

12090

No. _____

Supreme Court of Illinois

Frink & Walker.

vs.

Darst.

71641  7

Proceedings at a Circuit Court begun and held at the Court House in the City of Peoria in and for the County of Peoria in the State of Illinois, on the second Monday of May in the year of our Lord one thousand eight hundred and fifty two, it being the tenth day of said month.

Present the Honorable William Kellogg, Judge of the Tenth Judicial Circuit in said State. to wit:

Thursday May 20th A. D. 1852.

John Thirk,

Martin O. Walker,

vs
Ejectment.

Jacob Dant.

This day came the Plaintiffs by H. C. A. B. Meriman their Attorneys and filed their declaration in this cause, whereupon came the defendant by John V. Lindsay his Attorney and entered his appearance and plead to this action. By agreement of parties their right to trial by Jury is waived and all matters both of law and fact arising in this cause are submitted to the court for trial, and the court having heard the evidence do find the defendant not guilty in manner and form as the said Thirk and Walker have complained against him; Therefore it is considered that that the said Jacob Dant go hence without day and have and recover of the said John Thirk and Martin O. Walker his costs and charges by him about his defense in this behalf expended and that Execution issue therefor — The Plaintiffs entered a motion for a new trial in this cause and the court being fully advised in the premises over-ruled said motion.

The said Declaration and Plea are in the words & figures following.

Declaration:

In the Circuit Court of Peoria County
May Term 1852.

John Trint &
Martin O. Walker,

vs In Ejectment.
Jacob Darst.

John Trint & Martin O. Walker
Plaintiffs in this suit complain of Jacob Darst defendant
in this suit for that whereas on the first day of May A.D.
1852 plaintiffs were possessed of the following described
Real Estate: Situate in the County of Peoria and State of
Illinois, to wit: The South East fractional quarter of fraction-
al Section 11: 11ine in Township 11: Eight North of Range
Eight East of the 1st principal meridian. The title to which
Plaintiffs claim in fee and the said Plaintiffs being so
possessed thereof, the said Defendant on the second day of
May A.D. 1852 entered into said premises and unlaw-
fully withholds from the Plaintiffs the possession there-
of, to the damage of the said Plaintiff one hundred
dollars and therefore they bring suit, &c.:

J. O. & A. S. Merriman
Plffs Attys.

To the within named defendant

You are notified that on the first day of
the next term of the Circuit Court to be holden in and for
the County of Peoria or as soon thereafter as counsel
can be heard, the foregoing declaration in ejectment will
be filed and hereupon a rule will be entered requiring
you to appear and plead thereto within twenty days af-
ter the entry of such rule; and that if you neglect so to
appear and plead, judgment by default will be entered
against you and the Plaintiff will recover possession of the
premises described in said declaration.

Dated May 8, 1852. J. O. & A. S. Merriman
Plffs Attys.

Plea =

John Throck,
Martin O. Walker, Peoria Circuit Court,
vs
May Term, 1852.
Jacob Darst.

And said defendant by John T. Lindsay his attorney, comes and defends the wrong and injury when he says that he is not guilty of the trespass above herof laid to his charge and of this he puts himself upon the country &c.

John T. Lindsay
Atty for defendant.

The Plaintiffs filed their Bill of Exceptions in said cause on the 12th day of June A.D. 1852 in the words & figures following, to wit:

Bill of Exceptions John Throck

Martin O. Walker Peoria Circuit
vs
May Term A.D. 1852.
Jacob Darst

Be it Remembered that on this day this cause came on to be heard by agreement of the parties and the plaintiffs to maintain the issues on his part offered in evidence —

1st A Patent from the Government of the United States to John L. Bogardus, dated January 5, 1837 conveying the V. C. gr of Section nine in Township N^o eight N. R. E. East, which said Patent is in the words and figures following, to wit:

U. S. Patent: Certificate N^o 13258 — The United States of America, do all to whom these presents shall come greeting, whereas John L. Bogardus of New York County New York has deposited in the General Land Office of the United States a certifi-

cate of the Register of the Land office at Quincy whereby it appears that full payment has been made by the said John L. Bogardus according to the provisions of the Act of Congress of the 24th of April 1820, entitled "An Act making further provision for the sale of the public lands" for the South East fractional quarter of Section Nine in Township Eight North of range Eight East in the district of lands subject to sale at Quincy, Illinois, containing Twenty Three Acres and ninety three hundredths of an acre, according to the official plat of the survey of the said lands, returned to the General Land Office by the Surveyor General which said tract has been purchased by the said John L. Bogardus.

Now Know Ye, that the United States of America in consideration of the premises and in conformity with the several acts of Congress, in such case made and provided, have given and granted and by these presents, do give and grant unto the said John L. Bogardus and to his heirs, the said tract above described. To Have and To Hold the same, together with all the rights, privileges, immunities and appurtenances of whatsoever nature thereunto belonging unto the said John L. Bogardus and to his heirs and assigns forever, subject however to the rights of any and all persons claiming under the Act of Congress of 3rd March 1823, entitled "An act to confirm certain claims to lots in the village of Peoria in the State of Illinois. In Testimony Whereof, J. Martin Van Buren, President of the United States of America have caused these letters to be made Patent and the seal of the General Land Office to be hereunto affixed. Given under my hand at the City of Washington the fifth day of January in the year of our Lord one thousand eight hundred and thirty eight and of the Independence

of the United States the sixty second.

Martin Van Buren

{seal}

By A Van Buren Secy

By the President

H. M. Garland, Recorder of the
General Land Office

Recorded Vol 1 page 149. Cont

2nd It was admitted that John L. Bogardus became
deceased in the year 1839.

3rd The Plaintiffs then offered and read in evidence
the last will and testament of said Bogardus in the
words and figures following, to wit:

Probate of will:

At a special Term of the Probate Court within and for the
County of Teoria and State of Illinois at the office of the
Probate Justice of the Peace within and for said County held on
the seventh day of July Anno Domini One Thousand
eight hundred and thirty eight the following proceedings were
had in an application of Marion Bogardus for letters tes-
tamentary to be granted to her on the last will and testament
of John L. Bogardus, deceased, to wit:

Probate Court, Special Term - Saturday July 7 1838.

Application for Letters Testamentary on the last will and
Testament of John L. Bogardus decd. - The court
after the necessary proof having been made of the valid-
ity of said Will, issued letters testamentary to Marion Bogar-
dus, wife of the deceased, in the following form viz:

Letters Testamentary.

State of Illinois, Teoria County, ss: The People of the State
of Illinois, To all to whom these presents shall come, Greeting:
Know Ye that whereas John L. Bogardus late of the County of
Teoria and State of Illinois, died, on or about the second
day of June A.D. 1838, as it is said, after having duly
made and published his last will and testament a copy

whereof is herewith annexed, leaving at the time of his death, property in this state, which may be lost, destroyed or diminished in value, if speedy care be not taken of the same and inasmuch as it appears that Marion Bogardus has been appointed executrix in and by the said last will and testament to execute the same and to the end, that the said property may be preserved for those who shall appear to have a legal right or interest therein and that said will may be executed according to the request of the said testator, we do hereby authorize her, the said Marion Bogardus as such executrix, to collect and secure all and singular the goods and chattels, rights and credits, which were of the said John L. Bogardus at the time of his decease, in whose-soever hands or possession the same may be found in this state and well and truly to perform and fulfill all such duties as may be enjoined upon him by the said will, so far as there shall be property and the law charge her, and, in general, to do and perform all other acts which now are, or hereafter may be required of her by law. Witness Geo. B. Parker Probate Justice of the Peace in and for the said County of Teoria at his office in Teoria this 7th day of July A.D. 1838. Geo. B. Parker P.S.P.C., State of Illinois

Teoria Co V. Wm H. Hessenden Probate Justice of the Peace of said County, do hereby certify the above is a true copy of the letters testamentary granted to Marion Bogardus on Estate of John L. Bogardus as recorded in the Probate Office of Teoria Co. Witness my hand & seal at Teoria this 12th day of June A.D. 1847.

Wm H. Hessenden P.S.P. 

Will.

Will =

V. John L. Bogardus late of the City and State of New York, now of Teoria, in the County of Teoria and State of Illinois =

do make and publish this my last will and testament = hereby
revoking and making void all former wills by me at any
time heretofore made = As to my Estate both real and person-
al = I dispose of the same as follows to wit: =

First. I give and bequeath to my beloved wife Marion
Bogardus all my personal estate of which I shall be the
owner of at the time of my decease, intending hereby to in-
clude all my moneys, debts due to me, choses in action, and all
my goods and chattels of what nature soever or wheresoever the
same may be. =

Secondly. I give and devise to my said wife all my Real
Estate, wheresoever the same may be situated and to which I
have any claim or title whatsoever either in law or equity =
To Have and To Hold the same; till my daughter Peoria Anna
Elizabeth Bogardus shall arrive at the age of twenty one years
and then to be divided and disposed of as hereinafter directed
and subject to such right to sell and dispose of the same as
hereinafter provided and I hereby authorize and empower
my said wife as Executrix of this my last will and testa-
ment to sell any of the real Estate of which I shall die seized
or to which I have any equitable claim or title, and may
use, expend and appropriate the proceeds thereof as fol-
lows - to wit = first to pay all my just debts and funeral
charges = Second to support and maintain herself and
family and children and Grand Children, and to edu-
cate such as are or shall be under the age of twenty one
years - in a manner becoming their state and condition =
thirdly, the remainder arising under such sales shall be put
out on interest, or otherwise safely invested to be finally
disposed of as is hereinafter provided =

Thirdly = I give and bequeath to my said wife all the
rents, issues and proffits of my real Estate to be her own and at
her absolute control and disposal untill my said daughter

shall arrive at the age of twenty one years =

Fourthly I hereby authorise and empower my said wife as my Executrix to permit my son William M. Clement Rogers to occupy for family purposes, any one quarter section of my land free from rent or on such terms as she shall deem best for his interest; or she may at any time before my said daughter shall arrive at the age of twenty one years - convey to my said son in fee simple, without any payment or compensation therefor one quarter section of my land and on the final settlement and distribution of my estate, according to the terms and provision of this instrument, the same shall not be taken into the account, as part of my estate but each of the distributees shall receive his or her full third part thereof and no more of what remains over and above said quarter section = provided however, that my said wife shall not make such gratuitous conveyance of said quarter section to my said son - till the expiration of three years from and after my decease, nor unless he shall have erected, or cause to be erected on said quarter section a comfortable dwelling house, enclosed the whole quarter section with a good and substantial fence and put at least twenty acres thereof under cultivation =

Fifthly When my said daughter shall have arrived at the age of twenty one years - the whole of the real estate aforesaid, which shall remain unsold (except the quarter section which my said wife is authorised to convey if the same shall be conveyed to my said son) shall be equally divided between my said wife, and each of my children, so that each shall receive one third part thereof, quantity and quality considered, to have and to hold to them their heirs and assigns forever = such division to be made by three judicious persons to be appointed by the Judge for the time being, acting as the Chancellor of the Circuit Court of Teona County or such Judge as shall be the successor of the Circuit Court, if that shall

not then exist by law = Provided nothing herein contained shall be so construed as to prevent an amicable division and partition of said Real Estate among the said devisees by and between themselves, without the intervention of third persons, if they can agree to do the same amicably =

If my said daughter shall die before she shall arrive at the age of twenty one years - leaving no lawful issue of her body, then my said real estate remaining unsold shall be equally divided between my said wife and my said son, share and share alike in the manner herein before provided for the division between the three devisees = said division to be made at the such time as my said daughter would have arrived at the age of twenty one years - if she had lived = in case my said son shall die before the time my said daughter would arrive at the age of twenty one years, leaving no lawful issue then said real estate remaining unsold, shall be divided at the time she shall arrive at the age of twenty one years, equally between my said said and daughter share and share alike, the division to be made in the manner herein before provided = for a division among the three devisees = In case of the death of both of my said children without lawful issue then the whole of my said real estate shall go to my said wife, her heirs and assigns in fee simple, to be at her sole disposal = But in case of the death of either or both of my said children, before my said daughter would arrive at the age of twenty one years, lawfully begotten, then such child or children, shall take the share, that such child or children's parent would have taken if living = and in case my said wife shall die before my said daughter would arrive at the age of twenty one years - then any Trustee she may by deed appoint or by her last will and Testament shall hold such real estate, take the rents and profits thereof for the use of my children or the survivor of them, or his or her children, which after paying

the services of such Trustee, shall be invested for their benefit to be paid to them or the survivor of them, or his or her child or children lawfully begotten, at the expiration of the time my said daughter would arrive at the age of twenty one years and in case my said wife shall die without appointing any trustee by deed or will, as aforesaid, then the Judge for the time being acting as Chancellor, in and for the County of Teona shall have power to appoint such judicious person as he shall deem proper to act as such Trustee and such Trustee shall give bond with sufficient surety or securities to the Judge of Probate of said County, or in such manner as the acting Chancellor shall direct for the faithful discharge of his duties as Trustee and the said Trustee when thus appointed and having given bond as herein directed, shall have the same power to sell real estate, that is hereby given to my said wife and to execute and deliver all necessary and proper deeds for the conveyance of the same, but the proceeds of said sale after paying the expenses thereof and the services of said Trustee shall be invested and secured for the future use and benefit of my said children, the survivor of them or his or her child or children as herein before provided = Should my said wife or the trustee that may be appointed to act in her stead = make sale of so much of said real estate, as to produce a ballance over and above what shall be required for her support and maintainance of said children and grand children as before herein provided the same shall be divided among my said wife and children or go to the survivor or to their issue lawfully begotten, in the same manner, and in the same proportion as is herein before provided for the division of said Estate real among them or the survivor or survivors of them =

Sixthly. As I am the owner of the equitable interest in certain lands and Real Estate, the legal title of which is in other

persons who hold the same in trust for me I hereby authorize my said wife or the Trustee that may be appointed to act in her stead, to take deeds of conveyances of the legal estate of such lands and real estate, at such time as she or said Trustee acting in her stead shall deem proper and when the same shall be so conveyed, it may be sold in the same manner and the proceeds disposed of and appropriated in the same way, and if it shall not be sold before the time my said daughter would arrive at the age of twenty one years, to be divided and distributed in the same manner as is herein before provided for the other real estate =

Seventhly, It is my desire to have a family vault or burial place provided on some part of the real estate, now owned by me, in or near Peoria, I do therefore authorize and direct my executrix to select a lot from some of my land of not less than one eighth of an acre and to erect thereon a vault or tomb, for the interment of my own remains and other deceased members of my family and relatives, and when such selection shall be made, it shall remain for a place of interment forever and not subject to sale, alienation.

Eighthly I hereby authorize and empower my executrix in her said capacity and during her continuing such executrix to make, execute, acknowledge and deliver any and all deeds for the conveyance of any and all my real estate, now owned by me, or to which she shall acquire a title by the provisions herein contained or whar she shall purchase, for the benefit of my devisees, with the funds arising out of the sales of any of my real estate.

Ninthly As it is my desire that my executrix may proceed in the execution of the several provisions of this my last will and testament, with as little difficulty and embarrassment as possible, it is hereby directed that neither

before her entering upon the performance of her duties as such executrix, nor at any time thereafter shall she be required by any Judge or Justice of Probate or any other person or persons to enter into bond or give any surties for the due and faithful execution and performance of her duties as such executrix and I chose to trust entirely to her good judgement, diligence and fidelity—

Tenthly. As it may contribute to the happiness of my said wife after my decease to have my niece Anna Kortis of Saratoga County, State of New York reside with her and be a member of my said wife's family, and should my niece consent so to do, as an inducement thereto = I authorise my said wife to convey by a good and sufficient deed to the said Anna, any one quarter section of my land which my said wife may select, to be the absolute property and estate of the said Anna, and her heirs and assigns forever.

Eleventhly and Lastly = I do hereby nominate constitute and appoint my beloved wife Marion Bogardus sole executrix of this my last will and testament.

In witness whereof, I the said John S. Bogardus have to this my last will and testament, contained in three sheets of paper which are fixed together, set my hand and seal this second day of June in the year of our Lord one thousand eight hundred and thirty eight.

N. Y. S. = the words "which shall remain unsold" interlined - between the fourth and fifth lines from the bottom on the third page were interlined before the signing and sealing this instrument.

Signed, Sealed, published and declared by the above named John S. Bogardus as and for his last will and testament in

presence of us who at his request and in his presence
have subscribed our names as witnesses thereto.

Witnesses
Charles Kettle,
Jacob Gale,
Anslow Peters,
Rudolphus Rouse

John L. Bogardus

I do solemnly swear that this writing contains
the true last will and testament of the within named John
L. Bogardus, deceased, so far as I know or believe and
that I will well and truly execute the same by paying
first the debts and then the legacies mentioned therein
as far as his goods and chattels will thereunto ex-
tend, and the law charge me and that I will make
a true and perfect inventory of all such goods and
chattels, rights and credits as may come to my hands
or knowledge belonging to the estate of said deceased and
render a fair and just account of my executorship
when thereto required by law to the best of my knowledge
and abilities = So help me God.

Marion V. Bogardus.

proved by Anslow Peters & Jacob Gale, two of the subscri-
bing witnesses = to the will on the day of July 1838, before

George W. Parker

Probate Justice of the Peace
for Teoria County.

State of Illinois }
Teoria County }

I, William H. Hessenden, Probate Justice of
the Peace within and for said County of Teoria do hereby
certify that the foregoing is a full, true, perfect and complete
copy of the original last will and testament of John L. Bogar-
dus, deceased, filed and recorded in my office on the 7 day

of July A.D. 1838 and duly proved as the last will and testament of said John L. Bogardus, Given under my hand and seal at my office at Peoria in said County this 12th day of June A.D. 1847.

Wm H. Hesselnden P. J. {Seal} 183
State of Illinois, ss. V. William H. Hesselnden, Probate Justice
Peoria County, of the Peace within and for said County,
do hereby certify that the foregoing is a full, true and perfect
copy of the record remaining in my office, of the proceed-
ings of the Probate Court of said County at a special term
thereof, held on the 7th day of July A.D. 1838 at the Probate
Office in Peoria in said County, and of the probate of the last
will and testament of John L. Bogardus deceased, and
also of the appointment of Marion Bogardus, executrix of
the said last will & testament, and of the letters testamentary to
her thereon, and also of said will and proceedings thereon,
which remain unrevoked, as appears by the records in my
office - Given under my hand and private seal (no of-
ficial seal being provided) at my office, in Peoria in the
County of Peoria and State of Illinois, this 12th day of June
in the year of our Lord one thousand eight hundred and
forty seven. Wm H. Hesselnden P. J. {Seal}

United States of America,

State of Illinois - ss.

V. Horace S. Hooley, Secretary of State, of the State of
Illinois, one of the United States of America and
Keeper of the Great Seal of said State, do certify that
Wm H. Hesselnden who signed the foregoing certificate
was at the time of signing the same, Probate Justice of
the Peace in and for the County of Peoria and State of Illinois,
duly elected and qualified to office, with full power, by the laws
of this State, to issue certificates as aforesaid; that said
certificates are in due form of law and by the proper officer;

and that full faith and credit are due his official attes-
tations. In Testimony whereof, I have hereunto set my
hand and the Great Seal of State, at the City of Springfield,
this 12th day of June in the year of our Lord one thousand
eight hundred and forty eight and of the
Independence of the United States the seventy
Second. H. S. Cooley,
Secretary of State."

4. The Plaintiffs read in evidence a deed from Marion
Bogardus, Executor of the said last will and testament to
Seth L. Cole, which deed is in the words and figures follow-
ing, to wit:

Deed to Cole -

This Indenture, made this Twenty fifth day of September
Eighteen hundred and forty five between Marion Bogardus
of the City of Troy in the State of New York executor and
devisee of John L. Bogardus late of Teoria County, Illinois, decas-
ed of the first part and Seth L. Cole of Teoria County, Illinois,
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, to her in hand paid
by the party of the second, at and before the sealing and deliv-
ery of these presents and the receipt whereof is hereby acknowledged,
has given, granted, bargained and sold, aliened, infeoffed and
transferred and by these presents doth give, grant, bargain,
and sell, alien, infeoff, transfer, convey and confirm unto
the said party of the second part, his heirs and assigns forever
all the right, title, interest claim and demand which she now has
or which she may have in any manner whatsoever, of, in and
to all that certain tract or parcel of land situate, lying and
being in the said County of Teoria, Illinois, known and desig-
nated as being the South East fractional quarter of Section
Nine (9) in Township Eight (8) North of range Eight (8) East,
with the rights, privileges and appurtenances thereunto in any

with appertaining, with the remainders, reversions, rents, issues and profits thereof: To Have and To Hold the same with the appurtenances and all the estate, right, title, interest, claim and demand, which the said party of the first part had, has or ever shall have in and to the same and any and every part and parcel thereof, unto the said party of the second part, his heirs and assigns forever and the said party of the first part, for herself, her heirs, executors and administrators hereby covenants, promises and agrees to and with the said party of the second part, his heirs and assigns, that she or they shall and will at any and all times hereafter make execute and deliver any and such other deeds or assurances in law as he or they or his their counsel learned in the law shall or may require, devise or advise for the more sure and effectual conveyance of the said premises and the appurtenances, unto the said party of the second part, his heirs or assigns forever. In witness whereof, the said party of the first part, has herunto signed her name and affixed her seal the day and year first hereinbefore mentioned, the six first words of the seventeenth line of the first page being first partly written or erased so as to read "she now has or which she"

Signed, sealed and *Marion Bogardus* Executrix *[Signature]*
delivered in presence of
A. H. Sheldon, John Carpenter.

Troy N. Y. 25th September 1845, Received of Seth L. Cole the sum of one thousand dollars, being the consideration money specified in the said above deed. \$1000

Marion Bogardus *[Signature]* Executrix
State of New York
Rensselaer County, to wit } De it remembered that on this
twenty fifth day of September A.D. 1845 before the subscriber
Clerk of the Court of Common Pleas for the county of Rensselaer in
the state of New York, personally appeared *Marion Bogardus*

of the City of Troy in the said County to me personally well known as being the person who executed and signed the above and foregoing deed of conveyance and acknowledged the same to be her act and deed for the uses and purposes therein mentioned and desired the same to be thus certified for record and I further certify that the said Court of Common Pleas is by the laws of the State of New York a Court of Record. In Testimony whereof, I have hereunto signed my name as the Clerk

S.S.

thereof and affixed the seal of the said Court the day and year above written

Ambrose H. Sheldon, Clerk of
the Court of Common Pleas of the
County of Rensselaer, State of New York.

5. The Plaintiffs next read in evidence four deeds from Seth S. Cole: two to John Thirk and two to Martin C. Walker, which said deeds are in the words and figures following to wit:

1st deed to Thirk: This Deed made this twenty ninth day of October Eighteen hundred and forty five - witnesseth that Seth S. Cole of the County of Peoria in the State of Illinois - for and in consideration of the sum of Two Thousand dollars to him in hand paid by John Thirk of the County of Cook, in the State of Illinois - the receipt of which is hereby acknowledged - doth by these presents grant, bargain, sell, remise, release and forever quit-claim unto the said John Thirk his heirs and assigns forever - all that certain piece of land - known and described as follows, to wit - the equal undivided third part of the South East fractional quarter of Section Nine (9) in Township Eight (8) North of range Eight (8) East of the 1st meridian - lying and being in the County of Peoria and State of Illinois - and containing twenty three $\frac{93}{100}$ acres, in the whole fraction - (excepting the lot conveyed by said Cole to W. R. May this day). To Have and To Hold the above described land and premises, to him the said John

Trint, his heirs and assigns = forever = the said Seth L. Cole
hereby covenanting to and with the said John Trint, his heirs
and assigns, that he the said Seth L. Cole, will warrant and de-
fend the title to be free and clear from the claim of himself the
said Seth L. Cole, his heirs and assigns, but against the claim of
none others = In Testimony whereof, the said Seth L. Cole
hath hereunto set his hand and seal the day and year above
written. Seth L. Cole {S.S.}

Done in presence of Jacob Gale.}

State of Illinois, ss.

County of Peoria, ss.

I, Jacob Gale, clerk of the Circuit Court
within and for the County and State aforesaid = do certify,
that this day personally appeared before me Seth L. Cole,
who is personally known to me to be the same person, whose
name is subscribed to the within and foregoing deed, as
having executed the same, and acknowledged
that he executed the same = In witness my hand and
seal of said ^{Court} this 29th day of October Eighteen hundred and
forty five = Jacob Gale, clerk.

{S.S.}

2nd deed to Trint:

This Indenture made this twenty second day of May one thousand
eight hundred and forty six between Seth L. Cole and Adelia
A. Cole his wife now of the City of Washington in the District of
Columbia parties of the first part and John Trint of Chicago in
the State of Illinois, party of the second part, whereas, the said Cole
by a certain deed of Indenture made in the year one thousand
eight hundred and forty five, conveyed, remised, released, re-
linquished and quit-claimed to the said John Trint all his
title, interest and claim of, in and to one undivided third
part or share of all that certain tract, piece or parcel
of land, situate, lying and being in the County of Peoria
in the State of Illinois, known and designated as being
the South East fractional quarter of section nine (9) in

Township Eight (8) North of Range Eight (8) East of the fourth principal meridian^{line}, and whereas the said Cole and wife are now in like manner desirous of conveying to the said Thrint an undivided sixth part of the said fractional quarter section so that he may have in the whole an undivided half or moiety of the said tract, as also an undivided half or moiety of the other tract hereinafter mentioned. Therefore this Indenture witnesseth that the said parties of the first part for and in consideration of the sum of five hundred dollars lawful money of the United States to them in hand paid by the said party of the second part, before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained, and sold, remised, released, relinquished and quit claimed and by these presents do hereby bargain and sell, remise, release, relinquish and quit claim unto the said party of the second part, his heirs and assigns forever, all their right, title, interest, claim and demand, of in and to one undivided Sixth part or share of the said before mentioned South East fractional quarter of Section Nine (9) in Township Eight north of Range Eight East of the fourth principal meridian line, and of, in and to one equal undivided half or moiety of the tract designated as Lot number Three (3) in range number Nine (9) in McKills addition to Peoria, lying in the County of Peoria, State of Illinois. Together with all the rights, privileges and appurtenances, rents, issues and profits thereof: To Have and To Hold the same with the appurtenances thereunto belonging or in anywise appertaining, unto the said party of the second part, his heirs and assigns forever, to his and their only proper use, benefit and behoof forever, free, clear and forever discharged of all claims thereto, of, in or to any part thereof of the said parties of the first part: and the said parties of the first part for themselves and their heirs

hereby covenant and agree to and with the said party of the second part, his heirs and assigns, that they will forever maintain and defend the said granted and sold undivided parts or shares of the said tracts, unto the said party of the second part, his heirs or assigns against all persons whomsoever claiming or to claim the same by, through or under them or either of them, but not from or against the claim or claims of any others whomsoever. In Testimony whereof the said Seth L. Cole and Adelia H. Cole, his wife have hereunto set their hands and affixed their seals at the city of Washington, on the day and year first hereinbefore written

Signed, sealed & delivered in } Seth L. Cole { seal }
presence of Samuel D. King. } Adelia H. Cole { seal }

District of Columbia, County of Washington - to-wit.

I, Samuel D. King, a Notary Public in and for the said County, do hereby certify, that on the day of the date hereof Seth L. Cole and Adelia H. Cole, his wife, both personally well known to me personally appeared before me in my County aforesaid and acknowledged the execution and delivery of the above and foregoing deed, to be their act and deed for the uses and purposes therein mentioned; and the said Adelia H. Cole being by me examined privily and apart and out of the hearing of her said husband, whether she doth execute and acknowledge the same freely and voluntarily, and without being induced to do so, by fear, or threats of or ill usage by her husband, or by fear of his displeasure, declareth and saith that she doth. In Testimony whereof,

I have hereunto signed my name and affixed my official

{ SS }

Seal as Notary as aforesaid at the city of
Washington this 22nd day of May A.D. 1876.

Samuel D. King
Notary Public.

1st deed to Walker.

This Deed made this tenth day of November A.D. 1845 = witnesseth, that Seth L. Cole now of Chicago, in the County of Cook & State of Illinois = for and in consideration of one thousand dollars, to him in hand paid by Martin C. Walker of Chicago, in the County & State aforesaid, the receipt of which is hereby ^{acknowledged} doth by these presents Grant, Bargain, Sell, Remise, Release and forever quit claim unto to said Martin C. Walker, his heirs & assigns forever = all that certain piece of land = Known and described as follows to wit: The equal undivided sixth part of the South East fractional quarter of Section Nine (9) in Township Eight (8) North of Range Eight (8) East of the 4th meridian = lying and being in the County of Teoria and State of Illinois = and containing twenty three + $\frac{93}{100}$ acres in the whole fraction = (excepting "the Lot conveyed by said Cole to C. R. May on the 29th day of October A.D. 1845). To Have and To Hold the above described premises and land to him the said Martin C. Walker, his heirs and assigns = forever = the said Seth L. Cole hereby covenanting, to and with the said Martin C. Walker, his heirs & assigns, that he the said Seth L. Cole, will Warrant and Defend the title to be free and clear from the claims of himself, the said Seth L. Cole, his heirs and assigns, but against the claims of none others. = In Testimony Whereof, the said Seth L. Cole hath hereunto set his hand and seal the day and year first above written.

Seth L. Cole ^{seal}

Done in presence of Hugh T. Dickery }

State of Illinois, ^{County}

Cook County, ss. In this eleventh day of November 1845, personally appeared before me Seth L. Cole, to me known to be the same & real person whose name is subscribed to the foregoing deed, and acknowledged that he executed the same for the uses & purposes therein mentioned. Given under my hand at Chicago,

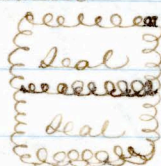
in said County this eleventh day of November A.D. 1845
Hugh D. Dietz
Judge of the "Cook County Court" Ill.

2nd deed to Walker:

This Indenture made this twenty second day of May one thousand eight hundred and forty six between Peter L. Cole, and Adelia St. Cole his wife now of the City of Washington in the District of Columbia, parties of the first part and Martin C. Walker of Chicago in the State of Illinois party of the second part, whereas the said Cole by a certain deed of Indenture made in the year one thousand eight hundred and forty five, conveyed, remitted, released, relinquished and quit-claimed unto the said Martin C. Walker, all his right, title, interest & claim, of, in and to one undivided sixth part or share of all that certain tract, piece or parcel of land, situate, lying and being in the County of Peoria, in the State of Illinois, known and designated as being the South East fractional quarter of Section Nine (9) in Township Eight (8) North of Range Eight (8) East of the fourth principal meridian line - and whereas the said Cole and wife are now in like manner desirous of conveying to the said Walker an undivided third part of the said Fractional quarter section so that he may have in the whole an undivided half or moiety of the said tract, as also an undivided half or moiety of the other tract hereinafter mentioned. Therefore this Indenture witnesseth that the said parties of the first part for and in consideration of the sum of Five hundred dollars lawful money of the United States, to them in hand paid by the said party of the second part before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained and sold, remitted, released, relinquished and quit-claimed and by these presents do hereby bargain and sell, remise, release, relinquish and quit-claim unto the said party of the second

part, his heirs and assigns forever, all their right, title, interest, claim and demand of in and to one undivided third part or share of the said before mentioned South East fractional quarter of Section nine (9) in Township Eight North of Range Eight East of the fourth principal meridian line, and of, in and to one equal undivided half or moiety of the tract designated as Lot number Three (3) in Range number Nine (9) in Mills' addition to Teonia lying in the County of Teonia in the State of Illinois, together with all the rights, privileges and appurtenances, rents, issues and profits thereof. To Have and To Hold the same with the appurtenances thereunto belonging or in any-wise appertaining, unto the said party of the second part, his heirs and assigns forever, to his and their only proper use, benefit and behoof forever, free, clear and forever discharged of all claims thereto, of, in or to any part thereof of the said parties of the first part and the said parties of the first part, for themselves and their heirs, hereby covenant and agree to and with the said party of the second part, his heirs and assigns that they will forever Warrant and Defend the said granted and sold undivided parts or shares of the said tracts, unto the said party of the second part, his heirs or assigns, against all persons whomsoever claiming or to claim the same, by, through or under them or either of them, but not from or against the claim or claims of any others, whomsoever. In Testimony whereof the said Seth S. Cole and Adelia A. Cole his wife have hereunto set their hands and affixed their seals, at the City of Washington, on the day and year first hereinbefore written.

Signed, sealed and } Seth S. Cole
delivered in presence of } Adelia A. Cole
of Saml D. King ==)



District of Columbia, County of Washington - to-wit:
I, Samuel D. King a Notary Public, in & for said County
do hereby certify, that on the day of the date hereof Seth S. Cole
and Adelia H. Cole his wife both personally well known to me,
personally appeared before me in my County aforesaid and
acknowledge the execution and delivery of the above and
foregoing deed to be their act and deed for the uses and pur-
poses therein mentioned and the said Adelia H. Cole being
by me examined privily and apart and out of the hearing
of her said husband, whether she doth execute and acknowledge
the same freely and voluntarily and without being induced
to do so by fear or threats of or ill usage by her husband or by
fear of his displeasure; deposes and saith that she doth. In
Testimony whereof, I have hereunto signed my name and
affixed my official seal as Notary as aforesaid, at the
City of Washington this twenty second
day of May A.D. 1846.
Saml D King, Notary Public.

6 The Defendant admitted himself to be in posses-
sion of Lot No Eleven in Block No Thirty Seven
in Bigelow and Underhills addition to Peoria which
Lot is part of said quarter section.
The Plaintiffs here rested their case.

The Defendant then offered in evidence a deed from John
L. Bogardus to Isaac Underhill dated August 5, 1834, which
deed is in the words & figures following, to-wit:
I know all Men by these presents that I, John L. Bogardus of
Peoria, in the County of Peoria & State of Illinois, in consideration of
one thousand & fifty dollars to me in hand paid by Isaac Un-
derhill of said Peoria the receipt whereof I do hereby acknowl-
edge, do hereby grant, sell and convey unto the said Underhill,

Deed Bogardus to Underhill

all my right & interest, in & unto the South East fractional quarter of section Nine in Township Eight North Range Eight East of the fourth principal meridian in said Illinois and also in & unto the the ferry established across the Illinois River in said Teoria, together with all the boats & other implements thereunto belonging. To Have & To Hold the same to the said Underhill, his heirs & assigns forever, with all the privileges & appurtenances thereunto belonging. In witness whereof, I have hereunto set my hand & seal this fifth day of August A.D. 1834.
Signed, sealed and delivered) John L. Bogardus [LS]
in presence of Orrin Hamlin.)

State of Illinois, 3
Teoria County, ss 3 This day personally appeared before the undersigned an Acting Justice of the Peace, in & for Teoria County, John L. Bogardus, who being personally known to me to be the same person and acknowledged the within to be his act & deed for the uses & purposes therein contained.
Given under my hand & seal this fifth day of August One thousand Eight hundred & thirty four.
Orrin Hamlin J.P. [LS]

To the reading of which in evidence the plaintiffs objected, the court over-ruled the objection and allowed said deed to be read in evidence, to which the plaintiffs excepted.

It was then agreed between the parties that said defendant has a regular chain of conveyance from said Underhill to the defendant.

The court found for the defendant.

The Plaintiffs moved for a new trial, which motion the court over-ruled.

To which finding of the Court and ^{the} decision over-ruling
said motion, said plaintiffs then and there excepted and
prayed the Court to sign, seal and make of record this said
Bill of exception
Vacation after May Term 1852. } W^m Kellogg {seal}

State of Illinois

Peoria County p: I Jacob Gale clerk of the Circuit Court
within and for the county of Peoria and
State of Illinois do hereby certify that the
foregoing is a full and correct copy of the
Record of the proceedings in a certain
cause in said Court of John Frink and
Martin O. Walker against Jacob Darst
as the same remains of record in my office.

In witness whereof I hereto set my hand and the seal of
said Court at the City of Peoria this eighteenth day of June
A.D. 1852 - Jacob Gale, clerk.

Clerk's fees: for transcript \$7.00 }
 certificate & seal .25 } \$7.25 Received of Frink &
Walker by their attorney A. Lee Murrison these fees -
June 18th 1852 - Jacob Gale, clerk.

John Smith } In the Supreme Court
 Martin O. McKee } June Term 1859
 v }
 Jacob Daest } Error to Preside.

And said plaintiffs in Error say
 that there is manifest Error in the Record
 proceedings & judgment of the Court below
 in this to wit

- 1 The Court Erred in Admitting the Deed
 from John L. Bogardus to Isaac Muhlhill
 in Evidence on the part of the defendant.
- 2 The Court below Erred in finding the
 issue joined, for the Deft which should have
 been joined for plaintiffs
3. The Court Erred in granting the Motion
 for a new trial

For these and other Errors apparent
 on the face of the Record said plaintiffs
 pray that the said Judgment may
 by this Court be reversed set aside
 annulled & wholly for nothing Estimated

H. M. Munn
 for p[ar]ties in Error

In nullo est Enatum

for Deft in Error.

In nullo Est Enatum

A. H. Purple

(Georgia)
John Smith
Monte O. Walker

Jacob Dant

Error to Poria
Revised & appt.

Filed June 30th 1852
Leland C.R.

Prepared

Taylor vs. Fiddle 2 Hill 641.

Sup. Court.

John Smith & }
Martin Walker } June Term 1852.

vs. }
Jacob Darst. } The judgment in this
cause must be reversed

1. Because Bogardus had no title
in fee to the land when he made a
deed conveying his interest to
Underhill &

Litt. Sec. 446 & There is no covenant in the deed
Coke Litt. 312. working an estoppel under which
Allen v. Laywood the title when acquired by Bogardus,
5 Grunleaf 227 & or at a subsequent date from
Jackson v. Wright - The government, would ensure
14 J.R. 193 & to Underhill & his grantees.
Dart v. Dart
7 Conn. 250 &
Jackson v. Winslow 9 Conn. 1.
& Jackson v. Peck 4 Wm. 105 at
bottom of page. 1 Cowen 613.

R.L. p. 105 sec. 11 There is no implied covenant
2 Binney 952 arising under Statutes of this State,
3 Pa. Rep The language of the deed being
322 & 3. "grant, sell & convey."

5 Ala. 586. No covenant can arise from
statutory inference unless the
words, grant, bargain, sell, all
are used.

2 Al. Com. 998 +
4 Comise Dig. 289
see 65.

4 Kent 468. 3 Wend. 99, 102.

11 Com Law. 648.

5 Barn & C. 709, 3 Gill 234

As to Habendum

13 Pick. 116.

20 " 574.

The estate granted
must be governed by the
granting part of deed
& the Habendum clause
only controls the duration
of the estate granted.

The words of Bogardus' deed to Underhill
"to have and to hold the same unto
Underhill his heirs and
assigns forever makes the
habendum consist with
the premises of the deed - The
grantor & his heirs hold the same
estate granted in the premises.

Corbin v. Healy
20 Pick. 514.

Comstock v.
Smith
13 Pick. 116.

Upon the authority of the case cited
from 2 Binney 95 & 3 Penn Repts,
by Penrose & Watts 322 & 323, the
deed from Bogardus to Underhill
would not be within the 11th Section
Revised Statutes Page 105 even if the
words "grant, bargain & sell" had
been used in the deeds.

For the reason that an estate
of inheritance in fee simple
must be granted in order to give
the force of a covenant to the
words "grant bargain sell"

These words would not of them-
- selves create an estate of
inheritance in fee simple.

Provia
Frank et al. v. Darab

Abstr. brief.

Filed July 21. 1852

John Frank
Martin O. Walker

In Supreme Court of Illinois

Jacob Durr

Ad. Munnick being first
and sworn deponent and says that he was
one of the attorneys for said plaintiffs in
said cause while pending in the Circuit
Circuit Court that he drew the declaration
of ejectment in said cause and served
the same on said defendant that at
the time he did so he informed said
defendant of his wishes for defendant
to enter his appearance and have
a trial at the next term of the Circuit
Court. ~~with a D. R. R.~~ in order that the
same might be taken to the Supreme
Court at the present term thereof
should judgment be rendered
against said plaintiffs and also informed
said defendant that he would the
said plaintiffs would if desired make
some arrangement by which defendant
could get the title to Lot Eleven in Block
Twenty Seven in Bedford & Madewell's Addition
to Chicago and a portion of the real estate
claimed in the declaration in said
cause of which Lot defendant admitted
himself in possession from said plaintiffs
with little expense provided they should
be adjudged to be the owners thereof to which
said Durr remarked that he would
come to the office of deponent and arrange
the matter or something to that effect.
That he came to deponent's office after
an agreement was made such and given
orated Durr whether by deponent or
his partner deponent cannot state
which agreement was then handed to
said Durr and which agreement
deponent has not seen since nor has he
in his possession or control either
the said agreement or a copy thereof.
That as nearly as deponent can

recollect. the said agreement was made
 and signed by the attorney in said
 suit on the part of John Smith above
 and the substance of which was that
 said Smith was to be the master
 of the suit in execution (except damages
 for) and in the event of recovery the
 said sum was to be paid to the
 same to said defendant. That there
 was no agreement made on the part of
 said plaintiff Walter within deposits
~~in relation to him~~ and all that was said
 in relation to him was that said
 Walter would do what was right in
 the premises, or something to that
 effect.

And further sworn & said not
 subscribed before & before
 the Undersigned Clerk of the Circuit
 Court of Boone County, Missouri
 witness my hand & seal this
 8th day of July A.D. 1852
 Jacob Gale, clerk.

A.B. Morrison

Smith & McElmer
 as
 Joseph D. Darrall
 Agents.

Filed July 12th 1852
 J. H. Darrall & Co.
 Agents.

STATE OF ILLINOIS, } ss.
LA SALLE COUNTY,

The People of the State of Illinois,

To *A. Luccleriman, John S. Lindsey, James Dougherty,
& Thomas Bryant*

Supreme GREETING:

YOU ARE HEREBY COMMANDED personally to be and appear instanter before the ~~Circuit~~ *State* Court of
said ~~county~~, now in session at the Court House in Ottawa, to testify and the truth to speak in a

certain case now pending and undetermined in said court, ~~wherein said A. Luccleriman will bring~~
with him any contract or contracts or agreements in writing in his possession or power
relative to the following named case or the effect of the judgment to be rendered in said
case upon the rights of the parties - wherein John Frink & Martin C. Walker are
plaintiffs and *Jacob Dunst is* defendant on the part of the said

and this you will in no wise omit.

L. Keland
WITNESS, ~~Paulo Lindley~~, Clerk of said Court, and the Seal of
said Court, at Ottawa, this *20* day of *July*

A. D. 185 *2*

L. Keland Clerk.

Frank & Walker

Jacob Sweet

Subpoena

To Supp. of Peoria Co.

4 copies	1.00
Print	20
return	10

\$1.30

Filed July 12th 1852.
L. Leland Clk.
By P. H. Leland Depy.

State of Illinois / Served on the within named
Peoria County / A. Lee. Merriam when Laid out
James Dougherty & Maria Bryant
By reading to them that as I
am Com. Mandate - July 6th 1852

James L. Rags
Sheriff Peoria

John Frink
Martin O Walker
vs
Jacob Darst

Peoria Circuit Court

May Term A.D. 1852

Expectment

In consideration that the said defendant has consented and does hereby consent that said cause be tried at the present term of this court, and that the same be taken to the Supreme Court by either party at the next June Term thereof, and submitted on agreement, that the plaintiff will pay all costs, and that said Frink will convey to said defendant by Quit Claims Deed One Half of the premises in controversy described in the declaration served on said defendant in this cause upon the said defendant paying said Frink One Hundred Dollars provided the decision of the said Supreme Court shall be in favor of said plaintiff
Peoria May 1852

"John Frink"
"By H.O. & A.L. Merriman"
his attorney

Filed July 13th 1852.
J. Leland Clk.
By P. H. Leland Esq.

John Smith
Martin O. Walker
Jacob Sarst

3
3
3

In the Supreme Court
of the State of Illinois

Term Term Oct. 1852

Jacob Sarst being first duly sworn
deposes and says that he is indifferent
whether this suit is dismissed, ^{or tried} at the present
time of this Court - that he is interested in
the defence to this suit, also in the matter
in controversy - that the agreement between
said plaintiffs and affiant is correct &
truly shown by the document annexed
marked "A" ^{which is a true copy of said agreement} and made part of this
affidavit, and the only agreement made
with the plaintiffs in this suit except
the one made by affiant. Attorney John
J. Lindsay and copied into the Affidavit
of Isaac Mudgett on file herein - That
affiant to induce others more interested
than himself to defend this case in the
Supreme Court did say to them that he
would not be much injured by the result
and authorized them to defend the suit
in my name, and I am informed and
well believe that A. H. Phelps was at
at affiant's suggestion employed to argue
and defend the case in affiant's name -
That A. O. Morrison some weeks previous
to the 4th Monday of June last informed
affiant that he desired that those interested
in the question involved in this suit
should defend upon the merits, and
in pursuance of that suggestion and by
affiant's authority said Phelps was employed
to defend this cause. That the object of the
plaintiffs as stated at the time of entering into
said contract was to expedite the matter, and
the object of affiant was to make the
best terms he could, praying defeat -

Subscribed and sworn to this
5th day of July A.D. 1852

before me the Clerk of the Circuit Court
of Piatt County Illinois, witness my hand & official seal.
Jacob Gale, Clerk.

Jacob Sarst

Trust sub

Trust

Scout. Appt

Filed July 13th 1852.

L. Leland Clk.

By P. K. Leland Depy.

John Trunk 3
 Martin C Walker 3 Supreme Court
 Jacob Darch June Term 1852

John J. Lindsay being first duly sworn
 doth depose and say That said cause was
 publicly openly and without concealment docketed
 in the Circuit Court for trial; when a usual
 number of members of the Bar were present
 and among them, A. H. Purple Esq, who
 examined the papers, stating that he did
 not know but he had some interest in the
 matter - After examining the papers, he threw
 them back upon the clerk's desk, the evidence
 in the case was then and there presented to
 the Court, with this apparent supposition that
 the Court would decide in favor of defendant
 which was done, as the case for defendant
 was supported by a decision in the Supreme
 Court, a Bill of exceptions was prepared
 by Plaintiff's attorney and presented to official
 which official considered correct, But the
 Bill of exceptions from some cause was not
 signed by the Court until after adjournment
 of Court, when said agreement was made
 which has been refused to by affidavit of
 Isaac Underhill - and further deponent
 cannot not

John J. Lindsay
 Subscribed & sworn to before me
 this 10th day of July 1852
 Charles Kettell
 County Clerk of the County Court.

Frank et al. vs. Durr
Affidavit

Filed July 20. 1852
L. Wilson Clk.

John Frank & Martin O. Mulka }
vs }
Jacob Darst }

State of Illinois } In Supreme Court by
Pavia County } ss } agreement from Pavia
County Exemption

I Isaac Mandin being duly sworn according to law doth depose and say, that he is informed and believes that neither the Plaintiff or defendant in this cause have any interest in or claim to Lot Number (11) in Block Number (37) in Bigelow's & Muddhill's addition to Pavia which is or will be in any manner affected by the determination of this suit, that there is an agreement between the said parties that the Defendants interest in or title to said land is not to be in any manner affected or prejudiced by said suit or the decision or determination thereof.

That the suit is really a fictitious one as between the parties, and designed & intended to effect the rights and interests of persons owning lots on the fractional quarter section described in the declaration better than the one claimed by the defendant and without any bind to the rights and interests of the parties in or to the said Lot (11) in Block (37) is designed & intended to be an experiment upon this Court, for the purpose of ascertaining whether the Court will not reverse the judgment rendered in the case of Frisby & Ottum vs Ballance at Dec. Term 1845.

2nd Civ. 141 - In support of which last statement affiants refers to the papers in the cause composing the Record, and also to an agreement on file in the Circuit Court not copied into the record as he is informed & believes

and which said agreement is as follows

" John Knott }
Martin O. Walker } Prior Circuit Court
as } May Term A.D. 1852
Jacob Savet }

It is agreed between said parties that the bill of exceptions forwarded to the Hon Judge Kellogg of the 10th Judicial Circuit of the State of Illinois is correct and may be signed in vacation, and the record made up and taken to the Supreme Court at the June term A.D. 1852 and that Judgment be entered at of the said term the case then having been submitted for trial and the papers added to the Court for inspection and decision. The only point to be made in the Supreme Court in said case is, as to the effect of the deed from Bogardus to Underhill, recited in the bill of exceptions and the same deed copied in decision of the Supreme Court of said State in 3rd (Monday 2) Vol. Gilman's Reports pages 145-146 Prior June 5th 1852

H. O. & A. L. Merriam

for Plaintiff
John T. Lindsey
for Defendant "

And affiant further states that he has a large pecuniary interest in the determination of the question of land referred to in the said agreement the having, since the decision of the Case of Frisby & Others vs Pullance conveyed several lots in said fractional quarter section by warrant deed upon the thought

and faith of the validity of said decision

He also further states that he verily believes that since said decision was made - and with the confidence that the same would be & remain undisturbed, improvements have been made by various persons on said Premises described in said Plaintiff's declaration not less than one hundred thousand dollars in value

He further states that he is advised by counsel and believes the same to be true that said Plaintiff when they purchased said property from said Cole & said Cole when he purchased from the Executor of Bogardus had full knowledge of the fact that said Isaac Underhill had bought said land of said Bogardus & paid a full and fair price for the same

And he is further advised and believes that these are matters and facts proper & necessary for the consideration of the Court in determining the questions presented in the Record; and which for some reason are altogether omitted

Efficient further states that there are probably more than one hundred persons at this time owning land or lots on said fractional quarter section; and more than one thousand residing and doing business thereon; none of whom on account of the manner in which this case has been presented to the Circuit Court have had any opportunity of presenting any facts for the consideration of that Court relative to the case under consideration

Affiant further states that the owners of lots
in said fractional quarter section have been
induced to purchase and improve their said
lots not only on account of the decision
of the Supreme Court of this State in the case
before referred to, but, their confidence in
that decision had been strengthened by a de-
cision of the Circuit Court of the United
States for the district of Illinois made
^{Deputy J. Morgan the brother in law of John Smith one of}
nearly five years since in which the plain-
tiff in said suit was ~~plaintiff~~ Plaintiff and
Jesse H. Cartering & others were defendants
in which case the same question was involved
and in which that court followed & adhered
to the decision of this court; & further states
not.

Subscribed & sworn to
before me this 24th Jan
A.D. 1852. Witness my
hand & official
Seal —

Isaac Underhill

 J. M. Crump
Notary Public
Peria City Ills

Isaac Underhill
J. M. Crump

Filed July 22 1852
J. L. Leland Clerk.

John Frink }
 Martin O. Wallke }
 v }
 Jacob Danst }
 The Supreme Court
 Term 1852
 Error to Peoria

John Frink One of said plaintiffs
 being first duly sworn deposes and
 says that he directed H. O. Morrison
 some months since to bring suit so
 as to raise for decision the validity of
 plaintiffs title to the south East Quarter
 of Section No. Nine (9) T. 8. N. R. 8, East of
 which the lot in controversy, and affiant
 gave no other directions but left the whole
 matter to said Morrison to manage
 as Attorney at Law, & for plaintiffs - That
 virtue of the plaintiffs made an agree-
 -ment personally with said defendant
 nor authorized any except so far as
 said Attorney in his character as such
 would by Law be authorized - That
 so far as affiant knows or believes
 that neither of said plaintiffs were in
 Peoria during the May Term of the
 Circuit Court of Peoria County, ^{Chicago} 1852
 That affiant was then in ~~Massachusetts~~
 and said Wallke at or about Chicago
 That affiant knows of no contract or
 agreement of the character referred
 to in said the Affidavits of Mr. Duhiell
 on file in this Cause, and all that
 affiant knows nothing about the whole
 matter except what has been informed
 by his Attorney and affiant avers that
 this is a sham or fictitious suit, but
 so far as affiant is concerned is a
 bona fide suit to settle a real right
 to the property in controversy - That
 affiant was in Peoria last month &
 consulted with various persons interested
 in the Question involved in this suit
 among whom were Isaac W. Duhiell
 A. H. Puffer and Samuel Voss and

They all well understood that this case
was to be tried at this term of the
Court if plaintiffs could do so.

Affiant further states that said Dorst is
in possession of the lot in controversy claiming
title under Matherhill & adversely to plaintiffs
as affiant is informed & believes, but
affiant did not know this nor that the
suit was against him till several months
after the proceedings were had in the Court
below - And said Walker has borne to affiant's
knowledge or belief given any directions
or in any way or manner interfered with
the management of this suit -

Subscribed & sworn to
before me this 2nd day
of July A.D. 1852
L. Leland C.R.

John F. Smith

James E. Smith

Dorst

Wm. of Dorst

Filed July 13th 1852.

L. Leland C.R.

Deft. in error

John Smith }
Martin O. McKee }
Terror Circuit
Court

✓
Jacob Daest } May Term 1852

It is agreed between said parties
that the Bill of exceptions forwarded
to the Hon Judge Kellogg of the 10th Judicial
Circuit of the state of Missouri is correct
and may be signed in vacation, and
the Record made up and taken to the
Supreme Court at the same term
A.D. 1852, and that judgement be
entered as of the said term the cause
there having been submitted for trial
and the papers passed to the court
for inspection & decision - the only
point to be made in the Supreme
Court in said cause is as to the ^{effect} validity
of the deed from Bagueres to need shall
recede in the Bill of exceptions, and
the same and copied in decision of the
supreme Court of said State in 3 Vol. Gilman
Reports pages 145. & 146,

Termin June 5. 1852.

A.O. S.W. Morrison
for plffs
John F. Lindsay
for defts

Trink et al.
vs
Dart

Filed July 20th 1852
L. Leland Clk.
By P. H. Leland Siff

State of Illinois
Supreme Court
June Term 1852

Ejectment
Error to Peoria

John Frink & Martin O Walker
vs

Carole Dorst

I Charles Ballance, being
only sworn depose and say, that I have no interest in
the matter in controversy in this suit to wit lot eleven
in block thirty seven, in Bigelow and Underhill's
Addition to Peoria. The South East fractional quarter
of said section nine, which is described in said patent
to Barpus, and in the said deed to Underhill, was
long since laid off into lots, sheets and alleys, and called
Bigelow and Underhill's addition, as above, and I own
under said patent, about fifteen lots, and have on
those lots more than twenty five tenants, and I resided
with my family on said tract more than ten years.
I have been engaged ~~as~~ ~~myself~~ both for myself
and others in many lawsuits respecting said tract,
or parts of it, and have attended every ^{court} ~~court~~ that
has been held in Peoria for twenty years. That
during the last May term of said court, I was present
every day, and ^{never} heard a word said in court about the
above entitled cause, and am sure that nothing
could have been done in said cause, in said court,
without my knowledge unless advantage had been
taken ~~during~~ ^{of} some temporary absence from the
court room. Although my interest in said tract is
notorious, at Peoria, so secret was this suit kept, that
I never heard of the decision of the above cause un-
til a few days ago, and since the record was certified
to this court. I have no doubt that this is a sham suit

in which said Darst has no interest whatever. A few days ago, and since I was informed of this proceeding called on James Sangherst (a brother-in-law of said Darst, and partner in business with him, doing business under the name and style of Sangherst & Darst, and who is understood to be part owner of said lot,) and inquired of him whether this was a real suit, or whether there was not an understanding between plaintiff and defendant, that defendant was to have his said lot in case he would permit plaintiff to obtain a judgement, and said Sangherst admitted that such was the fact.

I was originally of opinion that the deed from said Rogers to said Underhill was void, but since the decision of this Honorable court sustaining said deed, I have, on the strength of said decision, purchased property under said title, worth probably ten thousand dollars, and many others have purchased under said title, on the faith of said decision, and expended large sums in building store houses, ware houses, machinery &c.

Besides the case of Morgan vs. Custerius & al. referred to in Isaac Underhill's affidavit, in this case, I have known said ~~United~~ ^{deed} States admit said ^{deed} to go to the jury as a good deed, on several different occasions. And said deed has often since said decision, been introduced as evidence in actions in the Permia circuit court (sometimes with, and sometimes without objection) but in every case it has been admitted to go to the jury as a good deed.

Subscribed & sworn to
before me this 1st day of
July A.D. 1852.

C. D. Wallace

J. Leland Clerk.
By P. H. Leland Depy.

Since swearing to the above statement I have
had a conversation with H. O. Minnicks Esq. and am sat.
that the said suit was docket in open court but at a time
when I was not present

C. O. Ballou

Pigra
John Brink et al
vs Defendant
Jacob Darst

Filed July 2^d 1852.
L. Nelson Clk.

John Hink & } In Supreme Court of Illinois
 Martin O Walker }
 vs
 Jacob Hlast }

James Hlanghuty being first duly sworn doth depose and say that he is acquainted with John Hink one of the Plaintiffs in the above case and with Jacob Hlast the defendant, that said Hlast is this deponents partner in business, that he has had several conversations with said Hlast in relation to the above suit and that said Hlast informed him, that he had entered into an agreement with said Hink through his attorneys H. O. & A. L. Meriman by which the said plaintiffs were to convey the lot sued for to said defendant in case said Plaintiffs were successful, that said agreement was in writing and in the form of a bond for a conveyance, that a small consideration is expressed in said bond but that it was merely nominal, and that said Hlast expected to receive a conveyance for said lot as aforesaid - that this deponent saw a paper in Hlasts hand which he told him was the agreement between ^{them}, but did not read it; Deponent further states that from conversations had with said Hlast in relation to the subject aforesaid the precise language of which he cannot state, he had formed the conclusion, which still remains that said Hlast was not to be injured or in any way prejudiced by the result of said suit, but that by the agreement aforesaid and the understanding between the said

Deponent & said Plaintiff he said defendant was to have a conveyance of the said lot in case the plaintiffs were successful -

Deponent further states that he is the owner of one undivided half of said lot No. Eleven in Block 37, in Bigelow & Landreiers addition to Peoria, being the same lot for which suit is brought in this case. except 20 feet of the same heretofore sold to A. H. Purple or A. S. Voss, and further said deponent saith not -

Subscribed & sworn } James Daugherty
to before me this 9th day of July A.D. 1852 }

George J. Blakely
Notary Public
Peoria Co
Ill

Frederick & Malheur
vs
Jacob Ward
Affidavits

Filed July 12th 1852.
J. J. Ireland Clerk.
By J. W. Ireland Deputy.

12890