

Q. Do you know of Compliments having disposed of any parts or
Smith from said lands about the time he left it, if so state
what you know about it.

234 A. I know of the Compliments taking Rails from the place down to
a forty years of land he was improving on the big bottom.

Q. Do you know of Compliments having advised any person to buy
said land or any part of it, if so state what you know on that
point.

A. Mr. Valmago told me once before he left the land, that Mr. Smith
had said to him (Valmago) that if he did not want to buy that
land, that he might be permitted to buy an Eighty of it; and as near as
I recollect Mr. Valmago said he told him he might.

Q. Have you had any conversation with Valmago in respect to the
purchase of the other occupants.
(Objected to)

A. I don't recollect of any such after the commencement of
the suit.

Q. Did you have complaint about the time he left said land
any anything about leaving the same.
(Objected to)

A. I don't recollect.

Samuel Harris.

Chas. S. Huntington.

Q. Have you any clear recollection about the time of a mention
that the persons occupied the Valmago lands.

235 Ques. Can you give me a collection.

Ans. How large a part of an Eighty Six Acre fenced and broke
has I should say between fifty and seventy acres.

Ques. What kind of fence is built around that part which he has
enclosed.

Ans. A picket fence on the West, a rail fence on the North side.

Ques. Have you any other collection how long ago it is since took last
the same place mentioned.

Ans. I don't recollect as to the time.

Ques. Was it built since the commencement of this suit.

Ans. I don't know.

Ques. What is your occupation.

Ans. I am a farmer.

Ques. Did you ever work at the Carpenter business.

Ans. Not to any extent. I have helped to frame a house, built my own house.

Ques. What kind of a house is the one built by Smith that you
have before spoken of.

Ans. It is a one story framed house with a cellar and two bedrooms and kitchen.

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Q^d When did the conversation between you and the complainant about
Lester happen in Copley-church.

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Ans I think it was at or near my house I am not certain.

Q^d When did that conversation happen or what introduced it.

Ans I cannot tell

Q^d Do you recollect clearly what was said in that conversation.

Ans I have mentioned already all I can remember. It is my impression
that what Mr Lewis stated, was said, My impression is now that
Tilmoner did say what I have already stated. It was some time
ago and I did not pay much attention to what he did say.
Samuel Alford.

Deposition of Ezekiel Lewis who being first duly sworn
deposes as follows.

Q^d Have you been examined as a witness in this cause, if so, in relation
to what and when.

Ans I have been in behalf of the complainant some time last Spring
The complainant objects to the competency of the witness.

Q^d How much do you owe to the Decharge land.

Ans I have paid them about eleven pounds.

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Q How long is it since Salomago left those lands.

Ans. I cannot tell exactly, should think more than five years.

Q

1st Do you know what improvements were on those lands when Salomago left, if so state.

Ans. I don't know of any, there was an old log barn on it when he left I should not consider it worth anything.

2nd Do you know what became of the Nails & fences that had been put on it, if so state.

Ans. I purchased some of the nails myself of the Complainant.

3rd How long before he left the place did you purchase them.

Ans. I cannot tell, I should think it was within the year previous to his leaving the land.

4th Do you know of his selling any nails or fences to any other persons if so state to whom he sold.

Ans. I have seen Nails forming that I had every reason to believe came from the Salomago land, but don't know positively that they did.

5th Do you know whether any nails or fences were left there when he left the place.

Ans. Of the best of my recollection they were all removed, except a few around a small yard before he left.

9th Do you know of his selling any timber from said land about the time he left, if so state.

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Ans. I cannot say that I do. I know that timber was cut and taken away in the land about that time, but whether Salvage sold it, or who took it away I cannot say.

10th State whether any considerable quantity was cut and taken away about that time.

Ans. I think there was.

11th Did you know at the time, of Kitch's purchase of the land bought by him.

Ans. I understood at the time that he was about buying the land he did purchase. I learned it from family conversation between myself and son.

12 How long after that was it before he commenced occupying or improving said land.

Ans. I cannot say positively. My recollection is that he commenced building & fencing on it the same year.

14 What improvements has he made on said land.

Ans. He has broke between fifty and seventy acres, has built some hundred rods of fence, and there is an barn and fifty rods on the East side the one half of which I think he built. He fence on the East side joins with Smith's fence. He has built a frame house, with cellar under it has dug a well, set out some fruit trees.

15 What is your Occupation.

Ans Farming.

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Ques

1st State what expenses you have had in improving farms.

Ans I have followed farming my whole life, and have commenced on a farm in the woods and cleared it, and set out orchards on it, and have commenced on a farm on the prairie, and have built houses improved and set out orchards on that.

1st At what do you estimate the value of improvements on Whites Land.

Ans I think it would cost Seven Hundred Dollars to make the improvements on that lot that he has made. I should consider the improvements worth that sum.

1st How large a proportion of these improvements were made prior to the commencement of this suit.

Ans My recollection is that the principal portion of the improvements were made before the commencement of this suit, I am not positive that the time was limited at that time or not.

1st What improvements has Smith made on the land occupied by him.

Ans I don't know much about his improvements. I know that he built a frame house on it.

2nd What improvements has Westferry made on the land occupied by him after taking the

Ans I think that he had fifty acres late, he may have more. he has a good deal of fencing. I should say two hundred and fifty rods.

21st At what do you estimate the value of the improvements on Waterbury's land.

Wax

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Ans. If I am correct as to the quantity of the fencing and bracing I should estimate the value at Two Hundred and fifty dollars.

22nd How large a proportion of these improvements were made prior to the commencement of this suit.

Ans. I should think more than half of it.

23rd What improvements has Kelston made on the lands occupied by him of the Ramage lands.

Ans. He has made One Hundred and Eighty rods of fence, built a log house dry a mile, has been employed and forty acres.

24th At what do you estimate the value of the improvements on Kelston's land.

Ans. I should estimate the value at Three Hundred and Eighty five dollars.

25th How large a proportion of these improvements have been made prior to the commencement of this suit.

Ans. I should think over half.

Richard Smith.

Wm. S. L. S. S. S.

I did not visit the house built by him in the Spring of 1841.

Ans. To the best of my recollection it was finished and occupied previous to January 1841.

Q^o When did he dig the well you mention.

A^r I should think in the Spring of 1853.

ALL

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Q^o What is the value of the making the well.

A^r I should think Twenty five Dollars.

Q^o When did he set out the fruit tree you mention.

A^r In the Spring of 1853 & 1855.

Edwin P. Jones

Deposition of W. S. Hick who being first duly sworn deposes as follows.

Q^o What is your age and where do you reside.

A^r I am about thirty seven years of age. I reside in Clark County Mo
in the north part of the County.

Q^o Do you know the parties Complainant and Defendants in this Cause above.
and how have you known them respectively.

A^r I know the Complainant. I have known him about seven years & know
Defendant White have known him ever since I can remember. He is as
farther to me. I have seen Defendant Dennis, am not particularly ac-
quainted with him, don't know any other of the Defendants.

Q^o When does the Complainant now reside and how long has he
resided there.

Ans He resides in the Town of Franklin, Chittenden County, Vt. His family
comes with mine. He has resided there 12 or 13 years past this year.

Ques

Ques

1st What relation your acquaintance with him has been intimate or
otherwise

Ans It has been very intimate even so than with any other man in the County.

2nd For how long a period has your acquaintance been intimate with
him

Ans I believe five and six years. He has written for me a good deal in that
time.

3rd Where did he move from, when he went to Chittenden County.

Ans I understood from him that he moved from his place in this
(Stambridge County.)

4th Did you or do you now reside in what lands he had bought on
in this County. (Objected to.)

Ans I have the lands about 12 or 14 years ago. I saw by his house
about that time ago.

5th Was he accustomed to converse freely with you about his affairs, or
less otherwise. (Objected to.)

Ans He was in the habit of conversing with me freely and frequently
about his business affairs.

6th Did he when you first became acquainted with him converse with you

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about the lands he had left in this county?

(Objected to)

Ans. He did.

Ques.

11th Did he ever state to you whether he had given up said lands.
(Objected to.)

Ans. He talked with me once about it and said he had given up all hope of getting the Land, but he had struck a solo lead and was going to give them a try for it.

11th When was this conversation.

Ans. It was about four years ago this fall.

12th Did he at that time or about that time, state to you who was occupying that land and if so, who did he state was now or occupying.

Ans. He said the Smith boys, and may be the Clarke's live on it.

13th Did he state what improvements had been made on the land, if so state what he said.

Ans. He said Clarke's was fencing and breaking an eight, and the Smith boys are fencing & breaking in it, and I think he said a James Lewis had bought a party of it.

14th How long ago saw you heard him speak of these improving said land.

Ans. I should think about five years ago.

15th Did he ever state particularly what improvements were being made on the land.

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about the lands he had left in this county?

(Objected to)

Ans. He did.

Ques.

11th Did he ever state to you whether he had given up said lands.
(Objected to.)

Ans. He talked with me once about it and said he had given up all hope of getting the Land, but he had struck a solo lead and was going to give them a try for it.

11th When was this conversation.

Ans. It was about four years ago this fall.

12th Did he at that time or about that time, state to you who was occupying that land and if so, who did he state was then or occupying.

Ans. He said the Smith boys, and may be the Clarke's too on it.

13th Did he state what improvements had been made on the land, if so state what he said.

Ans. He said Clarke's was fencing and breaking an eight, and the Smith boys are fencing & breaking on it, and I think he said a James Lewis had bought a party of it.

14th How long ago since you heard him speak of these improving said land.

Ans. I should think about five years ago.

15th Did he ever state particularly what improvements were being made on the land.

Q. I told him say that Eliza Smith was improving an Eighty
north of the Eighty he laid on, I saw I saw him say at some time
that Eliza was building a house on it.

Q. Do you know whether he was not in the habit of frequently visiting
the neighborhood of this land, or here otherwise.

A. I know that he was. He has frequently told me that he had been
once to my brother and the Smiths.

Q. Do you know from his statement or otherwise, of his having advised
any person to buy any part of said land. If so, state what you
know on that point.

(Objected to.)

A. I told him about five years ago that I wanted to buy the quarter
section lying north of my brother's land. He said to me, if I wanted
it to go and buy it. I told him I did not like to go and
wished him to buy that quarter. I said to him that Eliza Smith
wanted to buy the lot north of him. I don't recollect the precise
reason he gave, but he said Eliza had better go and buy it or
something to that effect.

Q. Did he ever state to you whether there was any arrangement between
him and any of the occupants of said land, if so state what he said.

(Objected to.)

Q. I then asked him what he was going to do with the persons who had
bought that land. He said there was an understanding between him
and Eliza Smith that he should never disturb him. I think he spoke
once or twice about the Smiths, and perhaps he did once. He said the
Smiths were fine folks but said him and me he should not disturb
them.

The Complainant objects to the answer.

J. B. Smith

245.

W's Interrogations.

Q¹ When Mr. Salmag told you he had struck a new lead, and was going to give them a try for it. What was it he was going to give them a try for.

Q²

A¹ I understood that it was for the Sand in dispute.

Q² Did he state to you what kind of an agreement he had made with Elisha Cook not to disturb him.

A¹ He did not.

Q³ Did he state whether he received any consideration for that agreement.

A¹ I don't know as he did, any more than that Elisha had always used him first rate.

Q⁴ When did this conversation occur.

A¹ About four years ago this fall.

Q⁵ When did this conversation happen.

A¹ I don't know as I can tell you how often he met the one or many times. I know better it was at my house, at his house, and in the field.

Q⁶ Did this conversation occur after Elisha purchased.

A¹ I don't know when he purchased.

7th Did not that conversation occur at your house last Spring, and was not John Rutledge present.

WMA

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Ans I don't think it did, and do not recollect that Rutledge was present.

Qth Was not this what Talma said. That if Eliza Pick wrote not defend this suit he wrote not charge him any suit.

Ans I don't recollect any such conversation.
(W.D. Smith.)

Deposition of Mary Lockitt who being first duly sworn
deposes as follows.

Qth What is your age and where do you reside.

Ans I am about thirty seven years old and reside in Guilford Village, N.H.

Qth Are you acquainted with the parties Complainant and defendants in this cause, if so how long have you known them respectively.

Ans I am acquainted with Complainant, have known him about six years am acquainted with Defendant Pick, have known him about same years, am acquainted with Defendant Dennis have known him about seven years. Am acquainted with Defendant McIntosh have known him about six years, am acquainted with Defendant Robert Smith have known him about six years. Am acquainted with Defendant Nathan have known him about six years. Don't know any of the other Defendants.

Qth Do you know the last place where the Complainant formerly lived in this

Ans I do.

247 4th Do you know when Complainant left said lands, and if so how long ago.

Ans I do. He left them about seven years ago.

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5th Do you know what improvements he left on said lands when he left, if you do state.

Ans He left a log house. There was no cecelona on the land at the time he left.

6th What was that log house worth.

Ans I should think perhaps fifty dollars.

7th Do you know what became of the fences that had been on the land.

Ans I dont know as I do.

8th Do you know if the Complainant killed any of the fences or any of the timber on said land about the time he left if so state what you know about it.

Ans I dont know that I do.

9th Do you know of there having been any arrangement or understanding between the Complainant and any of the Defendants respecting said land either by the admission of the Complainant, or otherwise, if so, state what you know on that point.

(App'd to L.)

Ans Am you are last juror I think it was, I was returning from Court

WMA

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in company with the Complainant, when he stated to me that there
was no difficulty between him and Smith, respecting these lands
because there was an understanding between him and Smith, that is all
that I recollect on that point.

(Anson objected to as incompetent.)

10th Do you know whether the Complainant during the first five years
after he first left said land, was frequently in that neighborhood
and if so state how often and what you know on that point.

Ans I think he was frequently or every few months.
Mary Grellette.

Cross Interrogatories.

1st Do you know whether the rails on the lands above referred to which the
Complainant had, were turned by prairie fires?

Ans I do not know I know that a fire ran over those lands.

2nd In the conversation between you and complainant about there being
an understanding between him and Smith, did not the Complainant say
that he had agreed with Smith that they would not quarrel about the land?

Ans I don't know as he said those words. He said that there would be no difference
between him and Smith for there was an understanding between them
on that point.

3rd Did he say what that understanding was?

Ans He did not.

Mary Grellette.

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State of Illinois
Winnebago County ss.

I Charles A. Spafford Clerk of the Circuit Court in and for said County and State aforesaid, do hereby certify that the foregoing Depositions of William McAlpine, Thomas Lake Samuel Allen Captain Dennis, William J. Smith and Henry DeChellis taken on the part of the Defendants in the Cause of Mrs. Falmadge vs. Abraham Falmagne & Thomas Falmagne & Co. were taken before me at my office in Rockford in said County of Winnebago, and sworn to and signed by the several Deponents in my presence, that the several interrogatories and answers thereto were reduced to writing by me. That said Depositions were commenced to be taken on Friday the 1st day of September A.D. 1853. and were continued until Sunday the 3rd day of September A.D. 1853. when the testimony was finally closed. That the Complaint was introduced by Thomas Lake his Solicitor and the Defendants by Wright & Marsh their Solicitors and that said Depositions were taken in pursuance of the annexed notice.

Sub.

Witness my hand and the Seal of said Court
at Rockford this 19th day of October A.D. 1853.
C. A. Spafford,
Clerk.

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all
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Parsons & Others

Attys.

vs. Salomago

Ex't Court

MSA

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Since the trial, I had a right now obtained in
Ex't Court said Parsons vs. Salomago (Question, Did you have any conversation
with Salomago after the judgment in the Ex't Court, respecting his leaving
said Land in question and if so state what the conversation was, objected to
by Complainant, allowed and excepted to by Counsel.)

Answer. Not many weeks after the judgment was obtained in the
Ex't Court said, Salomago came to me and told me that he desired to remain
on the land a certain length of time, the length of time I don't remember
he desired me not to issue a writ to put him off. If I wrote let him remain,
to the time he mentioned he would leave the premises. I consented that he
might remain until that time and wrote him in writ, and if he left in
that time it would also be right. He gave me reasons why he desired to
stay, he urged me to consent to the arrangement which I did for the
reasons myself.

Wm. L. Michoud Am acquainted with Counsel. have known him for 14 years since we
have had a good deal conversation about this with Parsons. but he has
stated to you anything about his leaving the premises. (Objected to, consented
by Counsel to by Counsel.) I think if my memory serves me right as this
is to a time of 14 years ago. Mr. Salomago told me of the
circumstances, when he then resided, at that time him and Anne. When
has some conversation some years since, that as I understood was on
the line between Mr. Parsons, and the land which Salomago purchased to own
I understood it from him and Mr. Parsons. After that, Mr. Salomago told
me he was leaving along that that was the last of the arrangements
that were left on the premises, and that he had now left the land and
was done with it. That as to the last of my memory
I understood him was about 100 rods of the fence. The old party I think

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LRE

think from the fact that the improvements had been made some time.
 (Did you about that time communicate the substance of that
 statement to any one of the Dept. offrs., what communication did you
 make and to which of them. Objected to. Is the substance of it
 correct - Excepted to.) Related this conversation to Elisha Wink, don't
 recollect when but not a great while after, I think not to any of the
 others. Don't think there were any improvements at that time, except the
 Log cabin and the fence spoken of, thought it correct the cabin worth anything
 as a piece of property. (Did Saltnage ever make any statement to you
 respecting a preemption which he claimed on other lands than those
 in question in this case, if so, what did he say and when did
 he say it. Objected to as irrelevant; correct and excepted to.)

I have had conversation with Mr. D. at different times about his
 preemption, the same on the Wick when he then resided, I am not
 certain that at the time I moved him over he told me that he
 had preempted that land, but he has told me that he had preempted
 that land. Last Spring I went in the Mo. of March or April I
 had a conversation with him respecting this fact, and he gave me
 for two reasons for leaving the land then in dispute, for to get a preemption
 on the land where he then resided on the Wick. When asked him the
 question how he came to get a preemption on that or on other land
 while he owned this land in dispute or had a claim on it.

His answer was that he gave notice for a preemption, but he let
 it run out and then entered the land. I think he moved to his
 place on the Wick in the fall of 1846.

Robert Smith (Served as to the other Dept. Objected to admit that by Com.
 then Comptroller, since then a time about 10 or 11 years.
 (Have you had any conversation with him, about his leaving the lands
 in question and if so state what he said. Objected to.) Corrected,
 Excepted to.) Some time before he left the land, he told me that he
 was going to leave me if I wanted to buy any land, that he had
 better buy a piece of that land was in the Spring of 1846

120 10

me

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(Did you communicate that conversation to any of the other Defendants and if so State when and what you said. Object to - corrected & excepted) While Montgomery one of the Defs. told the date exactly, but it was about the time that Talmer told me. It was before Montgomery bought. I recollect that I told him that Talmer told me that if I wanted to buy any Land that I had buy a part of that of his.

(Did he say at the time above mentioned say anything about his giving up the Land and if so what, Object to - to the substance corrected excepted) He said he was going to leave the Land was going to move to a claim he had taken on the South Branch of the River, and that there would be no trouble about buying any of the Land. He mentioned something about Ferguson, I don't know his first name, but he mentioned that he might make a little trouble with Ferguson to get something out of him. That was all he stated in particular about.

Dr.

Did you communicate this conversation you had with Tal to any of the other Defs. beside Montgomery, if so, to whom, when, and what did you say, Object to for substance corrected excepted

I have told it to Mr. Wick. Can't recollect whether it was before or after he bought. It was soon after the conversation with Talmer. He said about the same that I told to Montgomery.

Do you remember whether you stated to either of Montgomery or to any of them all the conversation that passed between you and Tal, if so State, Object, corrected, excepted.

I don't know as I stated all the conversation at that time. I did state all that was said about leaving the land. App. examined.

This conversation occurred on the Land in question near the line between my line and that Talmer was then living on

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Wm

a part of the land in question. The subject of the Salinage land was not spoken of on that occasion. I don't think there was anything said about the Ferguson title more than what I have mentioned. I have known the Defendant Halston about a week before I bought the land. I went through the land with him before he purchased. I did not have any conversation with him about the title claim. I told him who owned the land in fact in I think I told him that Ferguson of St Louis had it for sale and I believe was just come. I did not tell him how Ferguson became just owner. There was no breaking in the land Halston & I walked over, there was a piece of land that had been broken, was not fenced was about 7 or 8 acres, was on the land that Halston bought had been broken before I came into the country I think it was not in sight from where they walked over. Had no conversation with Halston about the land or its title before they walked over it, more than he asked me where to go if he wanted to buy it. I told him Mr Halston was about for the land, for then who owned the land. He did not ask me how Ferguson became the owner, was with him but a short time, think he was in a house of Mr Coffey near No. 200.

Might have been in County 8 or 10 days before he got. Came into the settlement 2 or 3 days before he went into Mr Coffey house and about 10 days thereafter he bought the land. I don't think as anybody informed him that there was the Old Lands. He has told me after that he never knew of Salinage nor heard of his name until about the time the suit was commenced.

Chas Halston. I have been acquainted with Mr Salinage about 14 yrs. When the land in controversy. I don't recollect how long ago. I got moved off the land. I thought some words of him, that was well for his office. One of the terms when he was paid. I thought for him before he left. And after he moved away I don't know got there.

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The cabin was an old Log House, had been used a good while.
I got the bonds down after he left. I don't think the horse was
fit to live in after I took the bonds away. Shouldn't think it
was worth anything for a horse to live in, might do for a hog pen.
Camp Edmund C.

I think he was living in that same house when I
came into the country. I don't know exactly when he lived at
that time, but I rec^d years ago. I think he lived there, I came
into the country in July before the Land sales of 1859.

Complainant's Testimony.

Sergeant. I have been present several times at conversations between
Camp and Deft and I heard one at that time in Fall 1851.
I heard them talk about this suit. They were speaking with regard
to the right or title or something to that effect. Was after the suit
was commenced or was being talk about. This was at that time
I heard each one say that they wouldn't disturb the other about
the property. That they should have no difficulty about the property.
That said he wouldn't do anything to prevent Complainant from
getting the property. if the Complainant wouldn't disturb him.
At this Camp ought to have some of the land or some say
Complainant said that he would have any trouble you have from
the fact that he has told him to buy the land before he bought
it. I don't recollect what was said about the future possession
of the land.

Camp Edmund C.

Did Deft ever say any to you about Deft's title
claim to the land, if so what did he say about it and what
objected to, Complainant (Camp). He said he would not disturb
me. I think he said that he would settle with me.

He said Smith & Wick were fine people and he would not desert them.

25th

First Examination passed.

~~See~~ The Conversations were about 2 years ago. I think Wick & I were good friends. But I say as H. Smith.

L. Co.

Winchester Circuit Court.
In Chancery.

238 Thomas Primrose and others,
vs.
The Farmers.

Sheweth that you will please to take notice that
on Friday the 2nd day of September next at 10 o'clock A.M. at the office
of the Clerk of the Circuit Court of Winchester County in Westford in said County
before some officer authorized to take depositions of William R. Whitcomb, William
V. Lick, Henry Beckett, Primrose Thomas & John Smith to be used as evidence for
the defendants in the hearing of the above entitled cause, when and where you
may attend and cross-examine if you think proper.

Examination to commence at 10 o'clock A.M. and to continue from day to
day until completed.

Witness, &c.

To
Messrs. Parnap & Co. Secy.
Compt. Sold 5

Robert M. Howard & Wright,
Atty. Ctes.

Sent Aug. 20th 1853

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State of Illinois
Winnebago County, } Ill.

In the Winnebago Circuit Court.

XXX

Via Postage

vs. } In Absence
James Winick & Als.

The deposition of John Smith taken before M. Spafford
Clerk of the Circuit Court in and for said County of Winnebago at the Clerk's office
of said Court on the 2nd day of September A.D. 1853 between the hours of 9 o'clock
and 5 o'clock P.M. of said day pursuant to the annexed notice, and deposition
to be used as evidence in the trial or hearing of the above entitled cause on the
part of the Defendants. The said John Smith being first duly sworn to testify
the truth in the matter in controversy, the Complainant by Corp & B. B. B. his Solicitor
and the Defendants by Night this Solicitor being present.

Substantive examination as to the interest of the witnesses on the part of
the Complainant

Q. 1st Have you any interest in the result of this suit?

A. I have no pecuniary interest in it dollars and cents.

Q. 2nd What interest have you?

A. I have an interest that justice may be done between man and man.

Q. 3rd Do you live on any part of the lands in dispute in this cause?

A. No.

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LXXX

Sub. 4. Canister part?

Ans. I live on the North East Eighty of the land in dispute.

Sub. 5. How long have you lived there?

Ans. I have lived on that land about fifteen months.

Sub. 6. Who built the house in which you live?

Ans. I built it myself.

Q. How happened you to go into possession of that land?

Ans. I bought it of my brother Robert Smith one of the Defendants in this suit.

Q. How much of the land in dispute in this cause did you buy of him?

Ans. I bought one hundred and sixty acres.

Q. What price did you purchase of him besides the one you live on?

Ans. I bought the Eighty South of the one I now described.

Q. Who came the land over that you bought of Robert Smith?

(Objected to.)

Ans. Robert Smith was it.

Q. How did he acquire his title to it?

(Objected to.)

Ans. I sold it to him and gave him a deed of it.

The Complainant then objects to the examination of the witness in chief, on the ground that he is interested in the result of the suit.

~~Exhibit~~

Direct Examination.

Q. 1. What is your name and where do you reside?

A. My name is John Smith. I reside in Maryland. My age is about twenty seven years.

Q. 2. Are you acquainted with the parties Complainant and Defendants in this Cause or any of them, and if so, how long have you known them or either of them?

A. I have been acquainted with the Complainant Falmagne about eleven years. I have been acquainted with Defendants Nick & Sonnis about eleven years, with defendant Elston about four years, with defendants Montgomery & Robert Smith as long as I can remember. I am not acquainted with any of the other Defendants.

Q. 3. Are you acquainted with any of the land in controversy in this suit?

A. I am, have been acquainted with it about eleven years.

Q. 4. Has Robert Smith one of the Defendants improved any part of said lands, and if so, about how long since he first commenced improving it?

(Object is as leading.)

A. He has improved some of the land. He commenced improving the South East eighth of the lands in dispute about four years ago.

Q. 5. What improvements have been put on the land improved by said Smith since he commenced improving the same?

Q. How many acres of land, eighty acres have been enclosed and
a small frame house & stable built, and a well has been dug on the land.

Q. What is the value of those improvements?
(Object to be.)

A. I should think about six hundred dollars.

Q. Have you ever had any conversation with the Complainant in respect to the purchase of the above lands or any part of them, if so, state what conversation and when it occurred.

(Object to be.)

A. Some time in the Spring of 1846. My brother and myself and Mr. Selma the Complainant had been walking over the land now in dispute, and my brother had been talking with Selma of buying land at the time, and Mr. Selma told him if he was going to buy land, to go in and buy some of the land in dispute that he did not intend to have anything more to do with it.

Q. Who were together and engaged in this conversation?

A. No person except Mr. Selma, my brother & myself; the conversation was between my brother and Selma and I was along with them.

Q. Was this before or after your brother Robert agreed for a part of said land?

A. It was before.

Q. How long before was it?

A. It was about two years before.

Q. Who was on the land at the time this conversation occurred?

1st How long were they living on the land.



12th How long did he continue on the land after that?

Ans Some Months. Can't tell exactly how long.

13th Was any person on any part of the land in dispute after Talnadge left it and before your brother bought a part of it?

Ans Elisha Pick cultivated and improved a part of it.

14th How long had Elisha Pick been improving any part of said land before your brother purchased?

Ans One year if not two. I am not certain.

15th Was there any other person on the land cultivating or improving it at the time?

Ans There was not.

16th What improvements had Pick on the land at that time?

(Objected to.)

Ans He had about twenty acres broken; I do not recollect whether he had made any other improvements or not at that time.

17th Do you know where the Complainant lived at the time your brother purchased?

(Objected to.)

Ans The Complainant told me he lived in the south Branch of the Richmondo in De Witt County.

18th Do you know whether the Complainant was in the habit of frequently coming into the neighborhood of the land in dispute at or before the time of your brother's purchase?

Ans. He was frequently there about that time mostly after the purchase.

Q¹⁰

19th Do you know whether the time of your brother improving any part of said land after said purchase?

Q¹¹

(Objected to.)

Ans. I recollect that he stayed at my brother's house one night when my brother was harvesting the first crop he raised on the land he purchased. Salnago was in the field when he was harvesting at that time.

20th Do you remember when Sama Montgomery bought a part of the land in dispute?

Ans. He bargained for it at the same time my brother did.

21st Did you make any statements to said Montgomery of any conversation between the complainant and your brother Robert Smith, and if so, state what you said to him. (Objected to.)

Ans. I did. I told him that I had heard Salnago say in conversation with my brother, that if he wanted to buy the land, to buy it, for he should have nothing more to do with it.

22nd When did you make this statement to Mr. Montgomery?

Ans. At some time between the time the conversation took place between Salnago and my brother, and the time Montgomery purchased.

23rd What improvements has Montgomery on the land he purchased of the disputed tract?

(Objected to.)

Ans. About fifty some broke and female.

24th What is the value of these improvements?

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45. I should say something between two hundred and three hundred dollars.

~~XXIX~~ 28th What part of these improvements were made before the commencement of the suit?

Ans I think there was twenty acres brook and fence.

29th What was it worth?

Ans Something like one hundred and thirty or forty dollars.

30th What improvements has Eliza White on the part of the Land he purchased of disputed tract?

(Objected to.)

Ans I should think he had something like sixty or seventy acres brook, and Eighty acres fence, a fenced house, mill & orchard.

31th What are these improvements worth?

Ans I should think something like Eight or nine hundred dollars.

32th What proportion of these improvements were made before the commencement of the suit?

Ans The fencing was made, the House built, and some fifty acres brook.

33th What was the value of these improvements?

Ans About Eight Hundred Dollars.

34th What improvements has Polster made on the land he purchased of the disputed tract.

Ans He has one hundred and forty or fifty acres broke, one hundred and
eighty acres fenced on the outside, a Log house, new stable.

Q¹

Q² What are his improvements worth?

Q³

Ans I should think about seven hundred Dollars.

Q⁴ What part of these improvements were made previous to the commencement of
this suit?

Ans I think he had fifty acres broke, his house built, and eighty acres fenced
on the outside.

Q⁵ What are these improvements worth?

Ans Something like seven or five hundred Dollars.

Q⁶ What improvements were on the Lands in dispute just before Charles A. Wick
purchased?

Ans Nothing that I would call improvements.

Q⁷ Has the Complainant ever had any conversations with you since the
commencement of this suit; or have you had any conversations between
the Complainant and you either before or since the commencement of this suit
expressing an intention of not interfering with your Brother's purchase of
this land, and if so, state that conversation, and when it occurred.

(Objected to)

Ans The Complainant told me that if the occupants of the Land would not quit
his land, that when he and the Company got through, he would not disturb the
occupants of the land, and would get his money back the principle and
interest from the company. This conversation occurred since the commencement

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of this suit. I do not recollect exactly the time.

Q^x

Have you any knowledge of the removal of any parts by the complainant from the land in dispute, and if so state what you know of that transaction and when it occurred.

A. I know that all the parts were removed from the place before Salnager left it.

Atlas Smith.

Class Interrogatories.

1st For what purpose was the Deed which you made by you to Robert Smith?

A. I sold the land to him and gave him a deed of it.

2nd For what purpose did you sell the land to him?
(Objected to.)

A. I sold it to him for value received or for what I got for it.

3rd Was that deed made by you to him for the purpose of enabling you to be a witness in this cause?

(Objected to.)

A. The Deed of the land to him I suppose will enable me to be a witness in this suit; but that was not altogether my design in deeding to him.

4th What did Robert Smith pay you for the land and how did he pay it?

A. He gave me his note for Eight Hundred Dollars payable I think in one year for the land.

111 11

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Q¹ When was the first made and when was the note made?

A¹ I think they were made about the 25th of August last.

Q² Did you deliver up the possession of the Land to Robert Smith at that time?

A² I have not left the Land. I have a crop on it to take care of but Robert owns the Land.

Q³ Are you a Farmer, and if yes what business have you laid out for the coming season?

A³ I have not laid out any business for the coming season as yet. I expect to farm it somewhere.

Q⁴ What agreement was made between you and your brother about the Land you decided to him?

A⁴ We did not make any particular agreement about the Land, or when I was to have it. I expect if we had agreed to not it of him and if we do not I shall go some where else. I expect to farm somewhere.

Q⁵ Did you make any agreement with the said Robert Smith to give him the possession of the Land at any time?

A⁵ I did not at any particular time.

Q⁶ Have you any other property to carry on business with except the Land or the Eight Hundred dollars, and Sir, how much and in what does it consist?

A⁶ I have some stock of Horses, Cattle, & Cows, and some money in the whole.

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~~200~~

to the value of Ten or Five Hundred dollars.

10th What amount of Money have you?

Ans Fifty or Sixty dollars.

12th Were there any agreement between you and your brother, as to the Crops on the land at the time you deduced to him?

Ans There was no agreement about it. Suppose it was understood that I was to have the Crops.

13th What was the fair Cash value of the One Hundred and Sixty acres you deduced to Robert Smith and how much was it worth per acre?

Ans Under the present circumstances I call the One Hundred and Sixty acres worth Eight Hundred Dollars.

14th What are the circumstances to which you refer in your answer to the last interrogatory.

Ans I remove the dispute the title.

15th To your estimate about the value then, of the intrinsic value of the land or is it of Robert Smith to the land?

Ans Under the present circumstances I don't consider the land worth as much as if the title was not in dispute.

16th If title be that the heirs of land were clear and unquestioned, how much would it have been worth per acre at the time you made your deed to Robert Smith for the same
(Applied to)

Q^uo^o It would probably have been worth Eight Dollars for me.

Q^uo^o

17th What did Robert Smith want that Land for?

Q^uo^o

Ans I did not ask him.

18th Do you know?

Ans I suppose he was going to make a farm of it.
(Objected to)

19th What did you suppose he was going to make a farm of it?

Ans I suppose he would not have wanted it if he had not wanted to make a farm of it.

20th Was there any understanding between you and Robert Smith at the time you deeded the land to him, or at any other time, that you should have it again in case the Complainant failed to recover it in this suit, and do you expect to have the land again in that Court?
(Objected to)

Ans There was no understanding of the kind whatever, and if Debnag fails in his suit, I expect to have the land if I buy it and not without.

21st Did Robert Smith state to you how or out of what fund he expected to pay the Eight hundred Dollars?
(Objected to)

Ans He did not.

22nd Did you take a mortgage on the Land for security for the debt?

Ans I did not, I call for note good for that amount.

2^d Why did you not take a Mortgage?

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(Objected to)

Ans I called his note good and did not want to be troubled with the expense of a mortgage.

Q18

3^d What did you pay for the land when you purchased it of Robert Smith and how and in what manner did you pay for the same?

Ans I think I paid him about seven hundred dollars for the Land.

Robert Smith sold the land to me for my part of it share in my Father's Estate.

24th Did you have any conversation with Mr. Ralston previous to his purchase of a part of the land in dispute, and if yes, did you state in that conversation what Delmage had said about the lands in question?

Ans I had very little conversation with him, and nothing about what Delmage had said about the lands in question. I had no conversation with him about any of the lands.

25th Did you know that he intended to purchase any of these lands before he made his purchase?

Ans I had heard that he intended to purchase.

26th How did you know it?

Ans I don't recollect. I suppose from neighborhood talk. Ralston passed by one time in company with my brother and his two sons in their way to look at the land.

27th How you can hear any other conversations between Delmage and any other of the purchasers of the land in question?

As then that I recollect.

25th

272 1st How you ever found Mr Salmons say that the Land was his as it lay?
(Object to.)
As I have found him say so since the commencement of this suit.

John Smith.

State of Illinois.

Madison County } ss.

I, C. H. Spafford Clerk of the Circuit Court in and for said County do certify that the foregoing deposition of John Smith was sworn to and signed by the said deponent, that the same was taken down by me in the presence of the said deponent, that the said deponent was sworn before the said deposition was taken down, and that the said deposition was sworn to and subscribed before me by said deponent, and that said deposition was taken at the Clerk's office of said Circuit Court in Rockford in said County on the 2^d day of September A.D. 1853 commencing after the hour of 10 o'clock of said day.

In testimony whereof I hereunto set my hand and the Seal of said Court at Rockford in said County this 2^d day of September A.D. 1853.
C. H. Spafford,
Clerk.

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W. A.

tion of
J. D. Michaud

EXAM

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State of Illinois
Winnebago County I. B.

Winn. Co. Court.

Deposition of Thomas D. Robertson taken before C. H. Johnson
Clerk of the Circuit Court in and for said County of Winnebago at the Court House
in Rockford in said County on the 19th day of October A.D. 1853 said deposition
to be used as evidence in the trial or hearing of a cause now pending in said
Circuit Court wherein Anna Palmaro is complainant and Alexander Ferguson
James Perkins & Als are Defendants in the part of the deposition, said deposition
being taken by agreement of the parties. The complainant by Perkins and Ferguson
his solicitors and the Defendants by Wright their solicitors being present. The said
Thomas D. Robertson being first duly sworn to testify the truth in the matter in
controversy, deposes as follows.

Q¹ What is your age and when do you reside?

A¹ I am thirty five years old and reside in Rockford Ill.

Q² Are you acquainted with the parties to this suit, or any of them and if
so, how long have you known them respectively?

A² I have been acquainted with the Complainant Palmaro fourteen or
fifteen years with Deft. Alex Ferguson about ten years, with Defendant
Jas Perkins about eight years, with Deft Robert Smith about eight years
with Deft James McHenry about six years, with Defendant John P. Smith
about six years, with Deft William Austin five or six years, with Deft.
James C. Dennis about five or six years. I am not acquainted with any
other of the Defendants.

Q³ Look on the paper marked A now shown to you, and to be made an
exhibit herein and purporting to be a letter or contract from

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Ques

Thomas Pinrose to Eliza A. Wink and state what you know of said paper and in when have writing the same is?

(The Complainant here objects to the interrogatory, and the introduction of the paper produced.)

Ans. The Letter is in the handwriting of Thomas Pinrose. At about the date of the Letter which was on the 26th of November 1847 acting as the agent of Thomas Pinrose, I sold the tract of land mentioned in said Letter to said Wink for the price and on the terms mentioned in said Letter, and received the Letter from said Pinrose and delivered or caused the same to be delivered to said Wink.

Q^d state whether you are acquainted with the handwriting of Thomas Pinrose and if so what are your means of such knowledge.

Ans. I am acquainted with the hand writing of said Pinrose and have seen him write frequently.

Q^d Look on the several receipts for money entered on the said paper and state in what hand writing the same are, and where the same were introduced thereon, whether any and what money was paid at the time of such endorsement. (Alfred L.)

Ans. The several endorsements made on this Letter were made by me, and the sums of money therein stated to be received, were received by me from said Wink in said sale of land with the exception of one duplicate receipt for money received and paid over to A. B. Wink by W. B. Wink & Holland. said money was received on or about the date specified in said receipts.

Q^d Look on the Letter marked B and show to you and to be read an exhibit, having and purporting to be a Letter or Contract from Thomas Pinrose to Robert Wink and state what you know of said paper, and in when handwriting the same is.

MSA
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The Complainant had objects to the interrogatory and the introduction of the letter.

Ans The letter is in the handwriting of Thomas Primrose; at about the date of the letter as agent for Primrose I sold the tract of land mentioned in said letter to said Smith for the price and on the terms mentioned in said letter and received said letter from said Primrose and delivered the same to said Smith.

Q^d Look on the several receipts for money entered in said paper, and state in what handwriting the same are, and when the same were received, and whether any and what money was paid at the time of such acknowledgments. (Article 1.)

Ans The first acknowledgment of price is made in the handwriting of A. C. Allen of the firm of Allen & Ward & Co. the second acknowledgment & 1st of 2 is the handwriting of C. R. Alden Clerk for A. Ward & Co. I have seen both the first last named papers both, the last two acknowledgments are in my handwriting and the time of money accepted for by me were paid at the time mentioned in said receipts.

Q^d Look on the two papers marked C & P. now shown to you and to be made exhibit hereto, the one marked C. purporting to be a letter is contract from Thomas Primrose to James Fitzgibbon, and the one marked C. purporting to be a letter is contract from Thomas Primrose to William Foster and state what you know of said papers, and in what handwriting they are.

The Complainant objects to the interrogatory and the introduction of the papers.

Ans The letters are in the handwriting of Thomas Primrose. On or about the 16th of June A.D. 1845 as agent for Primrose I sold the tract of land mentioned in said letter marked C. to said Fitzgibbon for the price and on the terms mentioned in said letter and afterwards received said letter from said Primrose.

and delivered the same to said W. H. Montgomery, and on or about the 27th day of April 1849, or about the said Phoenix I sold the part of land mentioned in said letter marked B. to said Robert for the price and on the terms mentioned in said letter and afterwards received said letter from said Phoenix and delivered the same to said Robert.

7th Look in the several receipts for money endorsed on said papers, State in what handwriting the same are and when the same were made, whether any and what money was paid at the time of each endorsement.
(Exhibit 10.)

Ans. On the letter marked C. the first two endorsements of \$150. and \$100. are in the handwriting of Robert of the firm of A. Brand & Co. The third & fifth endorsements are in my handwriting, and the fourth endorsement of \$100. is in the handwriting of G. B. Eastman Clerk for Robert & Holland. The said sum of money mentioned in said three last receipts was paid by said Montgomery at the time specified in said receipts. On the letter marked H. the first endorsement is in the handwriting of Robert of the firm of A. Brand & Co. the last two endorsements are in my handwriting, the sums specified in said two last endorsements were paid at the time therein mentioned.

10th Look in the paper marked E. now shown to you and to be made an exhibit here, and purporting to be a letter or contract from Alex. Ferguson to James E. Davis was state what you know of said paper and in what handwriting the same is.
(Exhibit 11.)

Ans. The body of the letter is in the handwriting of G. B. Eastman Clerk for Robert & Holland, the signature to the same is in the handwriting of Alexander Ferguson. I have seen said Ferguson twice or three times. On or about the 27th day of June A.D. 1849, or about the said Phoenix I sold the part of land mentioned in said letter to said James E. Davis for the price and on the terms mentioned in said letter, and afterwards received said letter from said Ferguson and delivered the same to my last collection to said court.

MSA

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1st Look on the several receipts for money rendered in said Letter and State in
when handwriting, the same are, and whether any and what money was paid
at the date of each instrument.

Ans. The instruments are in my handwriting and the same herein specified
were paid at the date mentioned in said receipts.

2nd State whether you were authorized to receive money on said contracts
or how otherwise.

Ans. In all my acts in the premises I acted as one of the Firm of Robertson
& Holland Land Agents of Rockford Winnebago County who were the Agents
for said Thomas Pinckney and Alexander Ferguson, and as such agents were
authorized to receive moneys for them on lands sold for them in either of
them.

3rd Do you know whether Alexander Pinckney & Co were authorized to receive
money on said contracts, if so, State what you know on that point.
(Object to.)

Ans. I know that they were authorized to receive money for said Pinckney
& Ferguson on said contracts.

Thomas D. Robertson

Chas. Robertson.

4th How long have you been the agent for Ferguson and Pinckney
with regard to the lands, referred to, in the Letter exhibited as aforesaid.

Ans. As long back as the year 1845.

[1845-1848]

5th State whether the Refutation Robert Smith James Westfarming

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~~Ans~~

Eliza C. Fitch and James C. Davis, and either or any, are either of them if any had any connection with you previous to their respective contracts by you referred to, respecting the alleged claim of compensation to the lands mentioned in said letter exhibited.

Ans: I don't recollect of any connection with Davis, Montgomery or Fitch. I have a recollection of some conversation with Robert Smith about McCabey but do not recollect whether it referred particularly to the lands mentioned in their exhibits.

Thomas J. Robertson

The papers marked A. B. C. D. referred to in direct interrogatories are hereto attached and made exhibits in this cause.

W. Spafford, Coun.

May

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Oct 1

Wm. C. C. & Co.

Wm. C. C. & Co.

St. Louis Mo. Dec. 1847

At duly authorized & that effect I hereby make offer to transfer to you the title of Alexander Ferguson of this City to the following tract of land situate in Wm. C. C. & Co. and State of Illinois and known and described as the west half of the south west quarter of section thirty five in Township forty four north and range two east of the third principal meridian and containing Eighty nine acres or less, and that for the sum of Three Hundred and twenty dollars (\$320.) payable as follows, One Hundred and fifty dollars cash down, Eighty dollars within six years from this date, and Eighty dollars within ten years from this date with interest at the rate of six percent per annum on the last unpaid installment from this date until paid, and on condition of your paying the taxes on said land for the year 1848 and all future years, & that failing said payments or any of them, this offer to be at an end, and the land to remain the property of any claim on your part in law or in equity, that all payments made prior to such failure be to your credit.

Thos Geo Wm C. C.

Wm. C. C.

\$320. The Hundred and twenty dollars paid as per Robertson & Hollands to Alex Ferguson for Alex & Bond & Co.

\$220 The sum received from Wm C. C. & Co. and forwarded to Alex Ferguson for Alex & Bond & Co. on the within Contract Two Hundred and twenty dollars being the sum then receipted for.

\$20 Received from Alex & Bond & Co. Twenty Dollars on the within Contract.

Nov 27th 1847. Received Fifty two 22^{rs} Dollars on within.

Dec 1st 1847. Rec^d Fifty two 22^{rs} Dollars balance on within Bond.

Dec 23rd 1847 Rec^d from Alex & Bond & Co. Five 5^{rs} Dollars balance on within Bond.

And Delivered.

Great River. 11th June 1848.H. Robert Smith
Manitago Co. Mo. Ch.

LCC

As duly authorized to that effect I hereby make
offer to transfer to you the title of Alexander Ferguson of this city to the tract
of land after described situate in the County of Manitago and State of Missouri viz
The East half of the north west quarter and the West half of the south West quarter
of Section Forty five, Town forty five Range two East, containing in whole one
hundred and sixty acres more or less. And that for the sum of six hundred and fifty
dollars payable as follows, One Hundred Dollars on the first day of November next (1848)
two hundred and twenty dollars on the first day of November 1849 and two hundred
and thirty dollars on the first day of November 1850 with interest at the rate of
six per cent per annum on each installment from the 14th day of June current until
paid, also on condition of your paying all taxes and assessments for the present
year 1848. and for all future years on said lands. But failing said payments
on any of them this offer to be at an end, and the lands to remain the property of
the said one and no payments made prior to such failure to be forever forfeited
without any claim on your part either in law or equity in said lands or
perfected payments.

Wm. C. (Hon. Secy.)

D. J. Fergusson.

§ 146. One Hundred Dollars paid 11th Nov 1848. Alex. S. Broad & Co.

J. M. Ferguson.

§ 157. One Hundred & fifty dollars paid 15th July 1849.

A. S. Broad & Co. Agents for A.

§ 160. One Hundred Dollars paid Nov 3rd 1849.

The Ferguson for Robert Smith & Holland's.

§ 70. Sixty Dollars paid March 1848.

Alex. S. Broad for Robert Smith & Holland's.

To value the above lands my right title and interest in the foregoing land or
contract to John Smith. Value paid from 18th 18th 1849.

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Debit C.

Jan 21st 1848.

Wm. H. H. H. H. H.
Montage County, N.C.

Do. I do hereby certify that I have and offer to transfer to you the title of Michael Piquera of this city to the tract of land to be described, to wit in the County of Montage and State of North Carolina the West half of the South east quarter, and the North east quarter of the South east quarter of Section thirty five, Town forty five North, Range two East containing in whole one hundred and twenty acres more or less, and that for the sum of five hundred and eighty dollars payable as follows. One hundred and fifty dollars on the first day of November next (1848.) One hundred and sixty five dollars on the first day of November 1849 and one hundred and sixty five dollars on the first day of November 1850 with interest at the rate of six per centum per annum on each installment from the 14th day of June current until paid. Also on condition of your paying said taxes and assessments on said lands for the period from (1848) and all future years. Not failing said payments or any of them this offer to be at an end and the land to remain the property of M. Piquera and all appurtenances thereto from the date of such failure to be given perfected without any claim on your part either in law or equity in said land or perfected payments.

Wm. H. H. H. H.

Wm. H. H. H. H.

Jan. 21st 1848. Paid this 18th November 1848 One hundred and fifty dollars.

Wm. H. H. H. H. for M. Piquera.

Jan. 21st 1849. Paid this 1st November 1849 One hundred dollars.

Wm. H. H. H. H. for M. Piquera.

Jan. 21st 1850. Paid this 1st November 1850 One hundred dollars.

Wm. H. H. H. H. for M. Piquera.

Jan. 21st 1851. Paid this 1st November 1851 One hundred dollars.

Wm. H. H. H. H. for M. Piquera.

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§ 114th Received on the within Contract On Hand a sum of
 Dollars balance of principal & interest due on within contract
 Relation & Mollard.
 for A. Ferguson.

Rec'd a Receipt And of the premises within described this 10th day
 of September A.D. 1857
 Attest S. S. Eastman.

P.
 McWilliams Receiver.
 Minnesota Co Minn.

St. Louis 7th April 1849.

Sir, We duly authorize to that effect &
 hereby offer to transfer to you the title of Alexander Ferguson to the following
 tracts of land situate in the County of Minnecago and State of Illinois and
 more and described as the South West quarter of Section thirty five and
 the west half of the north west quarter of Section thirty five, both in township
 thirty five, and Range two East (S. 34 & 35 T. 34 R. 2 E. Sec 35 & 36 N.E.)
 containing two hundred and forty seven acres or less, in full cash and
 that for the sum of Nine Hundred and sixty Dollars, payable as follows,
 three hundred and twenty dollars cash down, the same amount within one year
 of this date, and the same year amount within two years of this date, with
 interest on these payments from this date until made at the rate of ten
 per centum per annum, and on the further condition that you are to pay all
 taxes due & from said lands for the present year 1849 and all future
 years. But failing you making said payments or any of them when they
 respectively fall due this offer is to be at an end and the land is to remain
 to Ferguson or to dispose of at pleasure without any claim in law or equity on
 your part therefor, and all payments made prior to such failure are to be paid
 in full.

Yours Very Truly,
 The Receiver in the above named County.
 At the rate of 6 per cent in place of 10 per cent.

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of 121. (Say Three hundred and twenty dollars) Received on the within from Nathan the 14th of October & Holland of Rockford
Chicago 21 May 1857. Messrs Bond & Co Agents
for Messrs Fergusons.

of 121. Say Three hundred & fifty eight & 40/100 Dollars rec'd on the within Bond. Rockford April 26th 1857.
Nathan & Holland for A. Ferguson.

of 129. Rec Three hundred and thirty nine 75/100 Dollars on the within May 5th 1857.
Nathan & Holland for A. Ferguson.

Rec Rockford September 19th 1857 from Nathan & Holland a Warranty deed of the premises within described, signed by Thomas Perkins in full satisfaction for this loan.
In presence of William Perkins.
J. B. Hartman.

C. Messrs James C. Davis Chicago June 1st 1857.
Winnebago County Ill.

Do I hereby offer to transfer to you my title in and to the following lot of land, situate in the County of Winnebago and State of Illinois described as the South East quarter of the South east quarter of Section Thirty five in Town Forty five, and Range Two East containing Forty acres more or less, and that for the sum of Two hundred dollars payable as follows, Fifty Dollars Cash down Twenty five dollars within one year of this date, and Twenty five dollars within two years of this date, with interest at the rate of six per centum per annum on the postponed payments from this date until paid, and on condition of your paying all taxes on said land for the present year 1857 and all future years. But failing said payments or any of them, this offer to be at an end & the land to remain in me free of all claim on your part or law.

or in equity, and all payments made prior to such notice to be paid
forfeited.

I am from St. Louis

Mr. Ferguson.

1858

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for. Rec'd on the within from 2nd B. & F. Co. - April 20th
1857 Rec'd from B. & F. Co. - September 1st 1857 Rec'd from B. & F. Co. -
Oct 1st 1857 Rec'd from B. & F. Co. -

A. Ferguson.

John Robertson & Holland.

Sept 12th 1851 Paid balance of \$142.50 in cash and I have paid.

State of Illinois

Winnebago County, Ill.

I, A. A. Spafford, Clerk of the Circuit Court in
and for said County do certify that the foregoing depositions of Thomas
D. Robertson were sworn to and subscribed by the said Dependent, that
the same were taken by me in the presence of said Dependent, that the
said Dependent was sworn before the said Depositions were taken down,
that the said Depositions were sworn to and subscribed before me by the
said Dependent at the Court Room in Rockford in said County, and
that they were taken by agreement of the parties on the 1st day
of Octbr A.D. 1853.

Sub.

In Testimony whereof I have set my hand
and affix the seal of said Court at Rockford
in said County this 1st day of Octbr 1853.

A. A. Spafford
Clerk.

John Robertson & Holland.

United States of America
State of Illinois Hennepin County:

WV

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At a special Term of the Circuit Court of Hennepin County began & held at Rockford in said County on the twenty fourth day of November A.D. 1845. pursuant to an order of said Court at the August term last past:

Present the Hon Thomas C. Proctor Judge
Thomas J. Turner Attorney for the Plf
Anson Barnum Barnum Shff &
James Mitchell Clerk

Then Sir Court

Alexander Ferguson Of the Nov Special Term 1845.

vs
Asa Salmage

Ejectment

I hereby enter myself security for costs in this Cause & acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action either to the opposite party or to any of the Officers of this Court in pursuance of the law of this State: Dated this Nov 11th 1845.

Anson Marsh

Filed Nov 11/45. Mitchell Clk

Then Sir Court:

Of the Special Term of November in the year of our Lord eighteen hundred & forty five:

County of Hennepin S. S.

Alexander Ferguson by Marsh & Night his Attornies complains of Asa Salmage by this his declaration & notice according to the Statute in such case made & provided: For that whereas the said Plaintiff on the first day of September in the year eighteen hundred & forty five was possessed of a certain parcel piece or tract of land with the appurtenances thereunto belonging situate in the said County of Hennepin known described & designated as the south east & south west quarter of Section number thirty four & the north west & south west quarter of Section number thirty five in Township number forty five north range two east of the third principal meridian which said premises the said

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plaintiff claims in fee And he the said Plaintiff being so pre-
sented the said Defendant afterwards to wit on the first day
September in the year eighteen forty five entered into the said
premises & ejected the said Plaintiff therefrom & unjustly withholds from
the said plaintiff the possession thereof to the damage of the said
Plaintiff of Two hundred dollars & therefore he brings his suit
Marsh & Night Atty for Plaintiff

To

Mr Asa Salmage

Sir. You are hereby notified that the declar-
ation with a copy whereof you are now herewith served & to which
this notice is subjoined will be filed in the Office of the Clerk of this
Court on the twenty fourth day of November inst in the Special Term
for term of said Court That upon filing the same a rule will be entered
requiring you to appear & plead to the said declaration within twenty
days after the entry of such rule: And that if you neglect so to appear
& plead a judgment by default will be entered against you & the plain-
tiff will recover possession of the premises specified in the declaration
Marsh & Night

Dated this 8th day of Nov 1845 Atty for Plff.

Hennebago County S. S. Anson Barnum Sheriff being duly sworn
doth upon his oath depose & say that he served a declaration & notice
of which the above is a copy on the above named Asa Salmage on
the 10th inst by leaving the same with the wife of the said Salmage
at his residence in said County:

Subscribed & Sworn to this 24th
day of Nov 1845 before me:
James Mitchell Clk

A. Barnum Shff H. Co.

Endorsed: "Filed Nov 24"/45. Mitchell Clk"

Tuesday November 25th 1845

Alexander Ferguson & Ejectment

Asa Salmage

This day comes the plaintiff by his
Attornies & files his declaration in this cause

with the notice thereto subjoined and moves the Court that the
defendant plead to the said declaration in twenty days from this
day: And it appearing to the Court by the Affidavit of Unson Bur-
num Sheriff of this County filed, that the said defendant was on
the 13th day of November last served with a copy of the Declaration
filed by said Sheriff, together with a copy of said notice by leaving
the same with the wife of said defendant at his residence in this
County, and the Court being sufficiently advised in the premises: it is
ordered by the Court here that the defendant plead to said Decla-
ration in twenty days from this day or that judgment be entered
against him by default:-

Asa Salmadge

vs
Alexander Ferguson

Kennebago County Cir Court
December 13th 1845.

And the said Asa Salmadge by Miller &
Miller his Attorneys Comes & pays that he is not guilty of unlawfully
withholding the premises claimed by the said Alexander Ferguson
as alleged in the said declaration of the said Alexander Ferguson.
And of this he the said Asa Salmadge puts himself upon the Country
Miller & Miller
Attys for Def^t

Endoned "Filed Dec 13 1845"

James Mitchell Clerk

At a regular term of the Circuit Court of Kennebago
County began & held at Rockford in said County on the 17th of
August A.D. 1846: Present Hon Thomas L. Proctor one of the as-
sociate Justices of the Supreme Court & Presiding Judge of the
Sixth Judicial Circuit of the State of Illinois

Thomas J. Turner Esq State Attorney
Strum R Maynard Sheriff
Jason Marsh Clerk

And afterwards to wit on the 20th day of August 1846 it
being one of the days of the aforesaid term of Court the following
entry was made as appears of record

Alexander Ferguson

v
(vs) Salmage

Ejectment

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And now at this day comes the said Plaintiff by his Attorney & the Attornies of the said Defendant also come & withdraw their pleas & appearance: And the said defendant being three times solemnly called comes not but makes default herein whereby the said Plaintiff remains therein undefended against the said Defendant wherefore the said Plaintiff ought to recover against the said Defendant the possession of the premises in the said declaration of the said Plaintiff described together with his costs & charges by him about his suit in this behalf expended: Therefore it is considered that the said Plaintiff do recover against the said defendant the possession of the said premises in the said Declaration of the said described: And it is further considered that the said Plaintiff do recover against the said Defendant his costs & charges by him about his suit in this behalf expended & that he have execution therefor: And hereupon the said Plaintiff prays the court of the People of the State of Illinois to be directed to the Sheriff of the County of Winnebago aforesaid, to cause him to have possession of the said premises according to the force form & effect of said recovery: And it is granted to him returnable to the next term of our said Circuit Court on the second Monday in Aug next:

last

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State of Illinois
Winnebago County S. S.  Heas before the Hon^{ble} Benj
R. Sheldon Judge of the Circuit Court of the County of Win-
nebago in the State of Illinois at a regular Term of
said Court began & held at the Court House in Rockford
in said County of Winnebago on Monday the 24th day of
April A.D. 1854.

Present the Hon^{ble}
Benj R. Sheldon Judge
William Brown State's Attorney
Henry W. Milliken Sheriff

Attest Charles W. Spafford Clerk

And afterwards to wit on the day at the aforesaid term
of Court the following decree was entered as appears of record
to wit:

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1879

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H.M.

In the Winnebago County Circuit Court

Asa Fallmadye

vs

Alexander Ferguson and others

including

Robert Smith

James Montgomery

Elisha A. Kirk

William Ralston and

James E. Dennis

In Chancery.

This day came the parties by their respective solicitors and counsel. And this cause having been submitted at the last September term of this Court, upon the pleadings and proofs, and the arguments of counsel thereupon, and taken under advisement by the Court, and mature deliberation being thereupon had, it appears to the Court the defendant Robert Smith is intitled to retain and hold free and clear of any claim thereto of the complainant herein, The east half of the south west quarter of section thirty five, and the east half of the north west quarter of the same section thirty five, in township forty five range two of east of the third principal meridian, in the pleadings in this cause described. And it also appears to the Court that the defendant Elisha A. Kirk, is intitled to retain and hold the west half of the south west quarter of the said section thirty five in Township forty five east of the third principal meridian, in the pleadings in this cause also

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described, free and clear of any claim thereto of the said complainant. It is therefore ordered adjudged and decreed, that the bill of complaint in this cause stand dismissed as to the said defendants Robert Smith and Elisha A. Kirk, and that they have and recover their costs and charges by them about their defence in this behalf expended, and that they have execution therefor. And it further appears to the court, that on the twenty ninth day of October in the year of our Lord one thousand eight hundred and thirty nine, the said complainant borrowed of William Taylor, in the pleading in this cause named, the sum of eight hundred dollars to pay to the government of the United States for the two half sections of land in the said pleadings described, and on the same day caused the said lands to be entered in the name of the said William Taylor at the land sale then being held at Galena in the county of Joe Davis to secure the repayment of the said borrowed money and interest, and caused the said lands to be paid for with the same money so borrowed by him of the said William Taylor; and the duplicate receipts of the receiver of the land office at Galena aforesaid, for the said lands to be made to the said William Taylor as is stated in the bill of complaint in this cause. and that there by the said William Taylor became and was seized in fee of the said lands as

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mortgage thereof, to secure the repay-
ment of the said money and interest,
and as trustee of the said lands for the
said complainant, subject only to the
said mortgage, ^{incumbrance} And it also appears
to the said Court that at the time of
the said loan and of the entry of the
said land as aforesaid, the said William
Taylor entered into a written contract
with the said complainant for the
conveyance of the said lands to the
said complainant upon the re-
payment in four years of the said
sum of eight hundred dollars, togeth-
er with a large amount of unlawful
~~interest~~ and usurious interest, in
several instalments, And it further
appears to the said Court, that in or
about the month of April in the
year of our Lord one thousand eight
hundred and forty two the said
William Taylor departed this life at
New Orleans in the State of Louisiana,
and that no part of the said sum of money
or interest thereon had been paid to him
at the time of his death, And it
further appears to this Court, that on the
eighth day of February, in the year of
our Lord one thousand eight hundred
and forty five the defendants named
in the said bill as the directors of the
Aberdeen North American Investme

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L.R.B.

and Loan Company filed in the Circuit Court for the county of Lima, bago a bill in chancery, against the heirs of the said William Taylor and other persons who were alleged in the said bill to hold the said lands by devise from the said William Taylor, in manner and form as is in the said bill of complaint, the object of which bill of the said directors was to cause the legal title to the said lands and other lands in the same bill mentioned to be conveyed to a trustee for the benefit of the said Aberdeen North American Investment and Loan Company, and that in pursuance of the decree upon the said bill, the legal title to the said lands was conveyed to the defendant Alexander Ferguson, as trustee for the said Company; but that the said complainant not being a party to the said bill, his right to redeem the said lands were not affected by the said conveyance, And it also appears to the said Court, that on the seventeenth day of June in the year of our Lord one thousand eight hundred and fifty, the said Alexander Ferguson by his deed of that date, for a ^{monetary} ~~monied~~ consideration in the said deed expressed to be one dollar, remised, released and quitclaimed to the defendant Thomas Primrose of St. Louis in the State of

Missouri, in fee, divers of the said lands
lying in the said County of Winnebago,
to as aforesaid conveyed to the said Alexan-
der Ferguson, including all the said two
half sections of land excepting the west
half of the south ~~west~~ Quarter of section
~~twenty five~~ thirty five in said township
forty five of range two east of the third
principal meridian, containing eighty
acres, which the said Alexander Ferguson
had previously conveyed to the defendant
Elisha A. Kirk, as hereinafter mentioned.

And it further appears to the Court, that on
or about the twenty second day of Novem-
ber, in the year of our Lord one thousand
eight hundred and forty nine, the said
Alexander Ferguson conveyed the said last
mentioned tract of land to the said Elisha
A. Kirk, in consideration of the sum
of three hundred and twenty dollars,
which had been previously paid to him
by the said Elisha A. Kirk, at divers
times which do not precisely appear by
the pleadings and proof in this cause,
and it also appears to the Court, that
on or about the twenty sixth day of June
in the year of our Lord one thousand
eight hundred and forty eight, the
said Alexander Ferguson contracted to
convey to the said Robert Smith,
the east half of the south east quar-
ter, and the east half of the northwest
quarter of section thirty five aforesaid.

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containing one hundred and sixty acres for the sum of six hundred and forty dollars to be therefor paid by the Robert Smith with interest, in divers installments, that all the said money and interest, except ninety dollars thereof, was paid by the said Smith to the said Ferguson, at divers times which are not sufficiently proved in this cause, that on the fourteenth or fifteenth day of March, in the year of our Lord one thousand eight hundred and fifty, after the said conveyance to the said Thomas Primrose, and after the filing of the bill of complaint in this cause, the said Robert Smith paid to the said Thomas Primrose the sum of ninety dollars, the balance of the said sum of six hundred and forty dollars and interest, and that on or about the twenty eighth day of August, in the same year 1851, the said Thomas Primrose in pursuance of the said contract with the said Alexander Ferguson, conveyed the said two half quarter sections of land, with warranty to the said Robert Smith, and it also appears to the court, that on or about the twenty sixth day of June in the year of our Lord one thousand eight hundred and forty eight, the said Alexander Ferguson made a

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written contract to convey to the defendant James Montgomery the west half of the southeast quarter and the northeast quarter of the southeast quarter of said section thirty four for the sum of four hundred and eighty dollars, payable at divers days thereafter, with interest, that upon the making of the said contract, the said James Montgomery entered into the possession of the same lands and made divers valuable improvements thereon previous to the filing of the bill of complaint in this cause; that he also paid to the said Alexander Ferguson previous to the said conveyance to him from him to the said Thomas Primrose, the said sum of four hundred and eighty dollars and interest, at divers times excepting a part thereof, which with interest amounted to one hundred and fourteen dollars and sixty three cents, on the twenty eighth day of August in the year of our Lord one thousand eight hundred and fifty one, and that on the said last mentioned day, and after the filing of the bill of complaint in this cause, the said Thomas Primrose, in pursuance of the said contract of the said Alexander Ferguson to the said James Mont-

goremen, conveyed the said last mentioned tracts of land in fee to the said James Montgomery, with general warranty. And it also appears to the Court that on the twenty seventh day of April, in the year of our Lord one thousand eight hundred and forty nine, a contract was made by and between the said Alexander Ferguson and the defendant William Ralston, for the conveyance to the said Ralston, of the southwest quarter of the aforesaid section thirty four, and the west half of the northwest quarter of the aforesaid section thirty five, for nine hundred and sixty dollars; that he paid down at that time the sum of three hundred and twenty dollars, and was to pay six hundred and forty dollars, the residue of the said sum, in two equal annual installments, with interest, that upon the making of the said contract, the said William Ralston entered upon the possession of the said tracts of land and made valuable and permanent improvements upon the same, before the filing of the bill of complaint in this cause, consisting of buildings and fences; that he paid most of the residue said residue of six hundred and forty dollars to the said

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Alexander Ferguson previous to the said conveyance from him to the said Primrose, and previous to the filing of the said bill in this complaint cause, that subsequent to the filing of the said bill, the said Palston paid to the said Thomas Primrose the balance of the said sum of six hundred and forty dollars and interest, and that after the said balance had been paid to him, the said Thomas Primrose, in pursuance of the said contract of Alexander Ferguson with the said Palston, by his warrant deed, dated the twenty eighth day of August, in the year of our Lord one thousand eight hundred and fifty one, conveyed the said last mentioned tracts of land in fee to the said William Palston. And it also appears to the Court, that on the twenty seventh day of June, in the year of our Lord one thousand eight hundred and forty nine the said Alexander Ferguson contracted in writing the defendant James E. Dennis the south east quarter of the south east quarter of the aforesaid section thirty four, for the sum of two hundred dollars: fifty dollars thereof to be paid down, and the residue in two equal annual installments of seventy five dollars each, with interest, that the said James E. Dennis, paid a part of the said purchase money and

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interest to the said Alexander Ferguson, and that the residue thereof, amounting to one hundred and two dollars and fifty one cents, was paid by the said James E. Dennis, to the said Thomas Primrose after the filing of the said bill of complaint in this cause: And that the said Thomas Primrose thereupon, by his warranty deed dated the twenty second day of August in the year of our Lord one thousand eight hundred and fifty one conveyed the said quarter quarter section of land in fee, to the said James E. Dennis. It is therefore declared, adjudged, and decreed that the said complainant, is intitled to recover and redeem the said several parcels of land conveyed to the said James Brontgomery, William Ralston and James E. Dennis respectively as aforesaid, by paying to the said James Brontgomery, William Ralston and James E. Dennis respectively, the several sums of money paid by them before the service upon them of the summons in this cause, for the said parcels of land, with interest thereon and for improvements made by them upon the said lands before the service upon ^{them} of the summons in this cause as hereinafter mentioned subject however to such mod-

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ifications as this court may hereafter order and direct, after the inquiries hereinbefore mentioned shall have been made. And it is ordered, that it be referred to the master in chancery of the County of Winnebago, to inquire what improvements were made by the said James Montgomery, William Ralston and James E. Dennis, respectively upon the several parcels of land so purchased by them as aforesaid prior to the service upon them of the summons in this cause and what is the value of such improvements; and also whether any and what damages the said parcels of land have sustained by the commission of any kind of waste, or by destruction of soil by cultivation, or otherwise, during the occupancy thereof by the said James Montgomery, William Ralston and James E. Dennis respectively; and that the said master also inquire whether any and what lasting improvements have been made upon the said parcels of land respectively, by the said James Montgomery, William Ralston and James E. Dennis since the service upon them of the summons in this cause and what is the value of such necessary lasting improvements; and that the master also inquire and ascertain what is the reasonable

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rent for the use and occupation by the said defendants of the said parcels of land respectively since the service upon them of the Summons herein. And it is further ordered, that the master state an account between the said complainant and the said James Montgomery, William Ralston and James O. Dennis respectively and that in stating the said account the said master for the time ~~for~~ which shall have elapsed after the service of the summons in this cause make annual ~~posts~~^{profits}, and from the amount of the said monies paid by the said James Montgomery, William Ralston and James O. Dennis respectively for the said lands, and the interest thereof he deduct the amount of rents which shall have been allowed by him for the use and occupation of the said parcels of land after deducting from said rents the present value of all permanent improvements made upon the lands since the service of the summons in this cause upon 3^d defendant that he deduct from the value of ~~improvements~~ the said improvements made as aforesaid before the service of the summons herein ~~upon~~ upon the said defendants sustained by waste and deduction of soil as aforesaid. And it is further ordered that in taking the

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said account the said master allow
the said defendants for taxes paid by
them upon the premises and that he
do not charge them with rent for
the mere improvements themselves
made by them, and be authorized to
examine the parties upon oath touch-
ing their dealings with other parties
in this cause as to the matters in
question herein, and to require the said
parties to produce all books, deeds, or
receipts, vouchers and papers relating to
the said matters; And that he make
report of his doings in the premises.

And it is further ordered, that
the question of costs, and all other
matters in question in this cause
be reserved for the further order
and direction of this Court.

Benj. R. Sheldon

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Copy Old Decree

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the decree

Copy Dec 1. Old Decree

1 Winnebago County Circuit Court,

Asa Tallmadge

vs

Alexander Ferguson & others

including

Robert Smith Elisha A.
Nirk James Montgomery,
William Ralston and
James E. Dennis,

Report on Reference
to take account
of Rents
improvements &c

2004

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To the Hon. Benj. P. Sheldon
Judge of the 14th Judicial Circuit
in the State of Illinois and as
Such Judge of the Winnebago
Circuit Court

In pursuance of an order of this Court
made in the above entitled cause at the
September Term thereof A. D. 1857, by which
it was referred to me to enquire what im-
provements were made by the said defen-
dants, James Montgomery, William Ral-
ston and James E. Dennis respectively, upon
the several parcels of Land purchased by them as
in said decree recited, prior to the service of the
Summons in this cause upon them, and
what is the value of such improvements;
and also whether any & what damages the
said parcels of Land have sustained by the
corrosion of of any kind of waste, or
by deduction of soil by cultivation or other-
wise during the occupancy thereof by the

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said James Montgomery, William Ralston and James E. Dennis respectively; And that the said Master also enquire whether any and what lasting improvements have been made upon the said parcels of land respectively by the said James Montgomery, William Ralston and James E. Dennis since the service upon them of the Summons in this cause and what is the value of such necessary lasting improvements;

And that the Master also enquire and ascertain what is the reasonable rent for the use and occupation by the said defendants of the said parcels of Land respectively since the service upon them of the service summons herein;

And it was further ordered that the master state an account between the said Complainant and the said James Montgomery, William Ralston and James E. Dennis respectively; And that in stating the said account the said Master for the time which shall have elapsed after the service of the summons in this cause make annual rests, and from the amount of the said moneys paid by the said James Montgomery, William Ralston and James E. Dennis respectively for the said Lands, and the interest thereof; he deduct the amount of Rents which shall have been allowed by him for the use and occupation of the said parcels

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of Land, after deducting from said Rents the present value of all permanent improvements made upon the land since the service of the summons in this cause upon said Defendants. That he deduct from the value of the said improvements made as aforesaid before the service of the summons herein upon the said Defendants. The amount of damages which the said Lands may have sustained by waste and deduction of soil as aforesaid;

And it was further ordered that in taking the said account, the said Master allow the said Defendants for taxes paid by them upon the premises, and that he do not charge them with rent, for the mere improvements themselves made by them.

I the Subscriber Master in Chancery in & for said County of Winnebago do respectfully certify and Report.

That having been attended by the Solicitors for the several parties interested herein viz. for the Complainant Tallmadge, and Defendants Dennis, Palston and Montgomery, I proceeded to a hearing of the matters so referred; And I herewith report the testimony of the witnesses produced by the respective parties upon said hearing, which is marked "A." & made a part of this my report.

I find from the testimony introduced, That Defendant James C. Dennis had made

no improvements, on the forty acres claimed by him prior to the service of the Summons, in this cause.

2^d From the testimony I find that Deft. James Montgomery, had prior to the service of the Summons in this Cause; upon the portion of the lands in question occupied by him - built about One Hundred and Sixty (160) rods of fence, and that he had broken about thirty (30) acres of said premises, viz about 20 acres in 1849, and about 10 acres in 1850, and that he had made no other improvements thereon.

That the value of such fence is 75 cts per rod (testimony conflicting & nothing certain as to quality)

As an improvement I find the breaking to be worth one dollar & fifty cents per acre - \$ 1.50

{ (Pemis is the only witness who testified upon that point & he says, that the breaking is worth \$1.50 per acre more than any subsequent plowing)

Making value of fence at 75 cts per rod
\$120. Value of Breaking 30 acres at \$1.50 \$45
Improvements at service of Summ \$165, &

3^d From the testimony I find that Deft. William Palston, before the service of Summons had upon the lands in question, occupied by him, erected a Log house, that he had broken about sixty acres, and had enclosed the same - That the amount of fence built by Palston prior

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to the service of the Summons does not certainly appear from the testimony, but but I have estimated it at one half of the whole amount built by him, (460 rods as appears from Kirke testimony)

Making two Hundred & thirty (230) rods - which was built from timber taken from the Land in question - The value of the House \$ 100 -

Improvements of Breaking 60 acres, at \$1.50 \$ 90 -

I estimate the value of Ralston's fence at 3¢ per Rod except West fence, which is 50, cts but the west fence has been improved since the service of Summons to give it greater value - made from a 2 to a 4 rail fence -

Value of 230 rods at 3¢ per rod \$ 66.25

Deducting 1/2 for value of material, leaves \$ 33.12 1/2

Present Value of improvements made before service \$ 233.12 1/2

I do not find that said defendants have committed any waste upon the Lands, respectively occupied by them; that if said Lands have suffered any injury it is only such as is incident to the ordinary course of Husbandry -

Since the service of the Summons in this cause I find, that upon the portion of said Lands occupied by Defendant Ralston Dennis: there has been built one Hundred & sixty Rods of fence (160) and about thirty Eight acres broken -

Present Value per rod of fence 40, cts

311 160 rods at 40 cts per rod, \$64, 00
 Improvement of breaking 38. acres
 at \$1/50 — 57, 00
 Present value of improvements = \$121, 00

329 I find that Defendant James Montgomery upon the portion of the Land in question occupied by him: Since the Service of the Summons: has built one Hundred and ten (110) rods of fence, and that he has broken about twenty acres —

Present value of Fence 75 cts per Rod,
 110, Rods at 75 cts. — — — \$82, 50
 Present value of Breaking 20, acres at \$1/50 per acre, 30, 00
 Total Value of Improvements since Service of Summons \$112, 50

And I find That Defendant Palston Since the Service of the Summons: has, upon the Lands in question occupied by him, Erected about two Hundred and thirty (230) rods of fence, — and has broken about Eighty (80) acres.

That he has erected a Log Stable, & has erected Corn Crib: and that he has dug & stoned a well (38) thirty Eight feet deep.

I find the present value of Palstons to be 3/- per rod except 160 rods on west side which by recent improvements has been made worth 50 cts.

230 rods, at 3/- \$86, 25

160, rods on west side value increased

1/2 per rod by Recent improvements \$20, 00

Value of fence built since Summons was served = \$106, 25

Timber taken from Lands, in question for

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value of which, deduct $\frac{1}{2}$ making - \$53, 12 $\frac{1}{2}$
 for fence since Service of Summons -
 Improvement of Breasting, 80 acres,
 at \$1,50 per acre \$120, 00
 Value of Log Stable 30, 00
 Value of Well, 38 feet deep at \$2 per foot 76, 00
 Corn Crib - - - - - 10, 00
 Total Value of Improvements since Service of Summons \$289, 12 $\frac{1}{2}$

I find the reasonable rent of the Lands in question occupied by Defts, Dennis, Montgomery & Palston Respectively to be, for the years 1851, and 1852, \$1,50 per acre, and for the years 1853, and 1854, to be 2\$ per acre, Said Sums being for the use of and occupation of the Lands independent of the use of any improvements by said Defendants respectively placed upon the same - both before and after the Service of Summons -

I have computed the interest on the Sums paid by the Defendants respectively, up to the first day of May A. D. 1855, and the account between the parties respectively is stated as of that date.

Asa Tallmadge Compt^r in acct.
 Paymts, on Land, With Deft, James E. Dennis Dr.
 1849
 June 27th 1855 Fifty Dollars - P. on Land \$50, 00
 April 20th " Twenty Dollars " " " 20, 00
 Sept 7th " ten Dollars " " " 10, 00
 Oct 7th " Thirty Four " " " " 34, 00

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Interest on 50\$ from June 27, 1849, to May 1, 1853

5 years 10 mos & 4 days

\$17.53

Interest on 20\$ from April 20, 1850,

to May 1, 1853 - 5 years, 11 days -

5.03

Interest on 10\$ from Sept. 7, 1850

to May 1, 1853, 4 years, 7 mo, 24 days -

2.78

Interest on 34\$ from Oct. 7, 1850

to May 1, 1853, 4 years, 6 mo, 24 days -

9.31 -

Taxes Paid -

Jan'y 24, 1850: Paid \$2.26. Interest on

same, 5 yrs, 4 mos 3 days - 72 cents -

\$2.98

Jan'y 6, 1851, ^{paid} \$2.89. Interest on same

4 yrs, 3 mo, 25 d'ys 74 cts, tax & interest

3.63

Total of 52, not at hand -

Jan'y 15, 1852, Paid \$1.67, Interest on same

2 yrs 9 mo, 16 d'ys, 23 cts, tax & interest

1.90

Jan'y 28, 1854, ^{paid} \$1.84, Interest on same

1 yr, 3 mo, 3 d'ys 14 cts, tax & interest

\$1.98

Feb'y 17, 1855, Paid \$1.96

1.96

Total taxes & interest \$12.45

Total Payments & interest 148.65

Am't of ~~Prin~~ taxes & interest - \$161.10

Cr

By use & occupation of 38 acres of
land for one year at 2\$ per acre, \$76 -

Deducting value of improvements made
since Service of Summons, \$124.00 -

Leaves a Balance over & above ~~Prin~~
of 45\$ for improvements made since

3/4 the service of Summons — 45¢

~~And~~
I find the sum of one Hundred sixty one
400 Dollars as Amount of payment and
interest, taxes and interest. Subject to no
deduction as provided in said Decree as
amt due from Compt to Deft, Dennis May 1/53, \$161.10

Oliver Fullmidge Compt^{ee} in acct
with Deft James Montgomery
Payments on Land —

Nov. 18, 1848. To One Hundred + fifty Dollars	\$150.00
Nov. 21 1849, To Sixty Dollars —	\$60.00
Nov. 1 1850, " One Hundred.	100.00
Oct. 2, 1850, " One Hundred	100.00
	\$410.00

Interest on 150\$ from Nov. 18, 1848 to May 1, 1853:
6 years 3 mo, 13 days. \$56.10

Interest on 60\$ from Nov 21, 1849 to May 1, 1853
5 yrs, 5 mo, 10 days — \$19.53

Interest on 100\$ from Oct. 21, 1850 to May 1, 1853.
4 yrs 6 mo — 27.00

Interest on 100\$ from Oct. 2, 1850 to May 1, 1853.
4 yrs + 7 mo. 27.57

Total interest \$132.13
Paymts + interest to May 1, 1853, \$542.13

As far as I can ascertain from the testimony
Deft Montgomery Cultivated of said Lands
In 1851 — 30 acres, at \$1.50 per acre, \$45.00
" 1852, 40 acres, do " " 60.00
" 1853, 50 " " do " " 100.00

In 1854 - 50 acres " do " " (\$100,00
Total for use & occupation ----- \$905,00

XX That the value of permanent improvements
made before Service of Summons \$16,500

315 Value of Improvements since Service
of Summons - 112,50

Amount of Taxes Paid 26,76
304,26

Balance of Rents over improvements \$00,74

As I find no authority in the
decree for allowing interest, on the
value of Improvements, made before
the service of Summons and as
there is no balance due Compt^e,
for Rents over improvements & taxes
until the last year, I have omitted
making the statement full year by year -

And

I find due Debt, Montgomery for
Due, Montgomery Money paid before Service of Summons &
May 1, 1855, interest on the same over & above the
use and occupation of the Land -

After deducting the value improve-
ments made & taxes paid -----

\$541,39

In making this computation I have first
applied the Rents to the payment of
improvements made before Service
of Summons: After paying the
taxes & value of improvements made
since the Service of Summons -

Asa Tallmadge Complt, in acct,
~~316~~ with Deft William Ralston
 Payments on Land -

May 21st 1849, To Three Hundred & twenty dollars \$320.00

316 April 26, 1850 358.40

Interest on, \$320⁰⁰ from May 29, 1849 to May 1st 1850
 5 Yrs 11 Mos, 2 days - \$113.70

Interest on \$358.40, from April 26, 1850 to May 1,
 1851, - 5 Yrs - 5 days \$109.01

Total of payments & rents 901.11
 br-

I find from the testimony that Deft.
 Ralston, had in cultivation on the
 the year: 1851, 60, Acres - at \$1.50

" " 1852, 88, " " " \$90.00

" " 1853, 116 " " " 132.00

" " 1854, 116 " " " 232.00

" Rents May 1st 1854, \$452.00

Value of improvements made
 since Service of Summons \$289.12 1/2

Taxes Paid by Ralston, 54.52
 \$343.64 1/2

Which deducted from Rents, up to
 May 1, 1854 leaves a balance of \$110.35 1/2
 for Rents, over & above improvements
 made since Service of Summons &
 Taxes Paid on May 1st 1854 - 1.

Deducting from value of improve-
 ments, made before Service of Summons

\$233.12 1/2

Balance for Improvements & Taxes May 1st 1854, \$122.77 0

317

Lands in Cultivation in
 1852, 140 acres at 2 $\frac{1}{2}$ ¢ \$280,00
 Deducting bal. of Val. of improvements &
 taxes 122,77
 Balance due for Rents, over improve-
 ments & taxes May 1, 1853- \$157,23-

Which Balance deducted from
 amount of payments before service
 of Summons, & interest on Same
 to May 1, 1853, Amounting to \$90,11

Leaving a Balance of \$743,88
 Due Palston } Due from Compt. Tallmadge to
 May 1, 1853 } Deft Palston on 1st of May 1853;
 for Money Paid, taxes & improve-
 ments, over & above Rent of Land-

And I would further Certify that upon
 the hearing the parties by their respective
 Solicitors have attended to the examination
 of witnesses for themselves, That a large
 number of witnesses have been examined both
 on the part of Complainant, and on the part
 of the defendants, That the testimony introduced
 both as to the value of the improvements made
 by the defendants, and the rent of the Lands
 is very conflicting — Many of the witnesses
 estimating the Rent of these Lands at 4 $\frac{1}{2}$ ¢ per
 acre for the last two years — Other witnesses

1300

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say the cash Rent for lands in that neighborhood, for the last three or four years has ranged at from \$1.50 to \$1.75 per acre, including improvements.

And although experience may have shown the lands worth more; from the testimony I do not think, for the last two years they would have commanded more than 28 per acre cash rent exclusive of the improvements, upon them made by defendants.

The testimony does not show the exact amount of fence built by Palston before the service of Summons, nor the number of acres he has had in cultivation each year since -- of the 80 acres or thereabouts broken since the service of Summons, the testimony shows 24 acres was broken in 1853, the remainder of the 80 I have divided equally between the years 1851 & 1852, All of which is Respectfully Submitted

April 18, 1853

William Lathrop

Reprot. 220

Master in Chancery

Filed April 25/1853

C. H. Spafford, Clerk

151

151

319

And afterwards to wit on the 30 day of Aprill 1858. the
 1st being one of the days of the Aprill term of the Minnibago
 County Circuit Court 1858 the following entry was made
 as appears of the Court record:

Blair
 8. 44

Wm. Salmons

vs

In Chancery

Alexander Ferguson vs

On motion of the Complainant

It is ordered that the Report of the Master filed at this term
 of the Court be in all things approved & confirmed by the Court

1858 - 25 / 10 2010 on 10/11

And afterwards to wit on the 4th day of October 1833. it being one of the days of the October term of the Hennepin County Circuit Court 1833. the following entry was made as appears of Court record.

Thursday Oct 4. 1833.

Kell

32A

Wm Salmage

Alexander Ferguson & Co

including James Montgomery & William Ralston

In Chancery

This day comes the Complainant by his Solicitor and Counsel and the Defendants James Montgomery & William Ralston by their Solicitor & Counsel also come and the Petition of the said Complainant heretofore filed in this Court cause for reference to the Master to take a further account of rents between him & the said James Montgomery and William Ralston respectively being heard. And it appearing by reference to the Master's report heretofore made in this Cause that an Account had been taken by the said Master of the rents of the lands in question in this Cause in possession of the said James Montgomery & William Ralston respectively up to and including this year of our Lord one thousand eight hundred & fifty four. And the arguments of Counsel being heard upon the said Matters. It is ordered by this Court that it be referred to the Master in Chancery of the County of Hennepin to take an account of the rents which shall have accrued from the said lands in the possession of the said Defendants Montgomery and Ralston respectively subsequent to the said year one thousand eight hundred & fifty four and report the same to this Court.

321

200

In Hennepago Cir Court.

322

RXX

Adm Talmadge

vs

Alexander Ferguson

Wm Ralston James

Montgomery James E

Dennis and others

To the Hon Benjamin R. Sheldon
Judge of the 11th Judicial circuit
in the State of Illinois and as such
Judge of the Hennepago Cir Court in
Chancery Sitting.

In pursuance of an order of reference of this Hon Court
entered in the above entitled cause at the Term.

A.D. 1855

by which it was referred to the undersi-
gned to take proof and Report to this court, of the
rents and profits of the Lands in question occu-
pied by defendants Wm Ralston and James Montgomery
I have taken the Depositions of a large number
of that neighborhood that at the taking of such depositions
I was attended by the counsel for the com-
plainants and the counsel for said defend-
ants Ralston Montgomery & Dennis,

And I would further certify and report that
the Lands occupied by said defendant Dennis
not having been embraced in said order of
reference it was agreed between the counsel
for the complainants and said Dennis that
the Land occupied by said Dennis should be
considered as embraced in the order of refer-
ence; that the lands were of the average quality
with those occupied by Defendants.

Ralston & Montgomery, & that the testimony taken upon this reference should be considered applicable in determining the Rent of the Lands occupied by said Dennis.

BUX

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And I would further certify and report, that it was agreed between the complainant, and defendants, Ralston Montgomery & Dennis, that the quantity of Land under cultivation occupied by said defendants respectively was following:

The said Ralston has one hundred and forty (140) acres under cultivation. The said Montgomery has fifty (50) acres under cultivation.

And that said Dennis has thirty six (36) acres under cultivation.

That said Ralston & Montgomery respectively have cultivated the same quantity for the past two years:

That said Dennis has cultivated his only during the year 1856; the complainant Palmadge having possession of the same during the year 1855.

And I would further certify and report, that on the part of the complainant & defendants a large number of witnesses have been examined upon this reference and their testimony reduced to writing which is herewith submitted and made a part of this report.

Alb

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That there is considerable disagreement in the testimony among of the witnesses, as to the Rent of the premises in question, the testimony varying as to the Rent of the lands occupied by Ralston, from two to five Dollars per acre; The witnesses generally estimating the Rent of the lands, occupied by Montgomery & Dennis, some what lower than those occupied by Ralston on account of the difference in improvements the quality of the soil being the same.

That in computing the Rent upon the premises in question, I have allowed the sum of Three Dollars & fifty cents, \$3.50 annual rent for the land cultivated by defendant Ralston.

And the sum of Three Dollars \$3.00 per acre annual Rent for the Lands occupied by Defendant Montgomery & Dennis respectively.

That the Rent of the premises cultivated by Deft. Ralston - One hundred & forty acres. for two years, (1855) & 1856) at \$3.50 per acre. per annum Rent. amounts to Nine hundred & Eighty Dollars =

That upon receipts produced, I find that defendant Ralston has paid the taxes upon the premises in question, in his possession for the years 1855 & 1856: That the taxes for the year 1855. Receipt. Dated Feb. 15th 1856 were \$41.70 and for the year 1856. Receipt dated January 31st 1857 were \$51.70 amounting together to ninety two & 52/100 Dollars. to be deducted from

Said Rent, \$92.³³/₁₀₀ from \$980 = \$887.67

325

PLB

That after deducting the amount of said taxes paid by the said Ralston I find that there is due from him for the rent of the premises cultivated by him for the years 1855 & 1856 the sum of Eight hundred Eighty seven & ⁶⁷/₁₀₀ Dollars

Bal due from Ralston \$887.67

That the Rent of the premises cultivated by the ^{Said} Defendant Montgomery - fifty acres - for the years 1855 & 1856 at Three Dollars \$3. pro acre, per annum Rent amounts to the sum of Three hundred Dollars,

That from tax receipt produced I find Deft. Montgomery has paid the taxes on the premises in question in his possession for the years 1855 & 1856 & that the taxes so paid by him amount, \$37.⁵⁸/₁₀₀ to be deducted from the amount of said Rent: \$37.⁵⁸/₁₀₀ from \$900. = \$262.42

That after deducting the amount of said taxes, so paid by said Montgomery, from said Rent I find that there is due from him for the Rent of the premises cultivated by him, for the years 1855 & 1856 the sum of Two hundred Sixty two & ⁴²/₁₀₀ Dollars

Bal Due from Montgomery \$262.42

Alt

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That Defendant Dennis is only chargeable with
Rent for the year 1856. That the Rent of the
premises cultivated by him - Thirty six acres
(36) for the year 1856 at Three Dollars (\$3) per acre
Amounts to One hundred & Eight Dollars. \$108.00

That from Receipt produced I find that said
Deft Dennis and one H. D. Michael have
paid the taxes upon the premises in question
in possession of said Deft. Dennis for the
years 1855 & 1856, Amounting to the sum of Fourteen
dollars & Sixty three cents \$14.63

That after deducting the amount of Taxes, 20
paid upon the premises in possession of said
Dennis I find that there is due from him for
the Rents of the lands cultivated by him dur-
ing the year 1856 the sum of ninety three & 3/4
Dollars

But Due from Deft. Dennis

\$93.37

And I would further certify and report that
the rents allowed above, are lower than
the estimate of many of the witnesses, but
from all of the evidence before me I think
the Rents allowed are quite as high as the
premises would have commanded in cash
for the years for which rent is charged,
all of which is respectfully submitted

May 1, 1857
Deposition & Report \$25.00
Filed May 6th 1857

William Lathrop
Master in Chancery

W. B. Derrick clerk

United States of America
 State of Illinois Hennepin County S. S. Pleas before the
 Hon^{ble} Benj R Sheldon Judge of the fourteenth Judicial Cir-
 cuit of the State of Illinois at a special Term of the Henne-
 pino County Circuit Court for hearing and deciding Chancery
 Causes began & held at the Court House in Rockford in said
 County on the 27th day of Apr^{il} 1857 in the year one thousand
 and eight hundred & fifty seven;

Present Hon^{ble} Benj R Sheldon Judge:

And afterwards to wit on the 7th day of May 1857. It be-
 ing one of the days of the aforesaid Term of Court the follow-
 ing entry was made as appears of Court record:

U^sa Salmago

Alexander Ferguson & Co. On Motion of Complainant
 Master's report as to rents con-
 firmed except as with deduction of County dollar from
 Ralston's Rent off 8 dollars from Dennis

U^sa Salmago

In Chancery May 7. 1857.

Alexander Ferguson
 James Montgomery
 William Ralston
 James E Dennis

This day comes on to be heard the
 exceptions heretofore filed as well
 on the part of the Complainant
 as of the Defendant Montgomery

Ralston & Dennis to the report of the master made at this
 term of the balance of rents to be allowed to the said Com-
 plainant from the said Defendants respectively over & above the
 taxes paid by them up to and including the year one

ALL

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thousand eight hundred fifty six and the arguments of
Counsel being thereupon had. It is ordered by the Court that the
sum so reported to be due from the said James Adlston be
reduced by the deduction therefrom of the sum of seventy dol
lars & that the sum of eight dollars be deducted from the
Amount reported by the master as allowed against the
said James E Dennis. And that the said report stand othe
wise confirmed

Benj R Sheldon:

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329.

United States of America
State of Illinois Hennibago County S. E. Place before the
Hon Benj R Sheldon Judge of the fourteenth Judicial
Circuit of the State of Illinois at a Term of the Hennibago
County Court for hearing & deciding Chancery Causes begun there
at the Court house in the City of Rockford in said County
on the 28th day of September 1837.
Ancient Hon Benj R Sheldon Judge:

On the same day aforesaid the following entry was made
as appears of the Court record

Usa Salmaço

a. 64

Alexander Ferguson vs

This day come the parties
by their Solicitor and on mo-
tion of the Complainant It is
ordered that it be referred to the Master in Chancery of
the County of Hennibago to take an account of rents use & occu-
pation of the Lands occupied by the Defendants James Mont-
gomery William Ralston & James E Dennis in question
in this Cause for the year one thousand eight hundred &
fifty seven & report the same to this Court:

In Winnebago Cir. Court!

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Asa Talmadge

vs

In Chancery

330

James E. Dennis
James Montgomery
& William Ralston

Report in

To the Hon. Benj R. Shelden Judge
of the 1st Judicial Circuit in the
State of Illinois and as such Judge
of the Winnebago circuit court in
Chancery Setting:

In pursuance of an order of Reference in the
above entitled cause, by which it was amongst other things
referred to the undersigned to take an account of the rents
and profits of the land and premises in question in this
cause in possession of defendant, James E. Dennis
James Montgomery and William Ralston, for the
year 1857. I would respectfully certify & Report, that on
the 27th day of January last the said Complainant
Asa Talmadge and the defendant James E. Dennis
James Montgomery and William Ralston before me
entered into an agreement or stipulation in writing
determining the quality of Land under cultivation for the
year 1857, by each of said defendants and the price
as ought to be allowed for the same, which agreement or stipulation
is hereto attached and made a part of this my Report.
By which stipulation it was agreed by and between
said parties, that the rent price for the year 1857
for the lands under cultivation by said defendants
respectively, should be computed at \$1000 per
acre; and that the quantity of Land or number
of acres under cultivation by each of said defen

dants should be determined by reference to the Report of the master in this cause in the year 1857. Except that the Rent of Land occupied by defendant Dennis for the year 1857. Should be computed at One hundred Dollars \$100#

JLN

That by reference to the Report of the master, in this cause dated May 1-1857. I find the number of acres Reported as cultivated by defendant James Montgomery for the years 1855 & 1856. Fifty acres.

The number of acres cultivated by Deft. Ralston, for the years 1855 & 1856 was One hundred forty 140 acres
And that defendant Dennis cultivated in the year 1856 Thirty six acres 36 acres
And I would further certify and Report that by said stipulation the rent of the lands occupied by defendant James E. Dennis for the year ending May 1 1858, amounts to One hundred Dollars. \$100.00

That the Rent of the Land occupied by defendant James Montgomery (being Fifty acres, at Three (\$3) Dollars pr acre) for the year ending May 1-1858, amounts to One hundred & fifty Dollars \$150.00

From which should be deducted taxes on lands for year 1857. paid by Deft. Montgomery as appears from tax Receipt. Amounting to thirteen & ⁸⁷/₁₀₀ Dollars. leaving balance of Rent \$13.07
over and above taxes for year 1857, One Hundred Thirty six & ⁹/₁₀₀ dollars.

That the Rent of the lands occupied by the defendant William Ralston (being One hundred and forty acres (140) at Three (\$3) dollars pr acre) for the year ending May 1-1858 amounts to Four Hundred &

322

Twenty dollars

\$421.00

For which should be deducted the taxes
for the year 1857, paid by said Ralston as
appears from tax receipt produced, am-
ounting to Twenty Eight & ⁶⁷/₁₀₀ Dollars

\$28.67

leaving balance of rent, over and above

\$391.33

taxes for the year 1857. - Three Hundred
Ninety One & ³³/₁₀₀ Dollars

And I would further certify and report that
at the instance of the counsel of the respective
parties I have brought down the account of the
respective defendants, from May 1 - 1855 to May
1 - 1858 = That by reference to the Report of the
Master in this cause dated April 18th 1855, I find
that there was, on the first day of May 1855, due to said
defendants W. Ralston for money paid & improve-
ments made upon the land in question over and above
rents and profits to that ^{date} the sum of. Seven Hundred
Forty Three, ⁸⁸/₁₀₀ Dollars

\$743.88

That the Rent of Lands occupied
by Deft. Ralston for year ending
May 1 - 1856. were (140) acres at ³³/₁₀₀ ^{of}
per acre Four hundred fifty five.

\$1185.

Taxes for year, 1855.

\$41.16

Amount same from pay. to May 1 - 1856

.51

Instalment of \$746.88 for one year from
May 1 - 55 to May 1 - 1856

144.63

Amt due Ralston May 1 - 1856 =

\$830.18

From which deduct Rent for 1856

4.5.00

\$825.18

That bal. of. Money Paid & improvement made by
Ralston, over and above Rents & Profits, May 1 - 1856

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Three Hundred Seventy five $\frac{1}{2}$ Dollars.
 Rent of Land occupied by Ralston
 for year ending May 1-1857. 140 acres.
 at $3\frac{1}{2}$ of price

\$ 485.00

Balance due Ralston May 1-1856.	\$ 375.18
Ant on same for one year.	22.51
Taxes pd for year 1856	51.17
Ant on Taxes for 3 mos	.77
Bal due Ralston May 1-1857.	\$ 449.63

Bal. of Rents & profits of Lands occupied
 by Ralston over & above monies paid and
 improvements made by Ralston, on the 1st day of May 1-1857. \$ 5.37

Rents of Lands occupied by Ralston for year ending May 1-1858 - being 140 acres, at $3\frac{1}{2}$ of price,	\$ 420.00
Amount of bal of Rents & profits, May 1 st 1858	\$ 425.37
From which deduct taxes for the year 1857 paid by Ralston	28.67
Bal. of Rents & Profits, due May 1-1858	\$ 396.70

That I find, that the rents & profits of the lands
 occupied by Defendant Ralston, over and above
 the monies paid, and improvements made by Ralston
 for the term ending May 1-1858 = amount Three
 hundred Ninety six $\frac{7}{10}$ Dollars. \$ 396.70

That by reference to the said Report of the Master in this
 case, dated April 18. 1858, I find the amount due
 defendant Montgomery for monies paid and im-
 provements made by him upon the land in his possession

324 - Since May 1 - 1855, over & above Rents & profits of lands
 to that date, was Five hundred forty one ¹³⁹/₁₀₀ Dollars
 amt. due Montgomery May 1 - 1855 = \$ 541.39
 Int for 1 year ending May 1 - 1856 = 32.48
 1/2 of Taxes for two years 1855 & 1856 = 18.79
 (Only having aggregate amt. for both years)
 Amt. due May 1 - 1856 to Montgomery = \$ 592.66

Rents of Lands occupied by Deft. Montgomery
 for the year ending May 1 - 1856 being Fifty (50)
 acres at three (3¢) dollars per acre \$ 150.00

Amount due defendant Montgomery \$ 7440.66
 for monies paid & improvements made.
 Over & above Rents & profits of Lands occupied
 by him. May 1 - 1856 Four Hundred forty
 & ⁶⁶/₁₀₀ dollars. Due May 1 - 1856. Montgomery \$ 440.66
 Int on same for year. — 26.43
 Taxes for year 1856 18.79
 Amt due Montgomery May 1 - 1857 = \$ 485.88

Rents of Land occupied by Deft.
 Montgomery for the year ending May
 1 - 1857 being fifty acres at Three
 (3¢) Dollars per acre — \$ 150.00

Bal due Deft Montgomery for monies paid
 and improvements made on Lands occupied
 by him. Over & above Rents & profits. May 1 - 1857.
 Three hundred thirty five & ⁸⁸/₁₀₀ Dollars = \$ 335.88
 Int for year ending May 1 - 1858. 20.15
 Taxes for year 1857. 15.07
 Amount due Montgomery May 1 - 1858 \$ 369.10

325

Rents of Land occupied by Deft.
Montgomery for the year ending
May 1-1858. being fifty acres at three
(3¢) pr acre. One hundred fifty Dollars -

\$ 150.00
\$ 219.10

Amount due Deft. Montgomery for monies paid &
improvements made by him on Lands in his possession
Over & above Rents & profits of same on the first day
of May A.D. 1858 Two hundred nineteen & 10/100 Dollars.

\$ 219.10

That by reference to the said Report of the Master
in Chancery in this cause dated April 18th 1855
I find the amount due the defendant James
E. Dennis. for monies paid and improvements made
by him on the Lands in his possession May 1-1855
was One hundred Sixty one & 10/100 dollars

Due Dennis May 1-1855 \$ 161.10

That deft. Dennis was not chargeable
with rent for year ending May 1, 1856,

Due Deft. Dennis Jan 1-1857. \$ 161.00

Int on same 2 years 19.33

Taxes for years 1855 & 1856 & interest 13.06

Due Dennis May 1-1857 \$ 195.49

Rent of Lands occupied by Deft. Dennis
for year ending May 1-1857 One hundred Dollars \$ 100.00

\$ 95.49

Amount due Deft. Dennis for monies
paid & improvements made on Lands occu-
pied by him over & above Rents & profits
May 1-1857

Liberty fine & ⁴⁹/₁₀₀ Dollars \$ 95.49
 Int. on same 1 year 5.72
 Due May 1-1858. for monies & improvements \$ 111.21

336 Rents of Lands occupied by Deft.
 Dennis, for the year ending May 1.
 1858 per Agreement One hundred Dollars \$ 100.00
 \$ 1.21

Balance due Deft. James E. Dennis
 for monies Paid & improvements made
 by him on Lands in his possession, over
 & above Rents & profits. May 1, 1858 - One
 hundred Dollars & twenty one cents \$ 1.21

May 1st 1858 William Ralston Dr
 To Bal of Rents & profits of Lands
 above payment & improvements \$ 306.50

May 1-1858. James Montgomery Cr
 By Bal of money Paid & improvements
 on Lands over and above Rents &
 profits of same \$ 219.10

May 1 1858 James E. Dennis Cr
 By Bal of money Paid & improvements
 made on Land, over & above Rents
 & profits of same \$ 1.21

All of which is Respectively submitted
 William Lathrop
 Master in Chancery

Feb 15, 1858: Report of \$ 30.00

An Herriubago Civ Court
Asa Talmadge } In Chanery
vs

327

William Ralston
James Dennis
James Montgomery }

Upon an order of Reference in
above cause before the Master of said Court to compute
the Rents & profits of the lands therein in question, for the
year 1857, it is agreed between the parties of said suit
that the rent for the year 1857, shall be computed at Three
(\$3) Dollars per acre for the lands in actual cultivation
and that for the number of acres so under cultivation
the parties refer to the Report of the Master in Chanery
made in this cause in the year 1857, the parties agreeing
that the quantity in said Report stated as under cul-
tivation is correct: Except that the rent of Land oc-
cupied by Dennis is to be computed at \$100# for a year
1857. Witness our hands this 27. of July 1858.

Attest
H. Lathrop
Master in Chanery

Asa Talmadge
James E. Dennis
James Montgomery
by Robt Montgomery
William Ralston

C. D. Brown Leth & Andrews
A. Stewart M. J. Sanbury }

The above named witnesses appeared and
claimed their fee on part of Complainant
for one days attendance each

July 27. '58

Endorsed Filed July 15th 1858 M B Denick Clerk

Alm

338

a 98

And afterwards to wit on the 20th February 1838 It being
one of the days of the February Term of the Hennepin County
Circuit Court: the following entry was made as appears of
the Court record

Asa Dalmage

vs
Alex. Ferguson et al

Now come the Complainant by
Bernap Loop his Solicitor & the
Defendants by Wright their So-
licitor & on motion It is ordered that the masters report
filed herein be & the same is confirmed:

And afterwards to wit on the 14th day of March 1838 It
being one of the days of the aforesaid term of Court the fol-
lowing entry was made as appears of the Court record

a 113

Asa Talmadge

vs

Alexander Fergerson

William Robston

James E Dennis

James Montgomery & als

In Chancery

FILE

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This day come the parties

by their solicitors and counsel respectively
 And upon inspection and examination
 of the report of the master, made under the
 decisive decree in this cause and confirmed
 by this court at the April term thereof, in the
 year of our Lord one thousand eight hundred
 and fifty five it appears that on the first
 day of May in the said year one thous-
 and eight hundred and fifty five, there
 was due from this said complainant to the
 above named defendants James Montgomery
 William Robston and James E Dennis
 respectively as balance of the account taken
 by the said master under the said decisive
 decree the following sums to wit: to the said
 James Montgomery, on said 1 May 1855, the
 sum of \$541.39 (Five hundred and forty one
 dollars and thirty nine cents) and to the said
 James E Dennis on the same day, the
 sum of \$161.10 (One hundred and sixty one
 dollar and ten cents) and it further appears, that
 under a further account in this cause and an
 agreement between the said complainant and
 James E Dennis & the said Master as stated
 in his report the said Master made a report of
 the rents of the lands in the said decisive decree

To the said Wm Robston the same 1 May 1855 the sum of \$743.88 (Seven hundred and forty three dollars and eighty eight cents)
 To the said James E Dennis on the same day, the sum of \$161.10 (One hundred and sixty one dollar and ten cents)

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specified and occupied by the said James Montgomery, William Ralston and James E. Dennis respectively; by which report and the modifications thereof made by the court upon exception, and confirmation thereof except so far as so modified, it was ascertained and established, that the amt of rents for the lands in ^{the} said decree specified and occupied by the said James Montgomery, for the years 1855 and 1856 over and above taxes paid thereon by him, was \$262.42 (two hundred ^{and} sixty two dollars and forty two cents) that the amount of rents for the lands so specified and occupied by the said William Ralston, for the same years 1855 and 1856 over and above taxes thereon paid by him, was \$81.67 (Eight hundred and seventeen dollars and sixty seven cents); that the land specified in the said decree as occupied by the said James E. Dennis, were not occupied by him during the year 1855, and that the amount of rents for the same land for the year 1856, over and above taxes paid thereon by the said James E. Dennis, was \$85.37 (Eighty five dollars and thirty seven cents, and upon inspection and examination of the report of the said Master made at the present term of this court and which has been confirmed by this court that the said Master had taken an account of the rents of the said land for the year one thousand Eight hundred and fifty seven over and above taxes paid thereon by the said Montgomery and Ralston respectively, and had also stated an account

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between the said complainant and the said
defendants Montgomery Rolston and Dennis
at their request carrying the computation there-
of up to the first day of May, of the present year.
One thousand eight hundred and fifty eight
and that the said rents for the said year one
thousand eight hundred and fifty seven, over
and above the said taxes so paid as last aforesaid
was as follows, to wit; on the said lands occu-
-pied by James Montgomery the balance of \$136,
-93 (One hundred and thirty six dollars and ninety
three cents) of rents over taxes paid; on the said
lands occupied by William Rolston, a balance
of \$391,33 (Three hundred and ninety one
dollars and thirty three cents) of rents over
taxes paid, and on the lands occupied
by James E. Dennis, the sum of \$100,00 (One
Hundred Dollars) of rent. And upon refer-
-ence to the said account stated, and the
computation thereof carried up to the first
day of May, of the present year, it appears
that there is due from the said complainant
to the said James Montgomery as of said
1 May 1838, the balance of \$219,10 (Two hun-
dred and nineteen dollars and ten cents)
that there is due from the said William Rol-
-ston to the said complainant as of the said
1 May 1838 a balance of \$396,70 (Three hun-
dred and ninety six dollars and seventy cents)
and that there is due from the said com-
plainant to the said James E. Dennis
as of the said 1 May 1838, a balance of

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MILB

\$1.21 (One dollar and twenty one cents)
 And the said balance of one dollar and
 twenty one cents having been paid into court
 by the said complainant for the use of the said
 James E. Dennis as of the said 1 May 1884, a
 balance. It is therefore ordered adjudged and
 decreed by the court, that the said complainant
 have and recover of and from the said defen-
 dant William Rolston, the said sum of \$396.70
 Three hundred and ninety six ^{Dollars} and seventy
 cents) the balance found against him as
 aforesaid and that he have execution thereon
 on the first day of May next, without, in default
 till then. And it is further ordered adjudged
 and decreed, that the said William Rol-
 ston by the first day of May next, coming to
 the said complainant, his heirs and assigns
 the said tracts of land occupied by him
 and described in the said decree being S. 1/4
 S 34, T 45, R. 2 E. 3^d p. m. (the southwest quarter
 of section thirty four in Township forty five
 north of range two east of the third principal
 meridian) and w. 1/2 N. 34, T 45, R. 2 E. 3^d p. m.
 (the west half of the north west quarter of sec-
 tion thirty five in Township forty five north
 of Range two east of the third principal meri-
 dian) with their appurtenances and that
 unless he shall make such conveyance by
 the said first day of May next, then that
 a commissioner be appointed by this court to make
 such conveyance, and it is further ordered
 that the said William Rolston by the first day

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of May next forthwith deliver to the said complainant full and quiet possession of the said tracts of land and other appurtenances — And it further ordered adjudged and decreed that the said James E. Dennis by the said first day of May next convey to the said complainant his heirs and assigns, the said land occupied by him and described in the said decree, being S.E. $\frac{1}{4}$ S.E. $\frac{1}{4}$ of S. 34 T. 45 N. 3. 2. E. 3. p.m. (the southeast quarter of the southeast quarter of section thirty four of Township forty five North Range two east of the third principal meridian) with its appurtenances and that only he shall make such conveyance by the said first day of May next, then that a commission be appointed by this court to make such conveyance. And it is further ordered that the said James E. Dennis by the said first day of May next deliver to the said complainant full and quiet possession of the said last mentioned tract of land and its appurtenances And it further ordered and adjudged and decreed, that upon the payment by the said complainant or his legal representatives to the said James Montgomery, his executor or administrators, by the said first day of May next & after the entry of this decree or to the clerk of this court for his or their use, of the said sum of \$219.10 (Two hundred and nineteen dollars and ten cents) with all interest which may have accrued thereon from and after the said first day of May next in the County

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S. 11111

Our Lord one thousand Eight hundred and fifty Eight, then the said James Montgomery shall forthwith thereafter, convey to the said Complainant his heirs and assigns, the said tract of land occupied by him and described in the said decision Decree being $10\frac{1}{2}$ S. E. $\frac{1}{4}$ S. 34 T. 45 N. R. 2. E. P. M. (the west half of of the Southeast quarter of section thirty four of Township forty five North Range two East of the third principal Meridian) and N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ S. 34 T. 45. N. R. 2. E. P. M. (the north East quarter of the South East quarter of Section thirty four in Township forty five North of Range East of the third principal Meridian) together with their appurtenances and that if he shall not do so, then that a commissioner be appointed by this court to make such conveyance, and it is further ordered adjudged and decreed that upon such payment being made by the said complainant, the said James Montgomery shall forthwith after the said first day of May next deliver to the said Complainant full and quiet possession of the said last mentioned tracts of land with their appurtenances, and it is further ordered adjudged and decreed that unless the said complainant, or his legal representatives make payment of the said sum of Two hundred and nineteen Dollars & ten cents with interest which may have accrued thereon as aforesaid within the time herein appointed for the payment thereof, then the said James Montgomery and his heirs shall

MEMO

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hold the said last mentioned tracts of land absolutely against the said complainant and his heirs, and the said complainant shall be foreclosed of all equity of Redemption therein and shall release the same to the said James Montgomery and his heirs, and it is further ordered adjudged and decreed, that the said complainant have and recover of and from the Defendants Alexander Ferguson and Thomas Nimrose, his costs and charges by him about this suit in this behalf expended, and against the said William Rolston, James Montgomery and James E. Dennis severally, one third of his said costs and charges that is to say one third of his said costs and charges of and from each of them the said Rolston, Montgomery and Dennis that it is further ordered, that in case of an appeal a writ of error in this cause shall be taken or brought by the said James Montgomery before the said first day of May next then it shall be at the option of the said complainant to pay the said balance due to the said Montgomery until thirty days after such appeal or writ of error shall be finally disposed of—

Benj R. Sheldon

Endorsed

Filed May 11. 1838

At Penneyer Dep Clerk's

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And on the same day to wit the 4th day of March 1838
it being one of the days of the aforesaid term of Court the follow-
ing entry was made upon the Court records:

~~CCX~~

a 118

Asa Salmage

Alexander Ferguson

William Ralston

James E Dennis &

James Montgomery et al

Mar 4. 1838

And the said defendant

William Ralston James

Montgomery & James E Dennis

having prayed an appeal from this Decree to the Supreme
Court the same is allowed upon the said Defendants filing
their bond to said Complainant in the sum of \$1500. with
Zehiel Dennis Richard Jackson & David Lamont as secu-
ties conditioned in addition to usual conditions to pay the
rents to accrue after May next.

Thun Lee Cor Court:

Asa Salmage

Alexander Ferguson

James Montgomery

James E Dennis

William Ralston

Elisha W Kirk et al

In Chancery

It is hereby stipulated on

the part of said Complain

ant & said Defendants James

Montgomery James E Dennis William Ralston & Elisha

W Kirk that on Case said Defendants Montgomery Dennis

& Ralston shall take & prosecute their appeal from the

Decree of this Court to the Supreme Court or shall bring

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then writ of Error and the said Complainant shall at
the same time bring his writ of Error against the said De-
fendant-Kirk then & that case the same record from this
Court shall be used by both parties in said Supreme Court
in the same manner as if each party had caused said
record to be sent to said Court:

Dated March 5th 1838.

Jason Marsh Sol^r for said Defendants
Montgomery Dennis Ralston & Kirk
Francis Burnap Solicitor for Complainant

Endorsed

"Filed March 5 1838. Mr J Derrick Clk Clerk"

Know all men by these presents that we William Ral-
ston James Montgomery & James E Dennis as principals
& Richard Jackson Ezekiel Dennis & David Samont as
sureties are held of firmly bound unto Asa Salmadge in
the penal sum of Fifty hundred dollars lawful money
of the United States for the faithful payment of which
we bind ourselves our heirs executors & administrators jointly
& severally firmly by these presents: In witness whereof we
have hereunto set our hands & seals this 18th day of March
A.D. 1838. The condition of the above obligation is such
that whereas on the 6th day of March A.D. 1838 in the
Hennepago County Circuit Court on the Chancery side then
of the above named Asa Salmadge obtained & recovered
a Decree against the above named William Ralston
James Montgomery & James E Dennis together with
Alexander Jaggerson & Thomas Primrose for the conveyance
of certain lands in said Decree specified by the said
William Ralston, James Montgomery & James E Dennis
to the said Asa Salmadge of the payment of three

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hundred & ninety six \$100 dollars by the said William
Ralston to the said Asa Salmadge besides the payment
of the costs of said suit by said William Ralston & James
Montgomery. James E Dennis Alexander Ferguson Thomas
Primrose And whereas the said William Ralston James
Montgomery & James E Dennis prayed an appeal from
said Decree to remove the same to the Supreme Court at the
time of making said decree: now therefore if the said William
Ralston James Montgomery & James E Dennis shall per-
form & observe said Decree & shall pay all costs interest & dam-
age therein as therein provided & shall pay the rents & ac-
crued on said lands after may next on and after said Decree
shall be affirmed in said Supreme Court: Then this bond
to be void & of no effect: otherwise to remain in full force:
Made & executed under our seals the day
& year first above named: In presence of
Jason Marsh as to Mr Ralston Jas E
Dennis & Ezekiel Dennis: James
Montgomery J^r & Kirk as to Richard
Jackson David Lemont:

William Ralston
Jas E Dennis
James Montgomery
Ezekiel Dennis
Richard Jackson
David Lemont

Filed Apr 3 1838.

At Penney's Dep Clerk

Fees for foregoing Transcription \$82.50

And the said appellants, Ralston, Montgomery & Dennis, by J. Marsh their Attorney came & say that this is manifest error in the record aforesaid in this that

The Circuit Court erred-

- 1 In not requiring the Complainant to bring the monies into Court, and not dismissing the bill for Compl^t refusing to do so.
2. In not allowing the Def^ts exceptions to the bill.
3. In allowing to Compl^t, costs & profits and improvements made on said lands by Def^ts.
4. In rendering a decree for said lands to be conveyed to Compl^t without requiring him to pay any purchase money.
5. In rendering a decree in favor of Compl^t against Def^ts, Ralston, Montgomery & Dennis.
6. In rendering a decree for costs against Def^ts, Ferguson, Primrose, Ralston, Montgomery & Dennis.
7. In not rendering a decree in favor of Def^ts.
8. In not rendering a final decree in respect to the rights of Def^ts Ralston, Montgomery & Dennis as against Def^ts Ferguson & Primrose.

J. Marsh

for Appellants Ralston, Montgomery & Dennis
for the Def^ts J. Ferguson & Primrose

In Sup Court

Gerguson & al^y
 vs
 Talmage } Appeal

vs Talmage }
 vs
 Gerguson & al^y } Writ of Error.

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 It is hereby stipulated that the Bill
 of said Talmage filed in the Wm Co. Cir. Court
 & made part of the Record in these cases, shall
 be taken & considered as correctly reciting & stating
 the original Bill filed by the Aberdeen North
 American Investment & Loan Co. in said Court
 & referred to in said Talmage Bill; also the Will
 of said Taylor. the Deed by Wm. Wright as
 Commissioner to said Gerguson & al^y & the deed
 from said Gerguson to said Paimore; And
 that the same were in evidence in this cause
 on the hearing in said Cir Court as thus set out;
 And it is further stipulated that on the
 argument of these causes in the Sup Court
 the tables of Land attached to said bill may
 be used & presented to this Court as though the
 same were particularly copied into said Record
 & the same is to be considered as part of said Record.

Jesse Marshall
 Atty for Rich Dalton, M
 mch. Adams
 Thomas Burroughs Atty for
 vs Talmage

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Alexander Hays

us

Asa Salmons

James in care

Filed May 19, 1858
S. L. O. Co.

1101-1107

Supreme Court State of Ill. Apr. Term 1878

Alexander Ferguson et al

vs

Asa Palmer.

And now comes the said defendant in error by Francis Barness his Solicitor & says that there is no such error in the record & proceeds in this cause as are aforesaid. Thence & prays an affirmance of said decree.. against said plaintiffs in error

Francis Barness

for the deft in error

Supreme Court

Elisha A. Kirk dft in error

ads

Errors to be corrected

Also John Edgar Poff in error. Current Court

And the said deposed
out in error by Mr. McWright his attorney
comes and says there is no such error in
the record and proceedings unto done
Carried in the Court below as the plain-
tiff in error has in that behalf done
alleged

Mr. McWright

Attorney for deposed

Superior Court

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Asa Talmage, }
3

Elisha A. Fitch }

Sold in snow

J. M. Wright

Filed May 19, 1858,
Leland
Clerk.

Supreme Court
 Alexander Ferguson &
 Thomas Rindred vs
 with Wm. Rolston & others P^{rs} in error
 vs } ^{appeals from}
 Asa Talmadge def^t in error & Wm. L. Linn

And the said Alexander Fergu-
 son and Thomas, Rindred P^{rs} in error
 vs. with others as appellants of
 the do write their attorney and say
 that in the record and proceedings in
 this cause in the Court below there is
 manifest error in this. That it appears
 in and by said record that a decree was
 rendered ~~that~~ therein that the above named
 plaintiffs in error should pay the costs
 of this cause when by the law the
 decree ought and should have been
 that the said defendants in error should
 pay the costs and that the P^{rs} in error shall

Record in said cause in the Court be-
 fore a decree was entered against the above
 named Alexander Ferguson and Thomas Rindred
 vs. with others as appellants of the do write their attorney and say
 that in the record and proceedings in this cause in the Court below there is
 manifest error in this. That it appears in and by said record that a decree was rendered therein that the above named plaintiffs in error should pay the costs of this cause when by the law the decree ought and should have been that the said defendants in error should pay the costs and that the P^{rs} in error shall

in error on D. Thoms

the Pys in error on

and the deans in the O. L. L.

was for the apt in error and again the
Pys in error when it should have been
for the Pys in error and against the
deponents in error

For Mr. Wright

Atty for Pys in error

181-2225

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Supreme Court

William Brewster

and others }
3 }

Asa Talcott

Argument of error

G. Alexander Ferguson

Thos. R. R. R.

Filed May 13, 1858.

L. W. R. R.

State of Illinois, Supreme Court April 2 1852

vs
Asa Salmons.

Alexander Ferguson & etc }

And now comes the said plain-
tiff in error by Francis Barnop his solicitor
& says that in the record & proceedings in this
cause there is manifest error in the same

1st The Court below erred in not sustaining
the motion's report in ~~overruling~~ ^{sustaining} ~~The Motion's report~~
in overruling the twenty second exception to the
bill

2^d The decree in the Court below ought to
have been in favor of Salmons & against
Kirtz.

And for these & other errors the plaintiff
in error prays for a reversal of said decree

Francis Barnop

for plaintiff in error

161 + 162

Fahriga

99
Kalender

12

12666

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1868

Supreme Court
William Rolston et al
appellants

Page 1

vs
Asa Salmadges appellee

Argument for Appellants

In this case appellee claims the right to redeem several parcels of land as an equitable mortgage from the appellants as grantors of one Taylor mortgaged as appellee alleges

Taylor entered the land at the Government Sale in 1839 in his own name. the patents were issued to him, and the claim of Salmadges is that Taylor entered the land for him, and took the title by way of security to secure to himself the payment of the money advanced, to enter the land with. Taylor had died, the lands had been conveyed to Ferguson ~~as a trustee~~ under a deed of a Court of Chancery establishing the original conveyance to Taylor as a trust for other parties and appointing Ferguson as a trustee for the same parties in stead of Taylor. Thomas Pinwood contracted with appellants Rolston, Montgomery and Dennis to sell the lands to them and after so contracting Ferguson conveyed the land in fee to Pinwood who received all the payments for the land both before and after the conveyance

and finally conveyed the lands to the appellants as he had agreed in separate parcels which conveyances were made after the commencement of this suit.

It appears also that Ferguson after the conveyance to him under the decree commenced an action of ejectment against Talmadge who was then in possession of a small portion of the land. Judgment was rendered against Talmadge in the action and he afterwards left the land moved to a distance, and although frequently in the neighborhood never resided there afterwards.

The contents of Talmadge's will were recorded until about the time of the conveyance by Primrose to appellants and not till some time after the commencement of this suit.

The Record at the time of the conveyance to Primrose and the record of it showed a complete title in him. Talmadge made but few improvements on the lands, which improvements were entirely gone removed and destroyed very soon after Talmadge's removal and long before the purchase of the appellants.

In short these appellants were ^{without} entirely ^{no} ^{notice} either actual or constructive up to the time of the commencement of this suit and the service of summons upon them.

The Instrument under which Talmadge claims is on its face a very stringent contract for the sale of lands in which time is made of its very essence. Talmadge however insists ~~however~~ that the transaction was in effect an Equitable mortgage, and being once a mortgage was always a mortgage.

These appellants having entered into contracts with Primrose for the purchase of these lands, having paid at divers times a large portion of the purchase price which they were to pay, entered into possession of them and made (valuable) improvements thereon and at the time of the commencement of this suit a very large proportion of the ^{purchase} price had been paid and improvements had been made of nearly the value of the lands at the time.

These appellants had up to the time of the commencement of this suit no legal notice of Talmadge's claim. Ralston in fact of it was a stranger in the County, and was even ignorant of Talmadge's existence. Montgomery and Dennis had lived in the neighborhood some time and probably knew Talmadge had some years before lived on a small part of these lands and left them. And the testimony fails to show that Talmadge ever had any

Page 4 Open actual possession whatever of the land
but by either Montgomery or Dennis

Besides at the time of the purchase by
Montgomery other persons, to wit Smith and Kirk
had purchased land which had been in
the possession of Jalmadge with the consent of
Jalmadge who had told them and others
that he had given up the land and had
had given up the expectation of obtaining it
or had done with it, and Dennis had seen
Jalmadge stand by, and seen the land sold
and improvements made in it without any
objection on his part, when he ^{Dennis} bought it.

It was proved that Jalmadge was very
often in the neighborhood after they had been
bought by the appellants and by Kirk and
Smith and knew of such sales, and that
such improvements were made, and in fact
that Jalmadge was occasionally at the house of
Smith when Smith was living on the ^{land}, bought by
him and knew what Smith was doing on
it.

The taxes also were paid by these appel-
lants after they went into possession and in
the account taken under the Order of the
Court below the taxes were proved and
allowed the appellants.

Who paid the taxes before does not ap-
pear perhaps by the record. Sept Armours
in his answer says they were not paid by Jalm

made, and Talmadge has not undertaken to show the payment of any taxes by him. Had he in fact paid such taxes such payment would have shown an assertion of right by him of too much importance to have been omitted ~~in~~ ⁱⁿ ~~land~~. The inference is irresistible that Talmadge never paid any taxes on these lands.

The first question is as to the character of the contract under which Talmadge claims.

I shall not argue as to what its effect would be between Talmadge and Taylor. The evidence possibly may show it to be a mortgage as between those parties.

But if a mortgage the rights it gave Talmadge were merely Equitable, and its character as a mortgage does not appear on the face of the contract under which Talmadge claims. On its face it is merely a contract for the sale of land, containing within it very stringent provisions, authorizing Taylor to declare a profit and making time of its essence.

Now altho Courts will declare all transactions for the security of, many mortgage transactions. Still the important question arises how far will Courts go in so declaring them when parties having the legal title are dealing in respect to the land with other person having no notice of the equitable rights or relations of parties.

It it appears to me that where parties choose to go out of the ordinary course in their dealings in such way as to conceal the true character of their transactions, ^{they} should in case of any inconvenience arising or that accrues to the parties to suffer by such inconvenience. And that innocent parties dealing in respect to the estate who may in fact know of the existence of the instrument shall only be bound by such contract and instrument as the same appears on its face, and that the holder of it against such parties shall not be permitted to insist that it has any other effect than appears on its face unless it can be clearly shown that the party buying, before his purchase had most clear and positive notice of the precise character of the transaction in which the instrument had its origin.

Further it appears to me requires, that a party

Should be bound by a notice of an instrument in the hands of another according to its legal effect as it appears on its face: and that such party shall not be required to search for, hidden secrets & occult significations in such instrument,

Had Talmadge placed this instrument on Record as required by the Recording acts in force at the time the same was given: would not any person Examining the Records and finding it, have been fully justified in coming to the conclusion that the instrument was in fact precisely what on its face it appeared to be, and upon Examining such papers on the Records and learning that Talmadge had once lived on the land that Judgment had passed against him in an action of Ejectment dispossessing him of the land which he had left, that he had moved to another place and had not ^{since} asserted any right to the land: Now would not such person have been fully warranted in coming to the conclusion that Talmadge right in the land had ceased, and coming to such conclusion had he bought the land would not this Court have protected him in his purchase

If this position be correct we may well ask whether the neglect of Talmadge to record his contract can place him in a better situation than he would have occupied had he recorded it.

At the time this contract was made the Statute on Conveyances contained a provision that where an absolute conveyance had been given which by some other instrument was designed to operate as a Mortgage merely it was made the duty of such Mortgagee to record such instrument within thirty days of the time of the recording of the principal deed and that unless he did so record the instrument, that he could not have the benefit of it.

Purple Book State Statutes 475
Section 8th

About the object of this Provision there can be no doubt. The object is clear plain & unmistakable. It is to protect all other persons dealing in respect to the land from a latent equity in favor of such Mortgagee and ^{to} assure that object the Statute makes his rights as Mortgagee to depend upon a scrupulous adherence to that Statute and to a ~~some~~ ^{of its provisions} perfect performance to the letter ^{of its provisions} imposing a forfeiture as the consequence of his neglect.

It may perhaps be contended and with some possibility that this 8th Section does not exactly apply to this case or rather that this case does not come within the very words of the Section, because that Suppon is absolute due to be given in full simply by the mortgagee to the mortgaged with an agreement back from the mortgaged to the mortgagee for a recovery of the land, on certain terms or conditions. In this ^{case} the conveyance was not from Talma to Taylor but was from the Government of the United States with an agreement from Taylor to Talma to convey the land to him on certain conditions.

That this case is not within the very words of the Statute I am slow to admit. What are the words of the Statute? That an absolute conveyance should be made to some person which by some other instrument by him executed is intended as a mortgage only. Now I insist that the Section does not simply refer to a conveyance by the supposed mortgagee, but intends, and includes, any conveyance from any person who may have the legal title, when such conveyance is caused to be made by the supposed mortgagee and an instrument giving it that effect is given to him. By the words of the Statute it is only necessary

Page 10 that there should be an absolute conveyance and another instrument giving touch absolute conveyance the character of a Mortgage. That is all that is necessary to come within the very words of the Statute, and the only question necessary to answer is in determining the point. Is the transaction a Mortgage if so it comes within the very words of this Statute.

In this case there was a conveyance absolute in its terms to Taylor from the Government of the United States, and an instrument from Taylor to Talmadge, which Talmadge contends turned the absolute conveyance to Taylor into a Mortgage from Talmadge to Taylor. So that admitting the premises of Talmadge: That the transaction was a Mortgage and the conclusion follows that it is within the very words of this 8th Section.

The object of the 8th section is to protect third persons in dealing with the Mortgagee. It was supposed that the Mortgagee would have his absolute conveyance which would show a clear title in himself and a right to use and convey the land when in fact by the contract between the parties no such ^{right} was intended and in order that the whole world might know that the transaction was but a Mortgage, the Mortgagee was required on pain of forfeiture to record his deed and was barred of the benefit of it having the transaction treated as a

Mortgage unless he should so record it

Supposing this conveyance to Taylor had been from Talmadge himself, and the instrument in question had been given back and such conveyance, and the deed had been duly recorded, and Palston Montgomery & Dennis had bought these lands, just as they did buy them; Could Talmadge sustain this action against them? Could we not plead this stated as an absolute bar, and would it not be so sustained by this Court? And are not our rights precisely the same that they would have been had the transaction been as above supposed? In my opinion that they would have set up in ^{such} an answer in bar of Talmadge, claim this 8th section.

It may be true that a Court will not aid a complainant in establishing a perpetuity, but when a complainant comes into a Court ^{of equity} claiming to recover land notwithstanding a perpetuity what hinders a defendant from using such a perpetuity as a shield to defend himself? True it cannot be used as a weapon of attack but when sought to be used as a shield a defendant may prevail.

In this case there was no deed of any kind from Talmadge to Taylor. Talmadge never had any title to the land in question. Taylor derives his title from the government of the United States, and the government records of course show the title of the land to be in him.

Patents, duplicates, &c are recorded in the proper offices of the government, and the effect of such recording is the same as the recording of deeds in the Recorder's office, but no recording of such evidence of title in the County Recorder's office would be of any avail. Such act would be entirely without force or ^{title} validity; and

Therefore the evidence of Taylor's ^{title} proceeding from the source they did was ~~an~~ effectually secured from the very moment of its purchase within the meaning of said 8th section.

If this conveyance to Taylor had been obtained from some other 3^d person it would have been recorded in the Recorder's office and being a government title recorded in the government Land office it stood in the same position as a recorded conveyance from any other third person.

Now we say that if the conveyance had been from any other third person but the gov-

cannot, and had been recorded in the Rec-
ords Office. Such recording under said section
would have imposed upon Talmadge the necessity
of recording his contract. That by his neglect
the propriety of its forced terms would have in-
tervened precisely as tho the deed ^{to Taylor} had been from
Talmadge himself. Perhaps the Court would not
have regarded such recording as furnishing
notice to the world at large that the trans-
action was a mortgaged one, it appearing on its
face to be a different one, but it would at
least have advised the world of some claim
in the land.

In this case, by applying to the
public records, which were the source of new titles
to lands in this County would have found the
title to the land, in Taylor, and the necessity of
the recording Talmadge's contract was precisely the
same it would ^{have been} had the conveyance to Taylor
been from some other third person than the gov-
ernment of the United States.

And more especially does it appear to us
that the Equity of the Statutes should be high re-
spected, and entitled to a liberal construc-
tion for the purposes of justice, applying strong-
ly to our case. And that by the Equity of the
Statutes Talmadge having neglected his evidence
of his claim of title cannot be held responsible
but it up as a mortgage to the injury of

Page 14 persons whom his neglect in this respect has
induced to deal in respect to the lands in
controversy and acquire rights therein

Bona fide purchasers of land
are protected, but there are many innocent
persons who may have paid out money and
acquired rights in respect to a matter which
a Court of Equity ought to protect who may
not under the strict definition be bona fide
purchasers

A Person may have made a contract
to purchase a tract of land may have paid
money on it, may have entered into possession,
moved his family on it, may have made any
arrangement for making the place his home; at
the time of the purchase there may have been
abundant opportunities of buying land on terms
as favorable as he has secured in this purchase
which opportunities may at the time of litigation
have ~~been~~ gone or at the time of the first intima-
tion of defect in his right be gone; yet this
person may not be what is usually called a
bona fide purchaser he may have paid but
a small part of the purchase price, he may
have made an advantageous contract in respect
to the manner and terms of payment and may
have gone on for a time paying it, and
altho not strictly a bona fide purchaser

great injury, ^{which} would result to him by having his
 Contract overruled by a Secret Equity and
 by being deprived of the benefit of his contract

To Protect such persons we imagined to
 have been the object of that 8th Section, as
 well as to cause every Mortgage to appear
 to the such upon the face of the public record

No such protection was needed of bona
 fide purchasers. They were protected and they
 protected by other well known principles of law

And this class of innocent purchasers
 claimants less than bona fide purchasers, who
 had paid money or done other acts, and
 who by means of such Secret Equities might be
 placed in a ~~for~~ worse position by them, needed
 also some protection against negligence and
 lack of others and Secret Equity of which
 they had no means of knowledge and this
 8th Section steps in and applies it to them

Upon the same principle stands the
 question of construction of the instrument,
 given as against innocent third persons, deal-
 ing about the property, who are not exactly
 bona fide purchasers but who are vested with
 Strong Equities. The party receiving the agreement
 can take care that it be such, that there shall

be no mistake about it, and it is his duty to do so. It is his duty to state that his contract shall clearly state the exact contract between the parties so that when brought to the notice of another party such other party may exactly know what the contract is. To do any thing short of this is lack in the party.

It is like the case of a party who has notice enough to put him on inquiry, makes the inquiry to the extent the notice requires, discovers nothing; or learns a state of facts which do not affect the rights under which he is about purchasing, and purchases in such case he is not charged with notice of any equities which he failed to discover provided he pursued his inquiries in good faith as far as his notice required, or for instance he had heard of that some body claimed some interest in the lands he inquired and found that he made no such claim; or he had heard that some body claimed the land examined the records and found an agreement of sale. in such case we hold the record of the agreement where he ~~learned~~ ^{rights & title} notice to him that the interests of the parties ^{precisely} such as they as they appeared on the face of the papers, that the purchaser has been put on inquiry and has pursued it as before he was required to go and is not chargeable with notice of any rights under such papers different from what they appeared on its face.

We insist that the Parties without notice would stand in no worse position than they would with notice: And knowing nothing about the contract relations, and being in no way just chargeable with notice we insist they are not injuriously affected by such want of notice and entire ignorance of Talmadge's claim; and that by reason thereof Talmadge can ^{not} be placed in any better position in respect to these appellants than he would have occupied had he been more diligent and read and his contract; and that the contract against them can in no event be regarded as any thing more than its provisions, should it be

We insist that to establish such a contract as this is a matter to the extent of affecting an innocent party it would be necessary that the party should not only know of it but of its precise objects as understood by the parties to it, and that if such innocent party was not chargeable with such notice it would be nothing more against him than in its face it appeared to be

By the decree of the Court below the complete innocence of these appellants was established. The Court only granted relief to Talmadge on the principle that he must do Equity when seeking it, and therefore imposed upon him as conditions to the relief sought, the terms that he should pay the appellants the money by them paid out in the purchase and improvement of the land; thereby decreeing them to be innocent purchasers. At the same time deciding against them on the ground that they were not bona fide purchasers, because they had not acquired the legal title to the estate. That their rights were mere Equities Equal only with the Equity of Talmadge older than theirs and where Equities are Equal the oldest must prevail.

Bona Fide Purchasers.

Are highly favored in Courts of Equity and protected by them, and cannot be deprived of the benefit of their purchases by older Equities of which they have no notice, and ^{have} ^{below} the Court regarded these appellants as bona fide purchasers the decree would have been in their favor.

1 Storys Equity Jurisdiction 64^e. 108.

139. 381. 405. 434. 436

2 Ibid See 1502

1 Hermon 27. 2 Vesey 454
 2 Sumner 12560 1 Dism Rq 128
 1 Spencer, Equity Jurisdiction 424

The Court below seems to have gone upon the assumption, that to constitute a bona fide purchaser the party claiming as such must have the legal title, and because appellants had not the legal ^{title}, the Court below decided they were not bona fide purchasers. I do not find the law to be as the Court held in respect to what is necessary to constitute a bona fide purchaser. The bona fide purchaser must be without notice of the Equity sought to be enforced, at least he must have been so at the time of the purchase, & must have paid the purchase price. In short a bona fide purchaser may be defined to be one who without notice of the Equity, in good faith has bought and paid for the land. The legal title is not necessary to constitute the character, the fact of innocent purchase and payment is all that is necessary, it is sufficient that he be entitled to call for it ^{the legal title} altho having it will be a circumstance in his favor. 1 Ball & Beatty 171

This last case decided that an innocent purchaser whose rights were merely equitable altho if he had the better right to call for

Page 20 The legal ~~title~~ estate was a bona fide purchaser

In fact so highly favored are bona fide purchasers, that Courts are solicitous to protect them and establish repose in titles and will sustain ^{their} rights altho, derived from a grantor to whom it had been conveyed for the purpose of defrauding creditors

2 Mason 272

We insist that had the Court given a correct interpretation to the law in respect to bona fide purchasers, and had not departed us on grounds purely technical the decree would have been in our favor in the Court below. It is true that at the time of the commencement of this suit we had not paid the purchase price of the land nor had we received the conveyance of the legal estate.

But we apprehend that the doctrine is clear that the legal estate is not necessary to a bona fide purchase, and in respect to the payment of the ^{entire} purchase money there may be an equivalent. It is held by Courts of Equity that a purchaser who enters into possession of land under a ~~part~~ contract, ~~stands~~ to purchase, stands in a better situation than the man who under the same kind of

Contract without possession pays the entire purchase money, and in Equity the fact of making improvements particularly those of a permanent and lasting character gives a strong claim to the protection of a Court of Equity.

Now can it not with propriety be contended and insisted that the laying out money in improving land is equivalent to the payment of the purchase money. These appellants had paid from two thirds to three fourths of the purchase money to be paid by them. They had also paid out considerably more money in improving than would have been necessary to pay the entire purchase price of the land. Some of them nearly as much as they were to pay ^{for the} land. If this money invested in the improvements had been used in paying the purchase price of the land it would have been fully paid for, and the character of bona fide purchasers established beyond all cavil. No Court but requires the doing Equity as the condition of granting it by repaying purchase money and paying for improvements. It is much easier to ascertain the amount of purchase money paid than the value of improvements, money paid on the purchase price can be easily ascertained and what is a fair compensation for its use, but improvements and the paid for necessaries

Page 22 to their value and not at their cost and to ascertain their value, an appraisement would be necessary, and the compensation for them would, ^{necessarily} be more uncertain and more likely to be insufficient.

The bona fide purchaser who has made no improvements would more probably be one who has bought the land by way of investment and for the ~~purpose~~ purpose of reselling or speculation, and would sustain less injury by the breaking up his contract than the man who has gone into possession of the land and made valuable improvements on it for the purpose of making a permanent residence of it: To deprive him of the benefit of the estate on which he has laid out his money to beautify improve and make valuable to would be to drive him from his home, break up those sacred associations which had begun to cluster and gather around it, and to do him an injury which no money could repair.

Let us suppose a case. A man of taste with a reasonable competence finds a parcel of land suited to his taste and wishing to use as much of his present means in its improvement and embellishment as he can arranges for a liberal credit for its purchase price, and buys it and will suppose the price of the land to be \$10,000 and the money paid down \$2,000. The purchaser thereupon enters into possession builds

at most expensive dwelling house lays out large sums in enclosing improving and ornamenting the grounds and by the time he has a pleasant house to move into with most attractive surroundings he finds that he has expended \$20,000. Let us suppose that about this time some person comes forward (I imagine) or some one like him and claims that he has a secret contract in his possession turning the title of the vendor of the farm house into a mortgage and entitling him to redeem as a mortgagor.

The purchaser knew nothing of his claim had not the least suspicion of it, was subject to no notice of it of any kind, and had he paid he paid the whole \$10,000 purchase money although he may not have expended a dollar in it, inasmuch his position in respect to this claimant would be impregnable. Now the question is: does his expenditure upon the land in manner described of \$22,000 place him in any worse position than he would have occupied by the payment of \$10,000 purchase money, and does he not stand as much in the position of bona fide purchaser as he would have done by paying the whole purchase price and making no improvements.

Had the question come up in any other manner there is no doubt Courts of Equity would have regarded him as vastly more entitled to their protection, and why not in this case? (and suppose the claimant sustains his

Page 24 position by doing Equity (as the phrase is) how could it be ascertained what compensation he ought to receive. He has laid out his money to gratify his own taste, and the market and Commercial value may fall far below the cost of it and what may be its true value to him.

It seems true that to settle the question is to decide it.

And we supposed an extreme case because such cases most effectually illustrate a Subject. But if the supposed purchase is entitled to be regarded as a bona fide purchase by reason of the investment of his money and the manner of its investment, the appellants in this case are no less entitled to be considered. They too had made their permanent homes on this land (at least Montgomery & Newlston had done so) with a view of settlement for their lives, and with the object of making it fit for their purposes had invested their money as they were able, and if they had possessed greater ability would have done more, and it appears too as against this claim of Talmadges and Eminent Property to be called bona fide purchasers.

This doctrine is somewhat supported by a decision of the United States Circuit Court of the State of Vermont which held that a vendor of land who had laid out money in

its improvement and who held by mere con-
 tract was entitled to the protection of Courts
 of Equity against a strictly technical legal right
 in ~~this~~^{one} case he was protected ^{against} a Judgment re-
 covered against him under the payment of the
 unpaid purchase money to the Judgment Cred-
 itor, in another case, the purchase money had
 been paid and the vendor was protected
 without conditions

2 Paines Cir Court Rep 598, 600

These cases we contend support us in
 our position and show that Courts of Equity
 will protect parties who have laid out their
 money in improving the land they have
 bought, and if the Court did it in the
 cases cited how much more is this Court
 called upon to do so in this case

But the Court below placing its decision
 on a mere technicality decided that the Equi-
 ties of the appellants were only equal to the
 Equity of Talmadge and his being the oldest
 must prevail

This was erroneous application of the
 rule, it is true that between equal Equities the
 oldest must prevail, but the wonder is that

Page 26 the Court should have declined this Equi
ty Equa

The Position of Talmadge was one of con-
stant negligence from the inception of the cause
of action to the final decree. Negligence &
lack of amounting to fraud appears in every aspect
of the case. Not a dime has he ever paid
to any body for the land. Not a step had he
taken to make his claim ^{generally} known, his written
Contract had he omitted to record ~~any~~
notwithstanding the provisions of a most stri-
gent Statute he required him on pain of for-
feiture to have done so in thirty days from the
time it was given. After having made a
few trifling improvements on the land am-
ounting to nothing, he abandons its possession
sells off and permits to become decayed and
destroyed the few wretched improvements he
had made publicly declares that he had
given the land up, takes no effectual
measures to have or make his claim ~~but~~
known, and altho apprised that other
persons were buying it and were laying out
large sums in its improvement: He takes
no steps to make his claim known or assert
his title, until the appellants had paid a
very large part of the purchase price and had
laid out money in improvements much beyond

the purchase price, and were just about paying up in full when Talmadge came forward and commenced this suit.

This the Position of Talmadge, "one of Criminal Careless negligence and nothing else from the beginning to the end of the ~~the~~ Chapter.

The Position of the appellants on the contrary is one of innocence, one of diligence. They are chargeable with no negligence whatever. They had no notice of Talmadge's claim, and even if they knew that he was pretending a claim to it they knew that he had publicly declared that he had abandoned and given up the land; They knew that Kirk and Smith had bought by his advice; that he was frequently in the neighborhood, knew of their purchase, and of the money they had paid out in buying and improving the land. They were diligent in paying the purchase price in making improvements, in taking possession and in the exercise and performance of every act constituting the indicia of ownership.

Judge Story says Equities and Equated when parties are Equally innocent and Equally diligent, and that where the Equities are unequal the preference is constantly given to the Superior Equity

1 Story, Equity Law, Section 64:642

And yet the Court below held the Equities of these parties Equal. The Equity of Talmeage Stupid in negligence and laches, and the Equity of the appellants innocent diligent and chargeable with no laches whatever, Equal. That laches and negligence which Courts of Equity abhor are Equal with innocence and diligence which they love.

A greater perversion and misconstruction of a legal principle than this we insist was never committed by a Court

There were many reasons upon established Principles why these Equities were not Equal and why the Equities of the appellants were Superior to those of Talmeage

They were in possession, and such possession gave them a superior Equity and would have done so, had their Equities been otherwise Equal which they were not.

18 Johns, 561

Krenys Equity 286

2 Vernon 599

They had the better right to call for the legal estate, and when Equity and otherwise equal the one having the legal estate or the better right to call for it has the Superior Equity

2 Balo & Beatty 171

2 Bessey Sen 486

He shall have a right to call for the legal estate when a bond is given for a purchase price & price paid

1 Term Rep 438 to be used

In respect to the rights of third parties to call for the legal estate: Had Talmadge any such right? he had never paid any thing, had never offered to do so, upon what principle could he call for the legal ^{estate} on the ground of his unpaid mortgage interest? he could only be entitled to the legal estate by redemption, which he never even offered to do, and as a matter of course had never interfered himself with the right to call for the legal estate.

How was it with appellants? They had paid their money they had received contracts from the ostensible owners of the land. They had paid

Page 30 money in the fulfilment of those contracts had
been diligent in the performance of the con-
tracts, had taken possession under, ^{they} had re-
mained in possession, had expended large sums
in improving them, and as we contend they
had entitled themselves to call for the legal
estate and by reason of such better right to
call for it they had acquired a Superior
Equity over Talmauld which this Court
ought to protect

The instances are numerous where Courts
of Equity have used their power to protect
parties who have been diligent against un-
diligent parties whose claims were of the same
character but prior in point of time.

For instance between Senior in came tra-
ces they have permitted Junior in came tra-
ces without notice to take priority over the Senior,
where the Senior has the legal estate by the
best right to call for it, or has got possess-
ion of the title deeds. The possession of the
title deeds in England being equivalent in effect
to the recording the mortgages in this country and
always going with the mortgages

10 days 260

11 " 618

2 Rev Williams 495

2 Eden 84

A Party In Ambiance was held protected
by a legal estate and possession against the
rent acts of the owner of the land in breach
of the estate which acts, was in the high
est degree fraudulent and fraudulent
10 Eng Chan Rep 310-319

When Equity and legal right in time will
prevail but fraud and negligence make them
unequal

1 Couch 19

2 Johns C.R. 607

In the case of the 2 assignees of a note
payment of a part to the senior assignee with
out notice of the prior assignment held good
3 Hill 228

24 Miss 208 if we examine the syllabus
by close words seem to hold the doctrine
that the oldest Equity is the superior one
but of examination of the case particularly
at page 230 we find that even by that
case the ^{Equity} ~~parties~~ must be equal and the
parties equally innocent

24 Miss 230

In this case Talmadge was guilty of negligence amounting to fraud which of itself ought to be conclusive against him in favor of these appellants and which was held sufficient against him by the Court below in respect to Burk & Smith.

He was guilty of the negligence of standing by, and seeing these lands ^{some} to other parties, and permitting it to be done without objection and in some instances encouraging it.

It appears by the testimony that Talmadge left this land in 1846 or 1847, then declaring that he had given it up and selling off the fences on it declaring that he had done with it. That shortly after he was recommending Burk to buy some of it, and soon after that ^{time} making the same recommendation to Smith, declaring to them and their friends that he had given up the expectation of getting the land, or had given it up. These recommendations were made known to Hunt & Gomer who bought about the same time Smith did. These parties all went into possession of their lands commenced making considerable improvements on them, and continued to pay money for them to their vendor & firm. This state of affairs was continued for some time. Talmadge continually visiting in the neigh

borhood knowing of these improvements, of the
 possession of the patents and probably of ^{their} ~~the~~ large
 payments, and takes no measures to warn these
 parties but then on their guards & give them
 any notice whatever that he had or claimed
 any right in these lands, that he intended to
 insist upon: Jalmadge altho frequently in
 the neighborhood and sometimes stopping with
 Smith, had removed his family away and
 lived at a distance, this being continued for
 some time after the first sales to Ralston, Ral-
 ston an entire stranger comes along in pursuit
 of land for a farm, he calls upon Smith, who
 knowing of these lands; that they are for sale, and
 having been informed by Jalmadge himself that
 he had given them up; induces Ralston to
 buy a large parcel of them at a large price
 Ralston pays a large sum of money on the pur-
 chase price money upon the land buys but large
 sums of money in its improvements; and contin-
 ues in possession so improving and paying for
 it; Jalmadge knows of this, makes no objection
 takes no steps to inform Ralston of his claim
 permits him to lay out his money in paying and
 improving the land up to the very time of the ser-
 vice of summons in this cause, without even bring-
 ing to the knowledge, of Ralston that such a per-
 son as Jalmadge had ever existed: There still
 remains a forty acre tract, Dennis has known
 of all these other purchases, has seen Jalmadge
 stand by and some ago, ^{as before} them, finds the land
 desirable and buys it; He also pays a considerable

Page 34 Sum of money for the land makes some improve-
ments. Finally after Rich has paid up and got
a deed, and the last payments of all the other
purchasers having become due or being about to
become due, when they would get money and
for their lands, and after they had laid out
about all the money they ^{possess} would lay out before
obtaining their title; Talmadge files his bill with
the modest request, that he might receive the
benefits of all these improvements without pay-
ing for them, upon paying government price
for the land and six per cent interest thereon
and not even making any effort to attempt
to pay that.

In connection with this charge of stand-
ing by and encouraging these sales there is a most
frequent circumstance going very far to show
a fraud in Talmadge respecting them which
is this: It appears by the testimony of J. B. Rob-
ertson a witness examined by the defendants
that the firm of Robertson & Howard of which
he was a member, were Land Agents in Rich-
ford for the sale of lands, and as such were
the agents of Primrose for the sale of these lands
that in pursuance of this agency all these lands
were sold by this firm, that such purchases were
of this firm and that such sales were made by the
witness Robertson and that many of the payments
were made to him. The Court is doubtless well

aware of the custom of these Land agents
 to advertise the lands left with them for sale
 and this firm did extensively offer these
 lands by advertisement from the time they
 first commenced selling to the time of their
 last sale is alleged by Rumrord in his answer
 and is a fair inference from the circumstances
 attending the transaction. It appears also that
 other lands in this neighborhood were claimed by
 Rumrord, and that Robertson & Hollands were their
 agents to sell them and the inference becomes a
 strong one that these agents publicly advertised
 them, and the inference becomes irresistible
 that Talmadge from the first offer of these
 lands to the time of the commencement of this suit
 knew that Robertson & Hollands were offering them
 for sale and selling them and endeavoring to
 sell them, and it does not appear that he
 took any steps to apprise any persons ^{might} who he
 or become an innocent purchaser of the lands
 or the agents engaged in selling it, that he
 claimed any interest in them but that he did
 stand by and witness, these lands offered to
 the public for sale by Land agents, ² knew of the
 sale of them by such agents is clear, and that
 he made no objection is equally clear and
 harmonizes with the direct encouragement given
 by him to Kirk and Smith.

The time between the first sale made to
 Kirk and the last sale made to Dennis was
 nearly two years, an ample time for him to take
 some steps to set up his claim and appraise the

Public of it, had he even recorded his con-
 tract at that time (which he neglected to do)
 he would have given some evidence to the pub-
 lic of an intention to insist on some right
 to those lands, but as it was, there was noth-
 ing to apprise any body of any claim of
 right in him or any thing to put them on
 inquiry; but every thing to lay and breed
 suspicion of such claims. And now to per-
 mit Talmadge to deprive these appellants
 of these lands, even on the terms and conditions
 imposed by the Court below would be to im-
 pose ^{against} fraud on these appellants, and to
 reward neglect, sloth, and fraud at the expense
 of diligence, honesty and good ~~faith~~ faith,
 a thing which I do not believe this Court
 is willing to do, and this effect of the de-
 cree of the Court below becomes painfully
 apparent when we come to see how easily
 all these terms and conditions were fulfilled
 by Talmadge he taking all the lands of these
 appellants with all their valuable im-
 provements without the actual payment to them
 of a solitary cent but in fact obtaining ^{against}
 against them a money claim for a consider-
 able balance ~~balance~~ besides the lands

That Courts of Equity have protected in-
 nocent purchasers against the fraud of stand-
 ing by and either actively or passively encour-

acquiring sales by other persons and afterwards
claiming the property estate or thing sold ap-
pears by a uniform current of decisions com-
mencing in the English Court of Chancery many
years ago and brought down to the latest pe-
riod in the history of our own Swiss ju-
dices. The effect of some of these decisions
I have recapitulated below. Thus.

A Family Settlement was made settling
the family estate in view of the marriage of
one of the sons of the family, a party who re-
ally had an interest in the estate which interest
was set aside by the settlement; knew of the
settlement and made no objection till he was
held estopped from afterwards attempt-
ing to set aside the settlement and estab-
lishing his own rights

1 Ball & Beatty 171

In another case held that a person hav-
ing the legal title to lands, who acquiesces in
the sale of it by another having a claim or claim
of title tort, is estopped from asserting his title
against a purchaser especially if he has advised
and encouraged the parties to the sale to deal
with each other

6 Johns C Rep 166

Held also that if a man knowingly or even
passively took on and suffered another to purchase
land under an impression of title without ma-
king known his claim, he should not after wards
be permitted to exercise his legal rights
against such person

1 Johns C R 354

2 Vernon 150

A man encouraged another to buy an
annuity held he could not after wards set
it aside

1 Vernon 136

A Party permitted a lease to be made
and the lessee to make improvements know-
ing lessor had no title held that he should
should not dispute the lease and that the
lessee should enjoy the term.

1 Equity Cases Atk 356 Pl 10

7 Vesey

231

A Party permitted money to be laid out
in building & renewal rent for a time & then brought
ejectment and recovered. On a bill filed
by the lessee to quiet title a lease was order-
ed to be executed by the claimant.

3 Atk 692

A Party having an interest in the land hears
another make declarations inconsistent with

~~with~~ his right and witnessed a deed selling it away. The Party was held to the declaration made.

2 Vernon 239. See also

14 Ills Ills 269

9 Foster 480

These cases decide that the encouragement by advice and recommendation, or passing & witnessing it ~~or~~ by without objection or by acquiescence knowing the thing to be done and taking no steps to prevent it, are and held to estop a party from setting up a claim inconsistent with the rights which he so by his advice, encouragement, or acquiescence permitted to be ^{accomplished} made, and we insist that in these parties also, I already stand estopped by these cases in respect to all these appellants. His encouragement was of all third characters. His contract was a unit in respect to these parties, he was to redeem the whole or none of the land he could not elect to take a part and let the rest go, and such being his rights he advises Kirk & Smith to buy. Then making his encouragement active as active as it well could be and he permits all the rest to buy improve and expend money without objection he permits Robertson & Holland to offer them for sale and to go on for years in selling them, and makes no effort to make known his claim for two years after the whole of his land was sold, and for four years after the first sale

to Kirk was made, thus, as we continue bringing himself within the tent and thin it of all and each of these decisions

The Court below held these appellants to be innocent purchasers and entitled to the protection of the Court, and decided against them solely on the technical grounds that Talmadge's claim was the oldest in time, and that the appellants had not the legal estate. Holding also that encouragement given Kirk & Smith was only to tempt themselves, making no account of the encouragement indirectly given the appellants; that the disregard of such encouragement by the Court was clearly erroneous we cannot doubt, and we have no doubt that the Court gave a most unreasonable prominence to those technical grounds upon which it determined this case in Talmadge's favor.

It appears that the land prior to the commencement of this suit had been conveyed to Primrose who in his answer denies notice of the claim of Talmadge, Talmadge in his brief sets out this conveyance but in no respects challenges the bona fides of this transaction.

The Court below paid no attention to this conveyance on the ground that the consideration therein was but one dollar and that therefore Primrose could not be a bona fide purchaser.

Was the Court right in adopting this theory and so readily disposing of this conveyance? Is it true that a party holding in fee by deed of quit claim is taken out of the privilege and rights of a bona fide purchaser. I should think that but one answer could logically ^{follow} the question.

But it appears from the same rather narrow ground on which the Court below placed its decision, the decree should have been for the appellants. It appears by the contracts themselves, to these appellants at least to all except Dennis as well as to Smith & Rich, that the sales were all made by Primrose the same fact appears by the testimony of the witness Robinson who testifies that as the agent of Primrose he made all these contracts which with one exception were signed by Primrose. The payments were all made to Primrose, a large portion of the improvement was made before the legal title was conveyed to Primrose, the balance of the money was afterwards paid to Primrose

Page 42 and conveyances made by him to all except
himself after the commencement of this suit

Now we insist that this evidence shows
that the legal title was made to Primrose for the
benefit of these purchasers and that Primrose
held as trustee for them and for them alone,
and that upon the narrow technical ground
upon which the Court below placed its
decision, the decree should have been for the
appellants and that the legal title should have
been used by them but for the protection of
the appellants, if necessary to that end. The
conveyance to Primrose was adverse to the rights
of Talmadge and in denial of them. It was
in fulfillment of the prior contracts of Prim-
rose to the appellants, manifestly designed
for their benefit and to enable Primrose to
convey to them as he had before agreed to
do.

This idea of Primrose, being the trustee of
these appellants is not novel, and is sustain-
ed by authorities. In Roman cases it has been
held that the vendor is a trustee for the
purchaser and that a party buying and lay-
ing out money in improvements is entitled
to the protection of Courts of Equity against

Page 48 Even legal rights

See 2 Paris C.C. 12548, 600

2 Hurst & Johns 64

1 Boston Equity 12 260

The decision in the Court below was a decision against Equity on grounds merely technical, when Courts have decided that they will not permit Equity to be entangled in a web of technicalities.

1 May and Chamber 151

In this case technical rules were stretched to give this case to Talmeage. His Equity with its surroundings of negligence, luck and fraud was held to be equal with those of the appellants surrounded by diligence, innocence and possession.

His neglect to record his contract, give notice of his claim, or to pay the purchase money was held to constitute an equal Equity with their innocent purchases, large payments of money, and valuable improvements.

His standing by encouraging these parties to buy, was held entitled to turn these innocent purchasers buying under his encouragement out of the possession of their honest purchases without the compensation of them of a dollar.

misconduct and the mortgagee must have
Page 45 died the money due and costs at that time

In this case the decree is against Ferguson and Primrose for the entire costs in the cause and against these appellants for a part of them. Upon what principle was Ferguson charged with costs, his relation to the subject of the suit had been that of trustee alone (not a beneficiary owner) acting for others and not for himself ~~himself~~, and before the commencement of this suit that relation had terminated, upon what principle was the entire costs of this case placed upon him? Nothing in the record justifies it.

Then as to Primrose a purchaser in fee of Ferguson nothing showing that he was ~~before~~ aware before this suit was commenced of the claim of Tolmady nothing appearing to impute any misconduct to him, nothing in any way connecting him with the original transaction why was he also charged with all the costs in the cause?

And in view of this question these parties neither of them appear to have had any personal knowledge of the original transaction with Jay or and they could not be held to know that the contract with Tolmady was any different from what its terms imported and

Page 46 Well might insist, that Talmadge, ^{should be held} to the terms of his contract as they appeared on the face of the instrument itself, and their doing so cannot be held in this Court a misconduct charging them with costs.

And they were not only by the decree charged with costs up to the determination of the Court that Talmadge was entitled to redeem, but they were also subjected ^{to} costs of taking an account between Talmadge and the appellants in respect to waste, and rents and profits, a matter ^{with} which neither Ferguson or Primrose had any thing whatever to do.

And the Court below not only allowed costs against Primrose and Ferguson but they also subjected these appellants to costs. When we take into consideration the fact that ^{the} Court held these appellants as entirely innocent parties, and only determined against them by stretching a technical rule we are astonished by this decree against them for costs. They were innocent purchasers, recognized as such by the first decree, their conduct appears diligent, honest and fair upon the record, while Talmadge's conduct is deficient in every element of all these qualities and the Court after recognizing the innocence

Page 47 of appellants has induced a decree against them depriving them of their lands with all ^{their} outlays and improvements, without any punishment and charges them with costs, and allows judgment without the expense of a single dollar in any shape either by way of buying the lands improving it or paying the taxes to take their lands ~~but~~ ^{and} not only so but allows him to establish his right to these lands and obtain them at the cost of innocent parties induced to buy them by his neglects

That a mortgagee paying a bill to redeem a mortgage must pay costs is abundantly sustained by

- 3 Mass 254. tota pagis 136
- 2 Vernon 185. 336
- 28 Eq Chan R 105

Mortgagees have sometimes been deprived of costs by mis conduct, and sometimes mortgagees have been held entitled to costs even by tendering the money due but the general rule is all costs are paid by mortgagees

- 3 Vesey 583
- 1 Bull & Bull 109
- 1 Page 48. 617
- 4 " 527
- 5 " 9
- 5 Pick 271

So Recapitulate

Talmadge, Contract being a mere contract of sale on its face, and none of the defendants in the suit to this bill filed having any notice of it prior to the commencement of this suit. It can have no more or different effect against them than a plain construction ~~of its face~~ ^{of it} by its term would require, and the same have been put an end to by Talmadge and relinquished by Talmadge upon before the appellants purchased; it can not in any manner be used to the prejudice of appellants.

Talmadge having failed to record his instrument as required by the Statute in force at the time it was given he cannot now set up the transaction with Taylor as a mortgage against any person, and more especially against these appellants.

Purples Book Estate Volume 475 Sec 8th

The appellants were bona fide purchasers of their land and are entitled to the protection as such and cannot be affected with Talmadge's Equity.

1 Story, Equity, Chancery, Section 64 (c.d. p. 9)
108, 139, 381, 409, 434, 436

2 Hild Sec 1502
 2 Vernon 27, 2 Vesey Sen 454
 2 Sumner 560, 1 Term Rep 128
 1 Spence Equity Jurisdiction 424
 1 Bull & Baty 171, 2 Mason 272, 273
 Cases Temp Talbot 69

Appellants were innocent purchasers
 in possession of the lands having equities su-
 perior to those of Talbot's to which his must
 yield and give way

18 Johns 561
 Krenys Equity 286
 2 Vernon 599
 7 Cranch 19
 2 Johns 6, R. 607
 3 Hild 228

They have equities superior to those of Tal-
 bot's were entitled to call for the legal estate
 and their rights must be preferred to his

1 Bull & Baty 171
 2 Vesey Sen 486
 10 Vesey 260
 11 " 618
 1 Term Rep 438
 10 Eng Chan R 310-319
 2 Edwards 84

They were encouraged (both actively and passively) by Salcedo himself to buy these lands and pay out their money in ~~response~~ improving them by standing by and seeing it done without objection, he is now ~~estopped~~ from claiming the lands against them or interfering with their rights therein

1	Ball & Benty	171
6	Johns & R	166
1	" " "	354
2	Rumon	150. 239
1	"	186
1	Eng Can Abpd	356 & 10
7	Wasy	231.
3	Atk	692
2	Pairs C.C.	598. 600
2	Harris & John	64
1	Bush & R	260

They were innocent and diligent in respect to the lands while Salcedo was guilty of lack and negligence and their rights ought to be preserved to him

1	Stroy's Equity	64 ^c
24	Miss R	230
2	McLean	495
14	Peters	174
4	Brown C.C.	469
2	Russ & Meyers	236

Page 51

2 Edwards 644
16 Chaires 99
4 Pels 328
1 Baw & Butz 69
1 Mayford C, Dec 151

Salvadoro claiming a Mortgage coming to
redem should have been required to pay all
the costs in the case and within appellants
Pinnrose, or Kington should have been required
and copy costs

3 Chad 254 ~~the~~ ^{the} ~~page~~ ^{page} 136
2 Hermon 185. 536
28 Ey G. R. 105
7 Busy 583
1 Baw & Butz 109
1 Paige 48. 617
4 " 527
5 " 9
5 Pick 271

For Mr. Wright for Pinnrose ~~and~~
& appellants

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Wm Weston et al

vs
Asa Talmadge

Argument of
J. M. Wright

Filed May 22 1858
S. Leland
CLK

In the Illinois Supreme Court

Alexander Ferguson & others

v

Asa Salmadge

Appellee

Asa Salmadge

v

Alexander Ferguson & others

Appellant

The Annexed are copies of the Schedules or
tables of land attached to the bill of Complaint of David Chal
mers and others against Alexander Ferguson & others filed in
the Circuit Court for the County of Hennepago on the eighth day
of February A.D. 1845. And referred to in the Stipulation be
tween the parties in the above entitled Causes and to be taken
as part of the record in those Causes.

*Schedule (A) of lands situate in the County of
Winnebago and State of Illinois.*

		Sec	Town	Range	Acres.
	N.W. $\frac{1}{4}$	5	43	1 E.	151.81.
W $\frac{1}{2}$	N.W. $\frac{1}{4}$	7	"	"	58.34
	S.E. $\frac{1}{4}$	12	"	"	160.00
E $\frac{1}{2}$	N.E. $\frac{1}{4}$	14	"	"	78.54.
E $\frac{1}{2}$	N.E. $\frac{1}{4}$	12	"	2 E.	80. "
	S.E. $\frac{1}{4}$	"	"	"	160. "
20 Acres N.E. Corner	S.W. $\frac{1}{4}$	20	"	"	20 "
N $\frac{1}{2}$	N.W. $\frac{1}{4}$	23	"	"	80 "
	N.W. $\frac{1}{4}$	24	"	"	160 "
E $\frac{1}{2}$	N.E. $\frac{1}{4}$	"	"	"	80 "
E $\frac{1}{2}$	S.W. $\frac{1}{4}$	"	"	"	80 "
	N.E. $\frac{1}{4}$	25	"	"	160 "
	S.E. $\frac{1}{4}$	"	"	"	160 "
E $\frac{1}{2}$	N.W. $\frac{1}{4}$	"	"	"	80 "
	S.W. $\frac{1}{4}$	28	"	"	160 "
	N.W. $\frac{1}{4}$	"	"	"	160 "
W $\frac{1}{2}$	S.E. $\frac{1}{4}$	"	"	"	80 "
E $\frac{1}{2}$	N.E. $\frac{1}{4}$	3	44	"	81.35.
E $\frac{1}{2}$	N.W. $\frac{1}{4}$	4	"	"	81.82.
E $\frac{1}{2}$	S.W. $\frac{1}{4}$	9	"	"	80 "
E $\frac{1}{2}$	N.W. $\frac{1}{4}$	10	"	"	80 "
E $\frac{1}{2}$	S.W. $\frac{1}{4}$	"	"	"	80 "
W $\frac{1}{2}$	S.E. $\frac{1}{4}$	"	"	"	80 "
E $\frac{1}{2}$	N.E. $\frac{1}{4}$	15	"	"	80 "
W $\frac{1}{2}$	S.W. $\frac{1}{4}$	"	"	"	80 "
	N.E. $\frac{1}{4}$	35	"	"	160 "
	S.E. $\frac{1}{4}$	"	"	"	160 "
	S.W. $\frac{1}{4}$	13	45	2 E.	160. "
E $\frac{1}{2}$	N.E. $\frac{1}{4}$	33	"	"	80 "
	S.W. $\frac{1}{4}$	34	"	"	160 "
	S.E. $\frac{1}{4}$	"	"	"	160 "
	N.W. $\frac{1}{4}$	35	"	"	160 "
	S.W. $\frac{1}{4}$	"	"	"	160 "
	S.E. $\frac{1}{4}$	"	"	"	160 "

රිප්	එරි	$\frac{1}{4}$	14	46	"	80	"
W2	එරි	$\frac{1}{4}$	15	"	"	80	"
W2	එරි.	$\frac{1}{4}$	19.	40.	එ	80	"
	NW	$\frac{1}{4}$	එ0	"	"	163.96	
W2	එරි	$\frac{1}{4}$	එ1	"	"	80.	"
රිප්	එW	$\frac{1}{4}$	එ2	"	"	80	"
	NW	$\frac{1}{4}$	එ0	45	"	167	14
	NW	$\frac{1}{4}$	එ1.	"	"	168	94.

*Schedule (B) of lands situate in the County of Boone and
State of Illinois.*

Lot 21	NE $\frac{1}{4}$	21	45	4 E	769 ¹¹
	NE $\frac{1}{4}$	5	"	"	160 "
	SE $\frac{1}{4}$	"	"	"	80 "
E 21	SW $\frac{1}{4}$	6	"	"	140 24
	NE $\frac{1}{4}$	"	"	"	70 26
	NE $\frac{1}{4}$	7	"	"	141 32
to 21	SW $\frac{1}{4}$	9	"	"	160 "
	NE $\frac{1}{4}$	19	"	"	80 "
	NE $\frac{1}{4}$	26	"	"	80 "
W 21	SE $\frac{1}{4}$	27	"	"	80 "
W 21	NE $\frac{1}{4}$	29	"	"	80 "
E 21	NE $\frac{1}{4}$	28	"	"	80 "
E 21	NE $\frac{1}{4}$	31	"	"	148 44
	NE $\frac{1}{4}$	32	"	"	160 "
	NE $\frac{1}{4}$	33	"	"	80 "
E 21	SE $\frac{1}{4}$	"	"	"	80 "
E 21	NE $\frac{1}{4}$	34	"	"	160 "
E 21	SW $\frac{1}{4}$	2	44	E	80 "
W 21	SE $\frac{1}{4}$	"	"	"	80 "
W 21	NE $\frac{1}{4}$	11	"	"	80 "
E 21	SW $\frac{1}{4}$	14	"	"	160 "
	NE $\frac{1}{4}$	1	45	"	161 96
	SE $\frac{1}{4}$	"	"	"	160 "
E 21	NE $\frac{1}{4}$	12	"	"	80 "
E 21	SE $\frac{1}{4}$	"	"	"	80 "
E 21	SE $\frac{1}{4}$	23	"	"	160 "
	NE $\frac{1}{4}$	25	"	"	80 "
	SW $\frac{1}{4}$	36	"	"	80 "
W 21	NE $\frac{1}{4}$	11	44	E	80 "
Pl of W 21	NE $\frac{1}{4}$	12	"	"	66 "

Schedule (C) Lands situate in McHenry County State of Illinois.

	W ² ₂	NE ¹ / ₄	17	43	6.6	80.00	
	W ² ₂	NW ¹ / ₄	"	"	"	80 "	
	W ² ₂	SW ¹ / ₄	"	"	"	80 "	
	W ² ₂	SE ¹ / ₄	"	"	"	80 "	
Lot 1.		SW ¹ / ₄	19	"	"	80 "	
	E ² ₂	SE ¹ / ₄	23	"	"	80 "	
	E ² ₂	NE ¹ / ₄	25	"	"	80 "	
	W ² ₂	NE ¹ / ₄	30	"	"	80 "	
		SE ¹ / ₄	12	44	"	160 "	
	E ² ₂	SE ¹ / ₄	17	"	"	80 "	
	W ² ₂	NE ¹ / ₄	22	"	"	80 "	
	W ² ₂	SW ¹ / ₄	26	"	"	80 "	
	E ² ₂	SW ¹ / ₄	9	45	"	80 "	
	W ² ₂	SE ¹ / ₄	"	"	"	80 "	
	E ² ₂	SW ¹ / ₄	12	"	"	80 "	
	E ² ₂	NW ¹ / ₄	13	"	"	80 "	
	W ² ₂	SW ¹ / ₄	5	46	"	80 "	
	E ² ₂	SE ¹ / ₄	7	"	"	80 "	
		SW ¹ / ₄	17	"	"	160 "	
Lot 2.		NW ¹ / ₄	1	43	7	78 87	
	W ² ₂	NE ¹ / ₄	11	"	"	80 "	
		SE ¹ / ₄	2	44	"	160 "	
	E ² ₂	SW ¹ / ₄	"	"	"	80 "	
	W ² ₂	SE ¹ / ₄	11	"	"	80 "	
	E ² ₂	NE ¹ / ₄	"	"	"	80 "	
	W ² ₂	NE ¹ / ₄	14	"	"	80 "	
		E ² ₂	19	"	"	322 014	
	W ² ₂	NW ¹ / ₄	23	"	"	80 "	
	E ² ₂	SW ¹ / ₄	26	"	"	80 "	
	E ² ₂	NE ¹ / ₄	28	411	76	80 "	
Lot 2.		NW ¹ / ₄	30	"	"	81 51	
	E ² ₂	SE ¹ / ₄	35	"	"	80 "	
Lot 2		NE ¹ / ₄	5	45	"		
		NW ¹ / ₄	5	"	"	250 18	

W ²	NW ¹ / ₄	15	"	"	80 "
E ²	NE ¹ / ₄	32	"	"	80 "
E ²	NW ¹ / ₄	33	"	"	80 "
W ²	NE ¹ / ₄	"	"	"	80 "
W ²	SW ¹ / ₄	2	"	5	80
Lot 2	NE ¹ / ₄	3	"	"	80 50.
E ²	SE ¹ / ₄	"	"	"	80 "
Lot 2.	NE ¹ / ₄	5	"	"	88.40
E ²	NE ¹ / ₄	10	"	"	80
	NW ¹ / ₄	11	"	"	160 "
E ²	SW ¹ / ₄	"	"	"	80

*Schedule (D) lands situate in the County of DeKalb
State of Illinois:*

	SW $\frac{1}{4}$	14	42	46	160 "
E $\frac{1}{2}$	SW $\frac{1}{4}$	15	"	"	80 "
	NW $\frac{1}{4}$	25	"	"	160 "
	NE $\frac{1}{4}$	"	"	"	160 "
	SE $\frac{1}{4}$	"	"	"	160 "
	NE $\frac{1}{4}$	26	"	"	160 "
E $\frac{1}{2}$	NW $\frac{1}{4}$	"	"	"	80 "
E $\frac{1}{2}$	NE $\frac{1}{4}$	27	"	"	80 "
W $\frac{1}{2}$	NE $\frac{1}{4}$	3	"	SE	80 62
E $\frac{1}{2}$	SW $\frac{1}{4}$	"	"	"	80 "
E $\frac{1}{2}$	NE $\frac{1}{4}$	8	"	"	80 "
W $\frac{1}{2}$	NW $\frac{1}{4}$	9	"	"	80 "
W $\frac{1}{2}$	NE $\frac{1}{4}$	17	"	"	80 "
W $\frac{1}{2}$	NW $\frac{1}{4}$	"	"	"	80 "
	SE $\frac{1}{4}$	"	"	"	160 "
W $\frac{1}{2}$	SW $\frac{1}{4}$	24	"	"	80 "
W $\frac{1}{2}$	SE $\frac{1}{4}$	"	"	"	80 "
	NW $\frac{1}{4}$	21	"	"	160 "
W $\frac{1}{2}$	NE $\frac{1}{4}$	25	"	"	80 "
W $\frac{1}{2}$	NW $\frac{1}{4}$	"	"	"	80 "
NE $\frac{1}{4}$	SE $\frac{1}{4}$	12	114	3	320.
E $\frac{1}{2}$	of NE $\frac{1}{4}$	13	"	"	80 }

In Banco Co Ills

Schedule (E) Lands situate in the County of Whiteside
State of Illinois:-

	NE $\frac{1}{4}$	18	20	264	109.75
E $\frac{1}{2}$	SW $\frac{1}{4}$	21	21	3	80
E $\frac{1}{2}$	SW $\frac{1}{4}$	3	"	"	80
W $\frac{1}{2}$	NW $\frac{1}{4}$	12	"	"	80
W $\frac{1}{2}$	NE $\frac{1}{4}$	13	"	"	80
	NW $\frac{1}{4}$	19	"	"	36.80
W $\frac{1}{2}$	SW $\frac{1}{4}$	"	"	"	75.78
E $\frac{1}{2}$	SE $\frac{1}{4}$	"	"	"	80
W $\frac{1}{2}$	NE $\frac{1}{4}$	20	"	"	80
	SW $\frac{1}{4}$	28	"	"	160
	SE $\frac{1}{4}$	29	"	"	160
	SW $\frac{1}{4}$	10	22	"	36.12
W $\frac{1}{2}$	SE $\frac{1}{4}$	"	"	"	78
	SE $\frac{1}{4}$	15	"	"	160
W $\frac{1}{2}$	SW $\frac{1}{4}$	23	"	"	80

*Schedule (D) Lands situate in the County of Rock Island
State of Illinois:*

	SE	$\frac{1}{4}$	7	20	2 E. 10 th	104 68
	SE	$\frac{1}{4}$	18	"	" "	97 44
	NE	$\frac{1}{4}$	32	"	" "	160 "
	SW	$\frac{1}{4}$	"	"	" "	160 "
	SE	$\frac{1}{4}$	"	"	" "	160 "
W ²	NW	$\frac{1}{4}$	33	"	" "	80 "
W ²	SW	$\frac{1}{4}$	"	"	" "	80 "
	SW	$\frac{1}{4}$	"	21	" "	91 19
W ²	SE	$\frac{1}{4}$	"	"	" "	69 32

*Schedule (G) Lands situate in the County of LaSalle
and State of Illinois:*

W ²	SW	$\frac{1}{4}$	9	36	3. E	80 "
W ²	NE	$\frac{1}{4}$	17	"	"	80 "
	SW	$\frac{1}{4}$	"	"	"	160 "
	SE	$\frac{1}{4}$	18	"	"	160 "
	NE	$\frac{1}{4}$	19	"	"	160 "
E ² No 1.	NW	$\frac{1}{4}$	"	"	"	80 15
W ²	SE	$\frac{1}{4}$	"	"	"	80 "
Mid 3. No 2. E ² No 1.	SW	$\frac{1}{4}$	"	"	"	160 "
E ²	SE	$\frac{1}{4}$	29	"	"	80 "
Mid 3. No 2. } 79.94 W ² No 3. } 72.21	NW	$\frac{1}{4}$	30	"	"	152 15

Schedule T-T Land situate in the County of Kane and State of Illinois:

Lot 2	NW ¹ ₄	3	142	6 E.	81 53.
E ¹ ₂	NW ¹ ₄	9	"	"	80 "
E ¹ ₂	NW ¹ ₄	11	"	"	80 "
E ¹ ₂	SW ¹ ₄	12	"	"	80 "
E ¹ ₂	SE ¹ ₄	21	"	"	80 "
W ¹ ₂	SW ¹ ₄	22	"	"	80 "
W ¹ ₂	SE ¹ ₄	29	"	"	80 "
E ¹ ₂	SW ¹ ₄	1	"	7 E.	80 "
W ¹ ₂	NE ¹ ₄	10	"	"	80 "
E ¹ ₂	NW ¹ ₄	13	"	"	80 "
Lot 1.	SW ¹ ₄	18	"	"	80 "
E ¹ ₂	SW ¹ ₄	20	"	"	80 "
E ¹ ₂	NW ¹ ₄	22	"	"	80 "
W ¹ ₂	SE ¹ ₄	"	"	"	80 "
E ¹ ₂	SW ¹ ₄	23	"	"	80 "
Lot 1.	SW ¹ ₄	30	"	"	80 "
W ¹ ₂	SE ¹ ₄	"	"	"	80 "
W ¹ ₂	NE ¹ ₄	27	"	"	80 "
E ¹ ₂	NE ¹ ₄	31	"	"	80 "
Lot 1. A	NW ¹ ₄	"	"	"	80.12.

Schedule I Land situate in Madison County State of Illinois: The equal undivided one half of the west half of the south west quarter of section. to twenty seven and of the north half of the north west quarter of section. to thirty four (34) in Township. to three north in range nine west of the third principal meridian

State of Illinois
Winnebago County ss. I Morris B. Perick Clerk of the
Circuit Court in & for said County do hereby Certify that the fore-
going are full & correct Copies from the original tables on file
in my Office & Attached to the Bill of Complaint in Case of David
Chalmers & others Against Alexander Ferguson & others.

Witness my hand & the seal of said Court at
Rockford this 18th day of May 1858.

M. B. Perick Clerk
By At. Penney Dep. Clerk

Fro \$3.75 for above Copy

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Wm Talmer

or

A. Ferguson & others

John Cole

Filed May 20 1858

J. C. Talmer
Clerk

Chicago May 24/58

Chief of Police Court
Sir

Enclosed I send

An agreement in the case of Kungwa
et al vs Salway - If Mr. Kungwa
is still at liberty on Mr. Wright's
parole hand to him - If not please
hand it direct to the Judge in

Very yours

Paul F. Gordon

Alex Furqueson et al }
 Appellee }
 vs }
 Asa Talmage, Appellant }
 In Supreme Court

Argument for Appellee.

I propose only to discuss three points, in this case, and those matters connected with & illustrating them, leaving, by arrangement the other points to my associates.

First.

I shall endeavor to show that the Complainant by his latter, his conduct in standing by and encouraging the purchase, by the appellee, is estopped from now setting up any claim to the land in question.

Second.

That under our recording acts as between purchaser or incumbrance, the deed or instrument under which they claim until recorded is as if it did not exist, and in contemplation of Law, did not exist: and one purchasing without notice of an unrecorded Mortgage, and going into possession is protected against such Mortgage.

Third,

When those incidents of a contract of Mortgage Sale which make it a Mortgage, rest in parol, a record of the contract is no notice of the mortgage, and if the party cannot hold under the contract as a contract, he cannot hold under it as a Mortgage, as against a

bona fide purchaser without notice.
I The Complainant by his laches, his silence, and encouragement to the Appellants or others, to purchase the Land, is estopped from claiming any interest in the Land as against them.

First: The purchase of the Land from the Government was under made 29th Oct 1839. and the ~~within~~ contract of Sale to Salmage made the same day, payable in four yearly instalments. Salmage went into possession.

In Feby 1843 a Bill was filed in Winnebago Court and asked title in Furquson.

No payments had been made by Salmage -

In April 1846, in an action of Ejectment against Salmage, a verdict was rendered against ^{him} Salmage, and he agreed to leave the premises without writ, and did leave in November 1846.

There was gross laches by which all right under the contract was lost. And commencement of Ejectment was an election to declare his rights forfeited, & bar his Equities, if he had any then.

And if he claimed any rights in the Land, he was bound to make them known, and interpose them, or else hold his peace. *From the 17th of Dec.*

We knew Furquson claimed the Land in fee, that it had been so decreed to him. Of these facts he was advised by the Ejectment Suit, and the title of Furquson then presented, and he was required then to interpose his Equities, if he had any. *14th Dec.*

bona fide purchaser without notice.
I The Complainant by his laches, his silence, and encouragement to the Appellants or others, to purchase the Land, is estopped from claiming any interest in the Land as against them.

First: The purchase of the Land from the Government was under made 29th Oct 1839. and the ~~within~~ contract of Sale to Salmae made the same day, payable in four yearly instalments. Salmae went into possession.

In Feby 1843 a Bill was filed in Winnebago Court and asked title in Furquson.

No payments had been made by Salmae -

In April 1846, in an action of Ejectment against Salmae, a verdict was rendered against ^{him} Salmae, and he agreed to leave the premises without writ, and did leave in November 1846.

There was gross laches by which all right under the contract was lost. And commencement of Ejectment was an election to declare his rights forfeited, & bar his Equities, if he had any then.

And if he claimed any rights in the Land, he was bound to make them known, and interpose them, or else hold his peace. *From the 17th of Dec.*

We knew Furquson claimed the Land in fee, that it had been so decreed to him. Of these facts he was advised by the Ejectment Suit, and the title of Furquson then presented, and he was required then to interpose his Equities, if he had any. *14th Dec.*

But so far from setting up any such Equitable
claim to the Land, she abandoned it, took off the
rails, and the floor from the House, and so far
as acts can go, abandoned the Land and all claim
to it: and in Conversation with several witnesses sta-
ted she had given up all claim to the Land, which was
communicated to the purchasers. I refer for this proof
to the testimony of the witnesses Meagon, Thomas Lake,
Samuel Horie, Ezekiel Dennis, W^m J. Kirk, W. D. Kuch-
ail, Robert Smith, Elias Martyn & John Smith. That
all the Appellies except Baleston knew of the ^{intimate} contract
between Taylor & Talmage, may be true; but that they
knew of the facts which made it a mortgage is
denied, and in no legal way is made to appear. And
I take it the notice to defeat a bona fide purchaser
relied on must be clear and explicit. The proof of
knowledge must not be rested on inference. 14, 116, 65.

All the knowledge they can in any case be charged
with, is of a contract for the purchase of the Lands of
Taylor and at the same time a failure to perform his
Ejectment & his acts & declaration of abandonment. If
they do not amount to a protection to a purchaser, what will
It is clear the purchasers referred in all their conversation
to Talmage's rights, if he had any, under the contract, &
insisted as is the fact, that those rights had been forfeited;
but no intimation is made of any rights as mortgagor,
or facts leading to such a conclusion, much less any ac-
tual notice of it. Notice to affect a purchaser must be
direct, or such as may advise a prudent man, and

which must lead necessarily to knowledge of the latent Equity.
This principle is so familiar that extended authorities
cannot be required. I will refer the Court however to
leading Cases in Equity 2 Vol 114. where all the Authori-
ties are collected. Also 8 N. H. 264. 26 Maine 484.
2 Sugd^d Vend 539 & note.

Knowledge of an instrument different from the one set
up is no notice of anything not appearing, in such
recorded, instrument

8 Corw 260

6 Sergt. Rawle 184

1 Sanfords 419

2.

Deilage by his conduct held out to the world that he
had no interest in the Land; that he had abandoned
any he might have had, and gave encouragement to
others, to buy portions of the Land. The testimony of the
Witnesses above referred is clear on this point.

To allow a man to sleep on his right for thirteen years,
to allow judgment in Ejectment to be obtained against
him, to strip the Land of fences and house, abandon
it, & leave on record or otherwise no evidence of any in-
terest in the Land; and continue such abandonment
for five years, and in the mean time declare pub-
licly that he had done with the Land, and intended
to have nothing more to do with it; —————

And advise others to buy of the owner on the Record;
then after parties in good faith, induced by his own
conduct and declarations have purchased, gone into

possession, and paid the largest part of the purchase money, and made valuable improvements, by which the Land has been enhanced in value, to set up a secret Equity, resting in parcel, and by virtue of it, turn them out of their home, and reap the fruits of their labor, would be a perversion of Equity, a reward to the deceiver an encouragement of laches & fraud, and a punishment of the vigilant & honest purchaser.

In this Country, where Land is ^{the} subject to traffic, and where its increase in value is so rapid, and so much depends upon the improvements made on it, parties setting up secret Equities, through which to deprive purchasers in good faith, of the rise of property, and the benefit of their improvements, will be held by Courts to strictest proof of diligence, and required to have done all in their power, by the Record of their Contract & otherwise, to warn and give notice of their Equities, and by no act or declaration of their own, give color to their nonexistence. This wise policy has thus far marked the decisions of our Courts, and ought not now to be departed from, A stronger case of laches, more significant acts and declarations of abandonment, and of the nonexistence of a secret Equity could hardly be made out. Besides, one may lose his right by ~~acts & declarations~~ ^{acts & declarations} as by acts of commission; One to preserve his latent Equity, must be prompt to assert them - he must not when he sees others acting in ignorance of their existence, delay to assert his rights.

nor by his silence permit the adversary to expend
their labor and money, without being made ac-
quainted at the earliest period of his claim - This
is a well settled rule of Equity, and commends itself to
the moral sense of every one. Tested by this Principle
how can the Complainant recover?

6 John Ch 166 21. Meaf. 639.

1 do 343.

Story Eqty Sec 383-389.

6 Ad & Ellis 475 Hollander vs Kilbuck

2 Eq Cases part 1st page 48. 17 Ills.

"^{the} ~~standing~~ Court say, "when anything in order to a
purchase is publicly transacted, and a third person
knowing thereof, and of his own right to the land
intended to be purchased, doth not give the purchaser
notice of such right, he shall never afterwards be
permitted to set up such right to avoid the purchase for
it was apparent fraud in him not to give notice to
the intended purchaser."

See also 2 Sugd' on Vend 516 top page - 1020 Marginal
where is noted all the Authorities are cited.

As to neglect and laches, See Sugd on Vend 289 Note

4
May it not be worthy of consideration ~~whether~~ in
a case of this kind, where the instrument itself is a
contract for a sale, and the facts which make the
transaction a Mortgage rest in parol, and it is at the
option of the vendor to treat the Contract as one for a pur-
chase, or a Mortgage, he may not by his laches, lose

The right of turning the contract into a Mortgage? Is it not like the Specific performance of a contract? Is it not rather like a contract for a mortgage? And must not a party within a reasonable time proceed to Establish its Character as a mortgage?

Policy would seem to require ^{this only} because Every day which Elapses, renders it more difficult to make out the real facts & Character of the transaction. At all Events this should be a consideration in favor of a purchaser, and should induce the Court to require prompt action, on the part of the vendor to turn it into a Mortgage, or to give notice the moment he finds, one acting in ignorance of his secret Mortgage.

(5) A written Contract after breach may be waived and abandoned by parol, and especially a Mortgage, which is virtually created by parol.

1 Suga on Vend 263 - Margin 173.

2 Wash 116

3 Conn 539.

1 Ham & M. 429

4 Mass 351

When one has a right as in this case to elect to pre-
create a Mortgage of Parol Testimony ~~as in this case~~, he
must do so within a reasonable time, and if he fail to do so, es-
pecially if the rights of third persons intervene, ~~he~~ he will be held
~~as having~~ ^{to have} abandoned his claim.

On principle it is similar to the election of an ap-
pree in Bankruptcy, In Smith's Gorum & Law Reports

"313, Judge Wain says, "If the assignee may elect to take or not
"to take any part of the Bankrupt's property - some period
"of time must be limited within which the election is to
"be made, If with the knowledge of the Bankrupt's title or
"with means of knowledge, he stands by without asserting
"his claim, for a length of time, and allows third persons
"done in the prosecution of their legal rights, to acquire
"an interest in the property, it appears to me that he then
"comes too late to assert his claim - that the time for his
"election has then passed."

The facts of this case show that the assignee had a claim
in on the property over all others, but the creditors
proceeded to subject the property to the payment of
specific debts & until near two years after they had
pursued their remedies, the assignee laid by, and after
they had incurred costs & contracted liabilities, then he sought
to interpose his claim to the property. The Court held he
could not do it - he was guilty of unreasonable delay which
was deemed an abandonment of his right - And this
though these creditors had constructive notice of the bank-
ruptcy, & consequently of his right in the property.
To the same effect is the 20 Ala 753, 19 do 414.

This principle is Equitable and just, and the
facts in this case demand it be applied for the
substance of ~~the~~ right.

It is no violation of the maxim "once a mortgage
always a mortgage," because as to third persons it
is not a mortgage, except on notice, & not as to the
debtor, except upon his election to make it so. The

Contract is not a Mortgage of itself; On its face, and in its terms, it is a contract to sell, and the Vendor cannot turn it into a Mortgage, but the Vendor can; or he can insist on carrying it out as a purchase. The Vendor cannot say it is a mortgage, & ^{that he} will not Convey, but will Enter Satisfaction on the Record; this would not vest the legal Estate in the Vendor.

II

Under our Recording acts, as between purchasers or incumbrancers the deed or instrument under which they claim being void as to Subsequent purchasers & incumbrancers without notice, is until recorded as if it had never been made, & was not in existence; and in contemplation of Law it has no force or effect until recorded, and one purchasing and going into possession is protected to the same extent, as if no ~~unrecorded~~ conveyance or mortgage then existed.

- 1 That the Judge who decided this Cause below, in common with some other Courts, has failed to distinguish the rights of parties under our recording acts, from those of parties in the same condition under the English System, and that of Sister States, is manifest, or he never could have rendered the decree he did in this Case.

If by laches, conduct or declarations, Talmage has not forfeited his rights, or was not ~~fully~~ Estopped

from setting up his rights as mortgagor, ~~but~~ ^{but} he had a clear, subsisting, Equitable, Mortgage, I am not prepared to say but that under the English Rule, and that in States where Deeds and Mortgages only are admitted to Record, he could enforce it against all the purchaser who had not paid at the time of filing the Bill, the whole consideration. - But under our Recording Laws, the principles on which that doctrine is held has no application. Our system is peculiar to ~~ourselves~~ and cases must be decided in conformity with it. And a failure to observe these distinctions has been the cause of all the difficulty in this case.

1
Under the English System an unrecorded deed or Mortgage, was made in no way void as in our State. A Contract for an interest in Land, was only an Equity, Standing on no higher ground than an unrecorded Mortgage: both were Equities, and therefore the eldest Equity prevailed: And when notice of the Elder and Equal Equity came home to the owner of the younger, he could proceed no farther, they were Equal, and priority gave Superiority to the Claim of his adversary: and therefore, unless the younger got in the legal title, and by its unity with the Equity, obtained an advantage, he was postponed to the Elder. To relieve the hardships resulting from this preference of the Elder over the younger Equal Equity the English System of Tacking was allowed.
2. So in New York and other States, where only the

Recording of a deed or mortgage, or some instrument creating an interest in real estate is made notice, ~~and~~ ^{but} the Statute expressly declares Executory Contracts for the sale or purchase of real estate not to be included under the term conveyance. By the first Section of Chapter Three Vol 1 Revised Statute of N.Y. page 756. the Record of all conveyances is made notice. By the 38 Sec of same Chapter, Executory contracts for the sale of Land, Executory Contracts for the sale of Land are declared not to be included under the term Conveyance.

And though by the 39 Sec such instruments are authorized to be recorded, the Record does not make them notice, but only makes them admissible in evidence without other proof.

If by the New York Statute an Executory Contract was included under the term conveyance mentioned in the first Section, then like a conveyance, it would be void as against subsequent purchasers, and the person holding it, would not hold in clear Equity, because this Contract in contemplation of Law, does not exist as against such subsequent purchaser, without notice; as to ~~them~~ ^{him} it is not made until recorded ^{even} if no such instrument was made until recorded - and where it was recorded, the subsequent purchaser was in possession he purchased with notice of all the rights of the party in possession.

This view is made clear by the 28th Sec of our ^{act} concerning Conveyances, as applicable to this case.

The Contract between Lalmadge and Taylor was

not acknowledged when recorded; and the 28th Section declares that such unacknowledged instruments when recorded shall be notice from the time of Record as to subsequent purchasers. The operation of one thing is the exclusion of another, and the Statute is equivalent to declaring that until recorded prior purchase shall not be affected by their existence, no provision is made for any retroactive effect of recording of his contract and thus - It is notice from the time of recording to all who may afterwards purchase, and nothing more - As to who have previously purchased, it can leave no effect at all, because the statute has given it no force.

In N.Y. as to deeds, they are declared ^{by statute to be} as against bona fide purchasers void, unless they are recorded before the deed to the subsequent purchaser, so that no decisions in N.Y. can affect the question in our State - As their Statute declares the deed first recorded to have preference - As to mortgages in the same State, the law is directly the contrary. The New York Statute concerning mortgages in force in 1822, declared the Mortgage first recorded should have the preference, provided it should not defeat the title of any bona fide purchaser, unless the mortgage had been duly recorded, In 19 Johns 282. The Court say, the object is to give notice through the Records to purchasers. "If ~~the~~ ^{he} search the Records and find the Mortgage on Record on the

first and only purchaser as to third persons -
See 4 Meaf 637.

But it is contended that the case of Doyle vs Leas that is opposed to this view; according to my apprehension it is in perfect harmony ^{with it as well as} ~~therein~~ and with those subsequently made in conformity therewith. The distinction between that case, and the subsequent case affirming it, and the one now before the Court is, that the subsequent purchasers in those cases did not go into possession, whereas in this case all the purchasers went into possession, and are entitled to the protection conferred by such possession. In the case of Doyle vs Leas 4 Leam 343, The Court say "if Munson whose deed was made & recorded subsequent to the Contract of Doyle, when his deed was Executed or took Effect, was not chargeable with notice, then he shall hold". Now the Court start with this proposition, it is the basis of the learned argument of the Court, it is the ground of conclusion - If the prior purchaser has notice of a subsequent purchase before his deed is of Record, this is all common sense or justice can require, inasmuch as the Statute does not exclude such subsequent purchaser by its terms from protection.

The Record is only notice of the parties interested, and possession is held equivalent to notice. It protects the first purchaser, though his deed or contract be not recorded, the same notice

being equivalent to Record must protect the subsequent purchaser, against a subsequently recorded deed.

But as to an unacknowledged contract, whether it may be the rule to an ~~unacknowledged~~ there can be no doubt it would.

But whatever may be the rule as to an ~~unacknowledged~~ contract, as to an unacknowledged contract, there would seem to be no doubt that its only effect ~~was~~ notice, from the time of Record, and it can have no retrospective effect.

Our Supreme Court decided in Cheant v. Jones 14 Ill 324 that prior to the Statute of 1845 record of an unacknowledged deed was no notice. Therefore the Record of such unacknowledged instruments, can only have the effect specifically given by the Statute. The 28. Sec says it shall be notice to subsequent purchasers from their Record. This section clearly must mean notice to purchasers subsequent to Record. If we have purchase prior to Record then we have purchase without notice.

To say that under this section, one who has entered into a contract & gone into possession without notice of a prior contract or conveyance unacknowledged, shall be cut out, by the recording of an unacknowledged deed or mortgage, would be legislating for the benefit of desert

incumbrances, and to the damage of subsequent bona fide purchasers, such a construction would be abhorrent to Equity & good faith.

I say therefore that the Record of an unrecorded Mortgage only affects purchasers subsequent to its record, and leaves prior purchasers in the full possession of their rights, especially where they have gone into possession.

In our State as before observed, Contracts for land are protected the same as conveyances, the interest of the purchaser is declared to be real estate, and subject to sale under execution see 1st Sec of act concerning Judgments & Executions - Such is the spirit of all our laws & the rights of parties can only be preserved in this State, where land is so great a subject of traffic, by thus treating them.

III

But whatever may be the views of the Court as to the second point argued above, it is not necessary that our views on that point expressed should be sustained, in order to authorize a reversal of this decree, we think the first point must be sustained, and if so that goes to the whole Equity of

(3-)

The Bill.

We proceed now to the third point on which my place confident reliance.

Then the incidents of a contract of sale which make it a mortgage, not in parol, a record of the Contract is no notice of a Mortgage, and if the party ^{cannot} enforce a specific performance under the contract, he cannot hold under it as a mortgage, against a bona fide purchaser, without notice.

^{What then}
1st ~~There~~ ^{is no evidence} That Salomadge claimed the Land as mortgagor or even under a contract, forfeited or not forfeited, is so clear from the testimony, that I shall not take time to dispute it. If to any of ~~them~~ ^{the purchasers} there ever had been notice that he claimed under a contract, the evidence is stronger that he had abandoned his rights under it and had forfeited his interest. As to Ralston there is nothing from which an inference can be drawn, that he ever knew anything of the existence of a contract when he purchased. That as between the parties there was a resulting trust is decided by the case of Furgeson vs ~~Shelton~~ ^{Shelton}, and I am not disposed in any wise to deny that there was a Mortgage. ~~But~~, but whether it be considered a trust or a Mortgage can make no difference in the Equitable rights of the parties. That it is neither a trust nor a Mortgage as to third persons without notice of the facts alimunde, is not less clear. It is not the contract which creates the trust

or mortgage, but the facts outside. It cannot be by the contract, because a contract affecting Land, cannot rest partly in ~~partly in~~ writing and partly in parol. It is the relation of the parties, that of loanor ~~or loanee~~, which as between themselves, stamps the transaction with the character of a Mortgage or Trust. This is no plain a principle to require authorities. The principle is established in 6 John Ch III 1 Johns Chy 274, 18 Ill 67.

3. Talmeage then never recorded his Mortgage or declaration of Trust, and for a good reason, he had none in writing which could be recorded - it existed in fact & parol, which could not be recorded. Therefore though he recorded his agreement to purchase the Land, it could not under the recording Laws give him any rights as a Mortgagee, nor was the Record notice of anything but a Contract to purchase. And unless he can enforce a specific performance of the Contract as a purchaser, he has thereby no rights ~~to be enforced~~ ^{as Mortgagee} against a purchaser without notice.

The doctrine of Once a Trust, or once a Mortgage always a Trust or Mortgage, has no application here. And as against bona fide purchasers can have no existence, even as against between the parties it may be destroyed by the laches of a party.

Follansbee vs Kilbreth Et al 17 Ill 524.

The Question then recurs Can the Complainant claim this Land under his latent Equities, if by laches he has not forfeited them, or by his

Conduct Astoria ^{himself} from setting them up, as against
the appellee? What are his equities? In 1838. he
loaned the money and had the land purchased
in Taylor's name. To secure ~~the~~ ^{of the money advanced.} ~~the~~ ^{the} payments. On the
Record, and to the world, Taylor was the owner. That he
went into possession, made some improvements and
resided on it until 1846. Never having paid one
cent of the purchase money. In 1846. a suit in Ejectment
is commenced against him by Taylor's representative
Ferguson, a judgment rendered & he goes out, takes off
his rails, and the floor from his house, declares "he has
done with the land", shall have nothing more to do
with it. Advises various persons to purchase of Ferguson,
knows they have done so. The purchasers go into possession,
make valuable improvements, and large payments
upon the land, and for five years remain in un-
disturbed possession of the premises as owners. He
then appears and tells the witnesses. William F. Kirk
"he had once given up all hope of getting the land,
but now was going to try for it, that he had struck a
new lead." Showing he had abandoned it, and the idea
of setting up a resulting trust was an after thought.
Having once abandoned he can never resume his claim.
If under such circumstances he has rights against
bona fide purchasers, they cannot be called equities.
Will a Court of Equity lend its aid to assist an inno-
cent purchaser of his rights, to preserve to him such
equities? I apprehend not. In Doyle vs. Lee, the Court
treated the party holding the contract as a purchaser

(6)

deluded into a purchase, and the payment of their money, by his criminal concealment & silent acquiescence for more than five years, then have the favours of Equity changed places.

I trust this Court will apply that ~~same~~ ^{well settled} maxim to this Complainant which it did to the Complainant in the Case of Tollanck vs Kilbreth 17 Ill 329. "If a party keep silence when Equity requires him to speak he cannot be allowed to speak when Equity requires him to keep silence"

The law is erroneous on the finding of the Court below - What provisions is made in the deed for the payment of the original purchase money - And I presume my associates have called the attention of the Court to the other points in the case, especially to the defects in the deed itself

Wm. G. Smith
Counsel for the Plaintiff.

161 & 162—

160—161

argt. of
Grant Goodrich

Filed May 25, 1858
S. Leland
clerk

161 & 162

160 - 161

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cent purchaser of his rights, to preserve to him such
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treated the party holding the contract as a purchaser

In Follansbee vs Kilbreth where there ^{actual fraud} was a ~~Contract~~ proved by the Trustee - and where the Cestui que Trust had paid a large portion of the purchase money, the Court held the Complainant, to have forfeited his claim to relief by his laches - and on much less testimony, that he had abandoned his interest in the land.

And this as between the parties when no bona fide rights of third persons ^{intervene} ~~intervene~~. Suppose in that case, Follansbee had contracted to sell to third persons the land in controversy, and they had gone into possession, paid part of the purchase money, though their contracts were not recorded, would the Court have hesitated to have protected them as against Kilbreth? And such would have been a case parallel to the one under consideration.

4.

I have further to say that the doctrine in England, which allows the Elder and Equal Equity to prevail over the younger, even if the facts in this case did not show the Equities of the Appellee though younger in date to the Superior, ought not to prevail in this Country. Its Condition forbids it.

The Reasons against it are most forcibly & eloquently presented by Senator Seward in 11 Wend 458.

In Conclusion I have only to say, if Talmaage after his laches, his abandonment of his ~~property~~ contract and the premises, his encouragement to others to purchase the land, his standing by while they were making payments & improvements, is to be regarded as the favorite of Equity, to be preferred to those who have been

Supreme Court.

April Term, 1858.

Alexander Ferguson
and others

vs

Asa Tallmadge.

Argument.

I. The arrangement between Tallmadge and Taylor, at the time the land was purchased at the land sale, was a transaction of loan and mortgage. The Rollins and numerous other witnesses proved that it was distinctly and avowedly a loan, and no attempt was made to disguise the fact, except in the form of the writing made between the parties. It is perhaps superfluous to quote authorities; the following however are in point: Ferguson vs. Sutphin, 3 Gilman 547; Smith vs. Dockett, 5 h. 584; 15 M. 528; Davis vs. Hopkins, 5 h. 519. The doctrine "Once a mortgage always a mortgage" therefore applies. Tallmadge had an equity of redemption in the land, a well known interest, an estate in equity; an interest of which he could not divest himself otherwise than by some mode of conveyance which the law recognizes as of a valid conveyance of land; and which no one could again otherwise acquire, except by purchasing the legal title from the holder of that legal title, without notice of the interest of Tallmadge.

There is not a pretence that Tallmadge con-

repealed away his right by any of the modes which the Law tolerates for the transfer of estates in land. The defendants attempted however to show a conveyance or release of Mr. Tallmadge by force of talk. ~~They however failed~~ If they had made any substantial proof of this kind, it could not avail them, for no man ever yet heard of the conveyance of land being made by mere words spoken.

Tallmadge maintains that the defendants below Ralston, Montgomery and Dennis, never acquired the legal title to the lands in dispute, and that that title is still outstanding in the heirs of William Taylor. If therefore they never acquired the legal title, they never ~~gained~~ could gain any advantage over him in equity. The fact that the legal title ~~is~~ was in the heirs of Taylor being one of which they had legal notice. Tallmadge's earlier equity must prevail.

The defendants Ralston, Montgomery and Dennis claim that they acquired the legal title to the land under the decree in behalmers and others, directors of the Merceen North American Loan and Investment and Loan Company against Ferguson, in the Winnebago County Circuit Court. The proceedings and decree in that case, Tallmadge insists were fraudulent and void, and were therefore inoperative. The statement in that bill, that the lands mentioned in it were entered by Taylor in trust for the complainants, ~~is~~ false and with their monies, is false, as shown by the evidence in this cause. The statement in that bill, and the

declaration in the decree thereon, that the legal title to those lands passed by devise from Taylor to Ferguson and James Darnum, is false, and shown to be so on the face of the bill, for the will of Taylor had no witness, nor was ever admitted to probate or record in this state. R.S. 538, §8. The decree is therefore wholly void for fraud. See second page 16.)

If that decree was not wholly void for all purposes, it could not change Dalmadge's relations to the land. It was fraudulent in law and void as to him, by reason that he was not ~~a~~ made a party. Story's Eq. Pl. §427. ~~Montgomery and Darnum do not pretend that they were~~

Montgomery and Darnum do not pretend that they were ignorant of Dalmadge's claim.

Robinson denies that he had any intimation of complainant's claim until he had made payment of \$698.40; which was as late as 26 May 1850, after he had been in possession one year. He says he made his contract of purchase 27 April 1849, went into possession 20 May 1849, and made his first payment the next day. He claims to be a purchaser without notice of Dalmadge's claim. From an examination of the evidence however it appears incredible that he had not actual notice before his purchase and first payment. That he should have been upon the land one year without hearing of the claim of Dalmadge wholly surpasses belief.

Robston contracted for a title under the decree in *Blahness vs. Ferguson*, of which the record was in Minnebag county. He was therefore cognizant of all the imperfections which appeared on the face of that record, and of every thing of which it gave him notice. The bill in that case stated expressly that Taylor had made contracts for the lands mentioned in it, which were outstanding, (Abstract page 14). It was therefore his indispensable duty to make inquiry about these contracts. If he had done so, he could not have failed to obtain information of what the nature of Dalmadge's claim was. This was such a circumstance as should have put him upon inquiry. And ~~if this was not~~ besides this, there ~~were~~ were several other things which will be mentioned which ought to have made him inquire. *Doyle vs. Beas*, 4 So. 245, 250; *Rupert vs. Mark*, 15 Ill. 542.

The testimony is, that Robston was several weeks in the neighborhood, before he made his contract to purchase. The lands were constantly called in the neighborhood "the Dalmadge lands" and the house Dalmadge had occupied on the spot he contracted for, was either standing or had recently been burnt down. There had also been ten acres cultivated there, besides some cultivation about the house. It is hardly possible that he did not see the marks of these improvements without inquiring about them, or that he did not hear the lands called the Dalmadge lands. Both and either of these cir-

circumstances were sufficient to put him upon the inquiry, and he is chargeable with the omission which that inquiry would have produced.

The district of country in which these lands were situated were infected with the knowledge of the nature of Taylor's transactions, and that knowledge was ripe. All this will appear from the following circumstances.

i. The tables attached to the bill in Exhams vs. Torpuson, agreed to be taken as part of the evidence in this cause, show that the lands entered in Taylor's name in Winnebago county were all in six townships in the neighborhood of the lands in question, besides others in the adjoining ~~six~~ townships in Boone county, besides numerous ~~lands more remote~~ tracts of land more remote. The depositions of Rollins, Brown, Piper, Horace Dyer, Cook, Conway and John Dyer, ~~show that all but Rollins witnesses resid-~~ ing in the neighborhood of the land in question, show that it must have been generally known, and in fact was proclaimed, that Taylor lent money to the settlers to enter lands. In a newly settled country, every body knows every body's business. Every man in the neighborhood, ~~and for miles around,~~ ^{and for miles around,} ~~were~~ ^{were} therefore able to give Mr. Rolston information about it and for miles around, were therefore able to explain & give Mr. Rolston information about the nature of Taylor's transactions, and of Polkman's claim to the lands.

The deposition of John Dyer, page 199, of a conversation with Ralston, goes strongly to show that he Ralston knew of was well aware of Ball-madges claim from the first.

After the decision in Ferguson vs. Sanphern, 34, 547, ~~every lawyer~~ was published and became known every lawyer was aware that Doylo's transactions were loan and mortgage. If Ralston had inquired of a reliable lawyer, he would have been informed so. He doubtless took counsel and if he did not, he ought to have done ~~so~~ it.

Neither Ralston, Montgomery nor Dennis had completed their payments to Ferguson or Primrose, or had received deeds until after the filing of the bill of complaint ^{and the service of summons} in this cause. They were not completely purchasers until they had completed their payments, and had received their deeds. The filing of the bill and service of summons were therefore a sufficient notice to them. Until they had received their deeds, they might have rescinded their contracts upon the failure of the title they had agreed for, and have recovered back the money they had paid, with interests. The filing of the bill fastened the legal title precisely where it then was, and ~~in~~ ^{making} courts do not regard any subsequent transfer as changing the equities of the parties.

The contract of Ballmadge with Taylor was made without any knowledge or intimation that he was the agent of the Scotch speculating company. He never had an opportunity to pay the money due at Taylor's death, to any one who could release him from his covenant to pay Taylor. If he had paid the amount to Ferguson or Primrose, he would still have been liable to pay it to any administrator of Taylor who might make his appearance.

Ralston, Montgomery, and Dennis took deeds with warranty of Primrose, and Ballmadge insisted at the hearing, that in any event, he could not be required to refund the money they had paid for their deeds. The judge of the circuit court however was of a different opinion, and decreed that he must ~~for~~ refund the money they had paid before the filing of his bill, with interest. He insists that by the rule of equity they ought to have been required to resort to their warranty for the recovery of the money so paid by them.

Montgomery and Dennis set up that Ballmadge orally consented that they might purchase. They fail however to make proof. If they had proved such consent, as has been above insisted, it would not amount to a conveyance or release, the utmost they could have claimed under it would have been to subject ~~them~~ him to pay for the improvements they had made, or possibly to pay the money they had paid Ferguson and Primrose

before the time of the filing of the bill of complaint. The decree gave them all this.

The appellants claim the benefit of the "act concerning the conveyance of real estate property," of 31 January 1827, §8. Gale's St. 150. The true construction of this section probably is, that a defeasance recorded within thirty days, relates back to the execution of the original deed, and ~~that this is~~ ^{there} so covers the intermediate time, and ~~saves~~ ^{defends} the land from any adverse title or incumbrance for that space of time. This is implied in the fifth section of the act abolishing the office of state ~~register~~ recorder, Gale's St. 664, which repealed §8 of the act in question. If that act did not repeal this section eight, the Revised Statutes of 1845 did, R.S. 456. ~~The registry acts however have nothing~~

The recording acts however have nothing to do with the case. Recording of deeds is only constructive notice of title; and this case shows notice from other sources. Besides and such notice is as effectual as the recording of a deed. Besides, the writing from Taylor to Ballmadge would not ~~have conveyed a notice of~~ if it had been recorded, have conveyed a information of the true nature of Ballmadge's claim, and Taylor would not give him one that would.

The appellants claim also the benefit of the act of congress for the relief of purchasers of public lands, of March 31 March 1830, and of the

of years limitation to bringing an action to recover back money, contained in that act. This limitation does not apply, because the bill in this case was not brought to recover back money. And again, as to the making void of a contract to convey land in consideration of a larger sum of money than was paid for it to the government; if the ~~contract~~ written contract between Taylor and Tallmadge were void for this reason, there still remains the fact, that the money with which the land was paid for, was borrowed of Taylor, and was the money of Tallmadge, and therefore the land, in equity, was Tallmadge's by virtue of the resulting trust. But the applicability of this act of congress is wholly disposed of in the concluding paragraphs of *Ferguson vs. Stephens*, 3 l. 592, 593, 594.

The appellants object, in the third assignment of errors, that after the first account was taken and confirmed, the defendants below were charged with rents upon the improvements they had made. The decree in this respect went upon the ground, that the appellants having been allowed in the first account for the cost of the improvements they had made, their claims in regard to those improvements were liquidated and converted into a mere money claim; and the balance of the account being struck, those improvements became, in equity, the property of Tallmadge, and the appellants were justly charged with the rent of them in the subsequent accounts.

The appellee insists that the appellants are not entitled to any benefit from their appeal.

The bill was taken as confessed against all the defendants who did not answer. That fact, however, from inattention, does not appear in the printed abstract.

Francis Barnard,
for Appellee.

162
Supreme Court.

As a Barridge
outs.

Alexander Ferguson
and others.

Argument for ~~Phillips~~
in error.

Filed May 22 1858
S. Leland
clerk

Barnes

In the Supreme Court.

vs a Ballinadze

vs,

Alexander Ferguson,
Elisha Kirk and others.

Argument.

Nearly all the points in the written argument in Ferguson and others against Ballinadze, apply so precisely to this case, that it is unnecessary to repeat them, or even to point out the particulars in which that argument does not apply to this case. That argument is therefore offered as part of the argument in this case.

This case differs from the other in the following respects.

1. Kirk, the tenant, made his purchase of Ferguson, and obtained his deed, before the filing of the bill of complaint in the court below.

2. He was more successful than Montgomery and Dennis, in giving a semblance of proof that Ballinadze encouraged him to buy the land of Ferguson, or consented that he should do so.

3. The decree was in favor of Kirk and the other defendants, in the court below, as to the land sold by him, and the writ of error is brought to reverse that decree.

In regard to Kirk, it is to be considered that he was at the land sale, ^{with his neighbors,} and could not have failed to be apprised precisely what Taylor's operations were. ~~Abstract 204~~ Record 264. He like the other purchasers from Ferguson and Primrose, had full notice of the defects in title as Ferguson; that the legal title was in Taylor's heirs, and that the money was due to his estate, and that the payment was in abeyance until some one administered on that estate. He was cognizant of the fact that Tallmadge was not a party in Chalmers vs. Ferguson, and was therefore not affected by that decree. If he made a mistake in these matters, it was a mistake of law, for which he must like all others, abide the consequences.

As to the second point, that Tallmadge encouraged Kirk to buy, or consented that he should, it is perhaps sufficient to say, that no mere words or actions, short of a deed under seal, will convey a title to land. At the common law, a feoffment, unless accompanied by a formal livery of seisin, was wholly inoperative. Even an oral feoffment and livery of seisin, would not under the statutes of this state, convey land. R. S. 102 §1. To allow title to land to be proved by words would let in perjury, and endles uncertainty and confusion in land titles. It was indispensably necessary for Kirk, if he intended to hold the land free of the claim of Tallmadge to have obtained a release from him. By omitting to do so, he justly exposed himself to all the ensuing inconveniences, and ought to complain.

But if we concede that an oral release of Pothmudge's equity of redemption might be effected, upon examining the proofs relied upon to establish such release, they will be found trifling, confused, uncertain and inadequate.

The first evidence on this point appearing in the abstract, is given by Pratt, page 256. This witness said that in a conversation between Kirk and Pothmudge, Pothmudge said ~~he would not~~ Kirk would not have any trouble from him from the fact that he had told him to buy the land before he bought it. It is very extraordinary, that one of the complainant's own witnesses should in a short conversation, have given such testimony; and it is very apparent that if he had like an honest man, have told what he should testify, he would never have been called by the complainant. Mr. Pothmudge authorises his counsel to say, that this witness made a different representation of what he should testify, and furthermore had been pried with liquor when he came upon the stand. It is intrinsically improbable that Pothmudge, when he was coming on this suit to recover the land, would say he did not intend to disturb Kirk; his actions, his being engaged in a suit, is strong evidence he had no such intention as that the witness attributed to him. But uncertain as is the evidence of conversation about land titles, when testified to by a person who heard that conversation, but it becomes doubly uncertain, when it is ~~from~~ attempted to be

proved through the medium of another conversation referring to the first. There were no means of examining that ~~first conversation~~ former conversation. If the whole of it could be given, it would probably bear a very different construction.

McHoon testified that in the fall of 1852, which was nearly two years after the commencement of the suit, Tallmadge told him witness, that Kirk had told him he wanted to purchase that piece of land, and he said to him, to go ahead and get it if he wanted it. This is the language of defiance, rather than of consent. The cross-examination of this witness shows that he was very uncertain what Tallmadge had said. This ~~also is an attempt~~ Pages 222, 3, 4. This also is an attempt to prove a former conversation by a subsequent one.

Howie testified, pages 234, 236, to a representation by Tallmadge of a former conversation between him and Kirk, but was very uncertain what Tallmadge said. The witness testified that Tallmadge told him that Kirk had said to him Tallmadge, that if he did not want to buy that land, he Kirk wanted to buy an eighty of it; and as near as I recollect, Tallmadge said he told him he might. This was while Tallmadge was in possession, in 1846, two years and a half before Kirk's alleged purchase. It does not appear that any thing was done up on this alleged consent.

W. J. Kirk testified, that ~~four~~ years about four years previous to Sept. 1853, Ballmadge told him he had once given up all hope of getting the land, but now was going to try for it; he had struck a new lead. 248. From this, it is ~~probable~~ ^{apparent} that all that Ballmadge might have let drop about abandoning the land, grew out of despondency about being able to redeem it; and in all probability, that despondency was expressed at the time of his making the alleged expressions, ^{if he ever made them,} conveying in effect a notice that he believed he had a just claim to the land. This witness also testified, that Ballmadge once told him, there was an understanding between him and Eliza Kirk, that he should never disturb him. What the agreement was, witness could not state. If such an agreement was made, it was an acknowledgment that Ballmadge had a right by virtue of which he might disturb Kirk. There is no proof of a consideration for the alleged agreement. It must have been in writing to bind, and if in writing, no proof of it ~~in writing could bind~~ could be made by parol.

Doolittle testified, that in March 1852, (more than a year after the commencement of the suit) Ballmadge said there would be no difficulty between him and Kirk, about the land, because there was an understanding between them. The same remarks apply to this testimony, as to the like testimony of the last previous witness. It may very well be that there was and is an understanding between Kirk and Ballmadge, that

in case Ballmadge recovers the land against him, he will pay Ballmadge for the land.

Michael, p. 252, testified that when Ballmadge left the land, in the fall of 1846, Ballmadge said he had now left the land, and had done with it, and that witness related the conversation to Kirk.

Robert Smith testified, ~~that~~ 253, that in the spring of 1846, Ballmadge told him that he was going to leave the land, and that witness might and had better buy it, if he wished to buy land; and that he soon after communicated this conversation to Kirk.

John Smith testified, 261, 262, that in the spring of 1846, Ballmadge and defendant Robert Smith were walking over the land, and Ballmadge told defendant Smith, that if he was going to buy land, to go and buy some of this, for he Ballmadge did not intend to have any thing more to do with it. The witness does not state that he told Kirk of this conversation. This witness afterwards said Ballmadge told him since the commencement of this suit, that when he and the company got through, he would not disturb the occupants of the land, and would get his money back from the company. It is hardly possible that Ballmadge ever said any thing so absurd and inconsistent with the facts, and he never had paid the company any thing, and there was no money to be got back. His object was to re-

cover land and not money. And furthermore all the money in question would hardly pay for litigation.

The testimony of Magoon and H. D. Kirk show that Ballmaize very frequently talked about these lands, and several of the witnesses show that he was very frequently in the neighborhood after he removed to De Kalb county. And what the foregoing are all the scraps of evidence which the defendant Kirk has been able to give any evidence of any verbal consent that the Kirk should buy the land occupied by him. By what rule of law or equity are such superficial, and shallow proofs, to effect a release by Ballmaize to Kirk, of his equity of redemption? If Ballmaize had entered into a conspiracy to induce Kirk to purchase, in order to take his improvements from him, and so had acted fraudulently, the case would be different. If it were proved that by such declarations as were attempted to be proved, he had drawn in Kirk, and induced him to purchase, equity would have been satisfied with depriving him of his proposed unjust gains, by making him pay for the improvements; and it might possibly make him refund the money Kirk had paid for the lands, but equity would not take from him his title; it would not deprive him of his right of redemption. There is no appearance that he acted in bad faith. He could not raise the money to bring suit, and pay the redemption money, until he had struck a new deal, as he expressed himself

to one of the witnesses. He never represented to any body that he had no right in the lands, and no one was deceived in this respect.

But allowing the utmost force any such representations are capable of, and there is still wanting an indispensable requisite ~~conveyance~~ to a conveyance: to wit a consideration. Without a consideration expressed, even the most solemn deed effects no conveyance. And at common law, a feoffment by deed and livery of seisin, without consideration, avails to the use of the feoffor. Where is the proof that Balmudge ever received so much as a pepper corn for the release of his equity of redemption in the lands in question?

One of the errors assigned in this case is, that the court below struck from the bill an exception, that part [48] setting out the commencement and proceedings in *Dutton vs. Ferguson*, in La Salle county, going to show the case of *Chalmers vs. Ferguson*, and *Winnemake*, to be fraudulent. It is insisted that this allegation should have been retained.

The plaintiff in error insists that the decree below ought to be reversed, and a decree be made that he recover the eighty acres of land occupied by Kirk, upon payment of the hundred dollars paid at the time of the entry of the land at the time of the entry thereof, with interest, that an account be taken of the rents, and that he recover the same, &c.

Francis Barmagh.

~~162~~
Supreme Court,
161

Asa Tallmadge

vs.

Alexander Ferguson
and others.

Argument for Plaintiffs
in error.

Filed May 20, 1838
S. Leland
clerk

Barnard.

Primrose & Ferguson

ads

Asa Talnadge

Ports for dpts Primrose & Ferguson. Cont. stated in reading Judge's report there for costs. They were not charged with costs. They were merely paid the value of the title ~~land~~ of the land had passed after its sale. They were not parties to the original contract with Talnadge. It was Taylor who originally contracted with him in respect on the supposition, that the contract with Taylor was a mortgage, Taylor was the mortgagee and not these dpts.

By the record it appears that Taylor in the transaction was the agent of other persons that upon his death the estate was assigned to the dpt Ferguson by the order of the Court for the benefit of the parties, for whom Taylor was agent and trustee. That Ferguson made an absolute conveyance to dpt Primrose. Ferguson sold and gave prior to the commencement of this suit had passed with all intent in the land, in conveying to Primrose his relation to the matter was that of ^{mere} trustee and it so appears, for charging him with costs by which before his appearance had been paid he was with

and intent in the subject matter of controversy and
he was not from a necessary party in the suit

Primmer was a grantee from Morgan
without any notice of Talnadge, claim a bona
fide purchaser as we contend. And why was
he charged with costs, what basis he had for
claiming being so failed. Talnadge undoubtedly
goes for relief on the ground that the estate
of Taylor was put a mortgage, and that Morgan
& Primmer ^{son} held them subject to a right of
disclaiming. On that hypothesis, they stood in a
^{worse} position, than that of mortgagee, and that of
Talnadge was no better than that of mortgage
man who had filed his lien to redeem the
under a mortgage. The decision is clear in
such cases that the mortgagee must pay the
costs and that no decree goes against the mort-
gagee for costs unless he has been guilty of some
misconduct.

There parties and charges with respect to
conduct neither of them, they are better off than
Primmer to the original transaction with Taylor the
Tregoner merely sustained a fiduciary relation
to it for other parties which had been shaped
the commencement, he was by no means bound to

protect the interests of those whom he represents,
and for that purpose he had commenced an
action of ejectment against the Tolmecs, and
received possession of the land in controversy.
and this case is the only evidence we have
that he knew of Tolmecs, or his claim to the
land: with what propriety then can we re-
gard him as guilty of a misconduct, that
is to charge him with costs in this case.

Primard is not shown by the record to
have known any thing about the matter
before the commencement of this suit, and
no connection with the original transaction
is shown of him. He denies all knowledge or
notice of Tolmecs claim in his answer; but
it is alleged that he holds by a quit claim
deed on a nominal consideration that he
or may not equal the right of himself and his
partners to regard him as a bona fide pur-
chaser, but I must let acquiesce him of this
conduct and then the claim against him
for costs, &c. &c. &c.

Tolmecs has not by the record shown
himself entitled to costs but his right is open

upon his claim has never been any of
 for trying the money which he had agreed to
 pay or in equity was bound to try to get a
 title to his land, and in fact the first vol-
 untary the defendants got of his claim is the
 service of a summons upon them

The third is that one tried to redeem
 a mortgage must pay the mortgage costs
 unless the mortgagee has been fully of some
 misconduct and mortgage must before com-
 mencement of suit offer to pay debt interest and
 costs 18 Johns 560 + ~~Sidwell, Rep 560~~
 5 ~~Adams~~ 25 Costs on mortgage 347. 385
 513. 4 ~~Lyons & Co~~ 128, 2 ¹⁸⁵ Vernon 536. 84
 + 3 And 255. 3 ~~Atk 515~~. + ~~Wat 32~~. 8 ~~Stia~~
 238. + 1 ~~Co~~ 105. 3 ~~Atk 670~~. 15 ~~Stia~~ 644
 632. 12 ~~Bow~~ 552. 8 ~~Young~~ 583. 4 ~~Phips~~
 521. 5 ~~Stia~~ 9. 1 ~~Stia~~ 48. 617. 5 ~~Pick~~ 271
 3 ~~May~~ 66. 1 ~~Stia~~ 149. 13 ~~Picks~~ 353.
 8 ~~Bow~~ 86. 2 ~~Sch & Lef~~ 642. 1 ~~Ballet~~ ~~Bow~~ 677

But in this and I think two other cases, are charged
 with costs of taking accounts between the other
 parties, the trustee in possession this was not a
 matter with which the debtenger or assignor

had my concern whether, they would not be responsible for the costs, and great injustice was done them in adjudging that they should pay them

In this, I am not in fact but I have been paid by Selmedge but he has had ^{rents} and put it through allowed him which have all been paid since this suit has ^{been} commenced. I pay the whole money which the court decided he was to pay as a condition of obtaining these lands so that in fact the rents and profits of the land have paid for them while the litigation has been going on. Now as I understand the land of the Selmedges without making any offer to pay ^{chase} ~~the~~ to take his share of paying for the land ^{by} ~~for~~ the rents and profits he is not allowed to cost, he should at least pay them or he pays nothing else

In any aspect of the land the decision for costs was wrong it was wrong to allow costs to ~~the Selmedges~~ Selmedge against Selmedge on a bill to determine what Selmedge is, charge all with no misconduct and a stipulation in writing it was to charge these defendants

with the cost of taking the account be
have the complete knowledge and those other
depts. when these depts were in no sense
interested in the account and when those
other depts were ought not to have been
charged taking the account

He deems the report in respect to
these dependents to far as it charges
them is erroneous and should be re-
voked

For McWright per
dpts Ferguson & Rind

Elisha H. Rink
vs.
Am. Telmady

Point, for debt in error

The debt in error was a bond paid for
purchase of the land claimed of him, he
had no notice of the claim of Telmady
prior to the service of summons on him
in this case, he had hoped that time paid
the full amt. of the purchase price, and
had received a conveyance of the land
thus adding the legal title to the strong
equities.

The only evidence in the case is
that gives the last date of notice to Rink
of any claim whatever in Telmady is the
evidence introduced by Rink himself of a
letter on the part of Rink to Telmady sur-
vey that Rink should by this land and
of advice given by Telmady to Rink
that he (Rink) should buy the land.

Suppl Rink thereupon appears, hopes
this court is a bond paid purchase in
very rapid and is who protect the
the doctrine in respect to the rights of bona

paid purchase without notice, such a right
is shown by the Record in this case is too
well settled to need an argument ~~in~~
to this point see 18 John, 513, 3 John, chm Rps
377. 1bery Am 387. 1 Storys Eq Jur, see 64^e

On this ground also Kirk has a strong
defense the Proof is clear of his buying a bona
fide purchase for a paid consideration, which
was all paid before notice, and the legal
title was also conveyed to Kirk before ^{that time} and no
notice to Kirk prior to the commencement
of the suit has been shown

Kirk's right to an affirmative on this
ground also is clear

But Kirk's right to an affirmative
is equally clear on another ground it is
Proved by several witnesses that Jelmads
himself advised Kirk to buy the land and
that probably this recommendation of Jelmads
was the first cause of Kirk buying it, it is
Proved that Jelmads had assumed other
assurances that he had given up the land
or that he ^{had} given up all expectations of getting

Supreme Court
William Brewster
& others

4

Asa Johnson

Powers per dyt
Higginson & Remond

Mr. Wright

it, this appears by the testimony of Prather
of Talmadge our witness who said that
Talmadge told him that he had to admit
Rich, but J. Rich also testifies that Tal-
madge told him he was willing that apt
Rich should by the land he being his
give it up. This testimony is strongly corrobor-
ated by the evidence of John Smith and
also by the testimony of apt Robert Smith
who both testify that Talmadge told them
that he ^{had} give up this land, or had the
idea of getting it and advised them to
by some of the land claimed in this suit.

This testimony goes to prove a general aban-
donment of this land in testimony of Tal-
madge and that he did advise Rich
as the witness Prather & Wm J. Rich testify.
Besides this is the evidence of several witnesses
that permanent and valuable improvements
were made on this land by Rich including
a dwelling house, that Talmadge was present
by in the neighborhood of the land known
that Rich was paying for the land and
making improvements on it and other ones

Once stated that he would any claim but
he on several occasions said that he would
never disturb Rite

So Permit ~~Rite~~ Talbot after Rite
thru his recommendation and his advice
had by this land and had laid out
money on it in buying and improving it; he
came into this Court and claim this land
with all the fruit of the industry and dis-
cussion of Rite for years; would be per-
taining a part on Rite and giving a pre-
mium to such negligence and thieftiness
and a ~~proof~~ prepared to be conducted
and completed which I apprehend this
Court will be slow to do a sanction to
such conduct. Perhaps when such a thing
is brought in a Court of Equity

The Rule is well settled that a party
cannot adduce another to purchase property or
some stand by and see him done without
objection and giving notice of his claim and
if a party in the same circumstances adds a
party such as without objection he is then

stopped from claiming such property against
such innocent purchasers in the eye of the
law it would be sanctioning a fraud to per-
mit him to do so

In this case the Equity of Pink is vastly
superior to the Equity of Talmadge (if the claim
of Talmadge can by any use of words be so
styled which I very much doubt), and hence
he has the legal title.

The doctrine is that where Equity
and legal title must prevail, the
legal ^{title} must prevail. Story Equity Juris page
74. See 64. which doctrine must surely
be good in favor of a party who has a
superior Equity

In fact I can see no reason for the re-
versal of this decree in favor of Talmadge
against Pink

Wm. M. Wright

for deft Pink

Supreme Court

Area Technology

Elisabeth A. Brink

Pres. for day in 1888

J. L. Wright