

Supreme Court  
Miriam E. Watson &  
Augustus Watson & their  
Guardian B. Gates vs

vs

Neil Brown

vs

Rec<sup>d</sup> of W. B. Allen Esq  
one hundred forty three <sup>56/100</sup> in full of judgment in  
above entitled action in favor of Deft & against Pls  
Date Sept 27, 1862

W. B. Allen  
Sept City

B. Gates Esq

Dear Sir

I handed Mr Haddock the check you  
sent me for the Costs in the Watson Case as you will  
see by the above receipt I also took a satisfaction piece  
which he acknowledged I will file that in the Clerk's  
office and have the Judgment satisfied of Record

Yours &c

W. B. Allen

(Satisfaction piece filed Sept 27<sup>th</sup> 1862  
for 1/2)

At day of 10th of April 1864  
Benjamin Gates  
of Buffalo, N.Y.  
vs  
Meriam E. Watson  
Guardian  
of  
Augustus Watson  
Plaintiff  
vs  
Benjamin Gates  
Defendant

Supreme Court  
Meriam E. Watson  
& Augustus Watson by  
their Guardian  
vs  
Benjamin Gates



Whereas an action was brought of which the above  
is the title to obtain possession of a House & lot  
in Buffalo & said action resulted in a judgment for  
the defendant and whereas said plaintiff by their  
Guardian Benjamin Gates is desirous of having  
a motion made for a new trial in said action  
under the statute, and is desirous that the  
undersigned should conduct said action as his  
Attorney.

Now therefore it is agreed by & between said Gates as  
Guardian of said plaintiff & L. Lewis that said  
Lewis will make a Motion for a new trial in said  
action & conduct said action to a final determination  
& pay the ordinary disbursements of said action, including  
for his said services if successful the sum of  
witnesses from a distance & receive as compensation  
three hundred dollars & the taxable costs against  
the opposite party & in case the plaintiffs are  
not successful said attorney shall not receive  
any compensation for his services & disbursements  
said Gates agrees in case said Lewis succeeds in  
obtaining possession of the said premises to pay  
him the Compensation aforesaid.

Dated April 15th 1864.

L. Lewis  
Benjamin Gates



Buffalo July 10<sup>th</sup> 1866

Friend

B Gates Esq

Dear Sir

Your favor

of the 8<sup>th</sup> inst was rec<sup>d</sup> this morning  
Enclosed please find a copy of the  
Decision which come to hand on the  
5<sup>th</sup> It is as near right as could be  
expected Haddock has obtained  
an order giving him 30 days to  
make a case intending to bring an  
appeal - Whether he will do so or not  
I cannot tell but it is very customary  
to ask time to make a case which is  
seldom denied I do not know  
what grounds he means to take And  
if you find it convenient to show the  
Decision with the case & my points which  
I sent heretofore to your counsel I would  
be glad to have you do so And if he

suggests any thing please let me  
know I think it will trouble  
them to get around it

It is a great relief at all  
events. to find one step is taken  
after so long a time And it is  
gratifying to know it is in the  
right direction

The amount awarded for  
the use & occupation is somewhat  
less than it ought to have been  
still we will not complain but  
hope that just for our adversary  
with my best regards

I remain Yours truly  
W R Allen

2  
-  
2  
2  
2

In Supreme Court  
 Minnie E Watson &  
 Augustus Watson by  
 their guardian Perryman Gates  
 agt  
 Elizabeth M M White

This action having been brought to trial before the Court without a jury a jury trial having been duly waived therein. W R Allen & L S Lewis Esqs appeared for the Plaintiff and L K Haddock Esq for the defendant

The Court having heard the proofs & allegations of the respective parties hereby find and decide the following facts and conclusions of law

1<sup>st</sup> That on and before the 2 day of December 1851 one Elizabeth M. Stagg was owner in fee of the lands & premises described and demanded in the complaint in this action and on that day conveyed the same by warranty deed to one Caroline Watson then the wife of Basil Watson who thence became & was seized in fee of said lands and the owner thereof

That at the time of said conveyance to her & to secure the payment of a part of the consideration thereof the said Caroline Watson & Basil Watson her husband executed to said Elizabeth M Stagg a mortgage of said premises conditioned to pay five hundred dollars with interest

2<sup>d</sup> That afterwards and on the 13<sup>th</sup> day of August 1852 the said Caroline Watson then still being

The wife of Basil Watson executed and delivered to him her said husband a warranty deed of the said land & premises purporting to convey the same to him in fee for the consideration expressed therein of one dollar which deed was duly acknowledged & recorded in the office of the clerk of said County

3.<sup>d</sup> That on or about the first day of January 1853 the said Caroline Watson died leaving her surviving Basil Watson her said husband and the Plaintiff, Missions & Watson & Augustus Watson her sole children & heirs at law they being the children of herself & said Basil Watson

4.<sup>th</sup> That on the 31.<sup>st</sup> day of January 1856 the said Basil Watson sold & conveyed the said lands & premises for the consideration of \$1500 to one Mary E. Lebb, wife of Thomas Lebb and the said Mary E. & Thomas to secure the payment of part of the purchase money executed to said Basil Watson a Mortgage of said premises to secure the sum of \$900 with interest and that afterwards about the 11.<sup>th</sup> day of February the said Lebb with consent of said Watson as another part of the purchase money of said premises paid the said Mortgage above mentioned given by said Caroline & Basil Watson to said Elizabeth M. Stagg by paying the sum of \$524.29. and the said Mortgage was thereupon in due form satisfied and discharged of record in the office of the clerk of said County. The previously accruing interest on said Mortgage had been paid from time to time by said Basil Watson.

5.<sup>th</sup> That on the 29<sup>th</sup> of March 1856 the said Bail  
Watson sold & assigned the said Mortgage executed  
to him by the said Mary E & Thomas Gibbs to one Joel W  
White

6.<sup>th</sup> That afterwards & on the 1<sup>st</sup> day of September 1856  
the said Bail Watson departed this life

7.<sup>th</sup> That afterwards & in the year 1857 default having  
been made in the payment of the Mortgage executed  
by said Gibbs and assigned to said Joel W White  
the same was foreclosed by action in the Supreme  
Court of this State to which action the Plaintiff in this  
suit were not made parties and the said lands &  
premises were in due form of law sold at public sale  
and bid in by the said Joel W White & conveyed  
to him as such purchaser by the officer who made such  
sale under the judgment of foreclosure in said action

8.<sup>th</sup> That this suit was commenced on the 4<sup>th</sup> day of  
November 1860 against one Phil Brown as defendant  
who was then in possession of said premises occupying  
the same as tenant of said Joel White that since  
this action has been pending the said Joel W White  
has also died and the said Elizabeth M M White  
has become the owner of said lands & premises and  
the said Phil Brown become & was the occupant thereof  
as her tenant and by an order of the Court the said Elizabeth  
M M White become and was with her consent, duly  
substituted as sole defendant in said action

9.<sup>th</sup> That the use & occupation of said lands and  
premises while the same were occupied by said Phil  
Brown as tenant of said Joel and since that time



has been the sum of \$100 per annum and that the costs  
prepaid thereof paid by said defendant & said Joel W  
White have amounted to the sum of about \$250

And the Court decides as conclusions of law that  
the plaintiffs are the owners in fee as heirs at law  
of said Caroline Watson of the lands & premises  
described in the complaint in said action and are entitled  
to judgment against said defendant for the recovery of  
the prepayment thereof That said plaintiffs are entitled  
also to recover the sum of \$350 for damages for the detention  
of said lands & premises And that they have judgment  
accordingly with costs to be adjusted

And that said judgment be without prejudice to  
any rights of said defendant to enforce hereafter any  
claim or equities she may establish in the premises by  
reason of the payment by any person of the mortgages herein  
before mentioned

January 3<sup>d</sup> 1866.

N. Davis

Justice Sup Court

Supreme Court

Merrison & Weston  
et al

Agt  
Elizabeth M M White

Decreed  
by N Davis  
Justice

Dated Jan'y 3. 1866

Buffalo March 25<sup>th</sup> 1867

Friend

B. Gates,

Enclosed I send a statement  
of account since the entry of July 1<sup>st</sup>.  
Showing a balance in my favor of \$41. 65

Also of Mr L. Lewis Account  
for carts & disbursements in action  
showing a balance in his favor \$408. 50  
In all \$450. 15

Please send the amount and  
I will send receipts for the same

It seems like paying out a good  
deal of money but all things considered  
I think it will be better for the children  
than to continue the litigation. It is  
productive property and will work itself  
clear in a few years - so they will have  
it clear of an encumbrance. I have seen Mr  
Haddock he appears to be pleased and is  
getting the justices to execute the deed  
so I apprehend no doubt that it will be closed  
up as was agreed upon. I paid \$18.00 in  
Albany & took a certificate of sale as a matter

of precaution

I suppose it would be as well to appropriate the rents to the payment of taxes which will remain after being released from Emory White (White Williams & W. H. Haddock) —

It will probably take some weeks before all is completed. Haddock sends the Deed first to Emory White in Conn. then to Mrs White in N.Y. and returns here where Mr & Mrs Williams will execute the same. — But it is all in good shape and we need <sup>have</sup> no further anxiety about it. —

I have delayed writing until now because I could not get to see Haddock until Saturday evening the 23<sup>rd</sup> inst. — And now direct to you at Lebanon concluding you would be likely to have left N.Y. before this time. —

If you will be kind enough to send me the money for the 2 Bills enclosed by the 1<sup>st</sup> of April you will oblige me

I remain

Yours Truly

W. H. Allen

Benjamin Gates Esq

Guardian of Miriam E & Augustus Watson.

1867

To W R Allen Dr

To services since entering Judgments \$35.00

" Search by Mooney - 4.00

March 7 <sup>th</sup>	"	Expenses to N. Y. fare	\$9.45	}	\$31.65	31.65
"	"	Sleeping car -	1.50			
"	"	Supper and breakfast	1.30			
8	"	refreshments	.75			
9	"	Dinner in N. Y.	1.00			
"	"	Fare to Buffalo	9.45			
"	"	room & 4 meals at Delawon	5.50			
"	"	Sleeping car - - -	1.50			
"	"	refreshments from Albany to B.	1.00			

To services in N. Y and Albany 25.00

" Paid tax & took shipment of scrip. 18.00

\$113.65

By Carz rec'd for rent			
for December -	\$13	}	\$92 -
January	13		
February	13		
March	13		
" " Carz in N. Y	20		72.00
			\$41.65

To L L Lewis Bill enclosed -

408.50

\$450.15

Buffalo June 13<sup>th</sup> 1870

Friend

B. Gates Esq.

Your favor was rec<sup>d</sup>  
this morning. I will have my  
Accounts with the Watson property  
made out when you come

I believe it is in about as good  
shape as it was possible to get in.  
The repairs have been considerable  
there is only one thing more wanted  
that is to fix the foundation. I  
have got some Stone but they are  
not laid up yet. I think it will  
be a good plan to let your friend  
Norwood have it at \$1850. I have  
no doubt but it will be the best

thing that can be done with  
it. I recd (last fall) a deed from  
Mrs White as executrix of Joel White  
but the other parties have not signed  
it. But I have perfected a title  
upon a tax sale and have a  
deed from the State so I think  
the title is good. I did not  
see how we should ever get  
the claims of Emily White Williams  
and Haddock merged without  
cutting them off by perfecting  
a title under subsequent sales.

I shall be happy to see you  
at any time you can come  
In the mean time

Trueman Truly yours  
W R Allen

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$$\begin{array}{r} 95 \\ 19 \\ \hline 855 \\ 95 \\ \hline 1205 \end{array}$$



Buffalo September 14<sup>th</sup> /70

Friend Gater

Please find enclosed a deed  
for Miriam & Stathen and her husband  
to execute -

Also a Bond & Mortgage made by  
✓ Alida Meed with an assignment  
of the same to you

Also a Bond & Mortgage to Mr Fowler  
and your self Trustees &c - Which if  
found to be correct and satisfactory  
you will retain until you receive  
the Deed from Mrs Stathen then send  
the same that the Deed & Bond & Morty  
may be put on record at the same  
time The interest on the Meed Mortgage  
which accrued before the 1<sup>st</sup> of September  
will belong to me. -

Last week I was informed by the

of the adjoining lot that the Eaves  
of this house encroached on his  
land I do not know whether it is  
so or not and I do not know  
of any way to ascertain without  
a survey, if it should prove to be  
true it would make some difference  
in the value of the premises The loss  
I suppose should be borne by the  
Watsons I will endeavor to ascertain  
the fact before you remit to Mrs  
Stothen

I leave town to morrow  
for Upper Sandusky Ohio and  
shall be absent 8 or 10 days  
as soon as I return I will look  
into the matter

I also enclose a memorandum  
showing that I am entitled to a deed  
from Miriam & Stothen and Augustus  
Watson, it is because it is not likely  
that the deed from Augustus Watson  
can be procured at present but

There can be no doubt but he will  
be heard from before the expiration  
of five years and you of course  
will retain his portion of the  
purchase money in your hand  
until ~~the sum is~~ given  
to you

I remain

Yours

W. R. Allen

P. S. I enclose a letter recd some  
days since

Rec<sup>d</sup> from Benjamin Gates. Fifty  
Dollars. on account of Estate, my father  
in Buffalo, New York State.

Meriam E. Stetson

May, 21 1876.

La Cross

Wisconsin

63  
63  
63  
882  
441  
20223

Paid. One Half of Estate of Watson  
to Miriam E Watson & Susan E Statham

Total Amt. \$549.36

1871. June 5. 25.34

" May 16. 50 00

" Oct 27. 201.34

\$274.68

1871. Jan 8<sup>th</sup> Rec. Interest 25 34

" May 16<sup>th</sup> " on Principal 100.00

" Oct 27<sup>th</sup> Bal of March 414 00.

\$537.34

None due from W. C. Allen

over

Augustus Watson's portion.

1871 Oct 2d. - Due 274. 68

Interest on same.

2 years 4 6 Mo - 7% 48. 05  
\$322. 73

My Expenses to Buffalo -

4 Buck -

21. 80

\$300. 93

Sent M. E. T. then.

July 17<sup>th</sup> 1871 in full  
for Augustus Watson

\$300. 93

La Cross, Wisconsin, November 2<sup>nd</sup> 1871

Received from Benjamin Gates Two  
Hundred, and One, 54/100, Dollars. In full  
of my portion of Interest & Principle in  
Estate of Patten & Cothran in Buffalo, N.Y.  
as settled by Superior Court of the State  
of New York.

Meriam C. Statham



Mount Lebanon Aug<sup>2</sup> 1813

Friend Benjamin

Forgive if I offend in writing.

I feel so warm, I have not heard from you since last fall.

I have heard ~~some~~ say that Brother was dead but I can't believe it, nor I don't want to. If I could any see him once more. If I am imposing up<sup>on</sup> your time by writing, you can't know it one side if not tell me if you have heard anything from him. I did not know but he will write to some one of you People. Friend Benjamin. Please do write once more to me.

If you any see the hard <sup>Brother's</sup> ~~xxxx~~ <sup>conscience</sup> ~~xxxx~~ <sup>smiles</sup> ~~xxxx~~ <sup>xxxx</sup>

Be ever a friend to your People  
in every ~~xxxx~~ <sup>xxxx</sup>

Meriam C. St. Meron  
The most comfort  
I have is thinking  
of my Acher Friends

Wm R Allen dr

Bond dated Sept. 1 1870 \$900

Sept 1. 1871 Int for 1 year \$63

" " 1872 " " " 63

" " 1873 " " " 63

Interest on 63 2 years 8.82

" \$ 63.1 year 4.41

Sept 1 1873 3 instalments of principal  
of \$100 each 300 00

Amount due \$ 502.23

Feb 16. cash 100 00

cut. NO. 9761-R

Buffalo April 14 1874

My Dear Friend

Your favor was recd  
 in due time and should have  
 been answered sometime since  
 but a multiplying of cares in  
 regulating my affairs and in negotiating  
 for the sale of my Eagle St house  
 has caused too long a delay My  
 tenant in the house on Eagle St  
 talks of buying it And if he succeeds  
 in getting his money I shall be  
 prepared to make a large payment  
 than you suggested I have prepared  
 a bond leaving a blank to be filled  
 with the name of the sureties Also  
 the amount to be filled by yourself  
 I should think from six hundred  
 to a thousand dollars wd be  
 sufficient to protect us from all

from all claims of Augustus  
Weston I presume it will  
be all right And they will act  
in good faith You will use  
your own judgment as to the  
amount And as soon as the  
bond is executed & returned  
I hope to be in funds to meet  
all that may be required to  
cancel their claims

With many thanks for  
your kindness during our  
acquaintance

I remain Truly

Your friend  
W. R. Allen

Sacros Miss

May 15<sup>th</sup> 1874

Dear Friend

Once more I have  
to write to you, not having  
any answer, to my letter.

I cannot tell whether you receive  
the Bonds and claim or not,  
I thought I never would have  
to annoy you a gain but I  
would like to have it  
settled be far long.

I often said I never will  
undertake any such thing  
again. No not if it was  
millions of dollars.

If you will please answer this  
as quick as you can I will  
be very grateful to you.

Please not to feel hard for my  
writing this, the quicker I have

The money the quicker I  
can turn it to <sup>profit</sup> ~~profit~~

Good By  
Prison Gave  
Child

Meriam C. Stethem

1924  
Sacramento Wis June 18

Dear Friend

I write once more  
to you Please dont keep me  
waiting for answer any longer  
I hardly think it fair  
after we sign bonds to  
never answer nor write  
to ourset So time I had  
the money as the bonds  
returned to me you said  
you wanted no doly I  
think the amount is long  
enough and I would I  
like to know the <sup>reason</sup> ~~reason~~  
cause that I am treated  
in such a manner  
It dont look right to me  
nor fair I am not a  
child no longer and I dont  
like to be treated like one



Please not be insulted  
but one cant have the  
passions of labor every day  
going to the office I am  
tired of. Please answer  
this. for it is the third  
I have wrote to you.

Merion C Stotter

Please not keep me  
waiting any longer  
I feel wearied I dont know  
wether you receive the  
bonds or not but I  
know you ar a man  
of honor and I can trust  
you. Please answer  
quick

Merion Stotter

Lacross Wis. Sept 3 [1874?]

My Dear Friend

It has been  
 six week since I received your  
 letter and draft. I have been  
 very sick not able to hold  
 a pen or I should have  
 answered it before.

You thought I insulted  
 you in my letter. That I did  
 not mean to do your answer  
 pained me very much for it  
 was the first time you ever  
 wrote so to me. it went like  
 a knife to my heart.

I thank you very much for  
 all the trouble you have  
 had for us. pen cannot  
 write my thanks,  
 when my brother appears  
 his morning is ready

for him. Please if you  
hear from him you can  
~~let~~ him where I live  
him all will be well

Please let me know  
if you got this

Miriam C. Stetson

Lovely Wis. Sep 21  
[1874?]

My Good Friend

I receive you letter  
in due time and I hope the  
returns will be all right  
we have done all we can  
to have it safe and sound.

I am so glad that it is now  
thrown with. I cant express  
my thanks to you for your  
<sup>enough</sup> trouble. If any thing more  
we will do it, The squire  
Lower and city clerk said  
we don all we could do.

~~When~~ <sup>if</sup> Brother comes it will  
<sup>ever</sup> be ready for him in Money  
or property with interest

Good By

Meriam E. Stotham

Estate of

M. Watson and  
Augustus Watson

All settled

with Miriam Watson

Augustus Watson

Reported Dead

Simple int. on \$900 for 5 yrs @ 7 1/2%.

900
<u>.35</u>
4500
<u>2700</u>

315.00 int. for 5 yrs.

315.
<u>900</u>
1215
<u>200</u> paid
1015. due

At Compound

From Sept 1.70 to Feb 16 '74 = 3 yrs 5 1/2 mos

Int. on \$900 for 1st yr = \$63.

" " 963 " 2<sup>d</sup> " = 67.41

" " 1030.41 for 3<sup>d</sup> yr = 72.13

1030.41
<u>72.13</u>
1102.54

From Feb 16 '74 to Sept 1.75 } rate for 5 1/2 mos @ .035 rate

Int. for 5 mos.

Due on Feb 16.74 \$1102.54

paid " 1041.13

Rate from Feb 16 to July 10

.03
<u>31.2339</u>
1041.13

Due July 10.74

Paid " 1100

Int from July 10, 74 to Sept 1.75 = 77.79

Due Sept 1.75

77.79
<u>972.36</u>
1050.15

Comp

Walton Estate

To Benjamin Giles, Jr.

1861. Oct 14	Expenses to Buffalo & Back.	21. 80.
" 62 Sep 27	Paid Haddock.	143. 56.
" 61. April 11.	" B. G. Expenses Buf & Back.	23 94.
" 67. March 8.	" " Expenses N York.	18 89.
" " " " "	" W. A. Allen Exp " "	51. 65.
" " " " " "	" " " " " " Service in Ill.	24 25
" " " "	Tax & Assignments of wife	15 00
" " " "	L. L. Lewis Fees	140 00.
" " " "	Disbursements.	54 50.

717.34

B. Galt's 26% dep't time in attending to the case - \$2<sup>00</sup>

53 00

Add Interest.

770.34

**SUPERIOR COURT OF BUFFALO.**

Edward Fowler et al., Trustees, &c., plaintiffs,  
against William R. Allen, et al., defendants.

By virtue of a judgment in the above entitled action, entered on the thirtieth day of March, 1877, I shall expose for sale at public vendue at the Sheriff's office, number eight, at the City and County Hall, on the second day of May, 1877, at ten o'clock in the forenoon, the following described premises, or so much thereof as shall be sufficient to pay the amount due upon said judgment, to wit:

All that tract or parcel of land situate in the City of Buffalo. County of Erie and State of New York, bounded as follows: Beginning in the easterly bounds of the Terrace one hundred and eleven and one-half feet northerly from its intersection with the northerly side of Church street; running thence north-westerly along the said easterly bounds of the Terrace twenty-four feet; thence northerly at right angles to the Terrace thirty-six and one-half feet, more or less, to an alley ten feet wide; thence southerly along said alley to a point from which a line drawn at right angles with the Terrace would strike the place of beginning; thence along said alley to the place of beginning.

Dated April 11, 1877.

JOS. L. HABERSTRO, Sheriff.

N. B. GATCHELL, Under Sheriff.

AUSTIN & HICKMAN, Pliffs' Attys.



Cas. No.  
9761-V

# SUPREME COURT.

MIRIAM E. WATSON and AUGUSTUS WATSON, by their Guardian, BENJA- MIN GATES, <i>against</i> ELIZABETH M. M. WHITE, Executrix, &c.	RESPONDENT'S POINTS.
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## I.

No relief can be given by the Court, acting as a Court of Equity, upon the matter set up in defendant's answer and proven on the trial.

1st. The proper parties are not before the Court. If any one is entitled to the equitable consideration of the Court, in view of the mortgage paid by Mrs. Jebb, she is the person. White did not pay it. He simply took an assignment of the mortgage made by Mrs. Jebb. Mrs. Watson's mortgage had been paid and satisfied when the mortgage assigned to White was executed. The equitable rights of the various parties are not affected by the judgment in this action; they are expressly reserved by the decision of the Court; and upon their bringing an action, and the proper parties being before the Court, their interests, if they have any, will be protected.

2d. Again: White, and those under whom she holds, have had possession for such a length of time, that the use of the premises more than equals in amount the five hundred dollar mortgage. It has been occupied by the

defendant, and those under whom she claims, since January 1, 1853, a period of 13 years. The use thereof is shown to be worth one hundred dollars a year. The taxes and repairs amount to \$250 during that time.

3d. The mortgage being paid by Basil Watson and Jebb with a full knowledge of all the facts; the legal presumption is, that it was paid out of the rents and profits of the premises. The legal title is in the plaintiffs; the mortgage given by their mother being paid and satisfied of record, (paid too, not by a stranger, but by a party claiming the land upon which it was a valid lien, and who had received the rents and profits accruing from the same, which in equity ought to be applied in payment of the mortgage,) will not be held unpaid for the purpose of protecting the possession in an action at law.

## II.

The deed from Mrs. Watson to her husband, Basil Watson, was void.

White vs. Wager, 25 N. Y. R. 328.

## III.

The defendant claims she lost possession by a tax-title in 1861, and that she should not be charged with rents since that time.

In answer to that we say :

1st. If she lost possession, it was her own fault; the tax was levied in 1857; she was a Mortgagee, and should have protected the property by paying the tax, as the charter provides she may.

The whole proceeding by which the tax-title was procured was conducted by her agent, and was procured

to bolster up an uncertain title, and was not obtained in good faith.

But a more complete answer is :

That the proceedings, by which Mrs. White obtained her lease from the City, are irregular and void. In case of the alienation of land by a statutory proceeding, the statute must be strictly complied with. Tax-titles have always been scrutinized with great rigor.

15 Barb. 337, 7th Cow. 88, 15 Wend. 348.  
7 Wend. 148, 16 Wend. 550.

Section 21 of title 5 of the Charter of the City of Buffalo, at the time this tax was levied, (see Session Laws, 1856,) provided that the notice to the owner to redeem from a tax-sale should be published in case of a non-resident owner for six weeks in the official city paper, and by serving a notice personally upon the tenant occupying the premises. In this case the proof does not show that the notice was published at all.

A notice, dated February 4th, 1861, seems to have been published in the months of December and January preceding the date of the notice, but there is no proof that it was published after it bears date. The publishing of a notice dated after its publication would mislead the owner, and should be held to be invalid. Again: the letters and figures at the bottom of the notice show that it was not, in fact, published in December and January. The publisher of the paper evidently attached to the notice an affidavit intended for another notice.

2d. The Charter provides that a copy of the notice shall be served upon the tenant in possession. The affidavit of Mr. Haddock, found at folio 62 of the case, shows that he served a notice upon Neil Brown, the tenant, on the 20th of February, 1861; but it does not show that Neil Brown was in possession on that day. He swears that he was in possession at the time he made his affidavit, which was the 21st of February.

3d. This certificate was given after the issue was joined, and the defendant was not in condition to take advantage of it in this case.

## I V.

The defendant, being the landlord of Neil Brown, obtained an order of Court, substituting herself as defendant, and is estopped from raising any question that Brown could not raise.

L. L. LEWIS,

*Counsel for Defendant.*

ent. No.  
1 9761-4

# Supreme Court.

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MIRRIAM E. WATSON and  
AUGUSTUS WATSON, by their Guardian  
BENJAMIN GATES,  
*Respondents,*  
VS.  
ELIZABETH M. M. WHITE,  
*Appellant.*

## Case and Exceptions.

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L. K. HADDOCK,  
*Attorney for Appellant.*

L. L. LEWIS,  
*Attorney for Respondent.*

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BUFFALO:  
SAGE, SONS & CO., LITHOGRAPHERS AND STEAM PRINTERS,  
Arcade Building, Main Street.  
1865.

THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

PHYSICS 309

PROFESSOR OF PHYSICS  
UNIVERSITY OF CHICAGO  
CHICAGO, ILLINOIS

# SUPREME COURT.

1

MIRRIAM E. WATSON and  
AUGUSTUS WATSON, Infants, by their  
Guardian BENJAMIN GATES,  
AGAINST  
ELIZABETH M. M. WHITE.

SIR: Please to take notice, that the defendant appeals from the judgment entered in this action against her on the 29th Jan., 1866, in the Clerk's Office in the County of Erie, and from each and every part thereof, to the General Term of this Court. Dated February 7, 1866.

L. K. HADDOCK,

*Attorney for Defendant.*

To L. L. LEWIS, Att'y for Plff, and  
L. P. DAYTON, County Clerk.

*SUPREME COURT, Erie County.*

2

MIRRIAM E. WATSON, and  
AUGUSTUS WATSON, by their  
Guardian BENJAMIN GATES,  
AGAINST  
NEIL BROWN, Defendant.

*To the above named Defendant:—*

You are hereby summoned to answer the complaint in this action, of which a copy is herewith served on you, and serve a copy of your answer on us, at our office in the City of Buffalo, N. Y., within twenty days after the

service hereof, exclusive of the day of such service ; and  
 if you fail to answer the complaint as aforesaid, the  
 plaintiff will apply to the Court for the relief demanded  
 3 in the complaint.

ALLEN & CALKINS, *Plff's Att'ys,*  
 No. 191 Main St., Buffalo, N. Y.

Dated November 7th, 1860.

*SUPREME COURT, Erie County.*

MIRRIAM E. WATSON, and AUGUS-	}
TUS B. WATSON, by their Guardian	
BENJAMIN GATES,	
AGAINST	
NEIL BROWN.	

The plaintiffs, by Allen & Calkins, their attorneys, for  
 their amended complaint against defendant, say :

That the plaintiffs are infants under the age of twenty-  
 one years, to wit: the said Mirriam E. Watson of the age  
 of about sixteen years, and the said Augustus B. Watson  
 4 of the age of thirteen years. That said Benjamin Gates  
 was duly appointed the guardian of said infants for the  
 purpose of prosecuting this action, by an order made by  
 Hon. James Sheldon, Erie County Judge, dated Novem-  
 ber 9th, 1860, and filed in Erie County Clerk's Office.

That the plaintiffs have the lawful title as the owners  
 in fee simple, to the following described premises : All  
 that certain piece or parcel of land situate in the City of  
 Buffalo, County of Erie, and State of New York, bounded  
 as follows : beginning in the easterly bounds of the Ter-  
 5 race, one hundred and eleven and one-half feet northerly  
 from its intersection with the northerly side of Church  
 street, running thence north-westerly along the said  
 easterly bound of the Terrace twenty-four feet; thence  
 northerly at right angles to the Terrace, thirty-six and  
 one-half feet, more or less, to an alley ten feet wide;  
 thence southerly along said alley to a point from which  
 a line drawn at right angles with the Terrace would



strike the place of beginning; thence along said alley to the place of beginning.

That the defendant is in possession of said premises, and unlawfully withholds possession of the same from the plaintiffs. 6

Wherefore the plaintiffs demand that the defendant may be adjudged to surrender the said premises to the plaintiffs, and to pay damages for unlawfully withholding the same, and the costs of this action.

ALLEN & CALKINS,

*Plaintiffs' Attorneys.*

Dated November 26th, 1860:

*SUPREME COURT, Erie County:*

MIRRIAM E. WATSON, and AUGUSTUS WATSON, by their Guardian BENJAMIN GATES, <small>AGAINST</small> NEIL BROWN, <i>Defendant.</i>
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And now comes the defendant, and for an amended answer to the amended complaint, says, he denies each and every allegation contained therein. 7

For a second answer this defendant says, that heretofore one Elizabeth M. Stagg, being the owner in fee, conveyed the premises on which the defendant now resides, and which it is supposed are the same intended to be described in the complaint, to Caroline Watson, then the wife of Basil Watson, by deed dated December 2, 1851, duly acknowledged and recorded in Erie County Clerk's Office, in Liber 127 of Deeds, at page 79, as by reference to said deed will more fully appear.

That the said Caroline Watson and Basil Watson, to secure a part of the purchase money of said premises, executed a mortgage thereon to the said Elizabeth M. Stagg, dated December 2, 1851, duly acknowledged and recorded in Erie County Clerk's Office, in Liber 86 of 8

mortgages, at page 373, and conditioned to pay five hundred dollars with interest.

That the said Caroline Watson, being in declining health, afterwards conveyed the same premises to her husband Basil Watson, by deed of warranty, dated August 13, 1852, recorded in Erie County Clerk's Office, in  
 9 Liber 82 of Deeds, at page 178, as by reference thereto will more fully appear.

That the said Caroline Watson, on or about the 1st of January, 1853, departed this life, leaving Basil Watson, her husband, Mirriam E. Watson, and Augustus Watson her sole children and heirs at law, her surviving.

That afterwards the said Basil Watson conveyed said premises by warranty deed, dated January 31, 1856, recorded in Erie County Clerk's Office, in Liber 144 of Deeds, at page 56, February 8, 1856, for the consideration of \$1,500, to Mary E. Jebb, wife of Thomas Jebb.

That the said Mary E. and Thomas Jebb, to secure a  
 10 part of the purchase money, executed their mortgage on the said premises to the said Basil Watson, dated January 31, 1856, duly acknowledged and recorded in Erie County Clerk's Office, in Liber 105 of Mortgages, at page 213, February 6, 1856, to secure the payment of \$900, payable in three equal annual payments.

That the said Mary E. Jebb and Thomas Jebb, afterwards, to wit, on the 5th day of February, 1856, paid \$524  $\frac{50}{100}$ , in full discharge of the mortgage so executed by Basil Watson and Caroline his wife, to Mrs. E. M. Stagg, and took a satisfaction piece of the same, which is dated  
 11 Feb. 11, 1856, and is duly acknowledged and recorded in Erie County Clerk's Office, in Liber 116 of Mortgages, page 355, to which reference is had for greater certainty.

That said Basil Watson occupied said premises from December 2, 1851, to the 5th of February, 1856, and paid the interest on the mortgage so executed as aforesaid, to Mrs. Elizabeth M. Stagg.

That the said Basil Watson, afterwards, sold and as-

signed, to one Joel W. White, said Mortgage so executed, as aforesaid, by Thomas Jebb and Mary E. Jebb, by an instrument dated March 29, 1856, duly acknowledged and recorded in Erie County Clerk's Office, in Liber 115 of Mortgages, page 366 as by reference thereto will more fully appear. 11

That at the time of the purchase of said mortgage by White, as aforesaid, he was induced to believe that Esther Watson was the wife of said Watson, and that Caroline Watson was the relative of said Watson, and fully competent to convey said premises to said Basil Watson: that the consideration so paid Basil Watson by White was eight hundred dollars, and was subsequently appropriated to the use of the plaintiffs in this action.

That afterwards proceedings were commenced in the Supreme Court of the State of New York to foreclose said mortgage so executed by Thomas and Mary E. Jebb, and such proceedings were thereupon had that a deed of sale was duly made and entered therein, March 16, 1857, and pursuant to said decree, said premises were sold to the said Joel W. White, on the 12th of August, 1857, by the Sheriff of Erie County, as will appear by a deed thereof, executed by him, duly acknowledged and recorded in Liber 205 of Deeds, at page 341, June 22, 1861, and the said Joel W. White entered into possession of said premises on the 12th of August, 1857, and has continued to occupy the same ever since by his tenants. 12

That this defendant is now in occupation of said premises as the tenant of the said Joel W. White, to whom he pays rent for the same.

That said plaintiffs have no other ground of claim to said premises than as heirs at law of Caroline Watson, deceased. 13

This defendant, therefore, prays that it may be decreed that the conveyance so executed by Caroline Watson to Basil Watson is a good and valid deed at law, or in equity, and that the said plaintiffs have no interest in 14

said premises as heirs at law of the said Caroline Watson.

That it may be decreed that the defendant is lawfully in possession of said premises as the tenant of Joel W. White, and that the said White be decreed a mortgagor in possession of said premises under the mortgage so executed as aforesaid, by Caroline Watson to E. M. Stagg; and that this defendant have such other and  
 15 and further relief as to this Court shall seem meet and just, with his costs of action.

L. K. HADDOCK,

*Defendant's Attorney.*

*SUPREME COURT.*

MIRRIAM E. WATSON and AUGUSTUS WATSON, by their Guardian BENJAMIN GATES, *Plaintiffs.*

AGAINST

NEIL BROWN, *Defendant.*

REPLY TO AMENDED ANSWER.

The plaintiffs above named reply to the amended answer of the defendant above named, and say they deny each and every allegation contained in the amended answer except as hereinafter admitted, viz: the plaintiffs admit that Elizabeth M. Stagg, as the owner in fee, conveyed the premises on which the defendant now resides, and described in the complaint as amended by the leave  
 16 of the Court, to Caroline Watson, then the wife of Basil Watson, by deed, dated December 2, 1851.

That the said Caroline Watson and Basil Watson, to secure a part of the purchase money of said premises, gave a mortgage thereon to the said Elizabeth M. Stagg, dated Dec. 2, 1851, conditioned to pay five hundred dollars with interest.

That Caroline Watson, afterwards, conveyed the same premises to her husband Basil Watson, by deed, dated August 13, 1852. That Caroline Watson died about the

1st of January, 1863, leaving Basil Watson, her husband, Mirriam E. Watson, and Augustus Watson, her sole children and heirs at law her surviving. 17

That Basil Watson occupied the said premises from December 2, 1851, to the 5th day of February, 1856.

That Joel W. White entered into the possession of the said premises on the 12th day of August, 1857, and has continued to occupy the same ever since. That the defendant is now in the occupation of said premises as tenant of the said Joel White, and that the plaintiffs claim the said premises as heirs at law of Caroline Watson, deceased.

And the plaintiffs further say, that the use of the said premises, since the giving of the said mortgage to Elizabeth M. Stagg, and at the time this action was commenced, amounted to enough to pay all taxes, repairs, and the whole of said mortgage of Caroline Watson, with the interest thereon. And the plaintiffs claim judgment as in their complaint demanded. 18

ALLEN & CALKINS,

*Plaintiffs' Attorneys.*

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*SUPREME COURT.*

MERRIAM E. WATSON and AUGUSTUS WATSON, by their Guardian BENJAMIN GATES, *Plaintiffs,*

AGAINST

NEIL BROWN, *Defendant.*

It is hereby stipulated that L. L. Lewis be, and he hereby is substituted as attorney for the plaintiffs in the above entitled action. Dated April 18, 1864. 19

ALLEN & CALKINS,

*Plaintiffs' Attorneys.*

*SUPREME COURT.*

MIRRIAM E. WATSON et. al., by their Guardian, &c.,	}
AGAINST	
NEIL BROWN.	

20 Upon reading and filing the stipulations of Messrs. Allen & Calkins, it is ordered that L. L. Lewis be, and he hereby is substituted as attorney for the plaintiffs in the above entitled action. Dated Buffalo, April 18, 1864.

(Copy.)

S. C. ADAMS, Dep. Clerk.

*SUPREME COURT, County of Erie.*

MIRRIAM E. WATSON and AUGUS- TUS WATSON, infants, by their Guar- dian BENJAMIN GATES,	}	CASE.
<i>Plaintiffs,</i>		
AGAINST		
ELIZABETH M. M. WHITE,	}	
<i>Defendant.</i>		

21 The issue aforesaid came on for trial at a Circuit Court held June 25th, 1864, in and for the County of Erie, at the Court House in the City of Buffalo, before Hon. Noah Davis, Jr., and the plaintiffs proved title to the premises in the complaint to have been before December 2, 1851, in one Elizabeth M. Stagg, and that she on that day, by a deed of conveyance, duly executed and delivered, conveyed the said premises to Caroline Watson, then the wife of Basil Watson. That said Caroline Watson died January 1, 1853, intestate, leaving her husband, Basil Watson, and the plaintiffs her sole heirs at law, her surviving, and that Basil Watson died in the year 1856. That this action was commenced against Neil Brown Nov. 7th, 1860. That Neil Brown was in possession of said premises at the commencement of this action and during the year 1860

as the tenant of Joel W. White. That Joel W. White died February 15th, 1862, leaving a will in and by which the defendant was made sole executrix and sole devisee. That Elizabeth M. M. White, upon an application to the Court, was substituted in place of Neil Brown, April 29, 1864, by an order of which the following is a copy: 22

At a Special Term of the Supreme Court, held at the Court House in Buffalo, April 29, 1864.

Present—HON. CHARLES DANIELS, Judge.

MIRRIAM E. WATSON, and AUGUSTUS B. WATSON, by their Guardian BENJAMIN GATES. <small>AGAINST</small> NEIL BROWN.
-----------------------------------------------------------------------------------------------------------------------

A motion having been made in the above action, at the above term of said Court, for a rule or order vacating a judgment entered in the said action on the 17th day of September, 1862, in favor of the above named defendants and against said plaintiffs, and for an order granting a new trial in said action. 23

After reading and filing the affidavit read upon said motion, and after hearing L. L. Lewis, of counsel for said plaintiffs, for said motion, and L. K. Haddock for the said defendant, it is ordered that the said motion be and the same is hereby granted, and the said Haddock having requested that Elizabeth M. M. White be substituted as defendant in said action, in place and stead of defendant, Neil Brown, and the attorney for the plaintiff consenting thereto, it is ordered that the said Elizabeth M. M. White, executrix, &c., be, and she is hereby substituted as defendant in said action, in place and stead of Neil Brown, said action to proceed with the same pleadings. 24

(Copy.)

S. C. ADAMS, Dep. Clerk.

The trial was here suspended.  
July 20, 1865, trial resumed.

Defendant's attorney moved for a non-suit, on the ground that the statute only authorizes an action of ejectment, when the premises are occupied, to be brought against such occupant. Motion denied and exception taken.

The defendant then produced and read in evidence the depositions taken by and before M. P. Fillmore, Esq., which are as follows:

SAMUEL A. BIGELOW testifies as follows:—I knew Basil  
 25 Watson in his life time. I acted as agent for Mrs. Stagg, and as such sold to Mrs. Caroline Watson, wife of Basil Watson, the premises described in this action; the deed was executed by Mrs. Stagg to Mrs. Watson; a mortgage was executed by Mr. and Mrs. Watson for the purchase money. I don't remember whether anything was paid down or not; my impression is there was not. I have received the following payments, as agent of Mrs. Stagg, and applied them on the mortgage:

	1852, Dec. 1,.....	\$17 50	interest
	1853, ".....	17 50	"
26	1854, January 14,.....	17 50	"
	1854, June 1,.....	17 50	"
	1855, April 7,.....	18 00	"
	1855, June 4,.....	17 50	"
	1856, February 11,.....	24 20	"
	1856, February 11, principal in full,....	500 00	

The two last payments were paid by Guy H. Salisbury. Mr. Thomas Jebb and Basil Watson called on me together and said if I would call on Mr. Salisbury he would pay me the interest due on the mortgage; I called upon Mr. Salisbury and he paid me the last two  
 27 items. Mr. Watson made all the payments on the mortgage except the two paid by Salisbury. At the time of the last payment I had a satisfaction piece executed by Mrs. Stagg and delivered it to Mr. Salisbury.

SAMUEL A. BIGELOW.

Sworn before me this 4th }  
 day of Nov., 1864. }

M. P. FILLMORE,

*Referee.*



Defendant, under objection, offers in evidence Liber 86 of Mortgages, and read mortgage from page 373, dated Dec. 2, 1851, executed by Basil and Caroline Watson, his wife, to Elizabeth M. Stagg on the premises described in the complaint, conditioned to pay five hundred dollars, with interest, according to a certain bond. Acknowledged Dec. 4, 1851, and recorded on the same day. 28

Defendant read in evidence the record of a deed dated August 30, 1852, executed by Caroline Watson to Basil Watson, consideration one dollar. Acknowledged Aug. 30, 1852, and recorded in Liber 152 of Deeds at page 178, on the 6th day of April, 1854, conveys same premises described in the complaint.

Defendant read in evidence the record of a deed from Basil Watson and wife Esther to Mary E. Jebb, dated January 31, 1856, and recorded in Erie County Clerk's Office, in Liber 144 of Deeds, at page 56, on the 8th day February, 1856. Conveys premises in complaint, consideration \$1,500. Full covenant deed. 29

Defendant, under objection, then read in evidence a mortgage executed by Jebb and wife to Basil Watson, dated January 31, 1856, recorded in Liber 105 of Mortgages, page 213, July 6, 1856.

Defendant read in evidence a discharge of mortgage in Liber 86 of Mortgages, at page 373, and dated February 4, 1856, acknowledged the same day, and recorded February 29, 1856, in Liber 116 of Mortgages, page 455.

Defendant read record of assignment by Basil Watson to Joel W. White, dated March 29, 1856, and acknowledged same day; recorded March 31, 1856, in Liber 115 of Mortgages, at page 366. Assigns Mortgage in 105 of Mortgages; consideration \$825 and guarantees the collection of the same. 30

Defendant reads in evidence a Lis pendens by Joel W. White, against Jebb and others, to foreclose mortgage, Liber 105, page 213, filed February 5, 1857; and also a Judgment Roll—Supreme Court—Joel W. White against Thomas Jebb, Mary E. Jebb his wife, George A.

Sherman and Julia F. Sherman, his wife. Filed July 14, 1857.

Defendant reads a deed executed by Orrin Lockwood, Sheriff, to Joel W. White, dated August 12, 1857, and recorded June 22, 1861, in Liber 205 of Deeds, at page 31 341, consideration \$1,053.18, conveys premises under above judgment. All of which was received under objection of plaintiffs' counsel.

GUY H. SALISBURY, being sworn, testified as follows: I know the location of the premises described in the complaint. I acted as agent for the sale of these premises in 1856; I was employed by Basil Watson. I sold them to Thomas A. Jebb; the deed was given to Mrs. Jebb; there was a bond and mortgage given for a part of the consideration; I paid off the mortgage to Mrs. Stagg, on the premises; I got a check for \$600 from Mr. Jebb; it was a 32 bank check; it was more than enough to pay the mortgage; this check was dated February 4, 1856; I paid \$524 $\frac{2}{100}$  to Mr. Bigelow for Mrs. Stagg, out of this money in satisfaction of this mortgage to her; I got a discharge of it, which is recorded.

On the sale by me the property was sold for \$1,500; Jebb paid me \$600 down, and a bond and mortgage by Jebb and wife was given for \$900, the balance.

Being cross-examined by Mr. Lewis, for [plaintiff, witness said: I should think the value of the use and occupation of the premises for ten years past is \$100 per 33 year. The mortgage to Mrs. Stagg was paid by direction of Jebb. Jebb and Watson came to my office together and gave me directions to use the money to pay off this mortgage and pay taxes; this was for the purpose of making a perfect title in Mrs. Jebb.

GUY H. SALISBURY.

Sworn to before me this 5th }  
of November, 1864.

M. P. FILLMORE,

*Referee.*

Defendant, under objection on the part of the plain- 34  
tiffs, read in evidence a declaration of sale from the City  
of Buffalo to Emily White, dated the 12th day of August,  
1861, recorded in Erie County Clerk's Office on the 26th  
day of August, 1861, on book 188 of Deeds, at page 471,  
leasing the premises described in the complaint for 100  
years—a copy of which is hereto annexed marked "A."

GEORGE W. ALLEN, being duly sworn, says: I am the  
Deputy Comptroller of the City of Buffalo; I have the  
papers upon which this lease marked A, was granted.  
They were taken from the files of the Comptroller's  
Office, read in evidence, under objection; a copy of them  
is hereto annexed marked B.

I have in my hands the record of the names of the 35  
agents of non-resident owners, taken from the Comp-  
troller's Office. I do not find an agent of either of the  
plaintiffs. Joel W. White had an agent, George C.  
White, duly recorded.

G. W. ALLEN.

Sworn before me this 7th day }  
of November, 1864. }

M. P. FILLMORE,

*Referee.*

LORENZO K. HADDOCK, being duly sworn as a witness  
on the part of the defendant, testifies as follows: I had  
the care of these premises after Joel W. White came  
into possession; I paid out for the necessary repairs of  
the house, \$103. The roof was entirely broken up; it 36  
had been repaired; the shingles have got so much out of  
repair that it leaked all through; it had broken the plas-  
ter and carried dirt down into the room. I had a new  
roof put on. This, with shingling and other repairs,  
amounted to \$103.60; I have also paid \$126.04 for taxes.

On the 12th day of August, 1861, Mrs. Emily White  
took possession of the premises by virtue of a lease from  
the City. My agency for Joel W. White had ceased  
prior to that time.

- 37 Being cross-examined by Mr. Lewis, witness said : Mrs. Emily White resides at Bolton, Ct.; she was not here on the day when she took possession of these premises ; she took possession by her agent ; I was her agent. I am not certain who was living on the premises at the time ; cannot tell whether it was Neil Brown or not ; my impression is the premises were not occupied, but were abandoned at the time—that the house was out of repair and Brown had gone away. Mrs. White furnished the money to me to take the leasehold title. I have understood she was the wife of Dr. White, the brother of Joel
- 38 W. White ; the Doctor, I think, is not living. These repairs were done in 1859 by J. J. Romer & Baird and others ; the money for repairs was paid all at one time ; these taxes were paid at various times from the 12th day of November, 1857, down to and including Oct. 7, 1863. I make the amount of taxes paid prior to the 12th day of August, 1861, \$40.11. The balance of the taxes I speak of was since Emily White's title.

L. K. HADDOCK.

Sworn to before me this 4th day )  
of November, 1864. }

M. P. FILLMORE,

*Referee.*

- 39 The defendant, under objection, also produced and read in evidence the proceedings of the Common Council of the City of Buffalo, showing that said petition of Emily White was received by said Council and duly referred to the committee of finance, July 22, 1861. That afterwards, on filing report of said committee, the said Council granted to the said Emily White a declaration of sale of said premises.

The defendant then produced from the Comptroller's Office of said city the record book of tax certificates of sale, from which it appeared that the tax certificate of sale upon the lot in suit was satisfied of record August

12, 1861, by a lease thereon to Emily White, and proved 40  
that the papers upon which said lease was granted was  
filed in the Comptroller's Office, in the City of Buffalo,  
on day last aforesaid.

It was admitted that the plaintiffs resided during the  
years 1860 and 1861 in New Lebanon, Columbia County.

It was also admitted that plaintiffs were not parties  
to the foreclosure suit commenced by Joel W. White.

HENRY H. CLAPP being duly sworn testifies as follows,  
under objection:—I am one of the proprietors of the  
Buffalo Morning Express; being shown the affidavit  
sworn to by him attached to the petition of Emily  
White. He said the figures at the bottom of the printed 41  
notice cut from said paper indicated it was first pub-  
lished February 5, and was to be published once a week  
6 weeks—Tuesdays. That it was so published to wit, on  
the 5th day of February, 1861, and continued thereafter  
on the 12th, 19th, 26th, and March 5th, 12th and 19th,  
1861. That the affidavit so made by him was made for  
some other or different notice than the one attached  
thereto, and the same has been changed or altered since  
he made said affidavit. Under objection defendant  
offered and read in evidence

EXHIBIT MARKED "B."

STATE OF NEW YORK, }  
CITY OF BUFFALO, ERIE COUNTY. } ss. 42

OBEDIAH J. GREEN, Clerk of said County, being duly  
sworn, says:—That payment has been made to him in  
good faith for the identical services charged in the an-  
nexed account; that such services have been actually  
rendered by him at the request of and for the holder of  
a certificate of sale issued by the Comptroller of the  
City of Buffalo, on the 23d day of June, 1858, for the  
non-payment of the tax or assessment named therein,  
being certificate No. 3,103 of that date; and that he is  
not interested in such certificate, or in the redemption  
of the land therein described in any manner directly or



*For Value Received*, I hereby assign to Mrs. Emily White all my right, title and interest in and to the tax certificate No. 3,103, June sale, 1858.

A. J. RICH.

Dated January 19, 1861.

STATE OF NEW YORK, }  
CITY OF BUFFALO, ERIE COUNTY. } ss.

On the 19th day of January, A. D., 1861, personally before me came Andrew J. Rich, to me known to be the individual described in and who executed the above instrument, and he acknowledged the execution thereof. 46

L. K. HADDOCK,

*Commissioner of Deeds for the City of Buffalo.*

That certain piece or parcel of land, situate in the city of Buffalo, being a lot on the north-east side of Terrace street, lying 111½ feet north-west of Church street, being 24 feet front by 37 feet deep north-west line, 18 feet south line, being part of inner lot No. 134.

STATE OF NEW YORK, }  
ERIE COUNTY CLERK'S OFFICE. } ss.

I HEREBY CERTIFY, that upon search of the indices to the records of deeds and mortgages in this office, the following were found affecting the title to the above described premises: 47

*State of New York to State of Massachusetts.* Deed of above described premises et. al., dated Dec. 16, 1786, recorded in Liber 24, page 469, April 6, 1835.

*State of New York to Samuel Ogden.* Agreement to convey same, &c., dated March 12, 1791, recorded in Liber 24, page 408, Nov. 6, 1834.

*Samuel Ogden to State of Massachusetts.* Release from performing same, dated May 11, 1791, recorded in Liber 24, page 413, Nov. 6, 1834.

*State of New York to Robert Morris.* Deed of said premises et. al., dated May 11, 1791, recorded in Liber 24, page 415, Nov. 6, 1834.

48 *Same to Same.* Deed dated May 11, 1791, recorded in Liber 24, page 418, Nov. 6, 1834. This deed delivered as an escrow.

*Robert Morris, by Sheriff, to Thomas L. Ogden.* Sheriff's deed of premises in question et. al., dated May 12, 1800, recorded in Liber 24, page 406, Nov. 6, 1834.

*Thomas L. Ogden to William Willink, et al.* Deed of above described premises, et al. dated Feb. 18, 1801, not recorded in Erie County.

*William Willink to Hendrick Seye.* Deed of premises in question, et. al., dated April 18, 1821, recorded in Liber 6, page 519, April 29, 1822.

49 *Hendrick Seye to William Willink, et al.* Deed dated April 19, 1821, recorded in Liber 6, page 522, April 29, 1822, conveys same as last above deed.

*William Willink et. al. to Paul Busti.* Power of attorney, dated April 19, 1821, recorded in Liber 1 of Miscellaneous Records, page 136, Jan. 18, 1822.

*William Willink et. al. to Paul Busti.* Power of attorney, dated March 29, 1823, recorded in Liber 7, page 254, Oct. 15, 1823.

*Paul Busti to Jacob S. Otto.* Power of attorney, dated Oct. 12, 1821, recorded in Liber 1 of Miscellaneous Records, page 121, Nov. 3, 1821.

50 *Same to Same.* Power of attorney, dated October 12, 1821, recorded in Liber 1 of Miscellaneous Records, page 126, Nov. 3, 1821.

*Same to Same.* Power of Attorney, dated Oct. 12, 1821, recorded in Liber 1 of Mis. Records, at page 128, Nov. 3, 1821.

*William Willink et. al. to Ebenezer Johnson and Samuel Wilkeson.* Deed dated June 15th, 1825, recorded in Liber 8, at page 182, March 7, 1827, conveys inner lot 134 et. al.

*Ebenezer Johnson and wife to Samuel Wilkeson.* Deed of said premises et. al., dated Oct. 30, 1826, recorded in Liber 10, page 75, Feb. 24, 1827.

*Samuel Wilkeson to Benjamin Rathbun.* Warranty



Deed, dated Sept. 28, 1835, recorded in Liber 31, page 332, Nov. 5, 1835, conveys said premises et. al. 51

*Benjamin Rathburn to Samuel Wilkeson.* Mortgage on same premises, dated Sept. 28, 1835, recorded in Liber 18, page 190, Nov. 5, 1835.

*Benjamin Rathburn to David E. Evans.* Mortgage on within described premises et. al., dated July 11, 1836, recorded in Liber 23, page 316, July 11, 1836.

*Samuel Wilkeson to Benjamin Rathburn et. al.* In chancery lis pendens filed Oct. 14, 1836, to foreclose mortgage No. 18; Babcock & Spaulding, Attorneys.

*Benjamin Rathburn by E. Ford Master to Samuel Wilkeson.* Master's deed of premises in question et. al., dated July 15, 1837, recorded in Liber 50, page 38, Aug. 4, 1838. 52

*Samuel Wilkeson and wife to Samuel Wilkeson, Jr.* Warranty deed, dated Oct. 25, 1842, recorded in Liber 69, page 535, Oct. 19, 1843, conveys said premises et. al.

*Samuel Wilkeson, Jr. to Samuel Wilkeson and wife.* Warranty Deed, Sept. 4, 1845, recorded in Liber 82, page 102, Sept. 12th, 1845, of premises in question et al.

*Samuel Wilkeson, Jr. and wife, and William Wilkeson and wife, to Elizabeth M. Stagg.* Suit claim, dated Oct. 31, 1850, recorded in Liber 116, page 525, Dec. 5, 1850, of said premises et. al.

*William Wilkeson and Samuel Wilkeson to John Wilkeson and Elizabeth M. Stagg.* Decree on petition, dated Oct. 31, 1850, recorded in Liber 118, page 119, Feb. 10, 1851, by which said premises et. al. were set off to Elizabeth M. Stagg. 53

*Elizabeth M. Stagg to Caroline Watson, wife of Basil Watson.* Deed dated Dec. 2, 1851, recorded in Liber 127, page 79, Dec. 5, 1851, conveys said premises et. al.

*Caroline Watson and Basil Watson, her husband, to Elizabeth M. Stagg.* Mortgage dated Dec. 2, 1851, recorded in Liber 86, page 375, Dec. 4, 1851, on premises in question et. al.

*Caroline Watson to Basil Watson.* Warranty deed,

54 dated Aug. 13, 1852, recorded in Liber 152, page 178, April 6, 1854, of premises in question.

*Elizabeth M. Stagg to Caroline Watson and Basil Watson.* Discharge of last above mortgage, dated February 11, 1856, recorded in Liber 116, page 355, July 29, 1856.

*Basil Watson, and wife Esther, to Mary E. Jebb.* Warranty deed, dated June 31, 1856, recorded in Liber 144, of deeds, at page 56, February 8, 1856, of premises in question.

*Mary E. Jebb and Thomas Jebb, her husband, to Basil Watson.* Mortgage on same for \$900, dated January 31, 1856, recorded in Liber 105, page 213, Feb. 6, 1856.

55 *Basil Watson to Joel W. White.* Assignment of mortgage dated May 29, 1856, recorded in Liber 115, page 366, March 31, 1856.

*Thomas A. Jebb and wife to George A. Sherman.* Q. C. Deed, dated December 22, 1856, recorded in Liber 177, page 278, December 23, 1856, conveys within described premises.

*Joel W. White to Thomas A. Jebb et. al.* Lis pendens filed Feb. 5, 1857, to foreclose last above mortgage. L. K. Haddock, plaintiff's attorney.

*Orrin Lockwood, Sheriff, to Joel W. White.* Sheriff's deed of premises in question, dated Aug. 12, 1857, left for record June 22, 1861, conveys premises in question.

O. J. GREEN,

County Clerk.

56 June 22, 1861. Fees \$3,75.

No. ——— BUFFALO, February 4, 1861.

To George C. White, Agent for Joel W. White:

Sir:—You will please to take notice, that on the 23d day of June, 1858, in pursuance of the provisions of the City Charter, the following parcel of land was sold by the City Comptroller, for the non-payment of the taxes and assessment charged on the General Tax

Rolls for the year 1857. Said lot, at said sale, being bid off by A. J. Rich, for the sum of \$9.45, and for the term of 100 years, and subsequently assigned to Emily White. And you, as owner, are required to redeem the same within three months after the service of this notice, by paying the undersigned, or to the City Treasurer for his benefit, the amount of the purchase money, together with the interest at the rate of fifteen per cent. per annum, and all expenses incurred, and allowed by Title 5 of the City Charter. 57

The premises are described as follows: A lot in the City of Buffalo, Erie County, N. Y., on the north-east side of Terrace street, part of Inner Lot No. 134, lying  $111\frac{1}{2}$  feet north-west of Church street, being 24 feet front by 37 feet deep north-west line, 18 feet south line. Assessed to George A. Sherman. 58

Your obedient servant,

EMILY WHITE,

Per L. K. HADDOCK, *Agt.*

STATE OF NEW YORK, }  
CITY OF BUFFALO, ERIE COUNTY, } ss.

L. K. HADDOCK, being duly sworn, deposes and says, that on the 8th day of February, 1861, he served a notice, of which the within is a copy, on George C. White, Agent for Joel W. White, by delivering to and leaving the same with him, at his office in Buffalo, N. Y., and further says not. 59

L. K. HADDOCK.

Sworn before me, this 8th day }  
of February, 1861. }

LYMAN D. HODGE,

*Com. of Deeds for the City of Buffalo.*

No. 3103.

BUFFALO, February 4, 1861.

To each and all the heirs and next of kin of Caroline Watson, late of Buffalo, deceased, and especially to Basil Watson, Frances Eugenia Watson, Augustus Watson, and  
 60 Mirriam E. Watson:

You will please to take notice, that on the 23d day of June, 1858, in pursuance of the provisions of the City Charter, the following parcel of land was sold by the City Comptroller for the non-payment of the taxes, and assessment charged on the General Tax Rolls for the year 1857. Said lot, at said sale, being bid off by A. J. Rich, for the sum of \$9.45, and for the term of 100 years, and subsequently assigned to Emily White. And you, as  
 61 owner, are required to redeem the same within three months after the service of this notice, by paying the undersigned, or to the City Treasurer for his benefit, the amount of the purchase money, together with the interest at the rate of 15 per cent. per annum, and all expenses incurred and allowed by Title 5 of the City Charter.

The premises are described as follows: A lot in the City of Buffalo, Erie County, N. Y., on the north-east side of Terrace street, part of Inner Lot No. 134, lying 111½ feet north-west of Church street, being 24 feet front by  
 62 37 feet deep, north-west line, 18 feet south line. Assessed to George A. Sherman.

Your obedient servant,

Feoaw6wTu.

EMILY WHITE.

ERIE COUNTY, }  
 CITY OF BUFFALO, } ss.

LORENZO K. HADDOCK, being duly sworn, says he resides in the City of Buffalo; that on the 20th day of Feb., A. D., 1861, he delivered to and left with Neil Brown, a notice of which the above printed notice is a copy; that he

is acquainted with the premises described in said notice, 63  
and that said Neil Brown is in occupation thereof.

L. K. HADDOCK.

Sworn to before me, 21st }  
February, 1861. }

A. A. BLANCHARD,  
*Com. of Deeds for the City of Buffalo.*

STATE OF NEW YORK, }  
ERIE COUNTY, CITY OF BUFFALO, } ss.

LORENZO K. HADDOCK, being duly sworn, says that he resides in the City of Buffalo; that Caroline Watson, mentioned in the annexed Search, died in the City of Buffalo in the year A. D., 1852, leaving her husband Basil Watson, and Mirriam E. Watson and Augustus Watson, her children and sole heirs, her surviving; that the said Basil Watson deceased at Buffalo aforesaid, about the first of September, 1856; that the said Mirriam E. and Augustus do not reside in the City of Buffalo, but reside in New Lebanon, Columbia County, New York; that they have no agent recorded in the Comptroller's Office of the City of Buffalo; that this deponent is informed and believes that the said Basil Watson left one other child named Frances Eugenia Watson, by a former wife; that she does not reside in the City of Buffalo, and has no agent recorded as aforesaid; that the above are the sole heirs of Caroline and Basil Watson, or either of them. 64 65

L. K. HADDOCK.

Sworn to before me this 22d }  
of July, 1861. }

LYMAN D. HODGE,  
*Com. of Deeds for Buffalo.*

No. 3103.

BUFFALO, February 4, 1861.

*To each and all of the heirs and next of kin of Caroline Watson late of Buffalo, deceased, and especially to Basil Watson, Frances Eugenia Watson and Mirriam E. Watson.*

66 You will please to take notice, that on the 23d day of June, 1858, in pursuance of the provisions of the City Charter, the following parcel of land was sold by the City Comptroller, for the non-payment of the Taxes, and Assessment charged on the General Tax Rolls for the year 1857. Said lot, at said sale, being bid off by A. J. Rich, for the sum of \$9.45, and for the term of 100 years, and subsequently assigned to Emily White. And you, as owner, are required to redeem the same within three months after the service of this notice, by paying the undersigned, or to the City Treasurer for his benefit, the  
67 amount of the purchase money, together with the interest at the rate of 15 per cent. per annum, and all expenses incurred and allowed by Title 5 of the City Charter.

The premises are described as follows: A lot in the City of Buffalo, Erie County, N. Y., on the north-east side of Terrace street, part of Inner Lot No. 134, lying 111½ feet north-west of Church street, being 24 feet front by 37 feet deep, north-west line, 18 feet south line. Assessed to George A. Sherman.

Your obedient servant,

67 Fe5oawTu.

EMILY WHITE.

STATE OF NEW YORK, }  
ERIE COUNTY, CITY OF BUFFALO, } ss.

HENRY H. CLAPP, of the City of Buffalo, being duly sworn, says that he is Proprietor in the office of A. M. Clapp & Co., and that the notice of which the annexed printed copy, taken from the newspaper published by said A. M. Clapp & Co., in the City of Buffalo, called the Buffalo Morning Express, is a copy; was inserted and published in said newspaper for six weeks in succession, once

each week, commencing on the 12th day of December, A. 67  
 D. 1860, and continuing thereafter on 19th, 26th, January  
 2d, 9th, 16th, 23d, 1861.

HENRY H. CLAPP.

Sworn before me this 29th }  
 day of May, 1861. }

L. K. HADDOCK,  
*Com. of Deeds for Buffalo.*

*Statement of Expenses incurred on Certificate No 3,103  
 of the 23 June sale, 1858, hereto annexed, to wit:—*

Amount of Certificate,.....	\$9 45	
Interest on same to 23d July, 1861,.....	4 36	
County Clerk's Search and Affidavit,.....	3 75	
Notices to Redeem, and Affidavits of Service,..	1 25	
Acknowledgment of Assignment,.....	25	
Fees of Notary Public,.....		
Affidavit to this account,.....	25	68
		<hr/>
Total,.....	\$19 31	

STATE OF NEW YORK, }  
 CITY OF BUFFALO, ERIE COUNTY, } ss.

L. K. HADDOCK being duly sworn, deposes and says,  
 that he is the agent for owner of the certificate above-  
 mentioned, being No. 3,103 of the 23d June sale, 1858;  
 that the expenses above set forth have been actually in-  
 curred and paid by him, except as to such items as re-  
 late to the amount charged as having been paid to city  
 or county officers, that the said charges do not exceed 69  
 the fees allowed by law.

L. K. HADDOCK.

Sworn to before me, this 22d day }  
 of July, 1861. }

LYMAN D. DODGE,  
*Com. of Deeds for Buffalo.*

COMPTROLLER'S OFFICE—CITY OF BUFFALO, }  
 July 22, 1861. }

I certify that on examination of the records of this office, it appears that the annexed tax certificate, No. 3,103, sale June 23d, 1858, is unredeemed; that George C. White is the recorded agent of Joel W. White, and that neither Francis Eugenia Watson, Augustus Watson or Mirriam E. Watson have any agent on record.

J. F. CHARD,  
*Deputy Comptroller.*

*To the Common Council of the City of Buffalo:*

The undersigned asks for a lease on the within tax certificate of sale, and is in duty bound will ever pray, &c.

EMILY WHITE,  
 PER L. K. HADDOCK, *Agt.*

Endorsed Finance July 22, 1861. Report in favor on filing papers and proof. Proof correct.

A. A. HOWARD, Chairman.

Granted Aug. 12th, 1861.

EXHIBIT MARKED "A."

71 *Whereas*, The Common Council of the City of Buffalo directed and caused a General Tax, for the support of the Free Schools, and to defray the contingent and other expenses of the said city for the year 1857, and for other purposes, to be assessed on all the taxable real and personal property in the said city, which said General Tax was duly made and levied pursuant to the Charter of said City. And *Whereas*, that portion of the sums necessary to maintain the Lamp and Water Districts are required by said Charter, were added to the General Assessment Rolls of that year. And *Whereas*, sundry local assessments returned to the Comptroller's Office for non-payment, were added to such General Assessment Rolls pursuant to the requirements of said Charter.



And Whereas, a portion of such Taxes and Assess- 72  
 ments was made upon that certain piece or parcel of  
 land in the said City, described as follows, to wit: a lot  
 on the north-east side of Terrace street, part of inner  
 Lot No. 134, commencing  $111\frac{1}{2}$  feet north-west of  
 Church street, and being 24 feet front, by 37 feet deep,  
 north-west line, 18 feet south line; which said portion  
 of taxes and assessments was returned unpaid by the  
 officer duly authorized and directed to collect the same;  
 and whereas, the said premises were, pursuant to au-  
 thority vested in the Comptroller, duly advertised for  
 sale, and were on the 23d day of June, A. D. 1858, sold 73  
 at public auction for the sum of nine dollars and forty-  
 five cents, (that being the amount of the tax, interest  
 and expenses for which the sale was made,) to A. J.  
 Rich, for the period of one hundred years, and a certifi-  
 cate of said sale delivered to him.

And Whereas, said certificate of sale has been duly as-  
 signed by said A. J. Rich to Emily White—

Now, therefore, know all men by these presents, that  
 the Common Council of the said City of Buffalo, pursu-  
 ant to the provisions of said Charter, have, upon the  
 application of the said Emily White, granted to her this  
 declaration, to the end that the said Emily White, her 74  
 heirs and assigns, may have, hold and enjoy the said  
 premises, pursuant to the provisions of the aforesaid  
 Charter, for and during the term or period for which  
 they were sold as aforesaid.

In Testimony whereof, I, Mayor of the said  
 City of Buffalo, have hereunto set my  
 ( L. S. ) hand and the seal of the said City, at the  
 said City, this 12th day of August, A. D  
 1861.

F. A. ALBERGER, *Mayor.*

Attest,

OTIS F. PRESBREY, *Clerk.*

Registered September 13, 1861.

ALONZO TANNER, *Comp'r.*

75 STATE OF NEW YORK, }  
 ERIE COUNTY, CITY OF BUFFALO, } ss.

On this 12th day of October, 1861, personally appeared before me, F. A. Alberger, to me known, who being duly sworn, deposed and said that he resided in, and was Mayor of the City of Buffalo, and that the seal affixed to the within Instrument was the Corporate seal of the said City; and that as such Mayor, pursuant to a resolution of the Common Council of said City, he had executed said instrument and affixed said seal thereto.

L. K. HADDOCK,

*Com. of Deeds in and for the City of Buffalo.*

76 Indorsed, DECLARATION OF SALE.—The City of Buffalo to Emily White. Dated the 12th day of August, 1861. Recorded in the Clerk's Office of the County of Erie, on the 22d day of April, 1864, at 12 o'clock and 15 minutes P. M., in Book No. 188 of Deeds, on page 471, and examined.

CHAS. R. DURKEE, *Clerk.*

April 22, '64, 12 $\frac{1}{4}$  P. M.

The testimony here closed.

The Judge made the following decision :

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*IN SUPREME COURT,*

77 MIRRIAM E. WATSON, and }  
 AUGUSTUS WATSON, by their }  
 Guardian BENJAMIN GATES, }  
 AGAINST }  
 ELIZABETH M. M. WHITE. }

This action having been brought to trial before the Court, without a Jury, a Jury trial having been duly waived thereon — W. R. Allen and L. L. Lewis, Esq's appeared for the plaintiffs and L. K. Haddock, Esq., for the defendant. The Court having heard the proofs and allegations of the respective parties, hereby finds and decides the following facts and conclusions of law:

1st. That on and before the 2d day of December, 1851, 78  
one Elizabeth M. Stagg was owner in fee of the lands  
and premises described and demanded in the complaint in  
this action, and on that day conveyed the same by war-  
ranty deed, to one Caroline Watson, then the wife of Basil  
Watson, who thereupon became and was seized in fee of  
said lands and the owner thereof; that at the time of such  
conveyance to her, and to secure the payment of part of  
the consideration thereof, the said Caroline Watson and  
Basil Watson, her husband, executed to said Elizabeth M.  
Stagg, a mortgage of said premises, conditioned to pay 79  
five hundred dollars with interest.

2d. That afterwards, and on the 13th day of August,  
1852, the said Caroline Watson, then still being the wife  
of said Basil Watson, executed and delivered to him, her  
said husband, a warranty deed of the said lands and pre-  
mises, purporting to convey the same to him in fee, for  
the consideration expressed therein, of one dollar, which  
deed was duly acknowledged and recorded in the office  
of the Clerk of Erie County.

3d. That on or about the first day of January, 1853, 80  
the said Caroline Watson died, leaving, her surviving,  
Basil Watson, her said husband, and the plaintiffs Mirriam  
E. Watson and Augustus Watson, her sole children and  
heirs at law, they being the children of herself and said  
Basil Watson.

4th That on the 31st day of January, 1856, the said  
Basil Watson sold and conveyed the said lands and pre-  
mises for the consideration of \$1500 to one Mary E. Jebb,  
wife of Thomas Jebb; and the said Mary E. and Thomas,  
to secure the payment of part of the purchase money, exe-  
cuted to said Basil Watson a mortgage of said premises 81  
to secure the sum of \$900 with interest; and that after-  
wards, about the 11th day of February, the said Jebb,  
with consent of said Watson, as another part of the pur-  
chase money of said premises, paid the said mortgage  
above mentioned, given by said Caroline and Basil Wat-  
son, to said Elizabeth M. Stagg, by paying the sum of

\$524.29, and the said mortgage was thereupon in due form satisfied and discharged of record in the office of the Clerk of said County. The previously accruing interest on said mortgage had been paid from time to time by said

82 Basil Watson.

5th. That on the 29th of May, 1856, the said Basil Watson sold and assigned the said mortgage executed to him by the said Mary E. and Thomas Jebb, to one Joel W. White.

6th. That afterwards, and on the first day of September, 1856, the said Basil Watson departed this life.

7th. That afterwards, and in the year 1857, default having been made in the payment of the mortgage executed by said Jebb and assigned to said Joel W. White, the same was foreclosed by action in the Supreme Court of this State, to which action the plaintiffs in this suit were not made parties, and the said lands and premises were in due form of law sold at public sale, and bid in by the said Joel W. White, and conveyed to him as such purchaser by the officer who made such sale under the judgment of foreclosure in said action.

8th. That this suit was commenced on the 7th day of November, 1860, against one Neil Brown as defendant, who was then in possession of said premises, occupying the same as tenant of said Joel W. White; that since this action has been pending the said Joel W. White has also died, and the said Elizabeth M. M. White has become the owner of said lands and premises, and the said Neil Brown became and was the occupant thereof as her tenant, and by an order of the Court, the said Elizabeth M. M. White became and was with her consent duly substituted as sole defendant in said action.

9. That the use and occupation of said lands and premises while the same were occupied by said Neil Brown, as tenant aforesaid, and since that time, has been the sum of \$100 per annum, and that the taxes and repairs thereof, paid by said defendant and said Joel W. White have amounted to the sum of about \$250.

And the Court decides as conclusions of law that the plaintiffs are the owners in fee as heirs at law of the said Caroline Watson, of the lands and premises described in the complaint in said action, and are entitled to judgment against said defendant for the recovery of the possession thereof. 85

That said plaintiffs are entitled also to receive the sum of \$350 for damages for the detention of said land and premises during the occupancy thereof by said Neil Brown and by said defendant for six years last past, after allowing and deducting from the value of the use thereof the said sum of \$250 expended for taxes and repairs; and that they have judgment accordingly, with costs to be adjusted. 86

And that said judgment be without prejudice to any rights of said defendant to enforce hereafter any claims or equities she may establish in said premises by reason of the payment by any person of the mortgages herein before mentioned.

N. DAVIS,

January 3d, 1866.

*Justice Sup. Court.*

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*SUPREME COURT.*

MIRRIAM E. WATSON and AUGUSTUS WATSON by their Guardian BENJAMIN GATES,

AGAINST

ELIZABETH M. M. WHITE.

This action having been tried before Noah Davis, Justice of the above Court, without a Jury, and his decision having been filed, whereby he finds and decides that the plaintiffs are entitled to the possession of the premises described in the complaint in this action, and assess their damages for withholding the possession of said premises at three hundred and fifty dollars. 87

On motion of L. L. Lewis, Plaintiffs' Attorney, it is adjudged that the plaintiffs recover the possession of

the real estate described in the complaint, and also the sum of four hundred forty-eight 26-100 dollars damages, costs and disbursements, against the defendant.

88

Judgment signed Jan'y 29, 1866.

J. H. FISHER, *Dep. Clk.*

Indorsed, Filed January 29, 1866, 1 P. M.

The said defendant excepted to the decision of the Justice and to his findings of fact and conclusions of law, as follows, to wit :

*First.*—The defendant excepts to the refusal of the Justice to non-suit the plaintiffs.

*Second.*—The defendant excepted to the refusal and omission of the Justice to find that nothing was ever paid by Mrs. Caroline Watson towards the purchase of said premises or upon the mortgage given therefor.

89

*Third.*—The defendant excepted to the refusal and omission of the Justice to find that the defendant was never in the actual possession of the premises sought to be recovered.

*Fourth.*—The defendant excepted to the finding of the the Justice, that Neil Brown became and was the tenant of the defendant.

90

*Fifth.*—The defendant excepted to the omission and refusal of the Justice to find that the conveyance of Caroline Watson to her husband Basil Watson, was a was a good conveyance both in law and equity.

*Sixth.*—The defendant excepted to the omission and refusal of the Justice to find that the mortgage to Mrs. Stagg should be declared a lien upon the premises in suit, and that the plaintiffs should pay the same to this defendant, together with the interest paid thereon, and the amount paid for taxes and repairs as a condition precedent to the return of the premises.

91

*Seventh.*—The defendant excepted to the omission and refusal of the Justice to find that the plaintiffs' title to the premises expired before judgment by lease of the same from the City to Emily White.

*Eighth.*—The defendant excepted to the conclusion of law of said Justice that the plaintiffs are the owners in fee of said premises and are entitled to judgment against said defendant for the recovery thereof.

*Ninth.*—The defendant excepted to the conclusion of law of said Justice that the plaintiffs are entitled to recover the sum of \$350 for damages for the detention of 92 said lands and premises.

*Tenth.*—The defendant excepted to the conclusion of law of said Justice in awarding costs and disbursements in this action to said plaintiffs.

*Eleventh.*—The defendant excepted to the decision of the Justice, whether of fact or law, for that the same should have been in favor of the defendant.

L. K. HADDOCK,

*Attorney for Defendant.*

