No. 14826

Supreme Court of Illinois

Hamilton

vs.

bolittle et al

71641

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 59

J. W. Middleton & Co., Stationers, 196 Lake St.

STATE OF ILLINOIS, SUPREME COURT,

Third Grand Division,

April Term, A. D. 1864.

JOHN J. HAMILTON, PLAINTIFF IN ERROR,

vs.

MARY M. & I. B. DOOLITTLE, DEFENDANTS IN ERROR, BY NASON, THEIR GUARDIAN.

ERROR TO TAZEWELL.

Abstract of Record.

Record, pages 2-4

This is ejectment for lots 11 and 12, in block 76, in Pekin. Declaration and rule filed September 2d, 1862.

General issue by defendant, and joinder by plaintiffs.

Trial and verdict for plaintiffs.

It is admitted that Peter Menard was the original owner of the lots in controversy, in fee.

The defendants in error then offered in evidence a deed from Peter Menard to Irwin B. Doolittle, dated June 22d, 1844, and recorded Sept. 22d, 1858, for the lots in controversy, acknowledged before a notary public, whose certificate had no notarial seal attached to it; which was objected to by defendant, for that and other reasons.

Plaintiffs then called Peter Menard, who was objected to by defendant, for interest. Objection overruled, and Menard testified that he executed the deed at the time it bears date, in good faith, to Doolittle.

Plaintiffs then proved the death of Doolittle, and that plaintiffs were his only heirs at law, and rested their case.

Defendant then offered in evidence a deed from Peter Menard to Samuel P. Bailey, dated Sept. 1st, 1858, and recorded on the 2d day of September, 1858, quit-claiming "all right, title, interest and claim to all lots and blocks in Pekin" &c., duly acknowledged in said county, Sept. 1st, 1858.

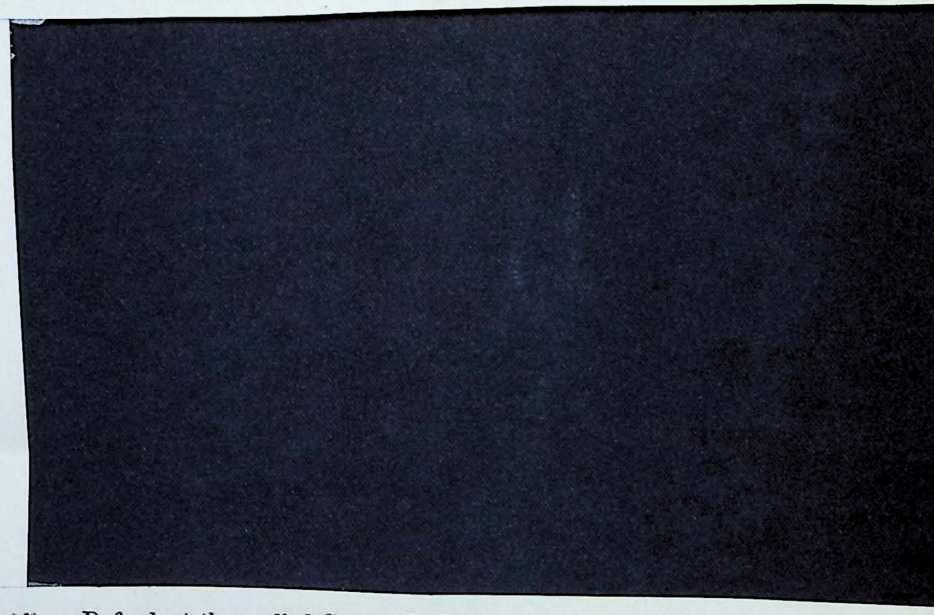
Then a warranteu deed from Samuel P. Bailey to James Milner for the lots in controversy, dated Oct. 23d, 1858, recorded same day.

And a deed from James Milner to B. S. Prettyman, dated February 1, 1859, and recorded February 7, 1859, for the same property.

And a deed from B. S. Prettyman to Benjamin Priddy, for the same property, dated May 17th, 1859, and recorded May 26, 1859.

And a deed from Benjamin Priddy to John J. Hamilton, for the same land, dated 6th November, 1860, and recorded Dec. 7th, 1860.

All of which deeds, offered by defendant, were objected to by plaintiffs, and objections overruled and deeds admitted in evidence. Witness Parker testified that when Hamilton purchased, he told him the lots were the property of Doolittle's heirs.



Defendant then called Samuel P. Bailey to testify, and plaintiffs objected, for the reason that he had made a warrantee deed to the premises, through which defendant claimed, and was liable on his covenants, &c.; and court sustained objection. Defendant then tendered and delivered to said Samuel P. Bailey a release of all liabilities on said covenants, and all the subsequent grantees of said lots in controversy; which release being shown to the court and counsel for plaintiffs, and delivered to said Bailey, the plaintiffs still objecting, the court then permitted Bailey to testify, who stated he was the grantee in the deed from Menard to S P. Bailey; that he bought the property of Menard in good faith; that Menard executed the deed without objection, on his agreeing to settle the Pearl debt and convey the lot to Pearl; that he gave his bond for $200 to do so, and had done it; that he owned the Pearl lot; that it was worth $50 or $75, and had a good house on it; that when he called on Menard to buy the property, Menard said he had sold it to Robert Briggs; but witness told him he had not sold him what he (witness) wanted to buy; that Briggs got the undivided interest in Pekin, and what witness wanted was what had been divided and set apart to Menard, as his own interest in Pekin; and that Menard consented to convey all that interest in Pekin to witness, and then executed the deed; that Menard did not, at that time or at any other time prior to the commencement of this suit, inform witness, nor did any one else, prior to his purchase of Menard and the date of said deed from Menard to witness, that he (Menard) had ever sold or conveyed the lots in controversy to Doolittle, or any one else. But on the contrary, witness knew I. B.

Doolittle, the ancestor of plaintiffs, for 15 years before his death; that in 1848, witness had a large claim and judgment to the amount of $1500 against him, (Doolittle,) and repeatedly called on him for payment, and carefully examined the records of the county and made diligent inquiry for property out of which to make his debt, but was not able to find any property from the record or learn of any by inquiring, and that the lots in controversy were always, until after he bought them of Menard and until after Hamilton purchased them, vacant and unoccupied, and were worth about $100 each; and that deeming and finding I. B. Doolittle totally insolvent, he compromised his claim and judgment against him, taking ten cents on the dollar on another man's note; and that at I. B. Doolittle's death his estate was totally insolvent so far as property appeared of record, and no schedules of said real estate were ever made or filed until after witness had purchased of Menard, and that witness had never had the slightest information or suspicion that he (Doolittle) had the slightest shadow or pretence of title thereto until long after he had made his purchase and recorded his deed from Menard.

Defendant then proved by Gridley, the clerk of the county court, that the estate of I. B. Doolittle was represented by the records in the county court by the administrator as totally insolvent; that no schedule of real estate was ever filed by him as belonging to said estate; to which evidence showing the fact of claim and judgment against Doolittle and the insolvency of Doolittle, plaintiffs by their counsel objected and excepted.

B. S. PRETTYMAN, *For Plaintiff in Error.*

59 Z 89

Abstracts

John J. Hamilton
vs.
Mary A. Doolittle et al.

Supreme Court=
April Term 1865=

Additional Argument
for Defts in Error=

Both parties in this case claim title to the lots in controversy from the same grantor, Peter Menard= The deed of Menard to the Ancestor of Plffs below, the Defts in Error, is dated June 22nd 1844, & recorded September 22nd 1858- that of Menard to Bailey is dated September 1st 1858, & recorded September 2nd 1858, And it is under this latter deed that Hamilton, the Plff in Error, deraigns his title= The sole objection taken to the introduction of the deed from Menard to Doolittle is deemed to be sufficiently met by the suggestions in printed brief of Defts in Error, and is in fact understood to be abandoned=

Did Bailey take anything by his deed of September 1st from Menard? The attention of the Court is specially asked to the form & wording of this deed, as set out in the Record, on pages 11 & 12; from which we think it will be apparent that whatever may have been Bailey's object, Menard did not intend to interfere with any conveyance he had previously made= Menard was one of the original proprietors of the ground on which the Town of Beloit was laid out. He had been the owner of lands & lots there to the value of many thousands- He had made numerous conveyances to different parties, among

others. this deed of June 22nd 1844. to Irwin B. Doolittle, itself embracing lots of the value of two thousand dollars, at the time Bailey got this deed, as will be seen by the testimony of Packer on page 24 of the record, inserted by Mr. Pettyman, atty for plff in Error. to supply an omission in the record. and so admitted by both parties - And now, in this State of case, for a nominal consideration of $200, but really much less, as is seen by the testimony of both Bailey & Menard, (pages 25, 26 & 27 of the record,) at the urgent solicitation of Bailey, Menard makes this deed of release & quit claim to Bailey in these terms - "all my right, title, interest & claim both in law "& Equity in & to the following described real estate "that is to say, all lots, Blocks, lands, and fraction- "al Blocks, or any interest therein, in the Town "of Pekin, county of Tazewell & State of Illinois, "that I have - also all my right and or any use "appertaining, together with the right of ways - "This deed is intended to convey all the interest the "said Peter Menard has in the Town of Pekin, "now city, in said County" language plainly relating to the then present time. And intended to cover & pass any supposed interest that might still remain in him, in any of this extensive property, and which he might rightly claim in good faith, convey, but, it is submitted, strongly repelling the

idea that he meant to be [illegible] have by this deed anything that he had before conveyed to others. This construction permits both deeds to stand "consistently with the innocence of all parties"; any other makes the deed to Bailey "a fraud upon ~~Doolittle~~ prior purchasers" Doolittle among them. The case indeed falls so directly within the terms of Brown vs. Jackson, 3 Wheat. 449, cited & approved, in M'Connell vs. Reed, & Butterfield vs. Smith, referred to in printed Brief, and from which we have just quoted, that we feel warranted in relying upon that case as completely settling the doctrine & its application, for which we contend here: There, a transfer of "all the right title & interest "which the said Lee holds" was construed to "operate only "upon lands, the right title & interest was then in Lee". So here, "all my right, title, interest & claim ... that "I have" and "this deed is intended to convey all the interest the said Peter Menard has" would, with equal propriety be limited to such lands & lots only as Menard had the right, title & interest in, at the time he made said Bailey deed. If this view be correct, it is unnecessary to discuss particularly the other point made & principally relied on by the counsel for the plaintiff in Error. viz: the incompetency of Menard, as a witness to prove that Bailey was not a purchaser without notice & in good faith; since, upon the assumption that this testimony was improperly admitted, it did not prejudice the case of

the dependant below, the deed to Bailey being in itself inoperative to carry the title to the lots in question, as against the plffs in that court= Still, upon this point the court is respectfully referred to the suggestions & views expressed in printed Brief of depts in Error as Meeting Satisfactorily the objection raised under this assignment of Error=

To what is said under 6th head in printed Brief, as indicating a want of good faith on the part of Bailey when he got his deed, may be added the apparent haste Exhibited by him in placing his deed on record. It will be seen too, (see Menard's Testimony, p.p. 24 & 25, 11 & 26. of Record) that he sought Menard at his own home, in Tremont, a number of miles distant from Pekin, the county seat, and would take no denial. would not even wait till Menard could go to Pekin, and see "that all was right", but prepaid for the deed then, and immediately hurried back to Pekin & put the deed on record, seemingly apprehensive that Menard might come to Pekin and finding that all was not right, the advantage anticipated from the deed might in some way be frustrated. Very luckily, as it was, word came by some means to Mr. Jackaberry, Administrator of Doolittle's estate, and guardian of his Minor children, the game that

Bailey was playing, whi[illegible]n on the alert and resulted in the reco[illegible]e Doolittle deed before any conveyance actually effected by Bailey of any of the lots covered by the Doolittle deed, the transfer & sale of which to a large extent it is not unlikely Bailey was even then endeavoring to negotiate, as is inferrible from his deed to Milner, his son in law, for a large part of them made & recorded only one month thereafter.

In reference to the doctrine of Estoppel relied on in Brief of plff in Error to show that Bailey was an incompetent witness, we deny that it does not apply to a case of this sort, where a party to a deed is called as a witness between third parties to prove a fact in issue between them - and refer the court to the cases of Worcester vs. Eaton, 11 Mass. Rep. 368; Soker vs. Haynes ibid. 498; Peterson vs. Willing 3. Dall. 506; Langdon vs. Felton 1 Rawle 141; Baring vs. Shippen 2 Binn. 154; McGarraman vs. Powers 1. S. & R. 102; Brownings vs. Downing 4 S. & R. 494; Nichols vs. Holgate 2. Aik. Rep. 138; Taylor vs. Beck 3. Rand. 316; Baring vs. Reeder, 1. Hen. & Munf. 154 - and to Comyn & Hill's notes to Phil. Ev. 1. 118 to 130 inclusive, where the point is discussed, and to the text on p. 130, where it is said, as is also held in some of the cases cited, that a vendor is competent to prove, when called as a witness, "that "he had no title in the lands pretended to be sold & conveyed".

The assignment of error relative to refusal to

grant a New trial, seems to have no foundation in the Record: In conclusion we remark that that the Bill of Exception seems to be deficient in not showing that it contains all the Evidence tho' we do not know but that, as Amended, it does substantially show all there was in the case:

Ottawa, April 7/65:

Cooper & Mogo
for Defts in Error:

Hamilton
&c. =
Scobittles =

2d Argument for
Defts in Error:

89 49

Hamilton
vs.
Doolittle=
addl Argument=

7.1865

State of Illinois }
Tazewell County } ss

Pleas in the Circuit Court of Tazewell County State of Illinois begun and held at the City of Pekin in said County before the Honorable James Narrill Judge of the 21st Judicial Circuit of the State of Illinois composed of the Counties of Mason, Tazewell & Woodford on Saturday the Sixth day of February in the February Term of said Court in the year of our Lord one thousand eight hundred and sixty four.

Mary M. Doolittle & Irvin B Doolittle by Jesse A Mason their Guardian

vs

John J Hamilton

State of Illinois }
Tazewell County } ss.

Be it remembered that heretofore, to wit on the second day of September in the September Term of said Court in the year of our Lord one thousand eight hundred and sixty two, came the said M M & I B Doolittle by their said Guardian Plaintiffs in this suit by W B Parker their

Attorneys and files in Open Court their Declaration against John J Hamilton the Defendant in this suit together with a Notice in writing to said Defendant and affidavit of service thereof upon said Defendant. Which said Declaration Notice and Affidavit are in the words and figures following, towit:

State of Illinois } ss. To the Jazewell Circuit Court
Jazewell County } September Term A.D 1862

Mary M Doolittle & Irwin B Doolittle
by Jesse A Mason their Guardian
vs
John J Hamilton
} Ejectment

Mary M Doolittle and Irwin B Doolittle by Jesse A Mason their Guardian the Plaintiffs in this cause complain of John J Hamilton the Defendant in this cause. For that whereas on the Twenty first day of August A.D 1862 the said Plaintiffs were possessed of the following described lands and tenements situated lying and being in the County of Jazewell and State of Illinois, towit, Lot 11 & 12 in Block 76 in the original Town now City of Pekin the title of which lands the said Plaintiffs claim in fee simple, being so possessed thereof the said Defendant afterwards towit on the Fourteenth day of August A.D 1862 entered into said premises and unlawfully held from the said Plaintiffs

the possession thereof & the damages of said Plaintiff Five Hundred Dollars and thereupon they bring suit &c

Wm B Parker & Jon Plaintiff's Attorneys

To John J Hamilton, Sir

You are hereby notified that on the first day of the Term of the Tazewell Circuit Court A.D 1861 to be held in the City of Pekin in said County the foregoing declaration in Ejectment will be filed and thereupon a rule will be entered requiring you to appear and plead within thirty days after the entry of such rule and if you neglect so to appear and plead judgment by default will be entered against you, and the Plaintiff will recover possession of said premises in said declaration described

Wm B Parker & Jon Plaintiff's Attorneys

State of Illinois } ss
Tazewell County }

William Gaither being duly sworn according to law on oath states that he duly served on John J Hamilton the Defendant within named by delivering to him a true and correct copy of the foregoing declaration with the Notice a copy of which is hereunto annexed on the day of August 1861 and further this deponent saith not

Wm Gaither

Subscribed and sworn to before me
this the 20th day of August A D 1862

Wm B Parker N P

Endorsed

Filed Sept 2. 1862.

Geo N Warlow Clk

And on the same day forthwith Tuesday the second day of September in the September Term of said Court in the last aforesaid the following proceedings were had in said Court in said entitled cause and entered of Record, viz.

Mary M W. Irwin B Bartlett
by Jno A Nash Guardian
vs
John J Hamilton

Ejectment

Now came the Plaintiff by their Attorneys and on their motion the Defendant is ruled to plead in twenty days.

And afterwards to wit on the Fifteenth day of September in the year A. D. 1862 came the said defendant John J Hamilton by B S Prettyman Esq his Attorney and filed in the Clerks Office of said Court his Plea in said cause which is in the words & figures following, to wit.

State of Illinois
County of Tazewell
} In the September Term of the Tazewell County Circuit Court A. D. 1862

Mary W Boobitt et al
by Guardian
v
John J Hamilton
} In Ejectment

And this day again came the Defendant by Prettyman his Attorney and says as he has heretofore said he says that he is not guilty of the said several trespass in said Count alleged in manner and form as they have above both alleged against him and of this he puts himself upon the Country

Prettyman for Deft.

Endorsed

Filed Sept 15. 1863

Geo N Vickers Clerk.

And afterwards to wit on Tuesday the Tenth day of February in the February Term of said Court in the year A.D. 1864 the following further proceedings were had in said Cause in said entitled Court and entered of Record, to wit

Mary W and Ann B Boobitt by
John A Hamm their Guardian
v
John J Hamilton
} Ejectment

On motion of Plaintiff's this Cause is ordered to be continued at their costs.

And afterwards to wit on Monday the fifteenth day of September in the September Term of said Court in the year A.D. 1866 the following further proceedings were had in said entitled cause and entered of Record to wit.

Mary M. Doolittle and Irvin S. Doolittle by J. A. Nason their Guardian } Ejectment

vs.

John J. Hazelton

Now came the parties by their Attorneys and by agreement leave is given to Defendant to file his Plea and the cause is continued

And afterwards to wit on Friday the fifth day of February in the February Term of said Court in the year A.D. 1866 the following further proceedings were had in said entitled cause and entered of Record to wit.

M. M. & I. S. Doolittle by J. A. Nason Guardian } Ejectment

vs.

John J. Hazelton

Now came the parties by their respective Attorneys and issue being joined they waive the intervention of a Jury and for trial put themselves upon the Court upon said proceeding with the trial until the hour of adjournment the further trial of this cause is postponed till tomorrow morning

And afterwards to wit on Saturday the Sixth day of February in the year last aforesaid to the February Term of said Court the following further proceedings were had in said Court in said entitled cause and ordered of Record to wit.

W W Ely & D B Corbitt by J A Mason Guardian } Ejectment.

vs

John J Hamilton

Now come again the parties and the Plaintiffs by their Attorney by leave of the Court withdraw their amended declaration heretofore filed herein. and the Court having heard the concluding evidence and the arguments of counsel and being fully advised in the premises finds the Defendant guilty of unlawfully withholding from the Plaintiffs the real estate in premises described in the Plaintiffs declaration, to wit "certain lands and tenements situate lying and being in the County of Jasper and State of Illinois, to wit Lots 11 and 12 in Block 78 in the original Town, Now City of Sidin" The Court also finds the estate established in the Plaintiffs to be an estate in fee simple and assesses their damages at the sum of one cent. It is therefore considered and adjudged by the Court that the Plaintiffs recover of said defendant premises of said described real estate and premises according to the force form and effect

of their said recovery, and that they have a writ of possession therefor, and that they also recover of said defendant the said sum of one cent their damages as aforesaid together with their costs in this behalf expended and that they have execution therefor.

Whereupon the Defendant enters his motion for a new trial under common law which motion is overruled by the Court.

The Exceptions made on the trial of the above cause and allowed by the Court are in the words and figures following, to wit.

Ann M. J. B. Doolittle
by next friend
John J. Hamilton

vs.

Dft Jury of Sangamon Co.
A. D. 1846 Oct
In Ejectment

Be it remembered that on the trial of the above cause it was admitted in open Court (a jury being waived by the parties) that Peter Menard was the original owner in fee of the Lot in controversy, and Plaintiff to support that part of the issue on her part to endorse the following Deed

Peter Menard wife } No 21607
to } Recorded September 22nd 1858
J B Doolittle }

This Indenture made and entered into this the Twenty second day of June 1844 by and between Peter Menard Jr and Caroline his wife of the first part and Irwin B Doolittle all of the County of Tazewell and State of Illinois Witnesseth that the said Peter Menard and Caroline his wife for and in consideration of the sum of Eight Hundred Dollars to them in hand paid the receipt they hereby acknowledge have granted bargained and sold released and conveyed and do by these presents grant bargain sell and convey unto the said Irwin B Doolittle his heirs and assigns forever all the Lot or parcels of land herein named being and lying in the Town of Pekin in the County and State above mentioned viz. Lots 12. 15. 16 in Block 15. Lots 13. 14 in Block 27 Lots 7. 8 in Block 52 Lots in Block 53 Lot 4 in Block in by Lots 9. 10. 11. 12 in Block 68 Lots 1. 2. in Block 72 Lots 9. 10. 11. 12 in Block 76 Lots 3. 4. 5. in fractional

To Have and to hold the above described premises with all the privileges and appurtenances thereunto belonging unto him the said Irwin B Doolittle his heirs and assigns forever and that the said Peter Menard Jr and Caroline his wife their heirs executors administrators and assigns will forever Warrant and defend the above

described property against all claims and pursuant
thereunto

In testimony whereof we Peter Menard and
Caroline his wife have hereunto set our hands and
seals the day and date first above written

P Menard (Seal)
Caroline Menard (Seal)

State of Illinois }ss
Iroquois County }

I Wm B Parker a Notary Public in
& for said County do hereby certify that Peter
Menard and Caroline Menard his wife whose signatures
appear to the foregoing deed of Conveyance and
who are personally known to me to be the identical
persons whose names are subscribed to said
deed as having executed the same this day
appeared before me and acknowledged that they
had signed sealed and delivered the same as their
free act and deed for the uses and purposes
therein expressed and Caroline Menard wife of said
Peter Menard Jr having by me been made ac-
quainted with the contents of said Deed and
being by me examined separate and apart from
her said husband acknowledged that she had
executed the same and relinquished her right of
dower in and to the premises conveyed voluntarily freely
and without compulsion of the said husband

In testimony whereof I have hereunto affixed
my private seal and subscribed my name this

12 day July A. D 18 44

Wm B Parker Notary Public

It is understood that the seal of the notary attached to this acknowledgment is his private not Notarial seal = I. K. Cooper for opts in Error

to which Defendant objected. Plaintiffs then called Peter Menard to prove the execution of the Deed from himself to Doolittle to which Defendant objected, but overruled objected, and Menard testified that he executed the deed at the time it bore date in good faith to Doolittle. Plaintiffs then again offered said deed in evidence and the Court admitted it against objection of Defendant

Plaintiffs then called Wm B Parker who testified that J R Doolittle was dead, and died about 1851 and the Plaintiffs were his only heirs, and that deft was in possession of the lots in controversy at the commencement of this suit. and then Plaintiffs rested their case.

Defendant then offered in evidence the following deed from Peter Menard to S P Bailey.

Peter Menard & wife
to
Samuel P Bailey

No 21540
Recorded September 2d 1838

Know all men by these presents that we Peter Menard and Emily his wife for and in consideration of the sum of Two Hundred dollars to us in hand paid by Samuel P Bailey the receipt of which is hereby acknowledged

Thos release and quit Claim. and by these
presents doth release and quit Claim unto the
said Samuel P Bailey his heirs and assigns
all my right title interest and Claim both in
law and equity in and to the following discribed
real estate. that is to say all lots Block land
and fractional Blocks or any interest therein
in the Town of Pekin County of Tazewell and
State of Illinois that Town. also all my right
and or any min appertaining together with the
right of Ways this deed is intended to convey all
the interest that the said Peter Menard has in the
Town of Pekin now City. in said County Tazewell
and bounded the said discribed premises and
appurtenances unto the said Samuel P Bailey
his heirs and assigns forever

In testimony whereof the said parties hereunto
subscribed their names and affixed their seals
this the first day of September 1838

Peter Menard (Seal)
Emily Menard (Seal)

State of Illinois }
Tazewell County }

I Henry R Broome a Justice
of the Peace in for said County do certify that
this the 11 first day of September 1838 personally
appeared before me the undersigned Peter Menard
and Emily his wife who are personally known
to me to be real persons whose names hereunto

subscribed as having executed the same and acknowledged that they had executed the same for the purposes therein expressed. And the said Emily Menard the wife of the said Peter Menard having been made acquainted with the contents aforesaid and having been examined separate and apart from her said husband acknowledged that she had executed the same freely and voluntarily and without fear or threats of the said husband and that she does not wish to retract and that she signed said deed for the purposes of releasing all the interest she had in said conveyed premises

Given under my hand and seal this 1st day of September 1838

Henry R Bronnell J P [seal]

To which Plaintiffs objected but the Court overruled the objection and Plaintiffs excepted

Defendant then read in evidence a deed from J P Bailey to James Milner as follows

James P Bailey wife } No 21690
To } Recorded Octobr 23d 1838
James Milner

This Indenture made this the Twenty third day of October in the year of our Lord one thousand eight hundred and fifty eight between James P Bailey and

Mary Bailey his wife of the first part and James Wilcox of the second part Witnesseth that the said party of the first part for and in consideration of the sum of Fifteen Hundred dollars paid by the said part of the second part the receipt of which is hereby acknowledged has granted bargained sold conveyed and confirmed and by these presents do grant bargain, sell convey and confirm unto the said part of the second part heirs and assigns certain tracts or parcels of land situated in the City of Dallas County of Dallas and State of Texas and described as follows viz;

Lots one and two in Block seventy two Lots nine, ten, eleven, and twelve in Block seventy six Lots twelve, fifteen and eighteen in Block fifteen Lots thirteen and fourteen in Block twenty seven Lots seven and eight in Block fifty two lot four in Block fifty three lots five six seven and eight in Block fifty one

Together with all and singular the hereditaments rights privileges and appurtenances thereunto belonging or in any wise appertaining To Have and to Hold the said premises as above described with the appurtenances to the said part of the second part his heirs and assigns forever, and the said part of the first part for himself and his heirs executors and administrators

doth hereby covenant to and with the said
party of the second part his heirs executors
administrators and assigns that he well
seized of the premises above conveyed as of
a good and indefeasible estate in fee simple
and hath good right power and lawful
same in manner and form aforesaid
that they and free from all incumbrances
and that the above bargained premises
in the quiet and peaceable possession of the
said party of the second part his heirs or
assigns against the claims of all
persons whomsoever will warrant and
forever defend

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

James A Bailey (Seal)
Mary A Bailey (Seal)

State of Illinois } ss.
Jasper County }

I Merrill Morris Clerk of
the Circuit Court for said County do certify that on
this day personally appeared before me James
A Bailey and Mary Bailey his wife whose names
appear subscribed to the foregoing deed of conveyance
acknowledged executed the same aforesaid personally
known to me to be the real persons who
in whose names the acknowledgment is performed

she made and acknowledged the execution thereof as their voluntary act and deed for the uses and purposes therein expressed and Mary Bailey wife of the said Samuel P Bailey having been by me made acquainted with the contents of said deed and by me examined separately and apart from her said husband whether she had executed the same and relinquished her dower to the lands and tenements therein mentioned, acknowledged that she had done so voluntarily and freely without compulsion of her said husband and does not wish to retract

Seal

Given under my hand and seal of Office at Pekin this Twenty third day of October A.D. 1838

Herrill C Young Clerk

Defendants then read in evidence a deed from J Milner to B S Prettyman as follows

James Milner wife
to
Benjamin S Prettyman

No 21947
Recorded January 7. 1839

This Indenture made this the first day of February in the year of our Lord one thousand eight hundred and fifty nine between James Milner and Sarah D Milner his wife of the first part and Benjamin S Prettyman of the second part Witnesseth that the said party of the first part for and in consideration

of the sum of One Thousand Dollars lawful money of the United States of America to him in hand paid by the said party of the second part at or before the ensealing and delivery of these presents the receipt whereof is hereby acknowledged hath remised released and forever quit claimed unto the said party of the second part, and to his heirs and assigns forever all of the following described real estate lying and being and situate in the City of Pekin County of Tazewell and State of Illinois described as follows, to wit.

Lots five, six, seven and eight in Block fifty and Lots one and two in Block seventy two Lots nine ten and eleven and twelve in Block seventy six and Lot eight in Block fifty two / Lots 5.6.7 & 8 Block 51 and 1 & 2 Block 72 Lots 9.10.11 & 12 Block 76 Lot 8 Block 52) as by Plat of the Town of Pekin will more fully appear

To Have and to Hold the said premises as above described with the privileges and appurtenances thereunto belonging unto the party of the second part his heirs and assigns forever.

In Witness Whereof the said party of the first part hath hereunto set their hands and seals the day and year first above written.

James Milner (Seal)
Sarah E Milner (Seal)

State of Illinois }
Tazewell County }

I, James O Bailey a Justice of the Peace in and for said County do certify that on this

personally appeared before me James Milner whose name is signed subscribed to the foregoing deed of conveyance as having executed the same who are personally known to me to be the real person who and in whose name the acknowledgment is proposed to be made and acknowledged the execution thereof as their voluntary act and deed for the uses and purposes therein expressed. And Sarah D Milner wife of the said James Milner having been by me made acquainted with the contents of said deed and by me examined separate and apart from her said husband whether she had executed the same and relinquished her dower to the lands and tenements therein mentioned acknowledged that she has done so voluntarily and freely and without compulsion of the said husband and does not wish to retract

Given under my hand and seal at Perkin this first day of February A. D 1839

Jamed P Bridg J. P. [seal]

Defendants Deed from B S Prettyman to Benjamin Bridg as follows.

B S Prettyman to Benjamin Bridg | No 22559 Recorded 26th May 1839

This Indenture made and entered into this Seventeenth day of May in the year of our

Lord one thousand eight hundred and fifty nine between Benjamin S Pettyman and Sarah A Pettyman his wife of the first part and Benjamin Priddy of the second part Witnesseth that the said party of the first part for and in consideration of the sum of One Hundred and fifty dollars paid by the said party of the second part the receipt of which is hereby acknowledged has granted bargained sold conveyed and confirmed and do by these presents grant, bargain and sell unto the said party of the second part his heirs and assigns all of those certain tract or parcel of land situated in the City of Pekin in the County of Tazewell and State of Illinois and known and designated as Lot eight (8) in Block fifty two (52) Lot number (1) in Block seventy two (72) and Lot eleven (11) in Block seventy six (76) as the same appears of record in the recorders Office of said County of Pekin now on Record in said County 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 part his heirs and assigns forever and the said party of the first part for themselves and their heirs executors and administrators do hereby covenant to and with the said party of the second part

his heirs and assigns that they are well seized of the premises above conveyed as of a good and indefeasible estate in fee simple and have good right to convey the same in manner and form as aforesaid. that the said premises are free from all encumbrances, and that the above bargained premises in the quiet and peaceable possession of the said party of the second part his heirs and assigns against the claims of all persons whomsoever they will forever warrant and defend

In testimony whereof the said Benjamin F Prettyman and Sarah A Prettyman have hereunto set their hands and seals the day and year first above written

B F Prettyman (Seal)

Sarah A Prettyman (Seal)

State of Illinois }ss.
Sangamon County }

I Sigmund P Bailey a Justice of the Peace in and for said County do certify that on this day appeared before me Benjamin F Prettyman and Sarah A Prettyman whose names appear signed to the foregoing deed of conveyance and who is personally known to me to be the identical persons whose names are subscribed thereto as having executed the same and acknowledged that they had executed the same as their voluntary act and

deed for the uses and purposes therein expressed, and said Sarah A Pridgman wife of the said Benjamin Pridgman having been by me made acquainted with the contents of said deed and being by me examined separate and apart from her husband acknowledges that she had executed the same and relinquished her dower to the premises conveyed voluntarily freely and without any compulsion of her said husband and that she has no desire to retract the same

Given under my hand and seal at Pekin this 19 day of May eighteen hundred and fifty nine

James P Baily J P [seal]

Defendants then offered and read a deed from Benjamin Pridgy wife to John J Hamilton as follows.

Benjamin Pridgy wife } No 23759
to } Recorded Dec 7. 1860
John J Hamilton }

This Indenture made this twenty first day of November in the year of our Lord one thousand eight hundred and sixty between Benjamin Pridgy and Harriet his wife of the first part and John J Hamilton of the second part Witnesseth that the said party of the first part for and in consideration of the sum

of Three Hundred dollars paid by the said party of the second part the receipt of which is hereby acknowledged have granted bargained sold and confirmed and by these presents do grant bargain sell convey and confirm unto the said party of the second part his heirs and assigns forever certain tract or parcel of land situated in Pekin in the County of Tazewell and State of Illinois and described as follows viz. Lot eleven (11) and twelve (12) in Block seventy six (76) in the original Town now City of Pekin together with all and singular the hereditaments rights privileges and appurtenances thereto belonging or in anywise appertaining. To Have and to Hold the said premises as above described with appurtenances to the said party of the second part his heirs and assigns forever and the said parties of the first part for themselves and their heirs executors and administrators do hereby covenant to and with the said party of the second part his heirs executors administrators and assigns that they are well seized of the premises above conveyed as of a good and indefeasible estate in fee simple and have good right power and authority to sell and convey the same in manner aforesaid and that they are free from all incumbrances and that the above bargained premises in the quiet and peaceable possession of the said parties of the second part their heirs

& assigns against the claims of any persons whomsoever

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

Benj Priddy (Seal)
Harriet A Priddy (Seal)

State of Illinois }ss
Jasper County }

I Robert Gibson a Notary Public in and for said County do certify that on this day personally appeared before me Benjamin Priddy and Sarah A Priddy his wife whose names are subscribed to the foregoing deed of conveyance and as having executed the same whom personally known to me to be the same persons who are in their proper person acknowledged that they signed and acknowledged the execution thereof as their voluntary act for the uses and purposes therein expressed, and said Sarah A Priddy wife of the said Benjamin Priddy having been by me made acquainted with the contents of said deed and by me examined separate and apart from her said husband whether she had executed the same and relinquished her dower to the lands and tenements therein mentioned acknowledged that she had done so voluntarily and freely and without compulsion of her said husband

and does not wish to retract.

Given under my hand and seal of Office at Athens this ninth day of December A.D. 1860

Seal

Robert Gibson Notary Public

All of which said deeds was admitted in evidence subject to objection and exception taken at the time by the counsel for Plaintiff, and as to said deed from Phillipman to Hamilton. Defendant called Wm B Parker who proved its execution, and said Witness said that he Warned said Maddox at the time not to buy, that the Doolittle heirs owned the soil and that he would lose nothing by said deed

at the instance of Plaff that the whole of the lots in the deed from Mead to Doolittle were worth when Maynard conveyed to Baily at cost $2000 dollars and

Defendants here rested.

Plaintiff then called Peter Menard again and proposed to prove by him that the Deed to Baily was obtained without consideration and in bad faith to which Defendants objected because Menard was the grantor to Plaintiffs to by warranty and general covenants and was therefore liable on his covenants to Plaintiff and interested in the event of the suit. but the Court overruled the objection and permitted Menard to testify.

Menard testifying

I knew James O Baily. at or about the date of the deed from me to said Baily and it was

he ~~said~~ Baily came to my home at Tremont and wanted me to give him a quit claim deed of my interest in the Town of Pekin. I told him I had no interest there to deed. that I did not own an inch of land in Pekin. that the last remaining interest I had there I had deeded to my brother in Law Duncan Briggs. that when I made that deed to Briggs I did not think I had anything left in Pekin which I had not been sold but deeded away. but Duncan told me Pekin had some interest left. and I said to him if you think so make out a deed for it and I will sign and make you a present of it. Briggs said no nothing for the deed I made him. Baily then said the deed to Briggs dont cover anything I want. that deed only relates to your interest in the undivided lot. I want a release of your interest in the divided lot. I replied that I did not know any interest in them lots to release but Baily pressed me very much to make him the deed and I at last told him if he was willing to give something for nothing, and would make a deed to Rand for a lot in Hankey which I had sold Rand would like Baily made some claim. and would wait till I could go to Pekin and look into matter that I would give him the deed he asked. if I found that we was right

Baily said that he must make the deed to Peard but was unwilling to wait for and to pay to Perkins said he wanted the deed from and them. And at length agreed and made him the deed and Baily gave me a Bond to make deed to Peard for the Newby lot. Him Newby lot might perhaps sell with good title for $8 to $10. I would not give that for it. and it would not at any time have been worth $50. I did not value my interest in Perkins at any thing. did not believe I had any interest when I saw when I made Baily the deed.

Defendants then called James P Baily who being sworn testified Plaintiff - objected because he had given a Warrants deed to the land in question and was liable on the covenants and therefore interested the Court sustained the objection

Defendants then tendered and delivered to said Baily a release of all liability on said covenants from the Grantee of said Baily and all of the subsequent grantees of said Lot in controversy which release being shown to the Court and examined and delivered to said Baily the counsel for Plaintiffs then objection the Court then permitted him to testify and Plaintiffs excepted the witness then testified

Stated that he was the grantee named in the deed from Thomas R & P Baily that he

he bought the property of Menard a good faith
that Menard executed the deed without objection
on his agreeing to credit the Bond debt and convey
the lot to Reed, that he gave his Bond for $200
to dozo and had done it, that he owned the Real
Est. that it was actually worth from $350 to $375
dollars and was bad a good bargain in it, that when
he called on Menard to buy the property Menard said
he had sold it to Robt Briggs, but Wilcox told him
he had not and knew what he wanted to buy
that what was sold to Briggs was an undivided
interest, and that Wilcox wanted was what had
been divided and set apart to Menard as his own
interest in Pekin, and that Menard then consented
to convey all of that interest in Pekin which was
not subdivided into Lots, and immediately
executed the deed. that Menard did not at that
time or at any other time prior to the commence-
ment of this suit inform Wilcox, or did any one
prior to his purchase of Menard at the date of the
deed from Menard to Wilcox, that he Menard had
ever sold or conveyed the lots in contravy to J B
Doolittle or any body else, and that on the contrary
he Wilcox knew from J B Doolittle the
of Plaintiff for 15 years before his death that Wilcox
had in 1848 a large claim and judgment to the
amount of about 1500 dollars against him, and
repeatedly called on him for payment and carefully
examined the Records of the County and made diligent

ingring for property out of which he took his debt but was made before any property from the Record, or learn of any by inquiry. that the plaintiff in continuing was always until after he bought them of Mercer and until after Hamilton purchased them vacant and unoccupied, and the law was with about $100 dollars each that during time finding J B Doolittle totally insolvent he commenced his claim and judgment against him taking 10 cents on the dollar in another mans note. and that if he said Doolittle death his estate was totally insolvent so far as property appeared of Record. and no schedule of said real estate was ever made or filed by the Executor of said Doolittle until after Mercer had purchased of Mercer, and Mercer had never any information and suspicion that he Doolittle had the slightest shadow of title thereto until long after he had made his purchase and Recorded his deed for Mercer Defendant then called on Sheriff with Records of the County Court who showed that the estate of J B Doolittle was represented by the Administrator as insolvent, and that no schedule of Real Estate was ever filed by the Administrator as belonging to said Estate. To all which evidence touching the claim & judgment of Peters & the insolvency of Doolittle Stiff by their counsel at the time the same was offered and given objected and excepted

(Signed) James Harriott Esq

State of Illinois }
Jefferson County } ss

I George H Hogben Clerk of the Circuit Court within and for said County do hereby certify the foregoing to be a correct and complete transcript from the Record of said Court of all the proceedings had in said Court in a certain cause wherein W H & I B Doolittle by their Guardian ad litem Plaintiffs and John J Hamilton was Defendant

In testimony whereof I have hereunto set my hand and seal of said Court this 20th day of April A.D. 1864

Geo H Hogben Clerk
By W H Clinton Deputy

State of Illinois } 3d Grand Division
Supreme Court } April Term A.D. 1864

John J Hamilton Plff in Error
vs
Harvey M Doolittle &
Irwin B Doolittle } Defts in Error
Nixon Gradison

And now comes the said John J Hamilton Plaintiff in Error and says in the Record and proceedings aforesaid there is manifest Error in this that the Circuit Court Erred in Decreeing in favor testimony for Plaintiffs bill

2. The Court erred in overruling the defendants motion for New trial in the Cause.

3. The Court erred in rendering Judgment for Plaintiff in the Cause below upon the Errors Record and Plaintiff in Error for their said & their manifest Errors in said Record and Proceedings pray that the Cause may be reversed

B. Sharpe
Atty for Pltf

And now come the defendants in Error by Cooper & Hogg their attorneys and say that in said record proceedings & judgment there is no error for which the same should be reversed

Cooper & Hogg
for Defts in Error

Wm W. Doolittle
Clerk by Sandia
& John J. Hamilton

Complete Transcript

Filed April 29 1864
Lakeland
Clerk

2858
Warren County
Circuit Court 49