June Term 1844

Upon which petition the Chancellor ordered as follows.-

In Chancery 11th Jany. 1828.-

On the above application it is ordered that the complainant pay to the defendants forthwith their costs as above taxed.- Theodorick Bland, Ch^r.

Costs of fifa filg. pet^n. 5
order 5 ikef. writ 50 taxing cost and copy 25 } 85
Tax .50
1.35

And afterwards on the 25th day of March 1835 the said defendants by Thomas S. Alexander, Esquire their solicitor filed in the said cause a further petition in the words following.

Caleb Clarke
vs.
Frances Bealmear and
Richard W. Isaac.

In Chancery - To the Honorable Theodorick Bland Chancellor of Maryland.- The petition of Richard W. Isaac the surviving defendant humbly shews that the bill filed in this cause having been dismissed under a rule of this Court with costs to the defendants they procured the said costs to be taxed by the Register to amount of $15.42, and on the 11th January 1828, an order was passed directing the complainant to pay said costs to the defendants, that the complainant has wholly refused to comply with said order, that the said Belmear has lately departed this life and your petitioner prays that he may have a fieri facias against the complainant to compel payment of said costs - And as &c. Thos. S. Alexander for Deft.

Upon which petition the Chancellor ordered as follows:

In Chancery 25th March 1835 - Ordered that a fieri facias issue as prayed by the foregoing petition - Theodorick Bland, Ch^r.

And thereupon the States writ of fieri facias was issued accordingly

Maryland Sct. I hereby certify that the foregoing is a true copy from the original proceedings in the said cause now remaining of record in the office of the Court of Chancery of Maryland - In Testimony whereof I hereunto set my hand and affix the great seal of the said State this ninth day of October in the year of our Lord 1838.- (Seal)

Ramsay Waters, Reg^r. Cur. Can."

But the Court upon the objection of the defendants counsel refused to permit the answers in the said record to be read to the Jury, and were of opinion that the dismissal of the Bill in the Record contained in the manner in which the same was dismissed did not prevent the complainant there, who is the defendant here from contesting the validity of said sale - To which refusal to suffer the said record to be read to the Jury for the purpose aforesaid, and to the opinion of the Court so given - the plaintiff by his counsel asked leave to except and that the Court would sign and seal this his bill of exception which is accordingly done this 18th of October 1839.-

John Stephen (Seal)
C. Dorsey (Seal)

Isaac and wife Lessee
vs
Caleb Clarke.

Plaintiff's 4th. Exception - After the evidence contained in the preceding bills of exceptions and which by agreement is made a part of this exception the plaintiff further to maintain the issue joined upon his part proved to the Jury that the mortgage from W. S. Clarke to the defendant and John Perkins of the 14th of August 1820 was given without consideration and then proved that after the affirmance of the Judgment of the Court of Appeals at June Term 1829, the transcript of the record of which is set forth in the plaintiff's second exception, a writ of Habere facias possessionem issued returnable to the December Term 1829 of that Court which was returned not executed - That another similar writ issued to June Term 1830 of the said Court, which was also returned "unexecuted" and then after laying the proper foundation for that purpose and for the purpose of proving that said Walter S. Clarke had after the affirmance of said judgment by the Court of Appeals became the tenant of the said Belmear offered to prove by a competent witness that sometime in the year 1830 the said Belmear called upon the witness, and shewed him a paper signed by the said W. S. Clarke, and dated as he thinks in 1830 on which the said Clarke acknowledged himself to be in possession of said land, as the tenant of said Belmear and agreed to pay him a rent for the use of said land - And thereupon the plaintiff prayed the Court to instruct the Jury that if they find from the evidence that the deed of mortgage from W. S. Clarke to the defendant and John Perkins of June 1820 was given without consideration, that it passed no title to the mortgagees and the title to the property therein mentioned notwithstanding such mortgage remained in the mortgagor W. S. Clarke of which opinion the Court was - And the plaintiff prayed the Court to instruct the Jury, if they further find, that after the sale by the Sheriff to Frances Belmear and the payment of the purchase money by him, if they find such payment and sale were in fact made, the said W. S. Clarke acknowledged himself in writing to be the tenant of the said Belmear and agreed to pay him rent for the said land, then neither the said Clarke nor any one claiming under him by title subsequent to the sale to said Belmear can dispute his title to said land - But the Court was of opinion and so instructed the Jury that if the Jury shall find from the evidence, the said Clarke was in possession of the said land at the time when the said contract and agreement was alleged to have been entered into, and that he did not originally enter thereon as tenant to the said Belmear that then such agreement does not prevent the defendant from contesting the title of the lessor of the plaintiff - To which refusal of the Court to give the instruction as prayed by the plaintiff, and to the instruction as given by the Court the plaintiff by his counsel prayed leave to except and that the Court would sign and seal this his bill of exception which is accordingly done this 18th day of October 1839 - John Stephen (Seal)
C. Dorsey (Seal)

Isaac and wife Lessee
vs
Caleb Clarke.

Plff's 5th. Exception - After the evidence in the preceding exceptions which by agreement are made a part of this exception and when the plaintiff was about reading to the Jury the following deed from Joshua T. Clarke to said Walter S. Clarke of the 17th of September 1813 which is as follows:-

"This Indenture, made this seventeenth day of September in the year of our Lord one thousand eight hundred and thirteen between Joshua T. Clarke of Prince George's County and State of Maryland of the one part and Walter S. Clarke of the County and State aforesaid of the other part, Witnesseth that the said Joshua T. Clarke for and in consideration of the sum of twenty two hundred dollars current money of the United States to him in hand paid by the said Walter S. Clarke before the sealing and delivery of these presents, the receipt whereof he the said Joshua T.

June Term 1844.