Shumell Clerk of our said Court at office in the Town of Dover the 4th Monday in February 1842 & 67 year of the Independence of the United States

By J. Shumell Clerk

on the back of said fifa the following bill of Cost is endorsed (to wit)

Judgment 30th October 1842 for	\$ 215.21
State Tax	2.25

Judgment 75¢. Filing papers 75¢ plea 50¢. Motion 37¢	
order 25¢. alias Bill cost of fifa 62½¢	3.25
Summons 75¢. bond and recording 40¢ calling Counsel 6¼	1.21¼
order execution 25¢ execution 37½¢ bill cost 25¢. Jury 12½¢	1.00
Writ July 16. Summons 100¢	1.16
	<u>9.87¼</u>

on the back of said Execution is also the following endorsement, to wit

N^o 154. Atkinson & Shumwell v^s J R Killbuck - issued 1st April 1843

Came to hand 3rd day of April 1843. No personal goods or chattles of the defendants in my County to be found whereon to levy to satisfy this execution, I therefore levy the same upon a tract of land containing 200 acres more or less bounded as follows beginning at E A Lee's South West corner thence west 58 poles to a Hickory Post oak & maple, South 150 poles to a stake, thence east 214 poles to a stake on Boy's line thence West 156 poles to the beginning said land levied on as the property of J R Killbuck to satisfy this execution - The above land was sold to N. D Elliott the 26 day of June 1843 for fifty dollars & this fifa returning not satisfied

John H. Morbley Sheriff

And also heretofore to wit on the 30th day of November 1842. November term 1842. of said Court there was another Judgment to wit

Elliott & Lee

v^s J R Killbuck } Appeal

This day came the parties by their Attornies and the defendant as on affidavit filed continues this Cause untill the next term of this Court. Thereupon it is considered by the Court that the plaintiff recover of the defendant. the Cost by them at this term of the Court for which Execution may issue

And from said Judgment an execution issued which is in the wordy figures following To wit

State of Tennessee

To the Sheriff of Stewart County, Greeting, You are hereby again Commanded that of the goods & Chattles lands & Tenements of Joshua R Killbuck in your County you cause to be made the sum of twenty eight dollars and 18 Cents to satisfy damages which Elliott & Lee lately recovered against the said J R Killbuck before the Circuit Court for Stewart County at their October term 1842 upon an action of appeal, also the sum of — dollars & — Cents which was adjudged by the Court for Expens and Cost in this behalf expended; Whence the said J R Killbuck, Committed as appears to us of Record, and have you those monies before the Judge of the 7th Circuit at our next Circuit Court to be held for the County of Stewart at the Court house in the town of Dover on the 4th Monday in June next. Ready to render unto the said Elliott & Lee.

for their Judgment and cost as aforesaid. and have you then and then this writ Mitney & J Shemwell Clerk of our said Court at office in the town of Dover the 4th Monday in Feb'y 1843 and 67 year of the independence of the United States

W. J. Shemwell Clerk

On the back of said Execution the following bill of cost is endorsed to wit, Judgment 4th November 1842 for Levist & Lee

Judgmt 75¢ Contemner 37¢ Motion 37¢ order 25¢ bill Cost 25¢
order Execution 25¢ Execution 37½¢ affs 6¼¢ Calling Counsel 6¼¢
3 probates 6¼¢ each

2. 98

Mitney J M Frason 9 days - ant city - 100¢ + 50 miles 200¢ + 2 ferriage 25¢ 11. 25

M H Ellis 7 day 22 miles + ferriage 25¢

6. 37½

M H Cherry 9 days - 75¢ + ferriage 25¢

7. 00

alias Bill Cost 25¢ Execution 37½¢

un. 62½

\$ 28. 18

On the back of said Execution is also the following endorsement to wit
N^o 183

Elliott & Lee

N^o

I R Killbuck } Issued 1st of April 1843. Come to hand the 3rd day
of April 1843. No personal Goods or Chattels of the defendants in my
County to be found whereon to levy to satisfy this execution. I therefore
levy the same upon a tract of land containing 200 acres more or
less bounded as follows. Beginning at E A Lee's South West Corner
thence West 58 poles to a hickory Post oak & maple, South 150 poles
to a stake thence east 214 poles to a stake on Boyd's line thence
West 156 poles to the beginning. Said land levied as the property
of I R Killbuck to satisfy this Execution this 6th day May 1843

The above described land was sold to W. D. Elliott for fifty dollars
it being the highest and best bidder 26 June 1843. John H. Mookba d^{shff}
Satisfied

John H. Mookba d^{shff}

Also heretofore to wit, on the 28th day of February 1843 in said Court
there was another Judgment to wit

Atkinson & Shemwell

N^o

Motion to condemn land

Joshua R Killbuck } This day came the parties by their attorneys and it
appearing to the satisfaction of the Court that the Matting of this motion
the following papers are filed to wit

\$47.99 One day after date I promise to pay Atkinson & Shemwell the
sum of forty seven dollars and ninety nine cents it being the balance
of my own and B H Frason's a/c: with them for Vaseu Reviewd

October 7th 1840

Joshua R Killbuck

Also a warrant to wit

State of Tennessee } To any lawful officer to Execute & return you
Stewart County } are hereby commanded to summon Joshua R
Killbuck to appear before me or some other Justice of the peace for
said County to answer the Complaint of Atkinson & Shemwell

in a plea of debt under two hundred, herein fail not given under my hand and seal this the 5th day of May 1842.

E W Smith J.P.

On the back of said warrant is the following endorsement

Atkinson & Shumwell } Come to hand when issued. Executing returned for
v^d Warrant } trial the 14th day of May 1842. before E W Smith
Joshua R. Killbuck } J.P.

J. R. Ellins Constable

Also a transcript of a Judgment to wit

Atkinson & Shumwell } N^o 254. May 21st 1842. \$52.59.

v^d } I gave Judgment against the defendant for the
J. R. Killbuck } above amount (\$52.59) and all cost for which
Execution may issue

Stayed by B. H. Fraser

E W Smith J.P.

J. R. Ellins returning officer Warrant

\$1.50

J. P. Judgment 254.

25

I do certify that the above is a true copy of a Judgment against J. R. Killbuck in favor of Atkinson & Shumwell

E W Smith J.P.

Also an Execution to wit

State of Tennessee } To any lawful officer to Execute and return
Stewart County } You are hereby commanded that of the goods and
Chattels, Lands and Tenements of Joshua R. Killbuck and Benjamin
H. Fraser his security to Execution if to be found in your County
you make the sum of fifty two dollars and fifty nine cents to satisfy
a Judgment that J. C. Atkinson and A. J. Shumwell obtained against
him before me on the 21st day of May 1842 and all legal costs
and pay over the same as the law directs fail not therein 28th day of
September 1842.

E W Smith J.P.

for Stewart County

On the back of said Execution is the following endorsement to wit
Atkinson & Shumwell } Came to hand the same day issued no personal
v^d } property found in my County when on I can levy
Joshua R. Killbuck } this Execution. I therefore levy this Execution on a
certain tract of land situated and lying in the County of Stewart
and State of Tennessee and on the waters of the green tree grove creek and
bounded as follows Beginning at Edwards A. Lacy's South West Corner
thence West 58 poles to a Hickory Post oak Maple South 150 poles to
a stake thence east 214 poles to a stake thence North 150 poles to a stake in
Boyd's line thence West 150 poles to the beginning containing 200 acres
More or less this 24th October 1842

J. R. Ellins Const.

It is therefore considered by the Court that the lands described in the levy
aforesaid be sold to satisfy the debt aforesaid interest and cost as well
before the justice as in this Court for which Venditioni Exponas may issue
and from the above Judgment there was issued a Venditioni Exponas to wit.

State of Tennessee To the Sheriff of
 Stewart County Greeting, Whereas herefore to wit on the 28th day
 of September 1842 an Execution was issued from the office of E. W. Smith a
 Justice of the peace for said County in favor of Atkinson & Shemwell against
 the goods & chattels, lands and tenements of Joshua R. Hillbrow & B. H. Fraser
 in consequence of a Judgment rendered May 21st 1842^{4th day} for the sum of fifty
 dollars and 59 cents and cost of suit which for the want of personal pro-
 cess was on the 24th of October 1842 by J. R. Elkins ~~for~~ Const. for said County
 levied on the undivided interest the defendant has in a tract of land lying
 and being in the County of Stewart and State of Tennessee on the north side
 of Cumberland River on the waters of green tree grove Creek better and
 bounded as follows Beginning at Edwards A. Lays South West corner thence
 with 58 poles to a Hickory Post oak & maple South 150 poles to a stake thence East 214
 poles to a stake thence North ^{150 poles} to a stake in Boys line thence West 156 poles to the
 beginning containing two hundred acres more or less 24th October 1842
 and whereas the Stewart Circuit Court at their February Term 1843 ordered ^{that}
 the Sheriff of Stewart County sell the before mentioned tract of land agreeable
 to law to satisfy said Judgment therein said Circuit Court accrued
 these are therefore to command you to sell the before mentioned tract of land
 agreeable to law to satisfy the said Judgment and cost as well before
 the Justice as in this Court accrued, and that you have the money
 arising from said sale before the Judge of our Seventh Judicial
 Circuit in the Court in the Town of Dover on the 4th Monday in
 June next ready to render unto those entitled to it Witness my hand
 Clerk of our said Court at office in the town of Dover the 4th Monday
 in Feb'y in 1843 & the 16th year of the independence of

J. J. Shemwell Clerk

On the back of said Vendition's Exponas is the following Bill of
 cost endorsed to wit Judgment 28 Feb'y 1843 for \$ 52.59

filing papers 75¢	Judgment 75¢	Motion 37 1/2¢	order 25¢	order
Vendition's 25¢	Vendition's Exponas 50¢	Calling Counsel 6 1/4	Condemning 65¢	3.83
Justice Smith fees & Judgment				37 ^{1/2}
Const Elkins warrant 50¢	levy 50¢			1.00
				\$5.20 ^{1/2}

Said Vendition's has also the following endorsement to wit
 Atkinson & Shemwell } Issued 1st May 1843. Came to hand the same
 day issued. No personal goods or chattels of
 J. R. Hillbrow & } the defendants in my County to be found
 B. H. Fraser } whom to levy to satisfy this execution I therefore
 levy the same upon a tract of land containing 200 acres more or less
 Bounded as follows. at E. A. Lays South West corner thence West 58 poles to
 a Hickory Post oak & maple South-pole to a stake thence East 214 poles to
 a stake on Boys line thence West 156 poles to the Beginning. said land
 levied on as the property of J. R. Hillbrow to satisfy this Execution this
 16th day of May 1843. The above land was sold to N. D. Elliott
 on the 26th day of June 1843 for fifty dollars & this writ returned
 not satisfied John H. Mockler d. Shff

and also hitherto to wit on the 28th day of July 1843. in said Court
there was another Judgment to wit

D. C. Atkinson

v. P.

Joshua R. Killebrew

Motion to condemn Land

This day leave the parties by their attorneys and it appearing
to the satisfaction of the Court that the matters of this motion the
following papers were filed to wit ^{a note to wit} twelve months after date I promise to pay
John Hutchinson one hundred and twenty four dollars value received
of him this 2nd day of October 1838. Joshua R. Killebrew (and)

on the back of said Note is the following endorsement to wit
For value received I assign the within note to A. J. Fraser July 6th 1839

John Hutchinson

For value Rec^d. I assign the within note to John C. Greenwood Sept 20th 1839

W. M. Greenwood

For value Rec^d. I assign the within note to Allen Grant and Guarantee
the collection of the same Sept 24th 1840. W. M. Greenwood

a Warrant to wit

State of Tennessee

Stewart County

To any lawful officer to execute and return you are
hereby commanded to summon Joshua R. Killebrew to appear before me
or some other Justice of the peace of said County to answer the
Complaint of Allen & Grant assignees of William Greenwood & A. J.
Fraser assignees of John Hutchinson for the benefit of D. C. Atkinson
in a plea of debt under two hundred dollars herein fail not given
under my hand and seal this the 5th day of May 1842

E. W. Smith J. P.

on the back of said Warrant is the following endorsement to wit

D. C. Atkinson

v. P. Warrant

J. R. Killebrew & A. J. Fraser

Esqr. Smith J. P.

Issued the 5th day of May 1842 came to hand when
issued. Executed on J. R. Killebrew and no assignee found
in my County & the time for trial 14th May 1842 before

J. R. Elkins Const

The Judgment in this Cause is as follows to wit

May 21st D. C. Atkinson } \$150.95 cts

1842 } J. R. Killebrew

B. F. Fraser Stayer

I give Judgment in this against the defendant
for the above amount and all cost of Suit for which execution may
issue

E. W. Smith J. P.

I do certify that the above is a true copy of a Judgment rendered
by me against J. R. Killebrew in favor of D. C. Atkinson, E. W. Smith J. P.
from said Judgment an Execution Issued to wit,

State of Tennessee

Stewart County

To any lawful officer to execute and return you are
hereby commanded that of the goods and chattels lands & Tenements of
Joshua R. Killebrew & B. F. Fraser Stayer to execution if to be found in
your County you make the sum of one hundred fifty Dollars and 95 cents

* Allen & Grant assignees of
Wm Greenwood & A. J.

Fraser assignees of
John Hutchinson

to satisfy a Judgment that L. C. Atkinson apine obtained before me on the 21st day of May 1842. and all cost and pay over the same as the law directs fail not this the 28th day of Sept 1842.

E. W. Smith J.P. for Stewart Co

on the back of said Execution is the following endorsement to wit
 L. C. Atkinson } Issued 28th Sept 1842 - Came to hand when issued
 v. } no personal property found in my County to levy this
 J. N. Killebrew + } Execution. I therefore levy this execution on a certain
 B. F. Fraser } tract or parcel of land situated lying and being
 in the State of Tennessee County of Stewart on the waters of Green tree
 grove creek and bounded as follows to wit Beginning at Edwards
 A Lucy's South west corner thence west 58 poles to a hickory Post
 oak + Maple South 150 poles to a Stake thence east 214 poles to a
 Stake ^{thence North 150 poles to a Stake} ~~thence North 150 poles to a Stake~~ thence west 156 poles to the beginning containing
 Two hundred acres more or less this the 24th October 1842.

J. N. Elkins Const

It is therefore considered by the Court that the lands described in
 the levy aforesaid be sold to satisfy the debt aforesaid interest
 and cost as well before the Justice as in this Court for which Execution
 may issue

From the above Judgment a Venditioni Exponas Issued to wit
 State of Tennessee

To the Sheriff of Stewart County greeting - Whereas heretofore to wit
 on the 28th day of September 1842. an Execution was issued from the
 office of E. W. Smith a Justice of the peace for said County in
 favor of L. C. Atkinson and against the goods and chattels lands
 and tenements of Joshua N. Killebrew + B. F. Fraser, in consequence
 of a Judgment rendered May 21st 1842. for the sum of one hundred
 and fifty dollars and ninety five Cents and Costs which for the want
 of Personal property was on the 24th October 1842 by J. N. Elkins a Con-
 - stable for said County levied on the undivided interest the defendant
 has in a tract of land lying and being in the County of Stewart on
 the North Side of Cumberland River on Green tree grove creek, being and
 bounded as follows to wit Beginning at Edwards a Lucy's South west
 corner thence west 58 poles to a Hickory Post oak + Maple South 150 poles
 to a Stake thence east 214 poles to a Stake thence North 150 poles to a
 Stake in Boyds line thence West 156 poles to the beginning containing Two
 Hundred acres more or less. 24 October 1842. and whereas the Stewart
 Circuit Court at their July Term 1843 ordered that the Sheriff of Stewart
 County sell the before mentioned tract of land agreeable to law to
 satisfy said Judgment therein said Circuit Court accrued. -

There are therefore to Command ^{you} to sell the before mentioned tract of land agreeable
 to law, to satisfy the said Judgment and cost as well before the Justice as
 in this Court accrued, and that you have the money arising from said
 sale before the Judge of our Seventh Judicial Circuit in the Court House
 in the town of Dover the 4th Monday in June next ready to render unto
 those entitled to receive the same. Witness My J. F. Hemmell Clerk of our said

Court at office in the Town of Dover the 4th Monday in July 1843 + 67th year of the Independence.

By J Shumwell Clerk

On the back of said order of sale is the following endorsement to wit
 L. C. Atkinson } Issued 1st May 1843. Came to hand the same day
 v. }
 J. R. Stillburn + } my personal goods or chattels of the defendants in
 B. F. Fraser } my locality to be foreclosed when on to levy to satisfy this
 execution, I therefore levy the same upon a tract of land
 containing 200 acres more or less bounding as follows Beginning
 at E. A. Lee's South West corner thence west 58 poles to a Hickory Post oak
 and Maple South 150 poles to a stake thence east 214 poles to a stake on
 Boyd's thence West 156 poles to the beginning said land levied on as
 the property of J. R. Stillburn to satisfy this execution, this the 16th day
 of May 1843.

The above land was sold to N. D. Elliott the 26th June 1843 for
 fifty dollars and this fifa returned not satisfied

John H. Mosher D. Shff

Said order of sale has also the following bill of cost endorsed on the
 back to wit

Judgment 28 th July 1843. for	\$150. 95
filing papers 75¢. Judgt 75¢. Motion 37 th of order 25¢ order	
Venditionis 25¢. Venditionis expensas 50¢. Calling Counsel 6 1/4	
Condemning 65¢.	3. 83
Justice Judgment + fifa 37 1/2	.37 1/2
Constable Elkins warrant + levy	1. 00
Register fee	.25
	<u>\$5. 45</u>

And also heretofore to wit on the 9th day of July 1843. N. D. Elliott assignee
 of the plaintiffs files his Receipts and advances his bid upon the land
 which is in the words and figures following to wit. Pursuant to an
 act of the general assembly passed the 14th day of November 1842
 I Newell & Elliott having become the purchaser of a tract of
 land belonging to Joshua R. Stillburn under ^{the} execution issued by
 the clerk of the Stewart Circuit Court on the first day of ~~April~~ 1843
 and in favor of Atkinson and Shumwell and against the said
 Stillburn for the sum of two hundred and fifteen dollars and
 twenty one cents, the other in favor of Elliott & Lee for the sum of
 twenty eight dollars and eighteen cents and cost upon both, and also
 to two Venditionis Expensas issued by the clerk of the Court aforesaid
 on the first day of May 1843. against said Joshua R. Stillburn
 one for the sum of one hundred and fifty ^{dollars} and ninety five cents and cost
 in favor of Quintus L. Atkinson the in favor of Atkinson & Shumwell
 for the sum of fifty dollars and fifty nine cents and cost under which
 Executions and Venditionis Expensas, the Deputy Sheriff of Stewart County
 sold a tract of land belonging to the said Joshua R. Stillburn as is
 described in the levy made by the Sheriff and in the face of said
 Venditionis Expensas to the said Newell & Elliott on the 26th day

37. of June 1843 for the sum of fifty dollars it being the last highest and best bid for the same, the Sheriff struck off said land to me at that sum and I being a bona fide creditor of said Stillburn to the amount of five hundred and thirty five dollars exclusive of the sum of fifty dollars bid for said land upon the day of sale do make an advance of the sum of five hundred + thirty five dollars upon my original Bid and agree by these presents to credit the said Executions Venditionis Expressas and debts ^{due} from said Stillburn with the aforesaid last mentioned sum, and shall operate as a Receipt in the hands of the clerk of Stewart Circuit Court for the said sum of five hundred and thirty five dollars — given under my hand this 9th day of July 1843.

attest

N. D. Elliott

By J. Shumwell

On the back of said advanced Bid is the following endorsement to wit
Filed in the office of the Circuit Clerk of Stewart County 9th day July 1843

Teste By J. Shumwell Clerk

State of Tennessee } I S. W. Kelly Clerk of Stewart Circuit Court do hereby
Stewart County } Certify that the foregoing Transcript is a copy of the
original Records on file in my office this given under my hand at
office in the Town of Dover this the 10th day of September 1851

S. W. Kelly, Clerk

37

Exhibit A ref. For value Received we assign the following Judgments to N. D. Elliott viz
to in debt Answer one vs Joshua R. Stillburn obtained at the October term of Stewart
Circuit Court for two hundred and fifteen dollars + 21 cents \$215. 21
one other on Joshua R. Stillburn + B. F. Fraser for
fifty two dollars + 59 cents obtained before E. W. Smith 52. 59
a Justice of the peace for Stewart County on 21st May 1842.
This 30th day of June 1843

Atkinson + Shumwell

For value Received I assign a Judgment I obtained vs Joshua
R. Stillburn + B. F. Fraser on 21st May 1842 before E. W. Smith for
one hundred and fifty dollars + 95 cents to N. D. Elliott this 30th
day of June 1843

J. C. Atkinson

Deposition of

A. J. Shumwell

Witness for deft

Taken 1st April 1852.

Question by defendant

In your answer to Complainants Bill you say
at the day of the sale or at farthest within 3 or 4 days after it
you was spoken to and you sold the judgments and again you
say the within transfer was not drawn up on the day of the sale
but some days after? State how this apparent discrepancy occurred

Answer

I Cannot say, I stated to Mr Boyd who drew ~~my~~ answer how it
was I may not have been precise, I was required by Mr. Boyd to
state the precise time of the sale that I recollect.

Question 2nd State if you signed the paper here Marked A Transferring the judgment

of Atkinson and Shemwell to N D Elliott dated 30th June 1843

Answer

I did execute it for Atkinson and Shemwell and for 2nd Atkinson transferring the judgments.

Question 3rd

If you sold the Judgment to Elliott state when the sale took place and for what consideration

Answer

I sold the Judgments transferring in the paper marked A to Elliott on the day of the sale of the land before the sale took place in consideration that he Elliott would pay their respective amounts at the end of two years from the sale, this sale was spoken of before by Elliott to me I told him that he had the power to take them to himself if he chose, and nothing more was said as I recollect until the day of the sale of the land when N. D. Elliott called on me at Dover a short time before the sale of the land and said to me that he wished to become the absolute owner of the claims and that I had power to sell them and had rather purchase them; when it was agreed that he should have the judgments by paying their respective amounts with interest at two years from that date; this sale was absolute and uncontested. Elliott has long since paid the same according to contract, I was of the opinion and so believed the judgments of 2nd Atkinson had been sold by him with some other claims to N. D. Elliott but Elliott said he had the right to take it to himself and account for it but he desired to become the owner of it and I sold it with the others to him as above stated

Question 4th

State why the judgments were not transferred by writing on the day of the sale of them

Answer

I recollect of no particular reason only the intimacy that existed between us and the confidence existing between us for many years before and afterwards its probable the written transfer was given by the advice of George Bayly. Mr Elliott mentioned it to me saying it perhaps would be best to take a written transfer when I executed the paper marked A. and further this deponent saith not

A. J. Shemwell

Deposition of

M^r. Bogard

Att^y for Complt

Question 1st By Complainant

Are you acquainted with the parties to the above named suit

Answer

I am

Question 2nd

Do you recollect a conversation that took place at your house the evening after taking the depositions of John Fraser and others between defendant and B. H. Fraser and others relative to Complainant having tendered to defendant the redemption

39. money to redeem complainant's land, if so state what defendant said on that occasion?

Answer.

I recollect there was a conversation at the dinner table in my house on the evening after taking the deposition of John Fraser and others A D Elliott stated that he did not know why it was that he did not take the money when complainant offered it to him and defend further stated that he would not refuse redemption money again for he did not believe that he could ever reach complainant's money again. Defendant further stated he had been unfortunate in refusing to take redemption money for land, had two similar suits and had lost them both, and believed he would lose this suit. and further Defendant depose it not. M. J. Bogard

Cross Examined Question by defendant

State whether or not it was the purchase money that he said refused

Answer

The Redemption money was the money spoken of

Question 2 Please state if he named the amount of money that he offered him and if so how much

Answer

The amount was not mentioned as I heard

Question 3rd Please state if the money you speak of defendant refusing had reference to this suit now pending between the parties or some other suit they have hitherto had

Answer.

It was my understanding that it had reference to this suit now pending between the parties

Question 4th State when you heard A. D. Elliott make use of this conversation at your house when John Fraser's deposition was taken in this case if he did not say John Fraser was not very near right in his deposition and he did not care if they did prove the tender of the fifty dollars and interest his first bid for he did not rely upon that to hold the land particular but it was his advance Bid which had never been tendered

Answer.

I do not recollect any such conversation only when John Fraser's deposition was taken A. D. Elliott refused to cross examine him

Deposition of
B. F. Fraser
Witness for Complainant
Answer

Question 1st by Complainant

Are you acquainted with the parties to the above named Suit

I am

Question 2nd Do you recollect any thing of a Conversation that took place at W. J. Bogard's House the evening after taking the deposition of John Fraser and others between defendant and yourself and others relative to Complainant having tendered to defendant the redemption money to redeem Complainant's land, if so please state to the best of your recollection what defendant said in that Conversation

Answer: I recollect that there was a conversation at Esq. W. J. Bogard's at said time at the dinner table in which A. D. Elliott acknowledged that the Complainant had tendered to him the redemption money and that he regretted very much that he did not receive it. He further more observed that he had been very unfortunate in refusing to receive redemption money that he had had two other such suits before and had lost them and was fearful that he should lose this also and that he would venture that he would never refuse money that was tendered to him again in any case whatever, furthermore this deponent saith not

B. F. Fraser

Cross Examined Question by defendant

Do you recollect the conversation that took place between yourself and A. D. Elliott at W. J. Bogard's at the dinner table the evening after John Fraser's deposition if A. D. Elliott did say John Fraser was very near right, and he did not care if he did prove the tender of the fifty dollars and interest his first bid for he did not rely upon that particular, but it was his advance Bid which had never been tendered to him

Answer: I do not recollect any such conversation between myself and A. D. Elliott on 1st evening, though said Elliott may have mentioned said particulars in said conversation but if he did I have no recollection of it whatever

Question 3rd You will please state whether or not you are interested in the event of this suit direct or indirectly

Answer: I am not

Question 3rd ^{State} In the conversation you refer to of A. D. Elliott of the tender of the

money if it was the purchase money he said he refused in place of tender of the redemption money if he did not say that had not been tendered him

Answer: I do not recollect that there was any thing said about the purchase money. My recollection is that it was the redemption money

Question 4th Please state if A D Elliott named any amount of money that had been tendered him

Answer: He did not name any amount of money that I recollect.

B. F. Fraser

Deer
27th April 1852

Killbuck } on the application of Complainant, this cause is
v. } remanded to the rules and leave given Compt to take
Elliott } the deposition of Aaron Goodrich within 4 months at
his own cost and the defendant shall have leave to take rebutting
proof

Deposition of Question 1st by A D Elliott

Geo. J. Shoemaker Were you present at Dover in June 1843. When the Complainant (Joshua
Witnup for defendant Killbuck) land was sold by the Sheriff by virtue of some Executions
filed 20 Sept 1852 in favor of A D Elliott

Answer Yes I was present

Question 2 Did you or not hear A D Elliott the defendant say why he did not bid more than fifty dollars for the land

Answer I did

Question 3rd What reason did he give at that time for not bidding over \$50.

Answer: I heard him Elliott say he had twenty days to raise his bid in

Question 4th Did or not this conversation take place immediately after the land was knocked off to him

Answer

I think it was a very few minutes after

Question 5. Was Benj^m F. Fraser present at that time

Answer I won't be positive but think he was present
and further this deponent says the not

G. J. Shoemaker

42
Decree
Oct. 22. 1852

J. R. Killbuck

v.

A. D. Elliott & others

Be it remembered that this cause came on to be heard and was heard before the Honorable John S. Brien Chancellor on the pleadings and Exhibits and proof in the cause when it appeared to the satisfaction of the court that the defendant A. D. Elliott bid off the tract of land in the pleadings mentioned on the 26th day of June 1843 for the sum of fifty dollars and that the Complt. J. R. Killbuck had tendered to said Elliott the full amount of the said \$50. interest and the cost thereon within two years from the said purchase at execution sale and had fully complied with the provisions of the act of Assembly authorizing him to redeem said land, and the court being further of opinion that the said A. D. Elliott was not the owner of the executions of Atkinson and Shemwell and L. C. Atkinson ^{the same} set out in the bill, at the time of his said purchase of the land on the 26th day of June 1843 and was ^{not} therefore to require of the Complt. the payment of his advanced Bid as a condition precedent to his right to redeem the land, - The court doth therefore order adjudge and decree that the Complt. J. R. Killbuck is entitled to redeem said tract of land from said A. D. Elliott and doth hereby divest all the right title and interest of said Elliott acquired by said purchase in and to said tract of land and doth hereby vest the same in the said Killbuck his heirs and assigns, and the court doth hereby make perpetual the injunction heretofore granted in this cause, restraining the said Elliott from prosecuting his action of ejectment for the said tract of land in the Circuit Court for Stewart County. - And the court doth further decree that said Elliott pay the cost of this cause and the cost of said suit at law for which let an Execution issue. It is further ordered the Complt. pay into the office of the Clerk &c. \$54. by or before the 2nd rule day after the rise of this court, the same being the amount bid by A. D. Elliott & interest thereon to the day the same was tendered

Appeal Bond Know all men by these presents that we N D Elliott
of the County of Montgomery and State of Tennessee. are held and
firmly bound unto Joshua R Killebrew in the sum of five hundred
Dollars current money of said State, to be paid unto the said
Joshua R Killebrew his Executors administrators &c. jointly and severally
firmly by these presents sealed with our seals, and dated the 21. day of
October 1852 -

The condition of the above obligation is such, that whereas
in a cause on an injunction Bill prosecuted in the Chancery Court
at Clarksville, by Joshua R Killebrew Complainant, against N D Elliott
et als defendants, a decree was this day rendering by said Court
against N D Elliott et als, allowing said Killebrew to redeem the
Redeem the land in the pleadings mentioned, and making perpetual
the injunction, restraining the Elliott from prosecuting his action
of ejectment in the Bill mentioned. from which decree the said
N D Elliott & others prayed an appeal to the next Supreme Court
to be held at Nashville. Now if the said N D Elliott & others
shall prosecute said appeal with effect, or in case of failure
therein, shall pay and satisfy all damages and costs which may
be awarded against them, for wrongfully prosecuting said appeal
and shall further abide by, perform and discharge the sentence,
Judgment or decree, which said Court may make therein, then
the above obligation to be void; else to be and remain in full
force and Effect, Signed, Sealed, and delivered this day and
date above written

N D Elliott Seal
H. S. Kimble Seal

Bill of Cost {		Killebrew {	Decred at October Term 1852	
		us {	Cost paid by N D Elliott to April Term 1851	
		Elliott {	Remanding cause to rules 12 1/2 10 order 25 1/2 1 off 18 1/2	
			4 Deds 3 1/2 1.50, 1 Cow 25 1/2, Setting Cause by Compts Counsel 12 1/2	
P. Priestley		Setting by Defndts Counsel	12 1/2 10 order 25 1/2	Decred 25 1/2 = \$ 3.00
W. Brandon Court			1 Notice	50 1/2
E. J. Bogard "			1 Spa	25 1/2
W. J. Bogard J. P.			1 Depo	1.00
Bury H. Frazier Witness			1 Day	75 1/2
W. J. Bogard			1 Depo	1.00
B. F. Frazier Witness			1 Day	75 1/2
E. J. Bogard Court			1 Spa	25 1/2
N. G. Morris J. P.			1 Dep 1.00 1 Spa 10	1.10
G. Brandon Court			1 Spa 25 1 Notice 50	75 1/2
G. J. Shoemaker Witness			1 Day	75 1/2

Wm. H. Orrell	J. P.	1 Depo	1.00	3	1.00
W. J. Bogard	Witness	1 Day	.75	3	2.00
E. J. Bogard	Levant	1 Spd	25	3	
N. G. Morris	J. P.	1 Depo	1.00		1.00

2 Transcripts from the Circuit Court Stewart City 6.30 P. by Elliott 6.30

Munford & M 2 Sids 75¢ 3 orders 75¢ Entering decree 40¢ —

— Appad Bonds 50¢ Transcript \$20.00, Bill of Cost 25¢ 22.65

Certificate and seal of office 75¢ 42.10

75

\$42.85

State of Tennessee }
 Montgomery County } I Thomas J. Munford Clerk and
 Master of the Chancery Court at
 Clarksville, do hereby Certify that the foregoing is a full
 and true transcript of the record and proceedings had
 in the case of Joshua R. Killebrew vs. Newell D. Elliott
 as in the said Court as appears of record and on
 file in my Office

In testimony Whereof I have hereunto set my
 hand and affixed the seal of said Court
 at Office in Clarksville the 8th day of
 January 1853 and the 77th year of the Independence
 of the United States

Thos. J. Munford Clerk

J. R. Killebrew

on

N. D. Elliott et al

Transcript of Record from
Chancery Court Clarksville

October term 1852

filed 5th Feby 1853

7th Circuit

Revised, and
Bill dismissed -
also divided

No. 0

Joshua R. Tillbourn

N. D. Elliott, A. J. Shumwell & others

Joshua R. Tillbourn files

this Bill in the Chancery

Court at Clarksville against Samuel D. Elliott, A. J., Shumwell and D. C. Atkinson; praying the Court to enjoin the Deft N. D. Elliott from prosecuting an action of Ejectment for a tract of land in the County of Stewart, and also to allow him, Compt, to redeem the land,

The bill charges that on the 26th day of June 1843, the tract of 200 acres of land the property of Tillbourn was sold by the Sheriff of Stewart County, in virtue of several executions in his hands against the complainant Tillbourn. One of which executions for the sum of \$28, was in the name of Elliott & Co; of which firm the Deft N. D. Elliott was a partner,

The other Executions were in the names of Lebe, Atkinson and Atkinson and Shumwell. The land was bid off at the Sheriff's Sale by Defendant N. D. Elliott for the sum of \$50; and afterwards on the 22d day of February 1845, the Compt Joshua R. Tillbourn tendered to N. D. Elliott the full amount of his said bid interest and cost, and offered to Redeem the land. Elliott refused to let him redeem, alleging that he had advanced his bid to the sum of \$535, and demanded the payment of that sum by Tillbourn, in addition to the \$50, as a condition to be performed before he had a right to redeem,

This Cause was before this Court at its last term, when all the questions involved in the Cause were settled except one question of fact, ^{Dec. 11, Term, by 442,} viz, Whether or not the Deft N. D. Elliott was the owner of the judgments of Lebe, Atkinson, & Atkinson & Shumwell; the same under which the

land was sold, and being the amount of the advanced bid, at the time of the sale under the Executions, on the 26th day of June 1843, Was he or Not a Bona fide Creditor? See Record page 23, for the opinion of the Supreme court, See 11 Humphreys page 442,

The Answer of A. D. Elliott admits the tender of the purchase money, and is proven by Bogard See Record pages 20 & 21,

The Court will observe that it is incumbent on the Deft A. D. Elliott to show affirmatively to the satisfaction of the Court, that he was the owner in good faith of the judgments at the time he bid off the land; The affirmative of the issue is to be made out satisfactorily by him, before he can insist on the payment of his advanced bid;

Let us see how the facts are as they are developed by the Record,

The Complaint in his bill alleges that A. D. Elliott was not the owner of the said ^{Judgments} at the time of the Execution Sale, and calls on him to state in his answer, whether or not he had purchased them, and if so to state "at what time said transfer was made, See Record page 3 at bottom,

A. D. Elliott in his answer Rec, p 15, says, that "at the time of the sale of the land, he was acting as the agent of Atkinson and of Atkinson & themself, and they had given him full power to sell transfer or assign said judgments." He further says, "When the sale took place he applied to themself and told him that he would take the judgments and pay him at the end of two years and from that day he considered himself the owner of the judgments," "that the judgments were not transferred to him on the record, but were transferred on a separate piece of paper, which is exhibited as part

of his answer and marked Exhibit (A) ¹¹ This Exhibit (A) is dated June 30th 1843, See Record page 37, mid way of page, From which it appears that the transaction took place 4 days after the Execution Sale, This answer excepted to by Court as indefinite and evasive, and the objection sustained, and the Deft required to answer over as to these points; but the amended answer was equally indefinite and evasive. See Record p

A. J. Shemwell the Co-defendant and the partner of the firm of Atkinson & Shemwell, in his answer (Record page 17) says that A. D. Elliott was the agent of Atkinson and of Atkinson and Shemwell, at the time when the said judgments were rendered and when the land was sold for the payment thereof, and as such agent had authority to assign or sell them or might have taken them to his own account. He further says that "At the day of sale or at furthest within 3 or 4 days after it, this Defendant (Shemwell) was spoken to upon the subject by Elliott and he sold to him the judgments &c" "He made no transfer on the Record, but he gave a written transfer on a separate piece of paper which is in the possession of Elliott and is exhibited in his answer being exhibit (A)"

This Exhibit bears date June 30th 1843, and the Deft A. J. Shemwell in this answer above quoted, evidently means to say that the date of the written transfer was the day of the purchase of the judgments by Elliott. This answer of Shemwell was sworn to Sept 1st 1845, Record page 18. Shortly after this when all the facts were fresh in his recollection, the deposition of ^{this same} A. J. Shemwell was taken See Record page 21 at bottom, he says, "at that time (he Elliott) had full power to dispose of the notes accounts & judgments of Atkinson and Shemwell as he thought proper;" Evidently referring to the time of the sale. In this

page 4

deposition he does not pretend to say that A.D. Elliott was the owner of the judgments at the time of the execution sale,

Witness B. F. Frazer proves in his deposition Record page 26 that he was present when Elliott bid off the land at \$50; Witness stepped up, and asked him why he did not bid more for the land to which Elliott ^{said} that that sum was the amount of his claim and that was all he cared for.

To rebut all this, viz the statement of Elliott himself in his answer; — the date of the transfer as appears by the exhibit (A); — the answer of A. J. Shemwell drawn up by an experienced and able Lawyer Mr Geo. C. Boyd, the joint deposition of Shemwell, the declaration of Elliott to B. F. Frazer at the time he bid off the land; the deposition of this same A. J. Shemwell is retaken since this cause was in this court, in the summer of 1851, more than 8 years after the occurrence, in which he states that the sale of the judgments was made to Elliott before the execution sale of the land; and that the written transfer made by himself bearing date after the execution 4 days, is incorrect and is not the date of the transaction, see Record page 37 & 38. The transfer in the name of D. L. Allen — seen in exhibit (A) appears in this Record to be June 30th 1842, this ~~was~~ is probably a clerical error and was intended for 1843. See the deposition of Boyd pages 38 & 39.

The deposition of Shemwell was rejected by the Chancellor is illegal being the declarations of Elliott himself.

The Chancellor was of opinion that the Compt was intitled to the relief sought in bill and so decreed, in which we think there is no error.

J. N. Robt

Joshua R. Kelleher
vs
A. D. Elliott & others

Bond of N. Roth

Joshua R. Killebrew

vs

Newell D. Elliott et al.

This case was commenced
in March 1843 by the compt
J. R. Killebrew, filing his bill

in the Chancery Court at Clarksville agt. the Deft. N. D. Elliott & others, to enjoin the s. N. D. Elliott from prosecuting an action of Ejectment, which he had commenced, agt. the s. J. R. Killebrew, in the Circuit Court at Dover, to eject him the s. Killebrew off of a tract of land of 200 acres, which the Deft. Elliott had purchased, as the property of Killebrew, at Sheriff's sale, on the 26th day of June 1843, by virtue of sundry executions in the hands of the Shff of Stewart County, against said Killebrew, which had been levied on said land.

One execution was in favor of Elliott & Lee, a mercantile firm of which the Deft. N. D. Elliott was a partner, This execution was for the sum of 28 dollars & 18 cents, besides cost of suit. Two executions in favor of Atkinson & Shamwell, one for about \$215. & some cents, the other for \$52. & some cents, & one other execution in favor of D. C. Atkinson for \$150.

These were the executions that were levied on the land, & in virtue of which the land was sold, when it was purchased by Deft. Elliott at the sum of \$50, & the money applied to the satisfaction of the execution in favor of Elliott & Lee, this execution was returned "Satisfied" ^{see Rec. p. 31} & all the others were returned by the Shff, endorsed "not satisfied" ^{see Rec. pp. 29 & 30}. On the 30th June 1843, four days after the sale of s. land, the unsatisfied judgments were transferred to the Deft, ^{see Rec. p. 34} whereupon he (Deft.) says he advanced his bid, on the 9th day of July 1843, to the sum of \$535. in addition to the \$50. first bid, & required of the

complt, the payment of said sum of \$535. with interest, besides the \$50 & interest, before he, Deft, would permit ~~complt~~, to redeem his land. On the 22nd day of Feb. 1845 complt tendered to Deft, the \$50 with interest, & proposed thereby to redeem his land, which Deft. refused, see rec, p. 2nd. The history of the facts of this case, as here stated, is not controverted, either by Complainant or Deft, except as to the time of the transfer of those unsatisfied judgments, to Deft, & here lies the issue, & the only issue between the parties in this case a simple single issue of fact, not involving any question or point of law, but the isolated question whether or not Deft. was the bona fide owner of those unsatisfied judgments, at the time of the sale of complt's land. Now let us see if we can ascertain, from the evidence adduced in this cause, the precise time when the Deft. did become the owner of these unsatisfied judgments. The Deft himself is called upon to answer upon oath, as to the time & place of the transfer of these judgments, & what does he say on that subject. (see rec, p 15 lower half) & p. 16 upper half) as to the time — see rec p 19, at bottom as to place.

A. J. Shammell one of the co-defendants, in his answer in reference to ^{time of} transfer says, (see rec, p. 17, middle.) As to place (see rec, p 20, top,) great uncertainty

Shammell, Dep. See rec, p. 21, taken Apr. 11th 1850, as to Deft's authority to transfer &c.

Upon this proof in reference to the transfer of these judgments, this case was tried at the Nov. term 1850 ~~at the Court of the chancery Court at Clarksville~~ & a decree rendered agst the Complt, dismissing his Bill & dissolving the injunction, from which decree Complt, appealed to this ^{Hon} Court, whereupon at the Dec. term 1850

this Court reversed the Decree of the Chancellor & remanded the suit for further proceedings in the Chancery Court, upon these grounds, (see Rec. p. 24, lower part, opinion)

Whereupon the Deft, set out with all the diligence, energy & untiring industry, for which he is so justly famed, as an experienced, practical litigant, aided too, by the advice of counsel, learned in the mysteries of legal practice to get additional evidence, to prove to the satisfaction of the Chancery Court, that he was the bona fide owner of those judgments, before he became the purchaser of Compts. land, at Shffs. sale, Now let us see how far he has succeeded in his attempt to obviate the uncertain character of the evidence, in regard to the time of the transfer of those judgments, And who, let me ask, does he call upon to help him out of this dilemma, why sir, he appeals again to his old, faithful well-tried friend & co defendant, A. J. Shumwell, who has answered & testified in this cause, time & again, from its commencement, through all its changes & phases, up to the present time, Now let us examine the evidence in his last Dep. compare it with some of his former depositions & answers, In his Dep. of Apr. 1852 he says, (see Rec. p. 37, 38.) Exhibit A, written transfer (see Rec. p. 37) (see Ans. Rec. p. 20 ^{top}) In 1845 when the transaction was fresh or he could not recollect whether the transfer took place at Dover or Tobacco Point, but in 1852, 7 or 8 long years after the thing occurred, he recollects distinctly that it occurred at Dover, (~~The date of the transfer on the deponent's file of 1845~~) We will now call your attention to the Dep. of D. H. Frozer Esq, in reference to the amt. of Defts. claim agst. Compt. at the time of the sale of Compts. land, (see Rec. p. 25 & 26, (McClure's order to Fraser, Rec. p. 26))

There is also, as we conceive, a fatal defect in the assignments of these judgments, by which no title or interest in them could possibly pass or cure to the Deft. here. In the assignment of the two first judgments they are not sufficiently identified, in this, that there is no persons name set out in the assignment, the style of the suit is not set out, it merely says, a judgment vs. Joshua R. Willibrew. neither does it specify the term of the Court, it merely says at the October term, but does not say what year.

year,
The transfer of the indgt. of L. C. Atkinson, was made by Dyer
Shammwell as agent of Atkinson, (see p. 17, middle of lower half)
whereas the signature purports to be that of L. C. Atkinson himself,
done in his own proper person, & not by his agent, now we think the
character of the agent, should appear on the face of the written
transfer,

transfers,
But waiving these objections, & admitting, for the sake of
argument the transfers to have been legally & properly made, a
point of ^{law} arises right there, & one which we conceive to be well established
& settled, which characterizes this written instrument as the best ev-
-idence of the contract between the parties in regard to these judgments,
& being so, it must be produced (Tatum vs. Jameson & Johnson,
2 Hum., 298, 299,) & having been produced, all oral testi-
-mony of a previous colloquium between the parties, must be
rejected, 1 Greenleaf on Ev, Sec. 275, = It is a well settled rule of law
that parol contemporaneous evidence is inadmissible to contradict
or vary the terms of a valid written instrument, 1 Greenleaf on ev, S. 275,
Chitty on Con, 22, We therefore think the Decree of the
Chancellor was right & proper, & there is no error in it.
Davis for

Davis for
C. confilicant
7.11

Mez. Sigat 486-487

X

16x Shannwell in his answer says "at the day of sale, or at farthest within three or four days after it, this defendant was spoken to on the subject by said Elliott, and he sold, to him said judgments - for the amt and interest called for by them, to be paid for at the end of the two years from the sale - this was a bona fide fair sale, and no collusion about it; this defendant had full authority to sell and dispose of the judgments in favor of D. C. Atkinson and that judgment was also transferred in the same contract. This defendant admits he made no assignment of these judgments either upon the record of the court, or upon the execution, but he gave a written transfer upon a separate piece of paper which he supposes is in possession of his codefendant Elliott, and he ^{answers} refuses to ~~lose~~ it for the present time. This defendant considered the judgments to be the property of the said Elliott from the time of the contract. The written transfer was not drawn up on the day the contract was made, but some days afterwards."

The written transfer will be found on page 37 of the record and bears date the 30 day of June 1843 - the 4th day after the sale. And D. C. Atkinson in his answer admits that Shannwell had authority to sell the judgments see page 18. The case was brought on to a hearing, as the foregoing facts present it, (excepting some immaterial details,) before Chancellor Cabal in October 1851 when the bill was dismissed. The Chancellor not regarding the time at which Elliott became the owner of the judgments as material. The question does not appear

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to have been made, it is not noticed in the decree. Certainly
is not noticed in the pleadings, or made there. It seems not
to have occurred to Mr Boyd who prepared the answer of
Elliott and Shamwell that the act of 1842 contemplated an
ownership of the judgments before the sale of the land, as
this Court decided in this case at its last term. Hence, we
may suppose, the loose and general mode of expression used in
Elliott's answer "when the sale took place he applied to, ~~Shamwell~~
Shamwell to take the judgments &c" This was agreed to and
from that day he considered himself the owner &c
Also in Shamwell's answer, "at the day of the sale, or at
farthest in three or four days after it, he was spoken to on
the subject, and he sold the judgments to Elliott," all made
of speaking still more indiffinit in relation to the question
whether before the sale. He however adds that "The written
~~transfer~~ ^{not} ~~contract~~ was drawn up on the day the contract was
made but some days afterwards" Now whilst the exact
point of time is still left indiffinite, yet it is ^{not} rendered
quite clear that the contract was made on the day of the
sale. Elliott says "when the sale took place" Shamwell says
"at the day of the sale" and again "the written transfer was
some days after the contract"

And this seems to have been the view
taken by this Court of the case last term when they
reversed Chancellor Cahoy's decree and remanded it.

Since which in order to show how the matter was, as
to what moment of time of the day of the sale of
the land we have taken the deposition of Shamwell

who proves expressly that he sold the judgments before
the sale took place, see his depo 37.

Deeren of Supr? Cont pag 21.

N. D. Elliott

"

J. H. McElreath

Wm

Stonich

J. R. Kellibrew

vs

A. D. Ellcott

MMMM

Be it remembered that on this day this cause came on to be heard before the Honorable R. J. McKinnis ^W A. D. Totten and R. L. Caruthers Judges of the Supreme Court presiding, up the transcript of the record and proceedings of the Honorable the Court of Chancery at Clarksville, and it appearing to the Court that the tract of land ^{sold} in the pleadings mentioned on the 26 June 1843 was purchased by the defendant A. D. Ellcott, at and for the sum of fifty dollars, and it appearing also to the Court that the said Ellcott had before the sale of the land purchased, and become the owner of the several judgments, of Atkinson & Shumwell, of D. C. Atkinson and an other judgment of Atkinson & Shumwell in the pleadings mentioned, against the Complainant, in the pleadings mentioned, and having so become the owner, on the ^{advanced} next day of July 1843, the defendant Ellcott ^{advanced} increased his bid the amount of said judgments upon the land so sold, and the Court being of opinion that the tender of Complainant Kellibrew of fifty dollars, the amount of the bid aforesaid with interest thereon up to the time of the tender did not entitle him to redeem the land, but that he was bound to tender the amount of the advanced bid also with interest, and so he is not entitled to the

relief prayed. It is therefore ordered adjudged and decreed
by the Court that the injunction in the cause be dissolved;
~~thereon~~ ~~for the~~ Chancellor below be reversed; that the injunction
in the cause be dissolved, ~~and that~~ complainant, ^{and that defendant be allowed to proceed with his action of ejectment} be
dismissed. It is also decreed by the Court that complainant
and his security Isaac Garrill pay one half of the
costs of the cause and that N. D. Elliott pay the
other half of the costs and that execution issue for
the same

N. D. Elliott

vs

J. R. McAllister

Decree

In cause