

No. 13955

Supreme Court of Illinois

Padon

vs.

Dwayre et al

71641  7

James Padon, Appellant,
 vs.
 Mary Dwire, David
 Dwire, and Sarah Ann
 Dwire by their next
 friend Thomas Crosby,
 Appellees.

Appellees brought ejectment against appellant and one Garret C. Milum for recovery of Lot 4, Blk. 3 W. of Public Square, in Sublett's addition to the Town of Lebanon, in St. Clair County. Appellant only served, who plead the general issue and appeals singly by 1-4 & 26—leave thereto had.

The cause was tried by the court by consent. On the trial, the following facts were agreed upon. 1. Plffs are children of Catharine Dwire and James Dwire. 2. That James Dwire died previous to June 1848. 3. Both parties claim under Elbridge G. Potter. 4. Exhibit A shall have the same effect as if it was executed and acknowledged 9—at this date by the Sheriff of St. Clair County.

Appellees then introduced in evidence a deed for said lot from Elbridge G. Potter, dated 10th Feb. 1857, to David Dwire, Mary Dwire and Sarah Ann Dwire, which deed does not appear to have been recorded; and though acknowledged in Iowa it is without a certificate that it was executed and acknowledged in conformity with the laws of that 9-10—State.

Appellant then introduced in evidence a deed for said lot from Elbridge G. Potter and wife to Catharine Dwire, of date June 1, 1848, and filed and recorded May 7th, 1849. This deed also was acknowledged in Iowa and is without a certificate that it was executed and acknowledged in conformity with the laws of that State. 10-12—

Thomas Crosby the next friend of the plffs in this suit was then called as a witness by the plffs and examined by consent; he testified that he had lived about nine years near Rockspring in St. Clair County; that he had taken charge of one of Catharine Dwire's children that was left destitute and has had it for some six years; that said Catharine is generally reported to be dead; that she has been gone some ten years, and not heard from. 13—and was of very dissipated habits.

Appellant then introduced the *Record* of a transcript from the Docket of C. Cunningham, a late Justice of the Peace of St. Clair County, recorded May 7th, 1849, showing that on the 20th June 1848 Nathan Horner and George L. Roberts obtained a judgment before said justice against Catharine Dwire for \$32.97 and costs; that on the same day, after oath being made by Nathan Horner, an execution was issued and returned no property &c. The *Record* shows the following return on the summons in the case:

"DULY SERVED BY READING. C. M. Perryman Const.;" but the Justice states in the *Record* as follows: "On application of Nathan Horner one of the plffs. summons issued June 15th, 1848, to C. M. Perryman, Const., returnable on the 20th inst. at nine o'clock 13-16—A. M. June 16th summons returned duly served by reading to the defendant."

Appellant also introduced the *original file* of the transcript aforesaid, which was filed June 26th 1848 (recorded May 7th, 1849). The *file* contains the same statement from the justice as above; but the Constable's return as shown by the *file* is as follows: "Duly served 16-18—by reading June 16th, 1848. C M. Perryman, Const."

Appellant next introduced an execution issued 8th May 1849 on said transcript from the St. Clair Circuit Court, and the Sheriff's return thereon, which execution and return was filed 17th Aug. 1849, and from which it appears that the Sheriff levied on said lot and sold the same on the 11th Aug. 1849 to Nathan Horner for \$48 in satisfaction of the execution, interest and cost. 18-20—

Appellant next introduced a deed for said lot from Shff. of St. Clair County to James B. Corrington, assignee of Nathan Horner, of date 22nd Nov. 1850—some of the *Recitals* of which do not correspond with the preceding record. 20-22—

Appellant next introduced exhibit A—being the form of a deed for said lot from the Shff. of St. Clair County to James B. Corrington with recitals corresponding with the preceding record. 22-23—

Appellant next introduced a deed for said lot from James B. Corrington and wife to def. Padon, dated 3rd May, 1855. 24-25—

The Court found for the Appellees, overruled a motion for a new trial and gave judgment against both defs. 7-8—

J. BAKER, Att'y for Appellant.

BRIEF.

- The deed from Potter to David, Mary and Sarah Ann Dwire was improperly admitted. 1. Pur. Stat. 156, Sec. 16.
- The deed from Potter and wife to Catharine Dwire, not being certified as the Statute requires, is not an instrument "whereby the rights of any person may be affected in law or equity," and though introduced in evidence by the appellant, it was entitled to *no weight* as such. The Court must nevertheless see that the *legal title is not thereby removed from Potter*.
- But, if title passed to Catharine Dwire, it was divested by the judicial sale. When the *whole* of the collateral record is looked into, all the facts necessary to jurisdiction are disclosed. *Westervelt vs. Lewis* 2 M'Lean 511.
- Erroneous recitals do not destroy the validity of a deed under a judicial sale.
- At all events exhibit A would relate back, and obviate defective recitals.
- Was it proper, on this record, to render judgment against *both* defs. ?

J. BAKER, Att'y for Appellant.

James Radon
vs

Mary Quinn
et al

Abstract &
Brief

RECORDED IN VOLUME 11

FIRST GRAND DIVISION.

FALL TERM, 1859.

PADON vs. DWYRE, et. al.

Appeal from St. Clair.

Defendant's Brief:

Bellingall vs. Gear 3 Scam. 575.

Scire facias to foreclose—default and writ of error. Return of officer that he had served by reading, but failed to state reading "to defendant." Court reverses the judgment and hold that the return must show, not only the time and manner, but upon whom, service was had, 576.

Wilson vs. Greathouse, 1 Scam., 174.

Return of constable failed to state when service made. Court held judgment void, and that good service could not be shown by parol. Affirmed judgment of Circuit Court, dismissing suit.

Bines vs. Proctor, 4 Scam., 174:

Insufficient service; court holds it to be cured by appeal under the statute, and distinctly recognizes the fact that the judgment would have been void if defendant had not appealed, 177.

Ogle vs. Coffey, 1 Scam., 239.

"Executed as commanded within." Suit on a judgment—Held insufficient, as it did not show the manner of service.

Ball vs. Shattuck, 16 Ill., 299.

Served according to law—don't give court jurisdiction by showing time or manner.

Randall vs. Sanger, 16 Ill., 27.

It is not enough for decree to state that due notice by publication had been given, but the notice must appear in the record.

Bimber vs. Dawson, 4 Scam., 541.

Suit on foreign judgment, where service was by leaving copy of summons at residence of defendant; and the doctrine is laid down as follows: court alleges that all the authorities agree that where record fails to show mode of service or appearance, it is but prima evidence of jurisdiction at most; but where record shows neither service of process, nor notice, nor appearance, the judgment is a nullity, p. 541.

Sedg., Cons. and Stat. Law, 848; 1 Mich. R., 151.

Where law requires reading and copy. Service by delivering the summons—gives no jurisdiction.

Harris vs. Hardman, 14 Howard 837. 11 Id. 437

Service by leaving copy—application to set aside default one term afterwards. Court held judgment void and can be taken advantage of collaterally, p. 840 to 846. 800; Ewer vs. Coffin, 1 Cush. R., 28; 17 Conn. R., 800.

Hubbard vs. Spencer, 15 J. R., 245.

Where plaintiff did not appear on day set for trial before justice, and a month after a person who had been authorized to confess judgment by defendant, did confess judgment, as of the day set for trial. Held the judgment was void and could not be sued on.

McNair vs. Biddle, 8 Mo. 257.

Advantage may be taken of a void judgment in a collateral proceeding—that is, where inferior court had no jurisdiction over subject matter or defendant had no notice of suit.--[4 Blackf. R., 429, 417, 476; 5 Id., 223. 3 Jones N.C.R. 344]

State vs. Stephenson, 12 Mo., 188.

Court seems to give reason why jurisdiction of inferior court may be assailed collaterally, to-wit: No writ of error lies from its judgment.

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Where a statute authorized a justice of the peace to fine for immorality, &c., and to cause to be brought before him the party charged, and defendant was personally served and did not appear, and was fined. Held the judgment was void collaterally.

Jackson ex dem Wetherell and Hyde vs. Jones, 9 Cow, 182. Transcript simply fails to state defendant was served or appeared. Court held, 1st—Transcript competent testimony, they are inclined to think, p. 191. 2nd—As the judgment comes collaterally in issue between persons who were not parties to it, it will be considered as judgment of superior court valid and regular until impeached, 191.

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The cases in 9th Cowen R. are not in point for two reasons: 1st—There the return of the constable to the summons did not appear 2nd—Because under our statute of 1847, page 56, the return to the summons must be copied and recorded to show jurisdiction.

Evans vs. Pierce et. al., 2 Scam., 468.

Plaintiff obtained judgment before justice of the peace, by defendant sending a letter to justice authorizing him to enter judgment. Held the judgment was void, and he could not redeem. Affirmed in 4 Scam. R., 177, and 14 Ill. R., 377. 8 Wend. R. 569.

Jurisdiction of inferior court must be averred and proved.—[1 Scam. R., 237.] Blackw. on T. T., 219.

1 Doug R. 384 + direct
3 Gray & Map. R. 539,
12 Georgia R. 429, 430, x
5 Wend. R. 272.

UNDERWOODS, Attorneys for Defendants.

Upon filing transcript in Cir.
Court the judgment had just
the same character as if it had
been rendered there. Thereupon
it became a judgment of a
court of general jurisdiction
& this taken jurisdiction is pre-
served in a collateral pro-
ceeding Rev. Stat 45 § 323
Sec 57.

9 Cow. 182 & 233

Rados
vs
Dwyer et al
Defendants' brief

James Padon, Appellant,
 vs.
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 Dwire, and Sarah Ann
 Dwire by their next
 friend Thomas Crosby,
 Appellees.

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The cause was tried by the court by consent. On the trial, the following facts were agreed upon. 1. Plffs are children of Catharine Dwire and James Dwire. 2. That James Dwire died previous to June 1848. 3. Both parties claim under Elbridge G. Potter. 4. Exhibit A shall have the same effect as if it was executed and acknowledged 9—at this date by the Sheriff of St. Clair County.

Appellees then introduced in evidence a deed for said lot from Elbridge G. Potter, dated 10th Feb. 1857, to David Dwire, Mary Dwire and Sarah Ann Dwire, which deed does not appear to have been recorded; and though acknowledged in Iowa it is without a certificate that it was executed and acknowledged in conformity with the laws of that 9-10—State.

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Appellant next introduced a deed for said lot from Shff. of St. Clair County to James B. Corrington, assignee of Nathan Horner, of date 22nd Nov. 1850—some of the Recitals of 20-22—which do not correspond with the preceding record.

Appellant next introduced exhibit A—being the form of a deed for said lot from the Shff. of St. Clair County to James B. Corrington with recitals corresponding with the 22-23—preceding record.

Appellant next introduced a deed for said lot from James B. Corrington and wife to 24-25—def. Padon, dated 3rd May, 1855.

The Court found for the Appellees, overruled a motion for a new trial and gave judgment against both defs. 7-8—

J. BAKER, Att'y for Appellant.

BRIEF.

1. The deed from Potter to David, Mary and Sarah Ann Dwire was improperly admitted. 1. Pur. Stat. 156, Sec. 16.
2. The deed from Potter and wife to Catharine Dwire, not being certified as the Statute requires, is not an instrument "whereby the rights of any person may be affected in law or equity," and though introduced in evidence by the appellant, it was entitled to no weight as such. The Court must nevertheless see that the legal title is not thereby removed from Potter.
3. But, if title passed to Catharine Dwire, it was divested by the judicial sale. When the whole of the collateral record is looked into, all the facts necessary to jurisdiction are disclosed. Westervelt vs. Lewis 2 M'Lean 511.
4. Erroneous recitals do not destroy the validity of a deed under a judicial sale.
5. At all events exhibit A would relate back, and obviate defective recitals.
6. Was it proper, on this record, to render judgment against both defs. ?

Rev. Stat. 45 p 204 sec 29

J. BAKER, Att'y for Appellant.

Upon filing the transcript in the clerk's office the judgment thereupon assumed exactly the same character as if it had been rendered in the circuit court. Thus to Ren jurisdiction is presumed in all collateral proceedings. Rev. Stat. 45 p 323 sec 57
 I come 182 & 233.

James Radon
vs

Mary Divine et al

Abstract &
Briefs

Bress

J. DYLLER, ADA for Applicant

Supreme Court of the State of Illinois.

FIRST GRAND DIVISION.

FALL TERM, 1859.

PADON
vs.
DWYRE, et. al.

} Appeal from St. Clair.

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Where law requires *reading* and *copy*. Service by delivering the summons—gives no jurisdiction.

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Service by leaving copy—application to set aside default one term afterwards. Court held judgment void and can be taken advantage of collaterally, p. 340 to 346. 300; Ewer vs. Coffin, 1 Cush. R., 23; 17 Conn. R., 300.

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Where plaintiff did not appear on day set for trial before justice, and a month after a person who had been authorized to confess judgment by defendant, did confess judgment, as of the day set for trial. Held the judgment was void and could not be sued on.

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Where a statute authorized a justice of the peace to fine for immorality, &c., and to cause to be brought before him the party charged, and defendant was personally served and did not appear, and was fined. Held the judgment was void collaterally.

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UNDERWOODS,
Attorneys for Defendants.

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Padose
no
Dwagre d'at
Defendants brief

State of Illinois
St Clair County } Pleas and Proceedings had in
the Circuit Court within and for the County of
St Clair and State of Illinois to wit:

Be it remembered that on the 21st day of March
1857 the following Declaration was filed to wit:

State of Illinois, Spring Term MD 1857 of the St Clair
St Clair County } County Circuit Court.

Mary Dwire, David Dwire and Sarah Ann
Dwire minors by Thomas Crosby their next friend
Plaintiffs in this suit complains of James Padon and
Garret C Milum of a plea of Ejectment.

For that the said Plaintiffs on the 20th day of
February 1857 at the County aforesaid were possessed
of lot numbered four in Block numbered three
West of the Public Square in Subletts Addition to the
Town of Lebanon in St Clair County aforesaid, which
said premises are owned and claimed by the said Plain-
tiffs in fee simple; and they the said Plaintiffs being so
possessed thereof, the said James Padon and Garret
C Milum afterwards to wit: on the day and year
aforesaid entered into the said premises and ejected
the said plaintiffs therefrom, and unjustly and un-
lawfully with hold from the said Plaintiffs the
possession thereof to the Damage of said Plaintiffs

2 of five hundred Dollars; and therefore they are
Underwoods & Snyder
Plffs Atlys

To James Padon and Garret C Milum
You are hereby notified that the Declaration
with a copy whereof you are herewith served will be
filed on the 27th Day of April next being the second
Monday of the next term of the St Clair County
Circuit Court in the State of Illinois; that upon
filing the same a rule will be entered requiring
you to appear and plead to the said Declaration
within twenty days after the entry of such rule, and
that if you neglect so to appear and plead, a Judg-
ment by default will be entered against you, and
the plaintiffs will recover possession of the pre-
mises specified in the said Declaration. Dated
this 3^d Day of March 1857.

W^m H & Jos B Underwood & W H Snyder
Plffs Atlys

State of Illinois }
St Clair County } George C Hart upon oath says that
he did on the 10 Day of March 1857 personally serve
James Padon, one of the Defendants in the preceding
entitled cause, who claimed title to the premises for
which the foregoing suit is brought with a true copy
of the Declaration hereto annexed and also with a true copy
of the notice in writing to the said Declaration
subjoined and likewise hereto annexed.

Subscribed and sworn to before me this 21st day of March 1857.

G C Hock

Wm J Thomas Clerk

And on the same day the following bond for costs is filed to wit:

Mary Dwire, David Dwire Sarah Ann Dwire by Thomas Crosby their next friend	} St Clair County Illinois Circuit Court April Term thereof 1857
vs James Padon, Garret C Milum	

I do hereby enter myself security for costs in this cause and 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 laws of this State, dated this 28th day of February 1857.

Thomas Crosby *(Seal)*

And afterwards to wit, at the April Term AD 1857 of said Court the following proceedings were had, entered upon Record as follows to wit:

Mary Dwire, David Dwire Sarah Ann Dwire by Thomas Crosby their next friend	} Ex parte
vs James Padon, Garret C Milum	

On the first Monday come

the Plaintiffs by Wth H. Snyder & Wth H. & Jos B. Underwood
 their Atties and prove by the affidavits of G. C. Hunt that
 the said Defendant James Padon has been duly served with
 a copy of the Declaration in this cause and of the notice
 thereto subjoined. Whereupon the Court enters a rule
 upon the said James Padon to plead in twenty days
 from this date and this cause is continued.

And afterwards on the 21 Sept 1857 the
 following Plea was filed to wit:

James Padon & Garret C Milum
 ats
 Mary Dwire et al

And the said Defendant
 James Padon by Horner & Bather his Attys comes &
 defends the wrong and injury & says he is not guilty
 in manner & form as above complained against him
 & of this he puts himself upon the Country
 Pled with the little } Horner & Bather
 Underwoods Attys for Piffs } Attys for J Padon

And afterwards at the September Term 1857 of said
 Court the following proceedings were had & entered upon
 Record as follows to wit:

Mary Dwire, David Dwire Sarah Ann
 Dwire by Thomas Crosby their next friend } Defendants
 vs
 James Padon & Garret C Milum }

On the first Monday comes the Defendant Padon by Baker & Horner his Attys and leave is given him by the Court to file his plea which he does in words as

On the third Wednesday come the Plffs by W^m H & S^r M Underwood their Attys and also comes the Deft Padon by his Attys Baker & Horner and by consent of parties this cause is submitted to the Court for trial. After hearing the evidence the Court finds the Defendants guilty, and that the said Plaintiffs Mary Dwire, David Dwire and Sarah Ann Dwire are seized of an estate in fee simple in and to the real estate in the Declaration mentioned and described to wit: Lot N^o: four in Block N^o: three West of the Public Square and in Sublots Addition to the Town of Lebanon in St Clair County, State of Illinois. It is therefore considered by the Court that the said Plaintiffs recover possession of the said premises and also one cent their Damages for the Detention thereof, and also their proper costs to be taxed and that they have writs of possession and fi fa therefore. And now the said Deft moves the Court for a new trial under the Statute.

And afterwards to wit: at the December Term 1857 of said Court the following Order was entered viz:

Mary Dwire, David Dwire, Sarah Ann Dwire,
by Thomas Crosby their next friend.

vs
James Padon & Sarah McMillin

Spent in court,

On the third Monday of

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the term it is ordered by the Court that this case be con-
tinued.

And afterward at the April Term AD 1858 of said Court
the following order was entered upon Record to wit:

Mary Swire, David Swire, Sarah Ann
Swire by Thomas Crosby their next friend } Executors,

vs
James Padon & Garret C Milum }

On the third Saturday
it is ordered by the Court that this cause be continued.

And afterwards at the September Term AD 1858 of said
Court the following order was entered on Record viz:

Mary Swire, David Swire, Sarah Ann
Swire by Thos Crosby their next friend } Executors,

vs
James Padon & Garret C Milum }

On the third Saturday
of the term the Court orders that the venue in this case
be changed to the County of Clinton, State of Illinois
for the reason that the Court has heretofore been
counsel in this case.

And on the 14th day of March AD 1859 the following
stipulations were filed viz

Mary Swire et al }
vs } Executors

James Padon and others

It is agreed that said cause which has been heretofore tried to Clinton County shall be tried by some Atty at the County of St Clair and that the Judgment therein may be as of the Circuit Court of St Clair County - Subject to the right and privilege of said Defendant to proceed in equity, if he deems it advisable, in relation to the rights of said Defendant in and to the premises in dispute in said Suit & that the papers in said Suit may be sent to St Clair

J Baker Atty for James Padon
W^m H & Jas B Underwood Plffs Atty

And afterwards on the March Term M. 1859 of said Court the following proceedings were had and entered upon Record as follows: viz:

Mary Swire, David Swire, Sarah Ann Swire by Thomas Crosby their next friend Executors

vs
James Padon & Garret Milum

On the fifth Monday of the term come the Plffs by W^m H & Jas B Underwood their Atties and also come the Defendants by J Baker their Atty and by consent of parties this cause is submitted to the Court for trial. After hearing the evidence and being fully advised of and concerning the premises the Court finds the Defendant guilty

of unlawfully withholding the premises in the Declaration mentioned and described to wit: Lot N^o: four (4) in Block N^o: Three (3) West of the Public Square in Sublots, Addition to the Town of Lebanon in McClain County, State of Illinois and that the said Mary Swire, David Swire & Sarah Ann Swire are entitled to said premises in fee simple. And now the Defendants by their said Atty moves the Court for a new trial which motion is denied by the Court to which decision of the Court the Defendants by their said Atty excepts.

It is therefore adjudged by the Court that the Plaintiffs recover of the Defendants the possession of the said described premises and also their proper costs to be taxed and that they have writs of possession and fieri facere therefor.

And now the said Defendant James Padon by his said Atty prays an appeal to the Supreme Court which is allowed upon the said Defendant James Padon filing within sixty days from this date his appeal bond in the sum of \$200. with William H Padon as his security. And the Court further orders the Bill of Exceptions be prepared within sixty days.

And afterwards on the 9th day of June the following Bill of exceptions was filed as follows viz:

Mary Swire, David Swire & Sarah Ann Swire by Tho Crosby their next friend

} Judgment in the Circuit Court of

St Clair County Mo
1859 March Term

James Padon & Garret C Milum

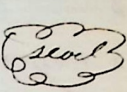
Do it remembered that

the said cause was tried by the Court by consent, without a Jury; that on the trial thereof the following facts were agreed upon. 1 Plffs are children of Catharine Swire & James Swire, 2 James Swire died previous to June 1848. 3 Both parties claim under Eldridge G Porter. 4. Exhibit A shall have the same effect as if it was executed and acknowledged at this date by the Sheriff of St Clair County

Plffs then introduced in evidence a Deed from Eldridge G Porter dated 10th February 1857 of which the following is a copy


"I know all men by these Presents that some years since and during the lifetime of David Swire formerly of Lebanon St Clair County Mo I deeded to him the said David Swire Lot number four in Block number three West of the Public Square in Sublots Addition to the Town of Lebanon in County and State above mentioned which Deed is said to be lost and does not appear on Record in said County Now therefore having received pay for and deeded the lot here mentioned to said Swire. I now release, quit claim and convey to David Swire Mary Swire and Sarah Ann Swire (heirs of David Swire deceased) and to their heirs and assigns all my right, title and interest in and to said Lot above specified and mentioned. Witness my hand and

seal this 10th day of February AD. 1857.

Elbridge G Potter 

State of Iowa

Jackson County }
 } Me it remembered that on this 10th
 February AD 1857 before D. S. Spring Judge of said
 County personally came E. G. Potter to me known
 to be the identical person whose name is subscribed
 to the foregoing release and acknowledged the same
 to be his voluntary act and deed for the purposes
 therein mentioned. Witness my hand & the seal of

 said County at my office in Bellevue
 this day & date above written.

Dan. S. Spring County Judge

I do then introduced in evidence a deed from Elbridge
 G. Potter & wife dated June 1. 1848 of which the follow-
 ing is a copy

This Indenture made and entered into this first day
 of June in the year of our Lord one thousand eight
 hundred and forty eight Witnesseth: That Elbridge
 G. Potter and Lucretia his wife of the County of
 Jackson and State of Iowa for and in considera-
 tion of the sum of forty two Dollars to them in
 hand paid the receipt whereof is hereby acknowledged
 have granted, bargained and sold and by these Presents
 do grant, bargain and sell unto Katharine Dwire
 widow of the late James Dwire deceased of the Town
 of Lebanon County of St. Clair and State of Illinois, and

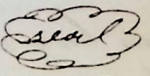
to her heirs and executors, administrators and assigns forever all that certain tract or parcel of land lying and being in the County of St Clair and State of Illinois known and Designated as lot Number four (4) in Block number three (3) in Subletts Addition to the Town of Lebanon containing eighty feet front running one hundred and thirty feet back. To have and to hold the said described and granted premises with the appurtenances unto the said Catharine Dwire and to her heirs and assigns and to her and their sole use and behoof forever. And the said Elbridge G Patter and Lucretia his wife for the consideration above named the said granted premises unto the said Catharine Dwire and to her heirs and assigns forever from all lawful claims or demands whatsoever with warrant and forever defend. In Testimony whereof the Grantors have hereunto set their hands and seals the year and day herein written. Signed, sealed and Delivered in presence of us

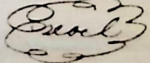
W^m Bartlett

M G Tyler

State of Iowa

Jackson County

Elbridge G Patter 

Lucretia Patter 

I the undersigned an acting Justice of the Peace of the Township of Bellevue in said County do certify that Elbridge G Patter and Lucretia his wife whose names are subscribed to the foregoing Deed are personally known to me to be the persons named in and

who executed the same and acknowledged that they had signed sealed and delivered the said Deed as their free will and deed for the uses and purposes therein mentioned The said Lucretia Patter having been first made acquainted with the contents thereof and examined separate and apart from her said husband by me, acknowledged that she did the same of her own free will and accord without threat fear or any undue influence of her said husband. In Testimony whereof I have hereunto set my hand and seal the 1st Day of June AD. 1848.

W^m Bartlett ^{Justice of the Peace}

State of Iowa }
Jackson County }

I Thomas Marshall Clerk of the District Court in and for said County and State do hereby certify that William Bartlett whose name appears to the foregoing Certificate of acknowledgment, was at the time the same was made an acting Justice of the Peace in and for said County and State duly elected, commissioned and qualified and as such full faith and credit are and of right should be given to all his official acts. In Testimony whereof I have hereunto set my name and affix



the seal of the District Court at my office in Andrew this 3^d Day of June AD. 1848

Attest. Thomas Marshall Clerk

State of Illinois

St Clair County } Records Office May 7 AD. 1849

I certify that the within Deed & Certificate were this day
filed and recorded in Book W page 346. of this office,
Richard Hay Recorder St. C.

Thomas Crosby the next friend of Piffs in this suit, was
then called as a witness by the Piffs & examined by
consent he testified that he had lived about nine years
near Rock Spring in St. Clair County; that he had taken
charge of one of Catharine Inire's children that was
left destitute & has had it for some six years; that said
Catharine is generally reported to be dead; that she
has been gone some ten years & not heard from, &
was of very dissipated habits.

The Defendants then introduced pro forma a record
of a Transcript from the docket of a late Justice of
the Peace of St. Clair County C Cunningham, re-
corded 7th May 1849 page 37 of the Record of Transcripts
for said County & of which the following is a Copy
"On the 26th day of June AD 1848 & recorded on the 7th day of May 1849

Nathan Horner, George L Roberts
Dealing under the firm of Horner & Roberts

vs
Catharine Inire

} Action of Assumpsit, on
} account for \$32.97 do as

per Bill of particulars filed

On application of Nathan Horner, one of the Piffs, a sum-
mons issued June 15th 1848 to C. M. Perryman Const^{le} re-
turnable on the 20th inst. at nine o'clock A.M. June the 16th
Summons returned duly served by reading to the Defendant,

June the 20th the Defendant failed to appear. Nathan Horner one of the Plffs appeared, also on the part of the Plaintiff. H H Horner witness, who being sworn and examined it was considered by me, that the Plaintiff recover Judgment against the said Catharine Dwyer the Defendant for \$32.97 the Debt with Interest until paid & with costs of suit.

June 20th 1848. Execution issued after oath being made by Nathan Horner one of the Plaintiffs, to C M Perryman Const^l, which execution was returned by said Constable on the 20th Day of June inst. no property found in my County whereon to levy.

Justice's Costs \$ 1.18³/₄
 Constable 1.35 ³/₄ \$ 2.53³/₄

Copy of Summons

State of Illinois } Lt.

St Clair County } The People of the State of Illinois to any Constable of said County, Greeting.

You are hereby commanded to summon Catharine Dwyer to appear before me at my office in Lebanon on the 20th Day of June AD 1848 at nine O'Clock AM to answer the Complaint of Nathan Horner and George L Roberts, dealing under the firm of Horner & Roberts for a failure to pay to them a certain Demand not exceeding one hundred Dollars, and hereof make due return as the Law Directs. Given under my hand and seal this 15th Day of June AD 1848

C Cunningham J P. Seal

Endorsement on the summons: Horner & Roberts J P. cash 31
 Catharine Dwyer } served & returned 25
 } travel 12 m 60

Duly served by reading C M Perryman, Const.

Copy of Execution

State of Illinois }
St Clair County }

The People of the State of Illinois to
any Constable of said County. Greeting.

We command you that of the goods and chattels of Catharine Dwyre in your County. You make the sum of thirty two Dollars & ninety seven cents Debt, with legal interest thereon from the 20th day of June 1848 until paid and one Dollar & seventy eight cents Costs which Nathaniel Horner & George L Roberts dealing under the firm of Horner & Roberts lately recovered before me in a certain plea against the said Catharine Dwyre and hereof make return to me within seventy days from date. Given under my hand and seal this 20th of June 1848

C Cunningham J P. (seal)

Endorsement: Execution come to hand June the 20th 1848 at 10 O'Clock A M and returned on the 20th of June 1848 no property found in my County whereon to levy.

C M Perryman Const.

Judgment	\$ 32.97	}	\$ 2.53
J P. Costs	1.18 ^{3/4}		
Const. "	1.35		

State of Illinois

St Clair County } I C Cunningham a Justice of the
peace within and for the said County of St Clair do hereby
certify that the foregoing is a true Copy of the proceeding
from my Docket in the aforesaid cause, and also true copies

of the summons and executions and endorsements thereon
Given under my hand and seal this 24th day of June, D. 1848

C Cunningham J. P. (seal)

Defendants introduced in like manner the original
file of the Transcript from which said Record was
made, which original Transcript was filed for record
in the Clerk's office of the Circuit Court of St. Clair County
June 26th 1848 & of which original Transcript the follow-
ing is a copy

Nathan Horner & George L Roberts Dealing under the firm of Horner Roberts	} Action of assumpsit on account for \$32.97 cts as per bill of particulars filed. In application of Nathan Horner one of the Plaintiffs a summons issued June 15 th 1848 to C. M. Perryman Const. return- ably on the 20 th Inst. at nine O'Clock A.M. June the
vs Catharine Smyre	

16th summons returned duly served by reading to the Defendant.
June the 20th The Defendant failed to appear. Nathan Horner
one of the Plaintiffs appeared. also on the part of the plaintiffs
H. H. Horner witness who being sworn and examined it
was considered by me that the Plaintiffs recover Judgment
against the said Catharine Smyre, the Defendant for \$32.97
cts debt with interest until paid, & with cost of suit.

June 20th 1848 Execution issued after oath being made
by Nathan Horner one of the Plaintiffs to C. M. Perryman
Const. which execution was returned by said Constable on
the 20th day of June Inst. "No property found in my Court
whereon to levy. Justices cost. 1.18³/₄

Constable 1.35
2.53³/₄

Copy of Summons

State of Illinois }
St Clair County } Constable of said County, Greeting

You are hereby commanded to summon Catharine Dwyer, to appear before me at my office in Lebanon on the 20th Day of June, A.D. 1848 at nine O'Clock A.M. to answer the Complaint of Nathan Horner & George L Roberts Dealing under firm of Horner & Roberts for a failure to pay to them a certain Demand not exceeding one hundred dollars and hereof make due return as the Law Directs. Given under my hand and seal this 15th Day of June A.D. 1848

C Cunningham J.P. *(Seal)*

(endorsement on the summons) Horner & Roberts J.P. cost 31
Catharine Dwyer } served and returned - 25
Demand \$32.97 } travel 19 m. 60

Duly served by reading June the 16th 1848

C M Puryman (Cons)

(Copy of execution)

State of Illinois }
St Clair County } to any Constable of said County. Greeting
We command you that of the goods and chattels of Catharine Dwyer in your County you make the sum of thirty two dollars and ninety seven cents, Debt with legal interest thereon from the 20th Day of June 1848 until paid, and one dollar and seventy eight cents cost, which Nathan Horner & George L Roberts Dealing under the firm of Horner & Roberts, lately recorded before me in a certain plea against the said Catharine Dwyer and hereof make return to me within seventy days from date

Given under my hand and seal this 20th day of June A.D.
1848 C Cunningham J.P. (seal)

Endorsement ^{on the above} - Execution come to hand June the 20th 1848
at 10 O'Clock A.M. and returned on the 20th of June 1848
"No property found in my County whereon to levy."

C M Perryman (Cons^l)

Judgements \$ 32.97	} State of Illinois St Clair County } J O Cunningham
J.P. cost 1.18 3/4	
Cost. " 1.35	
\$ 2.53	a Justice of the peace within and for

The said County of St Clair do hereby certify that the foregoing is a true copy of the proceedings from my Docket in the aforesaid cause and also true copies of the Summons & Execution and endorsements thereon. Given under my hand and seal this the 24th day of June A.D. 1848. C Cunningham (seal)

Entered: Filed June 26. 1848.

Theod Engelmann

Deps introduced in like manner an execution issued 8th May 1849 from the Circuit Court of St Clair County together with the Sheriffs return thereon which execution & return was filed in the Clerks office of said Court 17th August 1849 & of which the following are copies:

State of Illinois } Sch.
County of St Clair } The People of the State of Illinois
To the Sheriff of St Clair County - Greeting.

We command you, that of the lands, tenements and real estate of Catherine Dwyre in your County, you cause to be made the sum of thirty two Dollars and 97 cents with Interest thereon from the 20th day of June, AD 1848 until paid, it being the amount of a Judgment, which Nathan Hornor & George L Roberts recovered against the said Catherine Dwyre before C Cunningham Esq a Justice of the Peace within & for the said County of St Clair as appears by a transcript of said Judgment on file and of Record in the office of the Clerk of the Circuit Court of St Clair County; and the further sum of five Dollars Dollars and sixty cents; being the amount of costs by the said Plaintiff about his suit in that behalf expended, as also, your legal commission for executing this writ; which you will return to the Clerk's office of said Circuit Court within ninety days from this date, with an endorsement thereon as to the manner in which you may have executed the same.

Witness: Theodore Engelmann Clerk of said Circuit Court, and the seal thereof hereunto affixed this eighth day of May AD eighteen hundred and forty nine.

Theodore Engelmann

Endorsement: By virtue of the within writ to me directed I have this 24th day of May 1849 levied on the following described tract of land to wit: Lot No 4 in

Block 3 a laid out on the Plat of Sublots Adjacent to the town of Lebanon being 80 feet front and 130 feet in depth, and caused the same to be duly advertised according to law and in pursuance to the notice given I did on the 11th day of August 1849 expose the same to sale, and the said tract was struck off and sold to Nathan Horner at and for the sum of forty eight dollars which satisfied this execution interest & costs in full. August 11th 1849.

D W Hopkins Sheriff etc.

Filed August 17. 1849.

Theo Engelmann

Deft introduced in like manner a Deed from the Sheriff of St Clair County to James B Corrington Dated 22nd November 1850 of which the following is a copy

Whereas Nathan Horner and Charles L Roberts did recover a judgment before C Cunningham Esq lately a Justice of the peace in and for the County of St Clair against Catharine Dwyre for the sum of thirty two dollars and ninety seven cents. And whereas in pursuance of the Statute in such case made and provided, a transcript of said judgment was duly filed in the office of the Clerk of the Circuit Court for the County of St Clair and State of Illinois on the twentieth day of June AD 1850 upon which transcript an execution was issued, dated on the eighth day of May AD 1849 directed to the Sheriff of St Clair County to execute; and by virtue of said

execution the said Sheriff levied upon the land here
 in after described, and the same on the sale thereof
 struck off and sold to Nathan Horner, he being
 the highest and best bidder therefor; and the time and
 place of sale having been duly advertised according
 to law. And whereas by Deed of assignment dated
 the tenth day of November MD 1850 the said Nathan
 Horner for value received did duly assign all his
 right, title and interest to the Certificate of sale
 given by said Sheriff to James B Corrington.

Now therefore know all by this Deed that I David
 W Hopkins Sheriff of said County of St Clair in
 consideration of the premises, have granted, bar-
 gained and sold and do hereby convey to the said
 James B Corrington his heirs and assigns the
 following described tract of land to wit: Lot num-
 ber four (4) in Block three (3) as laid out on
 the Plat of Sublets Addition to the Town of
 Lebanon being eighty feet and one hundred and thirty
 feet in depth. To have and to hold the said
 described premises, with all the appurtenances
 thereunto belonging to the said James B Corrington
 his heirs and assigns forever.

Witness my hand and seal this twenty second day of
 November MD 1850.

David W Hopkins Sheriff
 of St Clair County Ills

State of Illinois
 County of St Clair
 Theodore Engelmann Clerk of the

Circuit Court within and for the County of St Clair and State of Illinois hereby certify that David W Hopkins, whose name is signed to the foregoing instrument of writing as having executed the same, is personally known to me, and that he appeared before me and acknowledged the said instrument to be his act and deed as Sheriff of St Clair County as therein mentioned, for the purposes therein expressed.

In Testimony whereof I have hereunto signed my name and affixed the seal of said Court this 35th Day of November A.D. one thousand eight hundred and fifty.

(Seal)

Theod Engelmann

Endorsement: Filed March 25. 1851

Recorded Book 2 page 346

Theod Engelmann

Depts introduced in like manner exhibit A which by consent was to have the same effect as if executed & acknowledged as aforesaid, & of which the following is a copy.

Whereas Nathan Horner and George L Roberts did recover a Judgment before C Cunningham Esq lately a Justice of the peace in & for the County of St Clair against Catharine Dwire for the sum of thirty two Dollars and ninety seven cents, and whereas in pursuance of the Statute in such case made and provided a transcript of said Judgment was duly filed in the office of the Clerk of the Circuit Court for the County

of St Clair and State of Illinois on the twenty sixth
 day of June AD 1848, upon which transcript an
 execution was issued dated on the eighth day of May
 1849 directed to the Sheriff of St Clair County to
 execute & by virtue of said execution the said
 Sheriff ^{seized} upon the land herein after described, and the
 same on the sale thereof was struck off and sold to
 Nathan Horner, he being the highest and best bidder
 therefor, and the time and place of sale having
 been duly advertised according to law; and whereas
 by deed of apportionment, dated the tenth day of Novem-
 ber AD 1850 the said Nathan Horner for value
 received did duly apportion all his right, title and interest
 to the certificate of sale given by said Sheriff to
 James B Corrington. Now therefore know
 all by this deed that I Frederick Mayer Sheriff
 of said County of St Clair in consideration
 of the premises have granted, bargained and sold
 and do hereby convey to the said James B Corrington
 his heirs and assigns the following described tract
 of land to wit: Lot number four (4) in Block
 Three (3) as laid out in the Plat of Subletts Addition
 to the town of Lebanon, being eighty front and one
 hundred and thirty feet in depth. To have and to
 hold the said described premises with all the appur-
 tenances thereunto belonging to the said James
 B Corrington his heirs and assigns forever. Witness
 my hand and seal this Day of April AD 1859.

Deeds in like manner introduced a Deed from James
 B. Corrington & Roda B. Corrington to Deft James
 Padon Dated 3^d May 1855.

I know all men by these presents that I James
 B. Corrington and Roda B. Corrington my wife in
 consideration of the sum of one hundred Dollars to us
 in hand paid by James Padon the receipt of which is
 hereby acknowledged have granted bargained and sold
 and by these presents do bargain, grant, sell, convey
 and forever quit claim unto James Padon his heirs
 and assigns forever all of our right, title, and inter-
 est in and to the following described parcel of ground
 situated in the Town of Lebanon in the County of
 St Clair in the State of Illinois known and described
 as being lot N^o four (4) in Block N^o three (3) in
 Subletts Addition to the said Town of Lebanon. To
 have and to hold the same with all the privileges
 and appurtenances thereunto belonging unto him
 the said James Padon his heirs and assigns forever.
 So that neither one of us or our heirs or any person
 holding by or through us or them shall by any manner
 of means have or claim any title, interest or estate
 in and to the premises hereby conveyed. In Witness
 whereof I James B. Corrington and Roda B.
 Corrington my wife have hereunto set our hands
 and seals this the third day of May in the year of
 our Lord one thousand eight hundred and fifty five.

Attest: }

James B. Corrington (seal)

H H Horner } Rhoda B Corrington (seal)
State of Illinois, St.

St Clair County } Be it remembered that on this the
third day of May in the year of our Lord eighteen hun-
dred and fifty five before me Henry H Horner a
Notary Public for Lebanon in said County of St Clair
appeared James B Corrington and Rhoda B Corring-
ton his wife both of whom are personally known
to me to be the identical persons who subscribed
and executed the foregoing Deed, and they severally
acknowledged that they had executed the same for the
uses and purposes therein mentioned. And the said
Rhoda B. Corrington after having the contents of
said Deed fully explained to her by me and examined
separate and apart from her said husband acknow-
ledged that she had voluntarily executed said
Deed and relinquished her rights of dower in the said
premises without any fear or compulsion of her
said husband. In Testimony whereof I have here-
unto set my hand and notarial seal of
office at Lebanon the day and year above
written.

Henry H Horner
Notary Public.

which Record of Transcript, original Transcript,
execution & return, Deed of Sheriff to Corrington,
& Deed from Corrington to Padon were
objected to at the time, by plffs atty & excluded

Enforcement on the Deed; I hereby certify that the within Deed was filed
February 27 1856 and recorded in Book O. 2
page 535.
Wm J Thomas CLK
By Sarah Shaver
Supt

by the Court, to which Judgment of the Court excluding said papers Defes Atty excepted at the time.

Whereupon the Court found the Defendants guilty of withholding the premises in the Declaration mentioned, & that the said Plffs were entitled to the same in fee simple. Whereupon the Defs Atty moved the Court for a new trial, which motion the Court overruled & entered Judgment for the Plffs accordingly, to which refusal of a new trial the Defs Atty excepted at the time.

The foregoing is all the material evidence introduced by either party on the trial of said cause.

W^m H Snyder (Seal)

And afterwards to wit: on the 9th day of June, ¹⁸⁵⁹ the following Memorandum was filed viz:

Dwight Atty
 vs
 Padon et al } of Grafton.

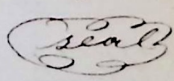
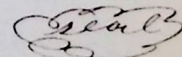
The Bill of Exceptions sets out the evidence correctly. We consent that in the order of last term it may be amended by allowing Padon to appeal alone upon giving bond &c. June 9. 1859.

W^m H & J B Underwood
 Attys for Plffs

And afterwards on the same day

The following Appeal Bond was filed viz:

Know all men by these presents that we James Padon & Henry Padon ^{heretofore} are held and firmly bound unto Mary Dwire, David Dwire & Sarah Ann Dwire in the penal sum of two hundred Dollars, which sum well and truly to pay we bind ourselves, our heirs, executors and administrators firmly by these presents. The condition of this obligation being such, that whereas at the March Term 1859 of the Circuit Court of St. Clair County, State of Illinois the said Mary Dwire, David Dwire & Sarah Ann Dwire by Thomas Crosby their next friend recovered a Judgment, against the said James Padon & Garret C. Milum in an action of Ejectment, for the recovery of certain real estate, from which Judgment the said James Padon prayed an appeal to the Supreme Court of the State of Illinois. Now therefore, if the said James Padon shall duly prosecute said appeal, & shall pay the said Judgment together with costs, interests & Damages in case the same shall be affirmed, then this obligation shall be void, otherwise it shall remain in full force.

James Padon 
 W. H. Padon, 

State of Illinois }
St Clair County } I the undersigned Clerk
of the Circuit Court in and for said County
of St Clair do hereby Certify the foregoing
to be a true and Complete Copy of the Declaration
together with the notice and affidavit thereon
attached - the bond for Costs - the plea - the proceed-
ings and orders of the Court entered of record at
the April, September, and December terms thereof
A D 1857. and also at the April & September
terms thereof A D 1858 - the stipulation, - and of
the proceedings and Judgment of the Court entered
of record at the March term thereof A D 1859.
and of the Bill of Exceptions - the Memorandum
filed June the 9th 1859 and of the Appeal Bond
as the same are of record and on file respectively
in my office

In Testimony whereof I hereto
sign my name and affix the
Seal of said Court at office
this 15th day of Novbr 1859
W^m S Thomas Clk

James Radon
Appellant

vs

Mary Swine
David Swine
Sarah Ann Swine
by their next friend
Wm Crosby Appellees

For the Sup Court
of Grand Div

And the said appellant
says there is error in the
 foregoing Record, & assigns
for error

1. that the Court erred in finding
& rendering the judgment which
it did below
2. That the Court erred in ad-
mitting the deed from E J Potter
to Mary, David & Sarah Ann
Swine
3. that the Court erred in not finding
& giving judgment for def below
4. The Court erred in finding for & rendering
judgment for against & rendering

judgment against both
Depts.

↳ The court erred in excluding
the dying proper evidence

Wherefore he says said
judgment ought to be reversed
J. B. R.

Atty for & appellant
joinder in error

W. H. Wood

Atty for appellee

James Paslow
Appellant
vs

Mary Duane
et al
Appellees

13955

file Jan 24: 62.

the return of
the case

2791