

"That said suit was subsequently removed to the United States circuit court for the Northern district of Illinois, and, being at issue in said court, and coming on to be tried before a jury, in that behalf duly taken and sworn between the parties, and upon the trial of said issue, the said Frank Kerting did then appear and tender himself, and was received to give evidence on behalf of himself, and did then take his corporal oath, and was duly sworn; and then, and upon the trial of said issue, it became and was a material question in the same whether, after the foreclosure sale, the said Kerting made a demand upon this defendant for any of the property which he thus individually claimed outside of the mortgaged chattels, and whether he fairly disclosed to your orator his claim of title thereto; and thereupon the said Kerting, having been so sworn as aforesaid, devising and wickedly intending to cause and procure a verdict to pass for him, did then and there falsely, willfully, and corruptly depose, and give evidence in substance and to the effect, that he made demand for said property because not embraced in said mortgages, and was refused possession thereof; and whereas, in truth and in fact, he never made any such demand, or in any other manner laid claims to any of the property above referred to, nor ever disclosed his right to any portion thereof, except by contesting and impeaching the foreclosure sale generally."

If the question whether the plaintiff in the Illinois suit claimed and demanded the property in question before suit brought, was a material one on the trial of the case, then it simply constituted one of the facts in issue concerning which the parties could themselves testify, and upon which they could adduce such other evidence as they may have had at hand bearing upon it. The whole gist of the allegation is that Kerting swore falsely that he made a demand for the property. That is all there is of it. In other words, it would seem that he testified on the trial that he made a demand. It is alleged that in so testifying he committed perjury. It must be assumed that the complainant, if the question was a material one, met it with testimony on his part. At least, it was his duty to do so, just as it was to meet any other issuable fact in the case. It was then the ordinary case, so far as the bill shows, of a contest between parties upon an issue of fact, on a trial before court and jury, where presumptively both parties had an equal footing, and each had an equal opportunity to present his side of the case, and where the jury, after considering the evidence, accepted the claim of one party rather than that of the other. To this point, that is all there is of the case made by the bill. It is not a sufficient ground for relief in equity against a judgment at law that one of the parties, or that some witness, or many witnesses, testified falsely upon a material question of fact in issue. If, upon such grounds, a court of chancery were to reopen issues settled by verdict of a jury, and thus relieve suitors from judgments recovered at law, it is difficult to see where litigation would stop, and what stability there would be in the adjudications of courts of law. Moreover, if the complainant were able to show, as he would have to do if this bill were maintained, that perjured testimony was given on the trial of the suit at law, and that such testimony caused a verdict against him, then his form of relief was in a motion for a new trial, addressed to the trial court. It was matter that came directly within the province of that court; for, according to the allegations of the present bill, the question involved was

one of fact, material to the issue. It was therefore legitimately and strictly the subject of review on motion for a new trial.

But the bill in its stating part further proceeds as follows:

"Furthermore, then and there, upon the trial of said issue, your orator, among other things, claimed title in himself under and by virtue of a sheriff's sale on judgment and execution, in the case of *The Butler Paper Company v. Frank Kerting and the Chicago Lithographing Company*, all of which duly appeared from the records and files of the court wherein said judgment was rendered; and it became and was, under the rulings of the presiding judge, a material question on said issue and trial whether this execution levy prior to the sale was abandoned by the judgment creditor, and whether said sale thus regularly appearing of record was fictitious or *bona fide*, and consequently whether the title of said Kerting, if any he ever had, to the property above referred to had become extinguished by such sale; and thereupon the said Kerting, devising and wickedly intending to cause and procure a verdict to pass for him, did then and there, by his own corporal oath, and that of the president of the judgment creditor; conspiring and conniving with him for that purpose, falsely, willfully, and corruptly depose and give evidence, and thus made it to appear in substance and effect, that said levy was withdrawn and abandoned, that no sale on execution was in fact made, and no money realized as purported by the record, and that the pretended proceedings were fictitious; whereas, in truth and in fact, the return of the sheriff as to his levy and sale was true, in every particular correct, and in conformity to the facts as they occurred and transpired at the time, so that all right, title, and interest of said Frank Kerting, if any interest he ever had, were fully extinguished by such sale, and acquired by your orator."

What has been stated of preceding allegations of the bill applies with equal force to this. If it was a material question on the trial of the suit at law whether the execution levy referred to, which was one of the sources of complainant's title, was abandoned by the Butler Paper Company, and whether the sale thereunder was fictitious or *bona fide*, then the complainant was compelled to meet that question with testimony, as an issue of fact in the case. The plaintiff in the suit at law, it seems, attacked the sale. It therefore devolved upon the defendant in the case to defend and maintain the sale. If his evidence was insufficient, or was overborne by testimony against him, that is not ground for relief in equity. The issue was one involving title. Both parties had to meet it; and, as already stated, even if false testimony was adduced on one side in maintaining the issue, that does not give the complainant a footing in equity to avoid the verdict and judgment. Again, this was a matter reviewable by the trial court. If it were shown that injustice had been done to one side by false swearing on the part of the other, or that the defeated party had been surprised, and therefore had not been able to meet such false testimony, it was within the power of the court to set aside the verdict, and grant a new trial.

The bill further proceeds:

"And your orator further shows that at the time of foreclosure of said chattel mortgage, and for several months thereafter, your orator had no possession or control, direct or indirect, actual or constructive, over the greater portion of the goods and chattels said to have been taken and carried away by your orator; that the color-grinder, varnish-machine, paper-cutter and labels, and