No. 13609

Supreme Court of Illinois

Durham et al

vs.

Heaton

71641 7

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 119

Durham
vs
Keator

1862
Refled

1862

13609

Pleas before the Hon. Martin Ballou Judge of the twenty third judicial circuit of the Circuit Court of the State of Illinois at the April term of said Circuit Court begun and held at the Court House in Princeton in the County of Bureau on Monday the fifth day of April in the year of our Lord One Thousand Eight Hundred and fifty Eight.

Present Hon. Martin Ballou Judge
Edward M. Fisher Clerk
Z. F. Waldron Sheriff
George W. Stipp State Atty

(To wit on the 17th day of said Term)
Friday April 23d 1858.
Court met pursuant to adjournment.

William W. Heaton
vs Ejectment
Walter Dunham &
Abbott Ellis

Now comes the plaintiff by Peters & Farwell his attorneys and files his declaration herein in the words and figures following, to wit

" State of Illinois } Circuit Court
" Bureau County } ss April Term AD 1858
" William W. Heaton plaintiff in
" this suit complains of Walter Dunham and
" Abbott Ellis defendants in this suit in a

2 "Plea of Trespass and Ejectment

" For that whereas the said plaintiff
"heretofore to wit on the ~~thirt~~ 1st day of July AD
"1857 was possessed in his own demesne as of
"fee simple of a certain Lot of Land situated
"in said County and State and described
"as the East Half of the South West quarter
"of section Thirty four in Township Eighteen
"North of Range Ten East of the 4th Principal
"Meridian and the said plaintiff being so
"possessed thereof the said defendants ~~having~~ ~~so~~
"there afterwards to wit on the 1st day of March
"AD 1858 entered into the possession of the prem-
"ises aforesaid and ejected the plaintiff there
"from and have from the time last aforesaid
"unlawfully withheld and still do unlaw-
"fully withhold from the plaintiff the pos-
"session of said premises. To the damages of
"the plaintiff in the sum of One Hundred
"dollars and therefore he brings his suit

" Heaton, Peters & Farwell
" Plaintiffs attys

" Walter Durham &
" Abbott Ellis

" Sirs You will hereby take notice
"that the foregoing Declaration with a copy of
"which you are now served together with this
"notice will be filed in the Circuit Court of
"Bureau County Illinois on the first day of
"the next Term thereof to be holden at the

3 " Court House in Princeton in said County
" & State on the first Monday in the month
" of April AD 1858 or as soon thereafter during
" said Term as counsel can be heard and
" that upon filing the same a Rule will
" be entered requiring you to appear and plead
" to said declaration within twenty days thereafter, and that if you neglect to appear and
" plead within such time a judgment by
" default will be entered against you, and
" the plaintiff named in ~~xxxx~~ such declaration will recover possession of the premises
" therein described.

" Heaton Peters & Farwell
" ~~Pltffs~~ attys

" State of Illinois }
" Bureau County } ss. John H. Mason being
" by me first duly sworn on oath says that he
" served the above declaration & (&) notice on
" the above named Walter Durham by reading the within writ and leaving a certified
" copy of the same with said Walter Durham
" on the 18th day of March AD 1858
" Subscribed & sworn to J. H. Mason
" before me this 9th day
" of April 1858. E. M. Fisher, Clk.

" State of Illinois }
" Bureau County } ss. John Carico being by
" me first duly sworn on oath says he served
" the within declaration & notice on the with

" ni named Abbott Ellis by delivering him a true
" & perfect copy of the same on the 26th day of
" March 1858.
" Sworn to & subscribed John Calico
" before me this 22nd day
" of April 1858.
" E. M. Fisher Clk

And on motion of said attorney a rule is taken on said defendants to file their plea to said declaration herein within twenty days from this date or judgment will be entered against them by default and the plaintiff will recover possession of the said premises

(And now on the first day of May AD 1858 come the defendants by Taylor and Fearing their attorneys and file with the Clerk of the said Circuit Court their plea herein, and the same is in the words and figures following) to wit

" State of Illinois } Bureau Co Circuit Court
" Bureau County } ss April Term AD 1858
" William W. Heaton
" vs
" Walter Durham &
" Abbot Ellis
" And said defendants come
" by Fearing their attorney and say that they
" are not guilty of unlawfully withholding
" the premises claimed by the plaintiff as
" alleged in the said declaration and of this they
" put themselves upon the country.

5 ✱ "
"

Taylor & Fearing
for defts

Pleas before the Honorable Martin Ballou Judge of the twenty third judicial Circuit of the State of Illinois at a Term of said Circuit Court begun and held at the Court House in Princeton within and for the County of Bureau in said state on Monday the sixth day of September in the year of our Lord One Thousand Eight and fifty eight

Present Hon.ble Martin Ballou Judge
Edward M. Fisher Clerk
Z. K. Walden Sheriff
George W. Stipp States attorney

(On the 1st day of said Term) to wit;
William W. Heaton
vs. Ejectment
Walter Durham &
Abbott Ellis

Now comes the plaintiff by Peters & Farwell his attorney and on motion of said attorney leave is given the plaintiff to amend his declaration herein. It is also further considered by the Court that this cause be continued to the next term of this Court.

Pleas before the Honorable Martin Bal

lon Judge of the twenty third judicial circuit of the State of Illinois at the January ~~at the January~~ term of said Court begun and held at the Court House in Princeton in the County of Bureau and State of Illinois on Monday the third day of January in the year of our Lord One Thousand Eight Hundred and fifty nine

Present Hon. Martin Ballou Judge
E. M. Fisher Clerk
D. E. Norton Sheriff
Geo. W. Stipp States atty

(To wit on the 6th day of said Term)

Saturday January 8th 1859.

Court met pursuant to adjournment

William L Heaton
vs Ejectment
Walter Dunham &
Abbott Ellis

Now comes the plaintiff by Peters & Farwell his attorneys and the defendants come by Fearing & Taylor their attorneys and by agreement of said parties this cause is continued to the next term of this Court.

Pleas before the Hon. M. E. Hollister

7

Judge of the ninth judicial Circuit of the State of Illinois at the March Term of said Circuit Court in and for the County of Bureau begun and held at the Court house in Princeton in said County on the second Monday ~~of~~ in the month of March in the year of our Lord One Thousand Eight Hundred and fifty nine

Present Hon.d M. E. Hollister Judge
E. M. Fisher Clerk
D. E. Norton Sheriff
Wm. Bushnell States atty

(To wit on the 3d day of said Term)
~~Wednesday~~ Wednesday March 16th 1859.
Court met pursuant to adjournment.

William L. Heaton
vs.
Walter Dunham &
Abbott Ellis

Now comes the defendants by Taylor their attorney and on motion of said attorney it is considered by the Court that this cause be continued to the next term of this Court and that said defendants pay all the costs accruing herein at the present term

Pleas before the Hon. M. E. Hollister Judge of the ninth judicial circuit of the State of Illinois at the September term of the said Circuit Court begun and held at the Court House in Princeton in and for the County of Bureau on the third Monday in the month of September in the year of our Lord One Thousand Eight Hundred and fifty nine.

Present M. E. Hollister Judge
E. M. Fisher Clerk
D. E. Norton Sheriff
W. Bushnell States atty

(To wit on the first day of said term)

William W. Heaton
vs Ejectment
Walter Durham +
Abbott Ellis

This day this cause being called; by the agreement of parties this cause is set for trial on Thursday of second week.

(To wit on the 10th day of said term)
Thursday ~~Wednesday~~ morning 8½ o'clock am
Sept 29th 1859. Court met pursuant to adjournment

William W. Heaton
vs. Ejectment

Walter Durham +
Abbott Lewis

Now come the said plaintiffs
9 by Peters, Farwell + himself as attorneys and
the said defendants come by Taylor + Powell
their attornies and the said plaintiff ~~xxxxx~~
enters his motion to suppress (suppress) the dep
osition of William A. Turney herein and
after argument of counsel, and the Court being
fully advised in the premises considers that
said motion be sustained as to the interog-
atories numbered "three, four, five, ~~six~~, seven
nine, and eleven and the answers thereto
and overruled as to other ~~xxxxxxxx~~ ~~xxxxx~~ inter
rogatories and answers. It is further consid
ered by the Court that this cause be continu
ed to the next term of this Court at the
costs of the said defendants and that the
said plaintiff have and recover of the
said defendants all his costs + charges
of this term of the Court by him herein
expended and that he have execution
therefor

(And now to wit on the same day come the
defendants by their attorneys aforesaid and
file their Bill of Exceptions and the same is
in the words and figures following to wit)

" William W. Heaton } Bureau Circuit Court
" vs } September Term AD 1859
" Walter Durham } In Ejectment

" Abbott Ellis

" Be it remembered that on this day this
" cause came up on a motion entered by the
" plaintiff to suppress the deposition of William
" A. Turney taken on behalf of the said defen
" dants for the reasons following

" 1st That said depositions are not properly cer
" tified. That the certificate of the notary ~~xxx~~
" ~~xx xxxx x xx~~ before whom they were taken
" is informal & insufficient

" 2d That said depositions do not appear to
" have been taken by or under the direction
" of the notary who certifies to them

" 3. That there is no evidence that the inter
" rogatories & answers or either of them were
" reduced to writing by the notary or under
" his direction and are not in his hand
" writing

" 4th That each of said interrogatories ex
" cept the first & second & the answers thereto are
" irregular unlawful & insufficient in this that
" each of said interrogatories seeks to obtain
" testimony not relevant to the issue, that
" it seeks to prove some fact that can only be
" proved by record evidence & is leading

" That each of said answers are not evidence
" for the reason that they are irrelevant not
" pertinent to the issue and not responsive
" to the questions and state matters that can
" not be proved by parol but can only be prov-
" ed by record evidence - and that they are other

11 "wise informal irregular & insufficient &
"not the best evidence of the truth of the
"statements therein made -
"which motion the Court sustained and quash
"ed the interrogatories and answers thereto
"numbered three (3) four (4) five (5) Six (6)
"Seven (7) Nine (9) and eleven (11) and exclu-
"ded said depositions so far as the said ques-
"tions and the answers thereto are concerned
"to which ~~time~~ opinion of the Court in the
"suppressing of said portions of said deposi-
"tion the defendants by their council then
"and there excepted and then and there pray
"ed that this their bill of exceptions might
"be signed sealed and allowed - which is
"accordingly done

M. E. Hollister (Seal)

Pleas before the Hon. M. E. Hollister Judge
of the Ninth Judicial Circuit of the State
of Illinois at a term of said Circuit Court
begun and held at the Court House in Prince
ton within and for the County of Bureau on
the second Monday in the month of December
in the year of our Lord One Thousand
Eight Hundred and fifty nine

Present Hon. M. E. Hollister Judge
E. M. Fisher Clerk
D. E. Norton Sheriff
Washington Bushnell.
States attorney

(To wit on the 2nd day of said Term)

Tuesday morning December 13th 1859

Court met pursuant to adjournment

William W. Heaton

vs Ejectment

Walter Dunham &

Abott Ellis

Now comes the said plaintiff by Pitts & Fawell his attorneys and the defendants come by Taylor & Cook their attorneys and by agreement of the parties. It is considered by the Court that this cause be continued to the next term of this Court.

Pleas before the Hon. M. E. Hollister judge of the Ninth judicial circuit of the State of Illinois at a term of said Circuit Court begun and held within and for the County of Bureau in the said State at the Court House in Princeton in said County on the second Monday in the month of March in the year of our Lord One Thousand Eight Hundred and sixty.

Present Hon. M. E. Hollister judge

E. M. ~~Hollister~~ Fisher Clerk

D. E. Norton Sheriff

W. Bushnell States attorney

(To wit on the second day of said Term)

Tuesday morning 8½ Oclock A.M

March 13th AD 1860. Court met

pursuant to adjournment.

William W. Heaton
vs Ejectment
Walter Dunham &
Abbott Ellis

Now comes the said parties by by their attorneys aforesaid and by agreement a jury is waived and the issues herein are submitted to the Court for trial.

(To wit on the 18th day of said term)
Saturday morning 8½ Oclock a.m.
AD 1860 March 31st. Court met pursuant to adjournment.

William W. Heaton
vs Ejectment
Walter Dunham &
Abbott Ellis

Now come the parties aforesaid by their Attorneys aforesaid and by agreement of the parties it is considered by the Court that this cause be set for hearing on Tuesday the 17th day of April A.D. 1860 at the Chambers of the Judge of this Court in Ottawa LaSalle County in the State of Illinois.

Pleas before the Hon. M. E. Hollister Judge of the ninth Judicial Circuit of the State of Illinois at the September Term of said Circuit Court begun and held at the Court House in Princeton in and for the County of Bureau in said State on the third Monday in the month of Septem

ber in the year of our Lord One thousand Eight Hundred and sixty.

Present Hon. M. E. Hollister Judge
Edward M. Fisher Clerk
David E. Norton Sheriff
W. Bushnell States Atty

(To wit on the 2nd day of said Term)
Tuesday morning 8 o clock September 18th AD 1860. Court met pursuant to adjournment

William W. Heaton
vs Ejectment
Walter Durham &
Abbott Ellis

Now come the said parties by their attorneys aforesaid and upon motion it is considered by the Court that this cause be continued to the next term of this Court

Pleas before the Hon. M. E. Hollister Judge of the Ninth Judicial Circuit of the State of Illinois at a term of the Circuit Court held at the Court House in Princeton within and for the County of Bureau in the State aforesaid on the Second Monday in the month of March in the year of our Lord One Thousand Eight Hundred and fifty one.

Present Hon. M. E. Hollister Judge

George W. Radcliffe, Clerk
Daniel Mc. Donald, Sheriff

(To wit, on the second day of said term)
Tuesday morning March 12th A.D. 1861.— Court met pursuant to adjournment.

William W. Heaton
vs. Ejectment
Walter Durham &
Abbott Ellis

And now come the parties aforesaid by their Attorneys aforesaid and after further argument of Counsel the Court being now fully advised in the premises Considers that the issues joined herein are in favor of the plaintiff and that defendants are guilty as alleged in the declaration, and thereupon it is considered and determined by the Court that plaintiff have and recover of defendants the possession of the premises in his declaration herein described with also his costs of suit by him herein expended. And on motion of Taylor & Paddock of defendants Counsel it is considered and ordered by the Court that an appeal to the Supreme Court be allowed to the defendants herein upon filing bond therefor conditioned according to law in the penal sum of Five Hundred Dollars with Enos Smith as surety therein, within ten days from this date and that the same be filed as of to day.

It is also further considered and ordered by the Court that defendants have until the 1st day of April next to file their Bill of Exceptions herein.

(To wit, on the eighth day of said term)
Tuesday morning March 19th A.D. 1861 - Court met pursuant to adjournment.

William W. Heaton
vs. Ejectment
Walter Durham & Abbott Ellis

And now come the defendants by their Attorneys aforesaid and file their bond for appeal herein nunc pro tunc as of the 12th day of March A.D. 1861, and the same is as follows, to wit:

(To wit, on the 16th day of said term)
Thursday morning March 28th A.D. 1861 - Court met pursuant to adjournment

William W. Heaton
vs. Ejectment
Walter Durham &
Abbott Ellis

And now come the defendants and file their Bill of Exceptions herein in the words and figures following, to wit:

17 " State of Illinois }
" County of Bureau }
" In the Circuit Court
" March Term AD 1861
" William W. Heaton
" v. } Ejectment
" Walter Burham and
" Abbott Ellis
" Be it remembered that on the trial
" of this cause to maintain the issues here
" in on his part the said plaintiff offered
" in evidence and read to the Court with
" proof of the signature thereof the certificate
" of the Register of the Land Office at Spring-
" field in the words and figures following to
" wit "
" " United States Land Office
" " Register's Office
" " Springfield Illinois
" " January 6th 1859.
" I, William E. Keefer. Register of the Land
" Office at Springfield Illinois do hereby cer-
" tify that on the fifteenth day of July
" 1835 Oliver Lindley purchaser of the
" General Government, at the Land Office
" at Galena Illinois the East half of the
" South West quarter of section number
" thirty four in Township number Eight-
" een N. of range number ten East of
" the 4th principal meridian containing
" Eighty acres and that said land

19 " " has been for some years past a resident of
" " Knoxville in the State of ~~Illinois~~ Iowa.
" " That this affiant applied by letter to said
" " John Lindley for said deed ~~was~~ by
" " him informed that said deed was not
" " in his possession and that the same with other
" " papers had been while the said ~~Parties~~
" " Lindley resided in Tazewell County
" " in this State accidentally destroyed by
" " fire which information from said Lind
" " ley affiant believes to be true. That
" " said deed is a material part of his
" " evidence in this case. He further
" " states that one other deed made by
" " said John Lindley to one James Bar
" " ber dated June 18th AD 1846. to among
" " other the premises in controversy is
" " a material part of his testimony in
" " this case That said deed is not
" " in his power to produce on the tri-
" " al of this cause, That James Barber
" " the grantee in said deed in whose
" " possession the same would most
" " likely be found under other cir-
" " cumstances was at the time of the
commencement of this suit insane
and confined as such insane per-
son in the State insane Asylum at
Jacksonville where affiant believes
he is still confined that before
he became insane said Barber who

" " has no family resident in Stephenson County
" " in this State. That Martin P. Sweet of
" " Freeport in said County is and has been
" " since long before the commencement of this
" " suit the Conservator of said Barber & the only
" " persons likely to have the custody of said
" " deed as only a part of the lands therein
" " described have ever been conveyed by said
" " Barber to any other person. that affiant
" " has called upon said Sweet for as well
" " the last mentioned deed as the one first
" " above mentioned That said Sweet in
" " formed this affiant that he had never
" " seen, ~~had~~, had never been able to find
" " & had not ~~had~~ in his possession either of
" " said deeds. That affiant knows of
" " no other person who would be likely
" " to have the possession of said deeds & that
" " he has no knowledge where the same
" " now are except as above stated. That
" " one other certain deed made by said
" " James Barber to one Tracy Reeve dat-
" " ed July 23d AD 1846 to among other
" " the premises in controversy is a ma-
" " terial part of ~~this~~ testimony in this
" " case. That said deed is not in the
" " power of this affiant to produce on
" " the trial of this cause. That said
" " Tracy Reeve the grantee in said deed
" " lives at Lanville in this County
" " that this defendant has repeatedly call

21 " " ed upon said Reeve for said deed that said
" " Reeve informed affiant at first that
" " he thought he had said deed but has
" " since informed affiant that after dili-
" " gent search in all places where said
" " deed would by likely to be found he
" " could not find the same & that said
" " deed was lost. affiant further states
" " that he searched the desk of said Reeve
" " where he was informed said deed
" " should be found & various packages
" " of deeds & other papers and all such
" " packages as he could find & was un-
" " able to find said deed & that he veri-
" " ly believes the same is lost & can
" " not be found to be used in evidence
" " on the trial of this cause

" " W. W. Heaton

" " Subscribed & sworn to
" " this 13th day of March
" " AD 1860 before
" " E. M. Fisher Clk

" and thereupon by leave of said Court of-
" fered and read in evidence a certain
" certified copy of the record of a deed (and
" certificates) from Oliver Lindley and
" wife to John Lindley in the words and
" figures following -

" No. 398. This indenture made this twen-
" " ty sixth February AD 1838 between Oliver

22 " " County of Tazewell and State of Illinois
" " of the first part and John Lindley of
" " the County of Tazewell and State afore
" " said of the second part Witness That
" " for and in consideration of the sum
" " of two thousand five hundred dollars
" " lawful money of the U. States to them
" " in hand paid the receipt whereof is
" " hereby acknowledged by the parties of
" " the first part have granted bargain-
" " ed and sold and by these presents
" " do grant bargain ~~and~~ sell and con
" " vey unto the party of the second part
" " his heirs and assigns all those certain
" " tracts and parcels of land situate ly-
" " ing and being in the County of
" " Bureau and State of Illinois described
" " as follows viz the east half of the
" " south west quarter of section five (5)
" " also the east half of the north west
" " quarter of section No four (4) also the
" " west half of the north west quarter of
" " section No. two (2) also the west half
" " of the south west quarter ~~of section~~ of
" " section No. five (5) also the east half
of the north east quarter of section
No. ~~seven~~ seven (7) ~~also the north west quar-~~
~~ter of the south east quarter of sec-~~
~~tion No. seven (7)~~ also the north east
quarter of section No. four (4) also

" " the north west quarter of the south east
23 " " quarter of section No. seven (7) all the above
" " described lands are in township No seven-
" " teen North of the base line of Range
" " No. Ten east of the fourth principal merid
" " ian. Also the west half of the south
" " west quarter of section No. Thirty five (35)
" " also the west half of the south west quar-
" " ter of section No. twenty six (26) also the west
" " half of the north west quarter of section
" " No. thirty five (35) also the west half of
" " the south west quarter of section no. thir
" " ty four (34) also the east half of the south
" " west quarter of section No twenty seven
" " (27) also the west half of the south
" " west quarter of section No. twenty seven (27)
" " also the west half of the north west quar-
" " ter of section no. thirty four (34) also the
" " east half of the north east quarter of sec-
" " tion No thirty four (34) also the east half
" " of the south west quarter of section No
" " thirty four (34) all in township No Eighteen
" " (18) North of the base line of Range
" " No ten (10) East of the fourth (14) principal
" " meridian which will more fully appear
" " by reference being had to the record of
" " Congress surveys in the district of lands
" " subject to sale at Galena Illinois
" " To have and to hold the aforesaid prem
" " ises together with all the privileges, appurtenances & her
" " editaments ~~xxxxx~~ to the same belonging

or in any wise appertaining to the only proper use and behoof of the party of the second part his heirs and assigns forever and the parties of the first part for ~~and~~ themselves their heirs executors or administrators doth covenant to and with the party of the second part his heirs and assigns that they will forever warrant and defend the aforesaid premises and every part thereof from the claim or claims of all person or persons whomsoever —

In testimony whereof the parties of the first part have hereunto set their hands and seals the day and year first above written

Oliver Lindley (seal)
Priscilla Lindley (seal)

In presence of us
Saml P. Bailey

State of Illinois }
Tazwell County } ss. This day the twenty sixth February AD 1838. personally appeared before the subscriber a notary Public in & for said County and State aforesaid Oliver Lindley and Priscilla Lindley his wife whose signatures appear to the above deed and who are personally known to me ~~to be~~ the persons described ~~in the~~ ~~within~~ in and who executed the same did severally acknowledge ~~acknowledgement~~ that they had

executed the said Conveyance for the uses and purposes therein mentioned, and the said Priscilla Lindley having been by me made acquainted with the contents of said deed, and examined separate and apart from her said husband acknowledged that she had executed the same and relinquished her dower to the premises therein conveyed voluntarily freely and without compulsion of her said husband this 26th Feby A.D. 1838. In testimony whereof I hereunto subscribe my name and affix my seal notarial the day and year aforesaid.

Seal

Samuel P. Bailey
Notary Public

I hereby certify that the foregoing is a correct copy of a deed filed for Record Nov. 2d 1838 at 9 o. c. A.M. and Recorded this 2nd day of Nov. 1838

Robert Garton Recorder
by B. L. Smith Deputy

State of Illinois } ss.
Bureau County }

I, Edward W. Fisher Clerk of the Circuit Court and ex officio Recorder in and for said County do hereby certify that the foregoing is a full true and perfect copy of the record of a deed executed by Oliver Lindley and Priscilla Lindley to John Lindley and the certificates thereof and thereto attached as Recorded on Pages 471 and 472 in Book A. of Deeds in the Recorders office in said County of Bureau.

In testimony whereof I have hereunto subscribed my

name and affixed the Seal of said Court at Princeton this 18th day of November in the year of our Lord One Thousand eight hundred and fifty four.

Seal

Edward W. Fisher Clerk and ex officio Recorder

27 " " ~~executed the said conveyance for the uses~~
" " ~~and purposes therein mentioned and~~
" " ~~the said Priscilla Lindley having her~~
" " ~~by me made acquainted with the con~~
" " ~~tents of said deed and examined sep~~
" " ~~arate and apart from her said husband~~
" " ~~acknowledged that she had executed the~~
" " ~~same and relinquished her dower to the~~
" " ~~premises therein conveyed voluntarily freely~~
" " ~~and without the compulsion of her said~~
" " ~~husband this 20th day of February AD 1834~~
" " ~~In testimony whereof I hereunto subscribe~~
" " ~~my name and affix my seal notary~~
" " ~~seal the day and year aforesaid~~
" " ~~Seal~~ ~~Samuel P. Bailey~~
" " ~~Notary Public~~
" to the reading of which copy in evidence
" as well as to the reading of the copies of
" two certain other deeds next hereinafter
" mentioned defendants by their counsel
" then and there objected and the said
" Court then and there overruled such ob-
" jections and allowed the said copy of the
" record of said deed to be read and the
" same was read as evidence herein to which
" opinion and ruling of the Court the said
" defendants by their counsel then and there
" excepted — said plaintiff thereupon of-
" fered in evidence a certain certified
" copy of the record of a deed from John
" Lindley to James Barber bearing date

" 13. June 1846. in the words and figures fol
" lowing to wit
" " Know all men by these presents that I
" " John Lindley of the County of Tazwell
" " and State of Illinois for and in consid-
" " eration of the sum of one dollar to me
" " in hand paid by James Barber of the
" " County of Stephenson and state afore
" " said at and before signing sealing and
" " delivery of these presents the receipt of
" " which is hereby acknowledged have
" " granted bargained sold, release and quit claim
" " ed and by these presents do hereby grant
" " bargain sell release and forever quit
" " claim unto the said James Barber
" " all my right title interest in law
" " and equity in and to the following
" " described real estate lying ~~and~~ & being
" " and situated in the County of Bureau
" " and State of Illinois known and de-
" " scribed as follows ~~to wit~~ The East half
" " of the North East quarter of section sev-
" " en (7) the north west quarter of the south
" " East quarter of section seven (7) the
" " North East quarter of section four (4)
" " the east half of the north west quarter
" " of section four (4) The east half of the
" " south west quarter of section five (5)
" " all in township seventeen (17) North ten East
" " of the fourth (4th) P. M. - South west quar-

" " ter of thirty four (34) the north west quarter
" " of thirty four (34) and the south west quar
" " ter of twenty seven (27) all in Township
" " Eighteen (18) North Ten East of the fourth
" " P. M. West half of the North west quarter
" " of section two (2) in Township seventeen
" " (17) North Ten (10) East of the fourth P. M.
" " To have and to hold the described premises
" " with all the privileges and appurtenances
" " unto him the said James Baker his heirs
" " and assigns forever
" " In witness whereof I have hereunto set my
" " hand and seal this the thirteenth day
" " of June One Thousand Eight Hundred
" " + forty six (1846)

John Lindley (seal)

" "
" " State of Illinois
" " Tazwell County } Before the undersigned
" " Justice of the Peace in and for said
" " County this day personally ~~appeared~~
" " came John Lindley who is known
" " to me to be the real person whose name
" " is subscribed to the foregoing deed of con
" " veyance as having executed the same
" " and then and there acknowledged that
" " he executed the same for the uses and
" " purposes therein expressed.
" " Given under my hand and seal this
" " thirteenth day of June AD one thousand
" " Eight hundred and forty six.

" " Jacob Kern J. P. (Seal)
" " I hereby certify that the foregoing is a
" " correct copy of a deed filed for record
" " June 13th 1846. at 10 o'clock am and
" " Recorded June 19th 1846.
" " Oliver Boyle Recorder
" " State of Illinois }
" " Tazwell County } I John Gridley Clerk
" " of the County Court in and for said County
" " do hereby certify that Jacob Kern Esquire
" " whose name appears subscribed to
" " the attached certified copy of Deed and
" " certificate of acknowledgement was on the
" " day of the date of said certificate to wit
" " on the 13th day of June AD 1846 an acting
" " Justice of the Peace in and for the County
" " aforesaid duly commissioned and qualified
" " as appears of record in my office;
" " that as such full faith and credit are
" " due to all his official acts
" " In testimony whereof I have
" " hereto set my hand and affixed
" " the seal of said Court
" " at Pekin this 19th day of September
" " AD 1859.
" " Jno. Gridley Clerk
" " ~~to the reading of which copy the defendants~~
" " ~~then and there objected but the said Court~~
" " ~~then and there overruled said objection~~
" " ~~and allowed the said copy to be read as~~
" " ~~evidence herein and the same was read~~

L. S.

State of Illinois }
Bureau County } ss. I Edward M. Fisher Clerk of the Circuit Court and Ex officio Recorder in and for said County do hereby certify that the foregoing is a full true and perfect copy of the record of a deed executed by John Lindley to James Barber and the certificates thereof and thereto attached as Recorded on pages 288 and 289 in Book "E" of Deeds in the Recorders office in said county of Bureau.

L. S.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said Court at Princeton this 18th day of November in the year of our Lord one thousand Eight hundred and fifty four

Edward M. Fisher Clerk
and Ex officio Recorder

to the reading of which copy the defendants then and there objected but the said Court then and there overruled said objection and allowed the said copy to be read as evidence herein and the same was read

22" by said plaintiff to which opinion and
" ruling of the Court the said defendants by
" their counsel then and there excepted - said
" plaintiff thereupon offered in evidence
" a certain certified copy of the record of
" a deed from James Barber to Tracy Reeve
" bearing date 23 July 1846. in the words and
" figures following to wit.
" "This indenture made this 23d day July
" " in the year of our Lord one thousand
" " Eight Hundred and forty six between
" " James Barber of Stephenson County Ill
" " of the first part and Tracy Reeve of the
" " second part witnesseth That the said par
" " ty of the first ~~part~~ for and in consideration
" " of the sum of Four hundred and twenty
" " five dollars lawful money ~~of the~~ paid by
" " the said by the party of the ~~first part~~ second part the
" " receipt of which is hereby acknowledged
" " does by these presents grant bargain and
" " sell remise release convey and confirm
" " unto the said party of the second part his
" " heirs and assigns all certain tracts or
" " parcels of land situated in the County of
" " Bureau & State of Illinois and described
" " as follows to wit The East half of the south
" " west quarter of section Twenty seven & the
" " East half of the south west quarter and
" " the east half of the North west quarter
" " of section Thirty four (34) in Township
" " (18) Eighteen. Range (10) Ten East of the

" " (4) fourth P. M. containing Two hundred
" " and forty acres more or less. Together with
" " all and singular the hereditaments and
" " appurtenances thereunto belonging or in
" " any wise appertaining. To have and to
" " hold the said premises as above described
" " with the appurtenances unto the said
" " party of the second party his heirs and
" " assigns forever — And the said party of the
" " first part for himself his and his heirs exec-
" " utors and administrators do hereby covenant
" " to and with the said party of the second part
" " his heirs and assigns that he is well seized
" " of the premises above conveyed as of a good
" " and indefeasible estate in fee simple and
" " has good right to sell and convey the same
" " in manner and form as aforesaid. that they
" " are free from all incumbrance and that the
" " above bargained premises in the quiet and
" " peaceable possession of the said party of the
" " second part his heirs ~~xxxx~~ or assigns against
" " the claim of all persons whatsoever will
" " forever warrant and defend
" " In testimony whereof the said party of the
" " first ~~part~~ has hereunto set his hand and
" " seal the day and year first above written
" " Signed sealed and James Barber (Seal)
" " delivered in presence of
" " Note the words "quarter"
" " interlined after west and "of"

" " interlined after half in
" " the 4th line was written
" " before signed
" " in presence of Robert C. Masters
" "
" " State of Illinois } I Robert C. Masters a Jus
" " County of Bureau } tice of the Peace within
" " and for the County aforesaid do hereby certify
" " that this day personally appeared before me
" " James Barber who is personally known to me
" " to be the identical person described in, and whose
" " name appears signed to the foregoing deed as
" " having executed the same and acknowledged
" " that he had executed the said conveyance for
" " the uses and purposes therein expressed
" " Given under my hand and seal at Lamoille
" " in said County this 23d day of July in the
" " year of our Lord one thousand Eight hun-
" " dred and forty six - Robert C. Masters (Seal)
" " J.P.
" "
" " I hereby certify that the foregoing is a cor-
" " rect copy of a deed filed for record July 24th
" " 1846 at 11½ o'clock A.M. and Recorded
" " July 24th 1846.
" " Oliver Boyle Recorder
" "
" " State of Illinois } ss. I, Edward M. Fisher
" " Bureau County } Clerk of the Circuit Court and Ex Officio
" " Recorder in and for said County do her-
" " by certify that the foregoing is a full true

" " and perfect copy of the Record of a deed
" " executed by James Barber to Tracy Reeve
" " and the certificate thereof given thereto attached as Re-
" " corded on pages 335 and 336 in Book
" " E of deeds in the Recorders office in said
" " County of Bureau.

" " In testimony whereof I have
" " hereunto subscribed my name
" " and affixed the seal of said
" " Court at Princeton this 18th
" " day of November in the year
" " of our Lord One thousand
" " Eight Hundred and fifty four
" " Edward M. Fisher Clerk
" " and Ex Officio Recorder

L. S.

" to the reading of which copy the said defend-
" ants then and there objected but the said Court
" then and there overruled said objection and allowed the said
" Copy to be read as evidence herein and the
" same was read by said plaintiff to which
" opinion and ruling of ~~the~~ said Court the said
" defendants by their counsel then and there
" excepted. And thereupon the said plaintiff
" kept read in evidence from Tracy Reeve to plaintiff a certain deed bear-
" ing date 3d July 1855 in the words and fig-
" ures following to wit:

" " This indenture made this third day of July
" " in the year of our Lord one thousand
" " eight hundred and fifty ~~xxxx~~ five be-
" " tween Tracy Reeve of the County of Bu-
" " reau & state of Illinois of the first part

36 " " " William W. Heaton of the County of Lee
" " " State aforesaid ~~[illegible]~~ of the second
" " " part Witnesseth. The said party of the
" " " first part for and in consideration of fif-
" " " ty dollars in hand paid by the said party
" " " of the second part the receipt whereof is hereby
" " " acknowledged and the said party of the
" " " second part forever released and discharged
" " " therefrom, has remised released sold
" " " conveyed and quit claimed and by these
" " " presents does remise release sell convey
" " " and quit claim unto the said party of
" " " the second part his heirs and assigns for-
" " " ever, all the right title interest, claim
" " " and demand which the said party of
" " " the first part has in and to the following
" " " described lot, piece or parcel of land to
" " " wit: The east half of the south west quar-
" " " ter of section (of section) No. twenty seven
" " " (27) The east half of the North west quar-
" " " ter and the East half of the south west
" " " quarter of section (of section) No thirty four (34) all in
" " " Township Eighteen (18) north of Range
" " " ten (10) East of the fourth principal merid-
" " " ian in the County of Bureau & State
" " " of Illinois containing two hundred and
" " " forty acres of land be the same more or
" " " less. To have and to hold the same together
" " " with all and singular the appurtenances
" " " and privileges thereunto belonging or in
" " " any wise appertaining thereunto and all the estate

right title ~~xxxx~~ interest & claim ~~xxxx xxxxx~~ whatever of the said party of the first part either in law or equity. to the only proper use benefit and behoof of the said party of the second part his heirs and assigns forever.

In witness whereof the said party of the first part hereunto set his hand and seal the day and year first above written

Signed sealed and delivered in presence of — Tracy Reeve (Seal) (Seal)

State of Illinois
Lee County } ss. I. Isaac S. Brandman Clerk of the Circuit Court in and for said County in the State aforesaid do hereby certify That Tracy Reeve personally known to me as the same person whose name is subscribed to the foregoing instrument of writing appeared before me this day in person and acknowledged that he ~~xxxx~~ signed sealed and delivered the said instrument of writing as his free and voluntary act. for the uses and purposes therein set forth

Given under my hand and seal of said Court this 3d day of July AD 1855

I. S. Brandman Clerk

L. S.

38 " " Filed for record Oct 2d 1855 at 4 o'clock
" " P. M. and duly recorded in Book T
" " of Deeds Page 498
" " E. M. Fisher Recorder
" Whereupon the said defendants by their coun-
" sel admitted that at the time of the com-
" mencement of this action they the said defen
" dants were in possession of the land in said
" plaintiffs declaration mentioned and claim
" ing title thereto and the said plaintiff
" then rested his case
" And the said defendants to maintain
" the issues on their part herein offered and
" read in evidence to the Court a certified
" transcript of a judgment of the Supreme
" Court of the State of Illinois in favour
" of ~~Oliver~~ William Dougherty and against
" Oliver Lindley and Irvin B. Doolittle
" with transcripts from the dockets and re-
" cords of said Court thereto attached and
" the deposition of William A. Turney Clerk
" of said Supreme Court in the words and
" figures following to wit
"
" " State of Illinois } In Circuit Court of said
" " Bureau County } County December Term AD 1859
" " William W. Heaton
" " vs In Ejectment
" " Walter Dunham +
" " Abbott Ellis
" " The above plaintiff or Mess

" " Peters & Farwell his attorneys will take notice
" " that the undersigned defendants will on Wed
" " nesday the 30th day of November instant
" " between the hours of Ten o'clock Am and
" " six o'clock P. M of said at the office of
" " the Clerk of the Supreme Court of said
" " State in Springfield in the County of Sang
" " amon in said State before some officer
" " duly authorized by law to take depositions
" " pursuant to take the deposition of William
" " A. Turney a witness residing in said
" " County of Sangamon to be used as evidence
" " on the trial of the above entitled cause
" " and if the taking of said deposition is
" " not completed on said day that then the
" " taking of the same will be continued from
" " day to day until the same is completed
" " at which time and place of taking said
" " deposition you may appear and cross ex-
" " amine said witness
" " Princeton November 10th 1859.

" " Walter Durham
" " Abbott Ellis
" " by Cook & Taylor their Attys

" " We have this day received a true Copy of
" " the within notice on this 12th day of Novem
" " ber AD 1859.

" " Peters & Farwell
" " Attys

40 " "

Deposition

" " of William A. Turney taken before Orlin
" " H. Minier, a notary public, at the Office
" " of the Clerk of the Supreme Court for
" " the second Grand Division of the State
" " of Illinois, in Springfield in the Coun-
" " ty of Sangamon in said State on Wed-
" " nesday the 30th day of November AD
" " 1859, between the hours of ten o'clock am
" " and six o'clock P. M. of said day in pur
" " suance of of the foregoing attached notice
" " to be used as evidence in the trial of a
" " cause now pending in the Circuit Court of
" " Bureau County, wherein William W. Hea
" " -ton is plaintiff and Walter Durham
" " and Abbott Ellis are defendants.
" "
" "
" "
" "
" "
" "
" "

" " William A. Turney
" " of lawful age, being pro-
" " duced sworn and examined on the part of
" " the defendants testifies as follows —
" "
" " Interrogatories to be put to William A. Tur
" " ney.
" " 1. What is your name age residence and occu

" " petition.
" " Answer. My name is William A Tunney I
" " am twenty seven years of age. I reside in
" " the City of Springfield and State of Il-
" " linois and am Clerk of the Supreme
" " Court for the Second Grand Division of said
" " State.
" " 2. Are you Clerk of the Supreme Court of
" " the Second Grand Division in the State of
" " Illinois and if so state whether you as such
" " Clerk have in your custody all the
" " records papers and files of the Supreme
" " Court of Illinois prior to the adoption
" " of the present constitution of this State?
" " Answer — I am Clerk as above stated
" " All the records of the Supreme Court pri-
" " or to the adoption of the present Constitu-
" " tion are on file in my office to the best
" " of my knowledge.
" " 3. State whether there is on the records of
" " the Old Supreme Court a judgment in
" " favor of William Dougherty vs. Oliver
" " Lindley and Irwin B. Doolittle and
" " if you find such a judgment please
" " make a correct certified transcript of
" " such judgment and attach the same
" " as an exhibit with a proper mark
" " Answer — There is a judgment on the
" " records of the Old Supreme Court in fa-
" " vor of William Dougherty vs Oliver
" " Lindley and Irwin B. Doolittle a

" " Copy of which is hereto attached
" " marked exhibit "A".
" " 4. Examine the records of said Supreme
" " Court and then state whether there is
" " any other judgment appearing on the
" " records or files of said Court between
" " the said parties named in the third
" " interrogatory. if so attach a certified copy
" " as an exhibit and if not please state
" " whether you have searched the records
" " diligently for that purpose.
" " Answer. — I have searched the records
" " and can find no other judgment on
" " the records of said Court between the
" " parties named
" " 5. State whether there is a Book
" " in the office of the Clerk of the Su-
" " preme Court in which is kept a record of all
" " executions issued upon judgments ren
" " dered in the Supreme Court and of the
" " ~~xxxxxx~~ return of such executions. And if you
" " shall answer that there is such a ~~book then~~
" " ~~state~~ whether you find that an ex
" " ecution was issued upon the judg-
" " ment in favor of the said William
" " Dougherty vs. Oliver Lindley and
" " Irwin B. Doolittle. And if you find
" " there is such a record of an execution is
" " sued and returned please make out a
" " certified copy of such record and attach
" " the same ~~to~~ as an exhibit to your deposition

" " with a proper mark

" " Answer – There is a book in my office
" " called an "Execution Book" which ~~it~~
" " ~~[illegible]~~. it is supposed contains a records
" " of all the executions issued upon judg-
" " ments rendered by the old Supreme
" " Court and a minute of the returns
" " made upon the executions. I find from
" " said book that several executions were
" " issued upon the judgment aforesaid in
" " favor of ~~Oliver Lindley~~ William Dough-
" " erty and against said Lindley & Doolit-
" " tle of which the following is a copy of
" " one which is hereto attached marked
" " "B"

" " 6. Will you search diligently amongst the
" " records and files of ~~the~~ Supreme Court
" " Clerk's office and state whether you can
" " find the execution mentioned in the
" " record Book referred to and as having
" " been issued December 26th 1837 upon the
" " judgment in favor of said William
" " Dougherty vs. Oliver Lindley and Ar-
" " ~~[illegible]~~ B. Doolittle and if you can find
" " such execution please attach a certified
" " copy of the same to your answer and
" " if you shall say you cannot find such
" " an execution state fully whether you have
" " searched every place in the office for it and whether
" " it is lost

Answer — I have made diligent search

" " for the execution which appears by the
" " Execution Book to have been issued on
" " the 26th December 1837 and cannot find
" " the same in my office. I believe it to
" " be lost

" " 7. Please examine the records of the said
" " Supreme Court and ascertain whether
" " there has ever been recorded upon the
" " records of said Court letters of admin-
" " istration on the estate of William
" " Dougherty and if you find any such
" " letters of record you will please ~~attached~~
" " to your answer a certified copy of the same
" " with a proper mark. Also state in what
" " book or records and when they were record-
" " ed.

" " Answer — There appears on page 372 of
" " Record Book "G" of the records of said Su-
" " preme Court letters of administration of
" " which exhibit "C" hereto attached is a
" " Copy.

" " 8. You will please make out a certified
" " Copy of the last order of the said Court
" " preceding and the first order following
" " the record of said letters of administra-
" " tion and make them an exhibit to your
" " deposition

" " Answer — The exhibit hereto attached marked
" " ed "D" is a copy of the order of said Court
" " immediately preceding and the exhibit here
" " to attached marked "E" is a copy of the

entry immediately following the record of the letters of administration referred to?

9. Will you examine and state whether after the date of said last order ~~of~~ as made an exhibit to your last answer an execution was issued by the Clerk of the Supreme Court in the name of Thomas Lewis Administrator of William Dougherty deceased and against Oliver Lindley and Irwin B. Doolittle and directed to the sheriff of Bureau County Illinois upon which it may appear by the returns that any lands were levied upon and sold by the Sheriff of Bureau County as the property of Oliver Lindley. If you can find any such execution and return please attach to your answer a duly certified copy of such execution levy and return with a proper mark.

Answer — There is an execution with returns on and attached to it on file in my office which appears to have been ~~issued~~ on the "Eighth day of July in the year of our Lord one thousand Eight hundred and forty three" by "E. Peck Clerk of the Supreme Court

46 " " against Oliver Lindley and Irwin B.
" " Doolittle and in favor of Thomas Lewis
" " is administrator of William Dougherty,
" " deceased, which execution appears to have
" " been directed to the Sheriff of Brecken-
" " county. The exhibit attached hereto and
" " marked "F" is a copy of said execu-
" " tion and returns and will show
" " what and whose lands were levi-
" " ed on
" " 10. Examine the records of said Supreme
" " Court diligently (and state whether you
" " have done so) and state whether there
" " was ever any other judgment ren-
" " dered in the said Supreme Court
" " wherein either William Dougherty
" " or Thomas Lewis administrator of
" " William Dougherty was plaintiff
" " and Oliver Lindley and Irwin B. Doo-
" " little were defendants except the judgment mention-
" " ed in your answer to the third in-
" " terrogatory.
" " Answer — I have examined diligent-
" " ly and can find no other judgment
" " than the one referred to heretofore
" " 11. If there ever was any other judg-
" " ment of record in your office between
" " said parties would you from the re-
" " searches you have made among the
" " records and papers of your office have
" " been likely to have found such
judgment.

" " Answer — Schinck & Schmeed

Wm. A. Turney —

" " Sworn to and subscribed
" " before me this 30th day of
" " November AD 1859
" " C. H. Miner
" " Notary Public

" "

" " (Exhibit "A")

" " At a Supreme Court of the State of
" " Illinois, begun and held at Vandalia
" " on Monday, the Eleventh day of De
" " cember AD 1837: To wit: On Satur-
" " day the Sixteenth day of December
" " AD 1837. the following judgment was
" " ~~xxxxxxxx~~ entered of record.

" " Present, all the Justices

" " William Dougherty
" " vs.
" " Oliver Lindley &
" " Irwin B. Doolittle

April 29, 1843. Assign the following judgment to Error to Fagwell
William B. Doolittle
J. W. Crosby
Attorney for administrator

" " This day came the plain
" " tiff in error by Logan & Baker his atter
" " neys, and it appearing to the Court that
" " the defendants in error have failed to join
" " their joinder to the assignment of errors
" " in this cause according to a rule enter
" " ed against them at a previous day of
" " this term; Therefore on motion of the

48 " " plaintiffs in error by his attorneys it is
" " ordered that for the default aforesaid the
" " judgment of the Circuit Court rendered
" " in this cause be reversed; and it is fur
" " ther considered by the Court that the de
" " murrer of the defendants in error to ~~the~~
" " plaintiffs declaration be overruled and that
" " the plaintiff in error recover against the ~~said~~
" " defendants in error his damages sustain
" " ed by reason of the breach of promise in
" " the plaintiffs declaration alleged but be
" " cause those damages are unknown to the
" " Court, it is ordered that the Clerk asses
" " the same: the Clerk having made his as
" " sessment reported to the Court that the
" " damages amount to the sum of Three
" " thousand four hundred and forty one
" " dollars and forty one cents ($3441.41)
" " which being approved by the Court it
" " is considered and adjudged by the
" " Court that the plaintiff in error recov
" " er of the defendant in error the said sum
" " of Three thousand four hundred and
" " forty one dollars and forty one cents
" " the damages aforesaid in form aforesaid by the Clerk asses
" " sed, and also his costs by him in this
" " Court and also in the Court below ex
" " pended, and that he have execution
" " from this Court for his damages and
" " costs aforesaid
" "

" " State of Illinois
" " Supreme Court - Second Grand Division
" " I William A. Turney Clerk of
" " said Supreme Court do hereby certify
" " that the foregoing is a true copy of a
" " judgment of said Court with the assign-
" " ment as appears in the foregoing which
" " was entered of record on December 16th
" " 1857 in Record Book "E" in the fore-
" " going case. All of which appears of rec-
" " ord in my office
" " In testimony whereof I
" " have hereunto set my ~~hand~~ name
" " and affixed the seal of
" " Seal of the Supreme Court
" " said Court at Springfield
" " this 26th day of January
" " AD 1859

Wm A. Turney
Clerk S.C.

Dougherty

vs.

Lindley & Doolittle

Copy of Judgment

("B") Date of Judgment	Parties	To whom sent.	Amt of Debt		Int.		Supreme Court costs		C. C. costs	
1837. Decr. 26	William Dougherty vs Oliver Lindley and Irwin B. Doolittle	The Sheriff of Tazewell County (Care of S. T. Logan Esq)	$344	41	Interest from 16th Decr. 1837.		9	5¾	14	18¾

t.	Amt of Debt	Int.	Supreme Court costs	C. C. Costs		Amt. made Debt	Amt. made costs &c		Return
Tazwell		Interest from 16th Dec. 1837.				$200		Ext.d	Rec.d on the within execution $200. March 21st 1838 Returned no property found of which the money can be made March 26th 1838. Wm. A. Finney Sh.T.C.
	$344 41		9 57¾	14 18¾					
(Cumberland)									

"C"

52.

State of Illinois
Sangamon County } Set.

The People of the State of Illinois
To all to whom these presents shall come
Greeting — Know ye that whereas William
Doherty late of Franklin County in the
State of Ohio died intestate as is said on or
about the 15th day of March 1840 having at
the time of his decease personal property in
this State which may be lost, destroyed
or diminished in value if speedy care be
not taken of the same. to the end therefore
that the said property may be collected and
preserved for those who shall appear to have
a legal right or interest therein. We do hereby
appoint Thomas Lewis Public Administrator of all and singular the goods and
chattels, rights and credits which were of
the said William Doherty at the time of
his with full power and authority to demand
and collect the said property + debts wherever the same may be found in this
State and in general to do and perform
all other acts which now or hereafter may
be required of him by law

Witness James Adams Probate
Justice of the Peace in and for
Sangamon County (no public
seal having yet been provided) the law has authorized

my private seal which is here
substituted this 23rd day of
August 1842.
L. S. J. Adams P. J. P. S. C.

State of Illinois
Sangamon County } Set.

These are to certify
that the foregoing is a true copy from the
records in Sangamon Probate Justice Court
Witness my hand & private seal
this 23rd day of August 1842.
J. Adams P. J. P. S. C.

Seal

State of Illinois
Supreme Court - Second Grand Division
I, William A. Turney Clerk of said
Court hereby certify the foregoing to be a true
copy of page 372 Record Book "G" of the re-
cords of said Supreme Court on file ~~on~~
~~file~~ in my office. In testimony whereof I
hereunto set my hand and
affix the seal of said Court
at Springfield
this 9th day of March 1859.
Wm. A. Turney
Clerk Supreme Court

Seal of the Supreme Court

54 " "

(Exhibit "D")

" "

" " "Ordered, that all causes heard and not
" " decided to be continued under advisement,
" " and that all other causes motions and
" " matters not otherwise disposed of be con-
" " tinued until the next term of this Court"
"

"

" " State of Illinois
" " Supreme Court. Second Grand Division
" " I William A. Turney, Clerk of said Su-
" " preme Court hereby certify that the foregoing is a true and correct copy of an order of the Supreme Court of Illinois which appears to have been entered of record on Thursday afternoon 14th July 1842. as appear by Record Book. "G" pages 364 + 371 of file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Springfield this 22d day of November AD 1859.

Seal of the Supreme Court

Wm A. Turney
Clk S.C.

(Exhibit "E")

Monday 12th Dec. 1842.

At a Supreme Court begun and held at Springfield on the Monday the 12th twelfth day of December in the year of our Lord one thousand eight hundred and forty two.

Present the Honorable William Wilson Ch Just
" " " Thomas C. Browne
" " " Sidney Breese
" " " Walter B. Scates
" " " Samuel H. Treat
" " " Stephen A. Douglas
" " " John D. Caton

State of Illinois
Supreme Court. - Second Grand Division

I William A. Turney Clerk of said Supreme Court hereby certify that the foregoing entry appears of record of the Supreme Court of said State in record book "G" on page 374.

Seal of the Supreme Court

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Springfield this 22nd day of November 1859

Wm A. Turney
Clk S.C.

"F."

56 State of Illinois
Supreme Court } ss.

The People of the State of Illinois
To the Sheriff of the County of Bureau Greeting
We command you that of the goods and chattels, lands and tenements of Oliver, Lindley and Irwin, B., Doolittle, you cause to be made the sum of Four Thousand one hundred and thirteen dollars and fifty six cents damages. Fourteen dollars and Eighteen & three fourths cents costs in the Circuit Court of Tazewell County, and the sum of Ten dollars and seven cents costs in said Supreme Court which Thomas Lewis administrator of William Dougherty deceased lately recovered against them before the Justices of our said Supreme Court as appears to us of record and make return ~~thereof~~ hereof in ninety days.

Witness the Hon. William Wilson Chief Justice of our said Court and the seal thereof at Springfield this Eighth day of July in the year of our Lord one thousand Eight Hundred forty three

Seal of the Supreme Court

E. Peck
Clerk of the Supreme Court

(Endorsed upon which execution is the following)

" " Debt.
" " Damages — $4113.56
" " Costs C.C. 14.18 3/4
" " Costs S.C 10.117
" "

" " There is paid on this execution the sum
" " of Eleven Hundred and thirty nine dollars
" " as per Sheriffs return attached to this writ
" " Oct 3d AD 1843. as bid by William B. Doo-
" " little the plaintiff in this execution
" " Wm B. Doolittle
" " by J. B. Doolittle Agent.
" " Filed 13th Oct 1843.
" " E. Peck C.S.C
" "
" "
" " Received this writ 3 o'clock P.M. the 29th
" " of July AD 1843. There is paid on this
" " execution by the purchase of ~~the~~ property the
" " sum of fifteen Hundred and seventy
" " five dollars as per sheriffs return attached
" " to this writ. Twenty dollars is applied in
" " part pay to Sheriffs for his fees. The remainder
" " or Fifteen Hundred and fifty five dol-
" " lars is applied on this execution.
" " August 20th AD 1843. W.B. Doolittle
" "
" "
" " (and attached to which execution is the follow-
" " ing)

58

State of Illinois
Bureau County } ss.

To Richard C. Masters

James C. Forestall & Richard C. Masters Greeting

Whereas by virtue of a writ of execution to me directed, issued out of the Supreme Court of the State of Illinois, bearing date the Eighth day of July AD 1843., commanding me to levy the amount therein specified of the goods and chattels, lands and tenements of Oliver Lindley and Lurin B. Doolittle The defendant in execution to satisfy Thomas Lewis Administrator of the estate of William Doughty deceased the plaintiff in said execution the amount of his judgment therein described. I have seized and taken in execution, the following described property of the said Oliver Lindley, To wit

								acres
The S.W.¼ of	section	34	Town	18. North	Range	10 east of 4th P.M.		160
N.W.¼	"	"	34	" 18	"	" 10	" " "	160
S.W.¼	"	"	27	" 18	"	" 10	" " "	160
W½ S.W.¼	"	"	26	" 18	"	" 10	" " "	80
W½ N.W.¼	"	"	35	" 18	"	" 10	" " "	80
S.W.¼	"	"	35	" 18	"	" 10	" "	160
W½ N.W.¼	"	"	2	" 17	"	" 10	" "	80-13
N.E.¼	"	"	4	17	"	" 10	" "	159-22
E½ N.W.¼	"	"	4	17	"	" 10	" "	79-20

E½ S.W.¼ of section 5 town 17 North Range 10 east of 4th Prin meridian 80

all in the County of Bureau and State of Illinois

Now therefore according to the statute in

" " such cases made and provided. I do hereby
" " call and appoint you the said Richard
" " C. Masters James G. Forestell & Robert C.
" " Masters an inquest, and do require of you
" " an oath forthwith to view estimate and ap
" " praise the reasonable and fair valuation of
" " said property in ordinary times and return
" " to me your doings under your hands and
" " seals. Given under my hand and seal this 25th day of August A.D. 1843.
" " (Seal) Stephen Smith
" " Sheriff of Bureau County
" " Ill.

" " Personally appeared before me Stephen
" " Smith Sheriff of the County of Bureau, the above
" " named Richard C. Masters, James G.
" " Forestal and Robert C. Masters appraisers
" " aforesaid who were severally sworn accord-
" " ing to law to well and truly value and appraise
" " all such property by me pointed out and
" " discharge the duties of such appointment
" " Given under my hand and seal this
" " 25th day of August AD 1843
" " (Seal) Stephen Smith
" " Sheriff of Bureau County

" " To Stephen Smith Sheriff
" " of Bureau County Illinois } In pursuance of
" " the foregoing appointment we have proceeded ~~proceeded~~ to
" " upon actual view of the property by you
" " you taken in execution as the property of

60 " " Oliver Lindley at the suit of Thomas Lewis administrator of William Dougherty deceased
" " that is to say.

				acres contain
" " The S.W.¼ Section	34	Town 18 North	Range 10 East of the 4th p.l. Indian	160
" " N.W.¼	34	18	10	160
" " S.W.¼	27	18	10	160
" " W½ S.W.¼	26	18	10	80
" " W½ N.W.¼	35	18	10	80
" " S.W.¼	35	18	10	160
" " W½ N.W.¼	2	17	10	80-13
" " N.E.¼	4	17	10	159.22
" " E½ N.W.¼	4	17	10	79.20
" " E½ S.W.¼	5	17	15	80.00

" " We have proceeded upon actual view ~~fixed~~ of said
" " lands and premises to estimate the fair and
" " reasonable value thereof in ordinary times to wit

" " The S.W.¼ sec.	34.	5.18.	N.R.	10 E. of 4th p.l.	N. Ind.	160 acres	at the sum of $325.00
" " " N.W.¼ "	34 "	18 "	"	10 " " " "	"	160 "	" " " 200.00
" " " S.W.¼ "	27 "	18 "	"	10 " " " "	"	160 "	" " " 475.
" " " W½ S.W.¼ "	26 "	18 "	"	10 " " " "	"	80 "	" " " 500.
" " " W½ N.W.¼ "	35 "	18 "	"	10 " " " "	"	80 "	" " " 200.
" " " S.W.¼ "	35 "	18 "	"	10 " " " "	"	160 "	" " " 425.
" " " W½ N.W.¼ "	2 "	17 "	"	10 " " " "	"	80-13 "	" " " 100.
" " " N.E.¼ "	4 "	17 "	"	10 " " " "	"	159-22 "	" " " 300.
" " " E½ N.W.¼ "	4 "	17 "	"	10 " " " "	"	79.20 "	" " " 150.
" " " E½ S.W.¼ "	5 "	17 "	"	10 " " " "	"	80 "	" " " 450.

" " Given under our hands and seals this 25th
" " day of August AD 1843.

Richard C. Masters (Seal)
James B. Forestall (Seal)
Robert C. Masters (Seal)

61

" " Received this writ 3 o'clock P. M. the 29th day of
" " July AD 1843. and by virtue of the command
" " therein I did on the same day, to wit the 29th day of July AD 1843 proceed to levy
" " upon the following described real estate, to wit:
" " (The south west quarter of section thirty four (34) contain
" " ing 160 acres more or less - north west quarter of
" " section thirty four (34) containing 160 acres more
" " or less - ~~South west of section thirty four (34)~~
" " ~~containing 160 acres more or less - North west~~
" " ~~quarter of section thirty four (34) containing 160~~
" " ~~more or less~~ - South west quarter of section
" " twenty seven (27) containing 160 acres more or
" " less ~~more or less~~. The three above described
" " lots are in Township number Eighteen (18) north
" " of Base line Range Number Ten (10) East of the
" " fourth principal meridian - Also the west
" " half of the North west quarter of section two
" " (2) containing 80 13/100 acres more or less - North
" " East ¼ of quarter of section four (4) containing 159 22/100
" " acres more or less - East half of ~~the~~ north
" " west quarter of section four (4) containing 79 20/100
" " more or less and east half of south west
" " quarter of section five (5) containing 80 acres
" " more or less - the four last described tracts
" " are in township No seventeen (17) North of Base
" " line. Range No. Ten (10) East of the 4th principal
" " Meridian - and all of the above mentioned
" " tracts are situated in Putnam County Illinois
" " as the property of the said Oliver Lindley one
" " of the defendants named in this writ. And
" " afterwards to wit on the twenty sixth day

62 " " of August AD 1843. I proceeded to the prem-
" " ises aforesaid and did appoint then and
" " there Appraisers Richard C. Masters
" " on the part of ~~the~~ defendant who was
" " absent and James G. Forestall on the part
" " of the Sheriff and Robert C. Masters, who
" " appointed by the plaintiff all of them be-
" " ing free holders of said County of Bureau
" " who were sworn by me to well and truly
" " without partiality or prejudice appraise said
" " real estate and make return according to
" " law which said appraisement of said prem-
" " ~~ises~~ appraisers and their return of the val-
" " ue of the premises is hereto attached and
" " made part of their ~~this~~ sworn return. And having
" " duly advertised said lands for sale by post-
" " ing up advertisements of the time and
" " place of sale in three of the most pub-
" " lic places in said County of Bureau for
" " the space of twenty days previous to day of
" " sale. And in pursuance of said adver-
" " tisements I proceeded to offer said lands
" " for sale at public vendue at the door of
" " the Sheriffs office in Princeton in said
" " County of Bureau on the twenty sixth
" " day of August AD 1843 between the hours
" " of nine o'clock AM and six o'clock P.M.
" " of said day to the highest and best bid-
" " der for ready money - And that William
" " B. Doolittle being the highest and best
" " bidder became the purchaser thereof for the sum

" " three hundred dollars for the first tract mentioned
" " ~~tract~~ — And the sum of two hundred dollars
" " for the second tract mentioned — And the sum
" " of four hundred dollars for the third tract
" " mentioned — And the sum of seventy five dol
" " lars for the fourth tract mentioned — And the sum
" " of two hundred dollars for the fifth tract
" " mentioned. And the sum of one hun
" " dred dollars for the sixth tract mention
" " ed — And the sum of three hundred dol-
" " lars for the seventh and last tract mentioned, Small
" " the sum of One thousand five hundred
" " & seventy five dollars. and that being more
" " than two thirds of the appraised value
" " the said real estate was then and there
" " sold and struck off to him at that
" " price. And have executed a certificate
" " of purchase to the said William B. Doolittle
" " for the above described this 26th day of
" " August AD 1843. Stephen Smith
" " Sheriff of the said County of Bureau
" " Illinois

" " Sheriffs Fees — Levy — 50
" " Advertising property for sale 25
" " 12 miles travel to summon appraisers 75
" " summoning 3 appraisers 25 each 75
" " Securing same to value property 18
" " Making certificate of Purchase 25
" " Commission on $1575 — 44.37
" " appraisers fees 1.50
" " $48.55

64 " State of Illinois } I, Richard C. Masters
" Bureau County } James F. Forestal & Robert
" C. Masters Greeting —

" Whereas by virtue of a certain writ
" of execution to me directed, issued out of
" the Supreme Court of the State of Illinois
" dated at Springfield on the Eighth day
" of July AD 1843. commanding me to levy
" the amt therein specified of the goods and
" chattels lands and tenements of Oliver
" Lindley and Irwin B. Doolittle the defen
" dants in execution to satisfy Thomas Low
" is Administrator of the estate of William
" Dougherty deceased Plaintiff in said ex
" ecution The amount of his judgment
" therein described I have levied upon
" and taken in execution the following de-
" scribed lands as the property of the said
" Olivir Lindley to wit. The W½ of S.W.¼
" section 26. - The W½ of N.W.¼ of section 35 —
" The E½ of N.E. ¼ of section 34 - The W½ of
" S.W.¼ section 35 - The E½ of S.W qr. of sec 35 -
" The above described five tracts are in township
" Eighteen (18) north of Base line. Range No.
" Ten (10) east of the fourth principal Meridian
" The E½ of N.E. ¼ section 7. - The W½ of S.W.¼
" of section 5 - The N.W. ¼ of S.E.¼ of section 7
" The three last described tracts are in town
" Seventeen north of Base line. Range No. Ten
" East of the fourth principal Meridian - and
" all the above described lands are situated in

" Bureau County Illinois - Now therefore
" according to the statute in such cases
" made and provided, I do hereby call
" and appoint you the said Richard
" C Masters, James G. Forrestell and Rob-
" ert C. Masters an inquest and do
" require of you an oath forthwith to
" view estimate and appraise the rea-
" nable and fair valuation thereof in
" ordinary times and return to me
" your doings under your hands and seals
" Given under my hand and seal
" this 18th day of Sept AD 1843
" Stephen Smith
" Sheriff Bureau County Illinois
"

" Personally appeared before me Stephen Smith
" Sheriff of Bureau County Illinois, the above
" named Richard C. Masters James G. Forres-
" tell and Robert C. Masters appraisers afore
" said, who were sworn by me according to
" law to well and truly value and appraise
" said property by me pointed out and dis
" charge the duties of said appointment.
" Given under my hand and seal this
" 18th day of Sept. 1843.
" Seal Stephen Smith Sheriff
" of Bureau County Illinois
"
"

66 " To Stephen Smith Sheriff
" " Bureau County Illinois — In pursuance of
" " the foregoing appointment, we have pro-
" " ceeded upon actual view of the premises
" " by you taken in execution as the property
" " of Oliver Lindley at the suit of Thomas
" " Lewis administrator of William Dougherty
" " deceased — that is to say:
" " The W½ of S.W.¼ of sec 26. — The W½ of N.W.¼ of
" " sec 35 — The E½ of S.W.¼ of sec 35 — The W½ of
" " S.W.¼ of sec 35 — The E½ of N.E.¼ of sec 34. The
" " above described five tracts are in township
" " No. 18 North Range no. 10 East of 4th Principal
" " line — The E½ of N.E.¼ of sec 7. The W½ of
" " S.W.¼ of sec 5 — The N.W.¼ of S.E.¼ of sec 7 —
" " These last described tracts are in town-
" " ship 17 north Range 10 East of 4th Principal
" " Meridian — All in Bureau County State
" " of Illinois — and have proceeded upon
" " actual view of said lands and premises
" " to estimate the fair and reasonable value
" " thereof in ordinary times to wit

							acres	
"	The W½	S.W.¼	sec 26	T. 18.	N.R. 10	E of the 4th P.M. under	80	$500
"	" W½	N.W.¼	" 35	" 18	" " 10		80	200
"	" W½	S.W.¼	" 35	" 18	" " 10		80	300
"	" E½	S.W.¼	" 35	" 18	" " 10		80	125
"	" E½	N.E.¼	" 34	" 18	" " 10		80	600
"	" E½	N.E.¼	" 7	" 17	" " 10		80	175
"	" W½	S.W.¼	" 5	" 17	" " 10		80	175
"	" N.W.¼	S.E.¼	" 7	" 17	" " 10		80	100

" " Given under our hands and

seals this 18th day Sept. AD 1843

Richard C. Masters (seal)

James G. Forestall (seal)

Robert C. Masters (seal)

Received this writ 3. P. M. the 29th day of July AD 1843. and by virtue of the command therein I did on the same day levy upon the following described lands to wit The west half of ~~the~~ south west quarter of section twenty six (26) containing 80 acres more or less – The west half of north west quarter of section thirty five (35) containing 80 acres more or less – The west half of ~~the~~ south west quarter of section thirty five (35) containing 80 acres more or less. The east half of south west quarter of section thirty five (35) containing 80 acres more or less.

I levied on the four following described Lots September 12th AD. 1843. to wit.

The east half of North East quarter of section thirty four (34) containing 80 acres more or less. The above described five tracts are in township Eighteen 18 north of Baseline Range No. 10 East of the Fourth Principal Meridian. Also the east half of North east quarter of section seven (7) containing 80 acres more or less. The west half of the south west quarter of section five (5) containing 80 acres more or less. And the north west quarter of South ~~East~~ quarter of section seven (7)

containing 80 acres more or less - The three
last described tracts are in township No. Seventeen (17) North of Base line Range No. Ten
(10) East of the Fourth Principal Meridian
all in the County of Bureau and State of
Illinois all as the property of the said Oliver Lindley
defendant in this execution. And afterwards
to wit on the 18th day of September AD 1843
I proceeded to the premises aforesaid and
did appoint then and there as appraisers
Richard C. Masters on the part of the de
fendant he being absent, and James S. Forrestall on the part of the Sheriff and Robert C. Masters was appointed by the plaintiff
all of them being free holders in said County
of Bureau, who were sworn by me to well
and truly without partiality or prejudice ap-
praise said lands and make return according
-ing to law - which said appraisement of said
appraisers and their return of the value of
said lands are hereto attached and made part
of this my return. And having duly adver
tised said lands for sale by posting up ad
vertisements of the time and place of sale
in three of the most public places in said
County of Bureau for the space of twenty
days previous to day of sale - And in pursu
ance of said advertisements I proceeded to of
fer said lands for sale at public vendue at
the door of the Sheriffs office in Princeton
in said County of Bureau on the third day

" of October AD 1843. between the hours of nine
" o clock Am and six o clock P. M. of said
" day to the highest and best bidder for
" ready money and that William B. Doolit
" -tle, he being the highest and best bidder
" became the purchaser thereof for the sum
" of $1480 dollars for the first tract men-
" tioned and the sum of 150 dollars for the
" second tract mentioned, and the sum
" 200 dollars for the third tract mentioned
" and the sum of 127 dollars for the sixth
" tract mentioned, and the sum of 125 dol
" lars for the seventh tract mentioned and
" the sum of 67. dollars for the eighth tract
" mentioned. And in all the sum of Eleven
" Hundred and thirty nine dollars and
" that being more than two thirds of the ap
" praised value the said lands were then
" and there sold and struck off to him
" at that price and I have executed ~~to him~~
" a certificate of purchase to the said
" William B. Doolittle for the above de-
" scribed tracts this third day of October
" AD 1843

" Stephen Smith Sheriff
" Bureau County Illinois

" Sheriffs fees
" Levy 50
" advertising 25
" Subj. appraisal 75
" Levy 18
" commission on $1139 - 28.47
" appraising 1.50
" certificate purchase 50
$32.15

Received my fees in full on
this execution
Stephen Smith Sheriff

" " State of Illinois
70 " " Supreme Court — Second Grand Division
" " I, William A. Turney Clerk of
" " said Supreme Court do hereby certify that the fore-
" " going execution and the return thereon wherein
" " Thomas Lewis, administrator of William Dough-
" " erty deceased is Plaintiff and Oliver Lindley
" " and Simon B. Doolittle defendants are true
" " copies from the original execution and re-
" " turn on file in my office, all of which
" " appears of record in my said office
" " In testimony whereof I have hereun-
" " to set my name and af-
" " fixed the seal of said
" " Court at Springfield this
" " 18th day of May AD 1859
" " Seal of the Supreme Court

" " Wm. A. Turney —
" " Clk S.C.

" " State of Illinois
" " Sangamon County
" " I, Orlin H. Miner, a
" " Notary Public for the City of Springfield in
" " said County and State do hereby certify that
" " the foregoing deposition was taken before me
" " at the office of the Clerk of the Supreme
" " Court for the second Grand Division of said
" " State in Springfield in the County of Sanga-
" " mon in said State on Wednesday the 30th
" " day of November AD 1859. between the hours

of ten o'clock A.M. and six o'clock P.M. of said day, that previous to the taking of said deposition the said witness was sworn by me to testify the truth in the relation to the matter in controversy; and having testified and his deposition being read to him he swore to and subscribed the same before me as notary public aforesaid

In testimony whereof I have hereunto set my hand and affixed my notarial seal ~~[illegible]~~ at Springfield this 30th day of November AD 1859

Notarial Seal.

O W Meier
Notary Public

Fee $7.00

The defendants then read affidavits of Thackeberry and E. N. Powell to wit

State of Illinois } In Circuit Court
Tazewell County } ss. of Bureau County

William W. Heaton
vs.
Walter Dunham et al } In Ejectment

This day personally appeared before me the undersigned Clerk of the Circuit Court of Tazewell County Middleton Thackeberry who being duly sworn deposes and says that he was well acquainted with William B. Doolittle in his lifetime that said William B. Doolittle departed this life on or about the fifteenth day of

July AD 1854. That affiant was duly appointed executor of the estate of the said William B. Doolittle deceased and as such executor he came into the possession of all the books and papers deeds and other instruments of writing belonging to the said Doolittle in his lifetime That affiant has diligently searched among such the papers of said Doolittle for a deed made by Stephen Smith Sheriff of Bureau County Illinois to said William B. Doolittle dated February Eleventh AD 1846. and has been unable to find such deed. Affiant further states that he has searched over all the deeds and other papers belonging to the said William B. Doolittle deceased and feels assured that there is no such deed amongst his papers and further saith not.

M. Thackeberry

L. S.

Subscribed and sworn to before me this 9th day of August AD 1859 as witness my hand official seal at Pekin the day and year last aforesaid

Merrill C. Young Clerk
Tazewell County Circuit Court Illinois

State of Illinois
Peoria County } ss.
William W. Heaton
vs.
Walter Dunhamstra

In Circuit Court of
Bureau County

In Ejectment

This day personally appeared before me the undersigned a notary Public within and for the City of Peoria in said County ~~Elisha~~ Elihu N. Powell who being ~~first~~ duly sworn deposes and says that the defendants claim to hold title to the property in suit in the above entitled cause under one Robert Patterson. That said Robert Patterson claimed to hold title to the said land under one William B. Doolittle who is now deceased that said William B. Doolittle claimed to hold title to the same premises under a deed made by Stephen Smith Sheriff of said Bureau County executed by said Stephen Smith to said William B. Doolittle by virtue of a sale made on an execution issued by the Clerk of the Supreme Court of the State of Illinois and directed to the Sheriff of said Bureau County in favor of Thomas Lewis administrator of William Dougherty deceased and against Oliver Lindley and Sarah B. Doolittle which deed bears date the Eleventh day of February

" " AD 1846. Affiant further states that he
" " knows that said Robert Patterson never had
" " in his possession the said deed and has
" " not now in his possession nor under his
" " power or control said deed nor does he
" " know where said deed is.

" " Affiant further states that the said
" " defendants never have the said deed in
" " their possession or custody nor do they or either
" " of them know where said deed is to be found

" " Affiant further states that some
" " years since he saw according to his best re-
" " collection the said described deed in the
" " possession of the said William B. Doolit-
" " tle the grantee in said deed

" " Affiant further states that the said
" " William B. Doolittle as affiant is informe-
" " d and believes to be true departed this
" " life in the month of July AD 1854. having
" " made his last will and testament there-
" " in appointing as his executor Middleton
" " Thackerberry and that said Thackerberry
" " took out letters testamentary on said estate
" " That affiant as agent for said Patterson
" " and on behalf of the defendants call-
" " ed on the said Executor to get said deed
" " and upon diligent search amongst the pa-
" " pers of the said deceased the said deed could
" " not be found as will more fully appear by
" " the affidavit of said Thackerberry heretofore
" " filed to and made part hereof. Affiant

" " further states that he was attorney for said
" " Patterson when said Patterson acquired
" " his interest in said land. Affiant fur-
" " ther states that he has enquired of every per-
" " son he knew who would likely have
" " the said deed in their possession and has
" " got ~~several~~ persons to search for said deed
" " and has been unable to find it and
" " affiant knows it to be out of the power
" " of the defendants to obtain said deed
" " on the trial of said cause and further
" " saith not

E. N. Powell

" " Subscribed & sworn to
" " before me this 10th day of
" " August AD 1859. - J. A. McCoy N.P.

" " State of Illinois
" " City & County of Peoria } J. J. McCoy Notary

" " Public in and for the said City of Peoria
" " in said County Do ~~hereby~~ certify that
" " the foregoing affidavit was subscribed and
" " sworn to before me this the tenth
" " day of August AD 1859. Witness my
" " hand & seal notarial at
" " the City of Peoria the day
" " and year aforesaid

Seal Notarial

J. McCoy
Notary Public

" " & thereupon without objection by said plaintiff
" offered and read in evidence to the Court a cer
" tified copy of the record of a deed and certificates from
" the Sheriff of Bureau County Illinois to Wil
" liam B. Doolittle bearing date 11 Feby 1846 ac
" knowledged 20 Feby 1846. and filed for record
" 21 March 1846 in the words and figures fol-
" lowing to wit

" " Whereas Thomas Lewis Administrator of the
" Estate William Daugherty deceased at the De
" cember term AD 1837 of the Supreme Court of the
" State of Illinois Recovered a judgment against
" Oliver Lindley and Sumner B. Doolittle for
" the sum of three thousand four hundred and forty nine 4/100
" dollars and costs of suit upon which judg-
" ment an execution was issued dated the
" Eighth day of July 1846 directed to Stephen
" Smith Sheriff of Bureau County to execute
" and by virtue of said execution the said
" sheriff levied upon the lands hereinafter de-
" scribed and the same were struck off and
" sold to William B. Doolittle for the sum
" of fifteen hundred and twenty dollars
" he being the highest and best bidder there
" for, and the time and place of the sale
" thereof having been duly advertised accord-
" ing to law. Now therefore Know all by
" this deed That I. Stephen Smith Sheriff
" of said County of Bureau in consideration
" of the premises been granted bargained

" " and sole and do hereby convey to the said
" " William B. Doolittle his heirs or assigns the
" " following described tracts of land to wit.
" " "The south west quarter of section thirty
" " four containing 160. acres more or less" The
" " North west quarter of Section thirty four
" " containing 160 acres more or less. The south
" " west quarter of section Twenty seven contain
" " ing 160 acres more or less The three above
" " named tracts in township No. Eighteen North
" " of Range No. Ten East of the fourth ~~prin~~
" " meridian Also The west half of the
" " North west quarter of section Two contain
" " ing 80 13/100 acres more or less The north East
" " quarter of section four containing 159 22/100
" " acres more or less The East half of the North
" " West quarter of section four containing 79 20/100
" " acres more or less And the east half of the
" " south West quarter of section five containing
" " eighty acres more or less. The four last
" " mentioned tracts in Township seventeen
" " North Range No. Ten East of fourth me
" " ridian And all in the County of Bureau
" " and State of Illinois. To have and to
" " hold the said described premises with all the
" " appurtenances thereto belonging to the said
" " William B. Doolittle his heirs and assigns
" " forever Witness my hand and seal this
" " Eleventh day of February in the year of our
" " Lord One thousand Eight hundred and

" " forty six

Stephen Smith Sheriff (seal)
Bureau County Ills

" " State of Illinois
" " Bureau County } ss. I, Cyrus Bryant Clerk
" " of the Circuit Court within and for said
" " County do hereby certify that Stephen
" " Smith Sheriff of said County whose signature
" " appears ~~[illegible]~~ to the foregoing deed and
" " who is personally known to me to be the
" " identical person whose name is subscribed
" " to said deed as having executed the same
" " this day appeared before me and acknow-
" " edged that he had signed sealed and
" " delivered the same for as his free act and
" " deed as sheriff as aforesaid for the uses
" " and purposes therein expressed,
" " In testimony whereof I have hereunto
" " subscribed my name and affixed
" " my seal at Princeton this twentieth
" " day of March in the
" " year of our Lord Eight
" " en hundred and forty
" " six.

Seal.

Cyrus Bryant Clerk Circuit
Court

State of Illinois
County of Bureau } ss. I Edward M. Fisher
Clerk of the Circuit Court within and for
said County & State do hereby certify that
the foregoing is a true and perfect copy of
a deed executed by Stephen Smith Sher-
iff of said County to William B. Dro-
litte and the Proof or acknowledgement
thereof as the same appears of Record
in my office in Book "E" of deeds page
169.

In testimony whereof I have hereunto
Subscribed ~~set~~ my ~~hand~~ name and af-
fixed my official seal
at Princeton this first day
of March AD 1859.

L. S.

Edward M. Fisher Clerk
by W. A. Fisher Dep Clk

I hereby certify that the foregoing is a
correct copy of a deed filed for Record
March 21st 1846. at 7 o'clock P. M. and
Recorded March 30. 1846

Oliver Boyle
Recorder

Whereupon it is stipulated herein by said
Plaintiff that the said defendants connect
themselves, by proper deeds of conveyance with
the title of said William B. Drolette

" derived from the said judgment execution and
" Sheriffs deed.

" Whereupon said defendants read in
" evidence to the Court a certificate of said Wil-
" liam A. Tunney Clerk of said Supreme Court
" in the words and figures following to wit

" "State of Illinois
" "Supreme Court — Second Grand Division
" "I, William A. Tunney Clerk of said Supreme
" "Court hereby certify that I have examined
" "the records on file in my office and that
" "it appears from Record Book "E" which con-
" "tains the orders opinions and proceedings
" "of the Supreme Court ~~of the State~~ of Illin-
" "ois for December Term AD 1837 among other cases
" "that said Supreme Court of the state of
" "Illinois commenced its session at Vandalia
" "on "Monday the Eleventh day of December
" "AD 1837" I further certify that said
" "record does not show any order of the
" "adjournment of said Court for said Term,
" "but that the last orders and opinions
" "of said December Term AD 1837, appears to
" "have been entered under date "Monday
" "December 25th 1837", which date commences
" "on page 61 of said Record book "E" and
" "that the last of the proceedings of said term
" "appear to end on page 77 of said Record
" "Book: and that among other orders of said
" "last mentioned date in said Record Book

" " and on page 68 of the same is an order
" " of which the following is a copy;
" " "Ordered, that all causes not otherwise dis
" " posed of stand continued until the next Term"
" " I further certify that on page 78 of said
" " Record Book "E" the following order first
" " appears; a copy of which is as follows
" " "At a Supreme Court begun and held
" " at Vandalia on Monday the 4th day of June" &c &c
" " 1838"
" " Given under my hand and the seal
" " of said Supreme Court
" " at Springfield this 14th
" " day of December AD 1860
" " Wm A Turney.
" " Clerk Supreme Court
" "

Seal of the Supreme Court

" which was all the evidence in the case
" and thereupon the said Circuit Court
" rendered judgment herein for the said
" plaintiff and against the said defend-
" ants to which ruling and opinion of
" the Court as well as the aforesaid other
" opinions of the said Court in this behalf
" the said defendants by their counsel
" then and there excepted and then and
" then prayed said Court to allow this their
" bill of exceptions and sign and seal the
" same which is done this 27th day of March
" AD 1861 in open Court M. E. Hollister
Judge (Seal)

82 State of Illinois, Bureau County, Ss.

I George M. Radcliffe, Clerk of the Circuit Court within and for said County do hereby certify that the foregoing is a true copy from the records of said Court of proceedings had therein in the foregoing entitled Cause.

Witness my hand and the Seal of said Court at Princeton this 23d day of May A. D. 1861.

Geo. M. Radcliffe Clerk
pr. Chas. J. Peckham Dep.

Come now come the said Walter Lenham & Alexr Ellis and say that in the record & proceedings aforesaid and in the condition of the Judgment aforesaid there is manifest error in this to wit

1st The court erred in suppressing the answers to the 3d, 4th, 5th, 6th, 7th, 9th & 11th interrogatories in the deposition of witness William A Turney and each of them severally

2d The court erred in admitting in evidence the record of a deed from Alison Lindley & Priscilla his wife to John Lindley and the certificates attached thereto

3d The court erred in admitting in evidence the record of the deed from John Lindley to James Baker

4th The court erred in admitting in evidence record of deed from Parmus Borden to Turney Reeves

5th The court erred in finding the issue for the plaintiff

6th The court erred in rendering the judgment aforesaid in manner & form aforesaid

R. C. Cook
atty for pltff in error

And now comes the defendants in error & says that there is no such error in said record & proceedings as is above assigned

Leland & Blanchard
for def'ts in error

Wm. N. Heaton 149
vs.
Walter Dunham &
Abbott Collins

Transcript of record

Filed Feb. 22. 1862.
L. Leland
Clk.

Coll's fees $16.35
Pd. by J. J. Taylor
Defts. Atty.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM, 1862, AT OTTAWA.

ROBERT DURHAM & WALTER ELLIS
vs.
WILLIAM W. HEATON.
} *Error to Bureau.*

ABSTRACT OF RECORD.

PAGE
Of Record.

This was an action of ejectment brought by Heaton against Dunham
2 & Ellis. Declaration in usual form filed April 23d, 1858.

Land in controversy is the east ½ of the sw¼ of section 34 township 18
3 range 10 east of the 4th principal meridian.

3 Service does not show that defendants were in possession of the land.

4 Plea of general issue filed May 1st 1858.

5 Leave to amend declaration.

15 Trial by the Court and verdict for plaintiff.

17 Bill of Exceptions shows that the following evidence was offered for plaintiff.

1st. Certificate of the Register of the Land Office at Springfield, showing that Oliver Lindley purchased the land in controversy of the United States on the 15th day of July 1835.

21 2d. Copy of deed from Oliver Lindley and Prisilla his wife, to John Lindley for the same land, February 26th 1858. The defendants objected to the reading of the copy. The Court overruled said objection and defendant then and there excepted.

18 Previous to reading the copy of said deed, plaintiff read his own affida-

vit, in which he stated that the original deed was lost as he was informed and believed; that said deed was not in his power to produce on trial; that said John Lindley was and had been for some years a resident of Knox-
19 ville in the State of Iowa That plaintiff applied by letter and was informed by him that said Deed was not in his possession, and had been accidentally destroyed by fire while said Lindley resided in Tazewell County in this State. That one other deed made by said John Lindley to one James Barbour, for the premises in controversy, dated June 13th 1846 was a material part of his testimony in the case; that said deed is not in his power to produce on this trial; that when this suit was commenced said James Barbour was insane, and confined in the asylum in Jacksonville; that affiant believes he is still confined there; that Martin P. Sweet of Freeport is a conservator of said Barbour; that affiant had applied to him for deeds aforesaid, and was informed by him that said deeds were never in his possession, and he had never seen them; said that plaintiff knew of no other person who would likely have possession of said deeds, and he had no knowledge where they are.

That one other deed made by James Barbour to Tracy Reeves, dated July 23d 1846, for the premises in controversy, was a material part of testimony in this case; that said Tracy Reeves lived in said Bureau County; that plaintiff called upon said Reeves for said deed; Reeves informed him at first that he had the said deed, but has since informed plaintiff that after diligent search in all places where said deed would be likely to be found, he could not find the same, and that said deed was lost; that plaintiff himself searched the desk of said Reeves, where he was informed said deed would be found, various packages of deeds and other papers; could not find said deed and verily believes the same to be lost.

27 Plaintiff offered in evidence a certificate copy of the record of a deed from John Lindly, dated June 13th 1846, for the premises in controversy.

31 To the reading of which the defendant objected. The Court overruled said objection, and the defendants then and there excepted.

32 The plaintiff offered in evidence a certified copy of the record of the deed from James Barbour to Tracy Reeves, dated July 3d 1846, for the premises in controversy.

35 To the reading of which the defendants objected, the Court overruled said objection, and the defendants then and there excepted.

Plaintiff then read in evidence a deed for the premises in controversy, from Tracy Reeve to himself dated July 3d 1855.

38 The defendants admitted the possession of the land in controversy.

Plaintiffs rested.

40 Defendants read in evidence the depositions of W. A. Turney, who testified that he was Clerk of the Supreme Court of the 2d Grand Division

that on the records of the old Supreme Court of this State, there is a judgment in favor of William Dougherty *vs.* Oliver Lindley and Irwin B. Doolittle. A sworn copy of which was attached to the depositions, which is as follows:

47 At a Supreme Court of the State of Illinois, begun and held at Vandalia on Monday, the 11th day of September, A. D. 1837, to wit: on Saturday the 16th day of December, the following judgment was entered of record.

47 Here follows a judgment in due form in favor of William Dougherty *vs.* Oliver Lindley and Irwin B. Doolittle, for the sum of $3,441.41, damages
49 and costs in that Court as well as in the Court below, which copy of judgment was also duly certified by the Clerk of said Court. Said witness
42 Turney further testified that there was no other judgment on the records of said Supreme Court, between the same parties.

43 There is a book in my office called an Execution Book, which it is supposed contains a record of all the executions issued upon judgments rendered by the old Supreme Court, and a minute of the returns made upon the execution. I find from said book that several executions were issued
52 upon the judgment aforesaid; a copy of said record is attached marked B, which shows execution issued on the foregoing judgment Dec. 26, 1837, with the following return. Received on the within execution $200, March 31, 1838 Returned no property found, of which the money can be made, March 26 1838.

WILLIAM TRANY,
Sheriff, S. C.

44 Said witness further testified that he had made diligent search for the execution, which appears by the execution book to have been issued on the 26th Dec. 1837, and cannot find the same in my office; I believe it to be lost. There appears on page 372 of Record, Book G, of the record of said Supreme Court, letters of administration of which Exhibit C hereto attached is a copy.

52 Exhibit C shows letters of administration upon the estate of William Dougherty, who died intestate March 15th 1840, to Thomas Lewis public administrator, granted by James Adam, Probate Justice of the Peace of Sangammon County, of the State of Illinois, Aug. 23, 1842.

44 Said witness further testified that Exhibit D attached to his deposition, is a copy of the order of said Court immediately preceeding, and Exhibit E is a copy of the entry immediately following the records of the letters of administration aforesaid; Exhibit D is as follows:—Ordered that all causes heard and not decided, being continued under advisement, and that all other causes, motions and matters not otherwise disposed of, be continued until the next term of this Court.

55 Exhibit E is as follows: Monday 12th Dec. 1842, at a Supreme Court begun and held at Springfield on Monday the 12th day of December, in the year of our Lord one thousand eight hundred and forty-four.

Present the Hon. William Wilson, Chief Justice; Thomas C. Brown, Sidney Breese, Walter B. Scates, Samuel H. Treat, Stephen A. Douglas, John D. Caton.

45 Said witness further testified as follows: there is an execution with returns on and attached to it on file in my office, of which Exhibit marked F hereto attached is a true copy.

56 Exhibit F is a copy of an execution issued by E Peck, clerk of the Supreme Court of the State of Illinois, on the 8th day of July 1843, in favor of Thomas Lewis, administrator of William Dougherty deceased, and against Oliver Bindly and Irwin B. Doolittle for the sum of $4113.56 damages, $14,18¾ costs in the Circuit Court of Tazewell County and $10,07 costs in said Supreme Court, on which is the following returns: Received this writ at 3 o'clock P. M., July 29th 1843.

57 There is paid on this execution by the purchase of property, the sum of $1575, as per sheriff's return attached to this writ; $20, is applied in part pay as sheriff's fee, the remainder $1555, is applied on the execution.

WILLIAM B. DOOLITTLE.

58 Attached to said execution, is a levy by Stephen Smith, upon certain real estate, including the premises in controversy, as the property of Oliver Lindley; the appointment of Richard C. Masters, James G. Forestal and Robert C. Masters, as apprisers, on the oath of the
60 apprisers and the valuation of property by them, the sw¼ of section 34 aforesaid, was apprised at $350. Said return further shows a proper advertisement of said land, and a sale of the same on the 26th day of August 1843, by said Sheriff. The said sw¼ of section 34, was sold to said William B. Doolittle for $300.

46 Said witness further testified that he had diligently examined the records in his office, and could find no other judgment in favor of William Dougherty or Thomas Lewis, administrator of William Dougherty, and against Oliver Smiley and Irwin B. Doolittle, than the one above stated; and that if there had been any such judgment, he thinks from his researches among the records that he should have found it.

76 Defendants read in evidence without objection, a deed from Stephen Smith, sheriff of Bureau Co. Illinois, to William B. Doolittle, for the
80 premises aforesaid, reciting the execution and sale aforesaid. Defendants read in evidence a certificate of William A. Turney, clerk of the Supreme Court of the State of Illinois, for the 2d Grand Division under the seal of said Court, in which he certifies that he had examined the records of said Court, and that it appears from record book E, which contains the orders, opinions and judgments of said Court, that said Court commenced a session at Vandalia, on Monday Dec. 16th 1837; the record does not show any order of adjournment at that term, but the last order entered at that term is of the date of Monday Dec. 25, 1837, on page 61 of said record, is a general order of continuance for all cases undisposed of; and the next order was on page 78 of said record book E, and is the order showing the commencement of June term 1838.

82 This was all the evidence.

The Court found the issue for plaintiff, and defendants excepted.

ERRORS ASSIGNED.

1 The Court erred in suppressing the answers to instructions 3, 4, 5, 6, 7, 9 and 11, of the deposition of William A. Turney.

2 The Court erred in admitting in evidence copy of record of a deed from Oliver Lindley to John Lindley.

3 And the copy of deed from James Barbour to Tracy Reeves.

4 And the copy of deed from John Lindley to James Baker.

5 In finding the issue for plaintiff.

6 In rendering the judgment.

719

Lenham & Ellis
vs
Hereford

Abstract

Filed Apl. 23. 1842
A Leland
clerk

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM, 1862, AT OTTAWA.

ROBERT DURHAM,
vs.
WILLIAM W. HEATON.

BRIEF OF APRELLEE BY LELAND & BLANCHARD.

The supposed answers are to interrogatories in a former deposition; not the one in the record.

The proper foundation was laid to introduce the recorded copies of deeds in plaintiff's claim of title. Session laws of 1861, p. 174, this act was passed after the decision in 24 Ill. 186.

The judgment was not a lien in Bureau Co., attaching prior to the conveyeyance by the judgment debtor, Oliver Lindley.

If a judgment of the Supreme Court was a lien throughout the State the lien of the plaintiff died when, by reason of the death of the jndgment creditor Dougherty, the judgment died.

Purple's Real Estate Stat. 328–9 & 338.
13 Ala. 167.
15 Ill. 337.

Though the judgment might have been revived by scair facias, in the name of the executor or administrator of Dougherty, it was not done, and the act of Feb. 19, 1841, (Purple's Real Estate Statutes, 338) was not retrospective in its operation, consequently the lost or abated lien, has not been revived by a reviver of the judgment because the second section of the act only applies to future

not past deaths. Indeed it may be said that the whole act applies to future not past judgment.

2 Scam., 499.
1 " 335.
7 Iredell, 59.
2 Hill, 239.

The letters of administration to Thomas Lewis were not recorded *in the court.* The clerk of a court of record has no control of the record nor authority except as directed by the court, as the act of the court to place aught upon the record.

The execution was not supported by the judgment, but was materially variant from it and void, and the judgment nor execution are the one recited in the sheriff's deed. On the question of variance, see—

13 Ia. 251.
8 Iredell, 221.
7 Conn. 6.
2 Conn. 862.
1 Dev. & Bat. 586.
Hanlin, 330.

It was not competent to prove by parol evidence aliunde that the execution was issued on the judgment. It should appear on inspection to be the same substantially. 2 Conn. 462.

119—180

Durham
vs
Heulon
Ques-y. Deft

Filed May 9. 1842
S Lecarlee
Clk