


No. 12934

Supreme Court of Illinois

Whitney

vs.

Roberts

71641  7

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1859.

FRANKLIN H. WHITNEY *vs.* TRUMAN ROBERTS.

BRIEF AND POINTS.

1. The record in this case shows clearly that the appellant is the owner of the land, having a complete and perfect chain of title from the patentee.
2. The record clearly shows that Roberts obtained his title from the heirs of the patentee by fraud and misrepresentation.
3. The object of the bill is to set aside the title so fraudulently obtained.
4. The Court, without any reason or cause whatever that I can discover, dismissed the bill.

Nothing is shown in the decree or elsewhere by which it can be inferred why the Court dismissed the bill, and I know of no authority that I can call the attention of the Court to as applicable to the question, except the general principle which controls in all cases in Chancery, that a conveyance procured by fraud and misrepresentation is void, and will, for that reason, be set aside.

5. The evidence in the cause clearly shows that Roberts procured the conveyance from the heirs of the patentee by fraud, and without any consideration.

We ask the Court to reverse this decree upon the merits, and to enter a decree in this Court for a conveyance by Roberts to Whitney, or to remand the cause, with directions to the Circuit Court to enter such decree.

N. H. PURPLE,
For Plaintiff.

171

Bris

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT,

To the Sheriff of the County of

Stark

Greeting :

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the *Circuit* Court of *Stark* County, before the Judge thereof, between *Franklin H. Whitney*

plaintiff, and *Truman Roberts*

defendant , it is said that manifest error hath intervened, to the injury of the said

Franklin H. Whitney

as we are informed by *his* complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; Therefore, We Command You, That by good and lawful men of your County, you give notice to the said

Truman Roberts

that *he* be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *Truman Roberts*

notice, together with this writ.

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *18th* day of *January* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*nine*.

L. Leland
Clerk of the Supreme Court.
by J. B. Rice Deputy

STATE OF ILLINOIS, }
SUPREME COURT,

To the Clerk of the Circuit Court for the County of Stark

ss. The People of the State of Illinois,

Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Stark County, before the Judge thereof, between Franklin H. Whitney

plaintiff, and Truman Roberts

defendant, it is said manifest error hath intervened, to the injury of the aforesaid Franklin H. Whitney

as we are informed by his complaint and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 18th day of January in the Year of Our Lord one thousand eight hundred and fifty-nine.

J. Seland

Clerk of the Supreme Court.

J. B. Rice Deputy

Franklin H. Whitney
vs
Juman Roberts

Writ of error

Filed Jan. 18, 1838
S. Leland Clk

STATE OF ILLINOIS Supreme Court sitting and for the Trial and Decision of said case. — Franklin H. Whitney, plaintiff in error, vs. Truman Roberts, defendant in error. — Error to Stark County Circuit Court.

It appearing by affidavit on file in the Clerk's office of said Supreme Court, in the above entitled cause, that Truman Roberts, the above named defendant in error, is a non-resident of the State of Illinois, and without the reach of the process of said Supreme Court, and the said Franklin H. Whitney having duly sued out of said Supreme Court a writ of error to reverse a decree obtained by the said Truman Roberts against the said Franklin Whitney, in the Circuit Court of Stark County, which writ of error is now pending in said Supreme Court, and a writ of *scire facias* having been issued herein, returnable on the first day of the next term of said Supreme Court to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, according to law.

Now you, the said Truman Roberts, the above named defendant in error, whose non-residence appears as above, are hereby notified to be and appear before the Justices of said Supreme Court, at the next term of said Supreme Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the records and proceedings of said Circuit Court brought into said Supreme Court, on return of said writ of error and the errors assigned, if you shall see fit; and further, to do and receive what said Supreme Court shall order in this behalf.

Attest: L. LELAND, Clerk.
N. H. PURPLE, Atty for Plff in Error. Jan 22

I William Osmon
proprietor of the "Ottawa
a newspaper printed
and published in Ottawa LaSalle
County Illinois do certify that the
annexed notice was printed and
published in said paper for four
successive weeks, the first publication
being on the 22^d day of January A.D.
1859 and the last on the 12th day
of February, A.D. 1859.

Ottawa Feb 15, 1859. Wm Osmon,
Publisher and
proprietor Ottawa Free Press.

State of Illinois
LaSalle County

William Osmon being
Sworn says that on the 15th day
of February A.D. 1859 he mailed a copy
of the annexed notice to Truman Roberts
at his usual post Office (as he is informed
and believes) at Utica Oneida County N.Y.
on the 15th day of February A.D. 1859
and that the said notice was so

State of Illinois JP
LaSalle County JP

I William Osmon
Publisher and proprietor of the "Ottawa
Free Trader," a newspaper printed
and published in Ottawa LaSalle
County Illinois do certify that the
annexed notice was printed and
published in said paper for four
successive weeks, the first publication
being on the 22^d day of January A.D.
1859 and the last on the 12th day
of February, A.D. 1859.

Ottawa Illinois 15, 1859. Wm Osmon,
Publisher and
proprietor Ottawa Free Trader.

State of Illinois JP
LaSalle County JP

William Osmon being
sworn says that on the 15th day
of February A.D. 1859 he mailed a copy
of the annexed notice to Sumner Roberts
at his usual post office (as he is informed
and believes) at Utica Oneida County N.Y.
on the 15th day of February A.D. 1859
and that the said notice was so

distinctly marked that attention would
be called thereto. The same being en-
closed in a letter to said Roberts and
marked on the face thereof "Whitney
vs Roberts" in pencil mark, and
further said to not.

Wm. C. Cramer

Subscribed and sworn before
me this 15th day of February,
A.D. 1859

L. Seland Clerk of the Sup. Court
by J. B. Rice Deputy of said State

Transcribed by
Whitney
vs
Cramer Roberts
Circuit Publication
& Affidavit.

Filed February 15, 1859
L. Seland Clerk
by J. B. Rice Deputy

FRANKLIN H. WHITNEY,	}	Plaintiff in Error,
<i>vs.</i> TRUMAN B. ROBERTS.		Defendant in Error.

IN THE SUPREME COURT,

OTTAWA, April Term A. D. 1859.

At the October Term A. D. 1855, Whitney, Complainant, filed in the Record, Circuit Court of Stark County, a bill in Chancery, stating that on the

p. 4. 19th of February, 1818, a Patent was issued by the United States to Charles Austin, for the N. E. $\frac{1}{4}$ of Sec. 33, Town 12, North of Range 6 East, in the military bounty tract for his services as a soldier in the late war with Great Britain. A copy of the patent marked "D." is exhibited and made part of the bill. That the land lies in Stark county.

p. 40. That in 1815 said Austin, the patentee, being embarrassed and in debt, applied to one Reuben Scriptor, of Cheshire Co., New Hampshire, for assistance. Scriptor went his security on a note of about \$80 and had it to pay.

p. 5. That to secure this money paid for him by Scriptor, who then resided in Cheshire County, New Hampshire, Austin made to him a power of Attorney to recover his, said Austin's land.

p. 40-41. A copy marked "A" is attached and made part of the bill.

p. 6. The complainant and defendant erroneously supposing that said power of Attorney was legal and binding, made a contract for the land. Complainant bought it of him, said Scriptor, for \$400, on the 18th of January, 1855.

p. 42-44. Copy of deed attached, marked "H."

Austin died about 1835, intestate; was seized of the land at time of his death.

p. 7. He left heirs as follows: *Charles H. Austin, Thomas M. Austin*, who were his only heirs, and who continued to hold the title to the land till about 15th August, 1854.

On the 18th November, 1837, Reuben Sceptor, supposing his power of attorney from *Charles Austin* to be in force, conveyed the land to Charles H. Cross.

p. 45-47. Copy of deed exhibited, marked "C."

p. 8. On the 8th January, 1855, Cross and wife sold and conveyed some land to complainant.

p. 48. Copy of deed exhibited, marked "C."

p. 8. That complainant purchased the land in good faith, having no knowledge of any prior conveyance to Truman Roberts, or any other person.

p. 8. That on the 14th February, 1855, Thomas M. Austin sold and conveyed all his interest in the land to complainant.

p. 50. Copy of deed, marked "E," exhibited.

p. 8-9. That on the 14th February, 1855, Charles M. Austin sold and conveyed all his interest in the said land to complainant.

p. 53. Copy of deed, marked "F," exhibited.

Said deeds were recorded on the 26th March, 1855, whereby complainant became the equitable owner of the land, and would have had the legal title, but for the acts of Truman Roberts, as hereinafter stated.

p. 9. That Truman Roberts, who resides in Oneida County, New York, a dealer in real estate in Illinois, having discovered that the deed from Scriptor to Cross was not binding, but void, and that the legal title was still in *Charles H. and Thomas M. Austin*, heirs at law of Charles Austin, deceased, about the 1st August, 1854, applied to said Reuben Scriptor, and told him he had a title to the land, and requested him to go with him to Charles H. and Thomas M. Austin, to persuade them to deed

p. 10.

- said land to him — Roberts — said Scriptor being the uncle of said Austin, and the brother-in-law of *Charles Austin*, deceased, in his lifetime.
- p. 10. Scriptor refused to go, and informed Roberts that he had already sold and conveyed the land under said power of attorney.

Roberts immediately went to Connecticut, where Charles H. and Thomas M. Austin lived, and about the middle of August, 1854, applied to them for a deed for the land. This was the first time they had any knowledge or information that they had any claim to or interest in said land.

- To induce them to convey the land, Roberts falsely and fraudulently
- p. 10-11. represented to said Austins that he had just come from their uncle, Reuben Scriptor, in the State of New York; that he was in law and equity the owner of the land; that he had purchased the same of said Scriptor, and paid in full therefor, but that some of his papers showing his title had been lost or mislaid, so that his title was on its face imperfect; that a court of equity would make him a title for \$20.00, but he would rather pay a small sum for a deed than litigate the matter in court.

- That their said uncle had offered to look them up and get a deed from them — said Charles H. and Thomas M. — provided he would pay the expenses; that the land was of little value — not worth \$2.50 per acre —
- p. 12. that he could and would enforce his claim in a court of equity, unless they deeded to him. Said Charles H. and Thomas M. were wholly ignorant of the premises, knew nothing of the land or its value, relied on his representations, and believed they were true.

- That relying upon such representations, the said Thomas M. and Charles
- p. 12. H., the first on the 11th and the last on the 15th August, A. D. 1854, for the consideration of \$10.00 each, conveyed their interest and title in the land to the said Roberts.

- Copies of the conveyances, marked "O" and "P," are exhibited and
- p. 55-58. made part of the bill.

- That all the statements of said Roberts were false, fraudulent, and untrue. That said Charles H. and Thomas M. were induced by said
- p. 13. false statements to make the conveyances to Roberts, and would not have done so had they known the truth and facts in the case.

- That Scriptor had, in fact, made no such statement to Roberts. That Roberts never had any title or claim to the land, nor ever purchased it from said Scriptor, or other person; nor had Scriptor ever offered to go to said Thomas M. and Charles H., and get them to deed to Roberts upon any terms whatever, and that in truth the land was then worth
- p. 13-15. \$15 per acre, which Roberts well knew. That Roberts well knew that he could get no title to the land by application to a court of Chancery. That all his statements thus made were false and fraudulent, and made with an intention to cheat and defraud the said Austins out of this land. That said conveyances so procured, were void, and the equitable title still remained in said Austin, and that the conveyances ought to be set aside.

PRAYER.

- That said conveyances from the said Thomas M. and Charles H. Austin, may be set aside, and for general relief
- p. 15. Oath of defendant waived.

DEFENDANT'S ANSWER

Admits the issuing of the patent to Charles Austin, as stated in the bill; denies his indebtedness to Scriptor; admits the power of attorney to Scriptor, and alleges that the same was void; denies that complainant

bought the land of Scriptor for \$400.00; admits that Charles Austin died intestate in 1835, leaving Charles H. and Thomas M. Austin his only heirs; denies that Scriptor conveyed the land to Charles H. Cross, or Cross to the complainant; denies that Charles H. and Thomas M. ever conveyed the land to complainant, and avers that they conveyed to him in August, 1854, for a "*valuable consideration and in good faith*;" says he never tried to persuade Scriptor to get a deed from Austin; states that he had a title to the land previous to the conveyance from Austin; that in Austin's lifetime, and on 6th November, 1821, Benjamin Gibbs purchased the land from Reuben Scriptor, attorney in fact of Charles Austin, patentee, for \$100, and that Scriptor made a deed to him, in which there was a mistake in locating the land west instead of east of the 4th principal meridian. Deed recorded 15th October, 1823.

Copy attached as exhibit marked "a," and made part of answer not found in the Record.

p. 20 $\frac{1}{4}$ That in 1853, he purchased the land of Gibbs, who made him a quit
20 $\frac{1}{2}$. claim deed the 17th February, 1853, which was recorded the 23d March, 1853.

p. 21-22. Copy of deed exhibited, marked "B," and made part of answer.

That he was the first purchaser, for a *valuable consideration*, from

p. 22. Scriptor, under the power of attorney, and from Charles H. and Thomas M., and is legally and equitably entitled to the land.

Plaintiff filed a replication to the said defendant's answer.

The following is the substance of the depositions taken in the cause:

Charles H. Austin, complainant's witness, states: I am 41 years old; boot-maker; reside in Middletown, Conn. Known Roberts, the defendant, about one year; complainant about six months. Charles Austin was my father; he was a soldier in the late war with Great Britain, in 1812, in Banks' Company, 23rd Regiment. Married, as my mother says, about 1810 or 1811; had four children, born in lawful wedlock; Charles H. Austin, born Sept. 5, 1814; Lydia Austin, born Oct. 14, 1816, who died about 24 years since; Thomas M. Austin, born about 1818, now residing in Ashford, Windham County, Conn; and Edward Austin, born July 15, 1827, who died at the age of fifteen months. My father died at Norwich, Conn., about 22 years since.

I made a deed to Roberts of the land in controversy, under the following circumstances: About a year ago Roberts came to my house and inquired of me whether I was not a son of Charles Austin. I told him I was; he told me he had some business with me about some bounty land that was my father's. I asked him to go into the house; he declined; it was as early as six o'clock in the morning. He requested me to call up
p. 31-32. to the hotel and see him there; I did so. He then said he would show me deeds and papers showing that the land belonged to him. I then asked him why he came to see me, as I did not know that I had any right or title to any land there. He said that one great reason why he came to see me was, that he had ascertained there were heirs, but that it made no other difference to him, only that he was in New York and thought he would come up and see them, but that he could hold it by applying to a court and not cost him more than \$30 or \$40; he said he thought it was a quicker way for him to get title through us than to go to court, by paying us a little something for our trouble; expressly saying that he would pay nothing for the land, as it belonged to him. He showed me deeds, representing that they were obtained from my uncle, Reuben Scriptor. That was the first I knew I had an uncle by that name. From the deeds he showed me, and the statements he made to me, I became pretty well satisfied that he was telling the truth, and I wanted

p. 32-33. to save him the trouble of going to court. I told him I would wait a little while and write my uncle about it. He sort of hesitated, and afterwards told me that he didn't see why I need to wait; he didn't see why I could not be satisfied with his statement; that it would save him the trouble of going to court, as he should do and hold it, unless I saw fit to deed to him. He then said he had a letter from my uncle, and put his hand in his pocket and took it out. He then read as follows, as near as I can recollect: "Dear Nephew: I am glad to learn that I have nephews. I have not heard from you in many years," and then goes on to say that "My friend Roberts will lay before you the papers and business concerning the land, that was formerly your father's," and goes on to state that "It *was* in his hands," and what disposal he made of it. He said, "Now it belongs to Mr. Roberts, and that he—the said Roberts—has the only right and title to it, and that it will save myself trouble and expense if you will deed to Mr. Roberts."

He said he could hold it in spite of all and would, if I did not see fit to deed the land to Mr. Roberts. The reason why I did conclude to deed the land to Mr. Roberts, was that I might save my Uncle trouble and expense. I never gave but one deed to Truman Roberts; he gave me for my time and trouble a three dollar bill, which the Cashier of the p. 33-34. Middletown bank pronounced to be a worthless bill; I never received any more than the three dollar bill before mentioned, from the said Roberts. The said bill was entirely worthless to me. I gave Mr. Roberts the deed about one year ago; I have examined the certified copy of a deed marked "A" attached to this deposition, and which I desired to be so attached, and which is now shown to me and believe the same to be a true copy of the original deed which I executed to said Roberts.

I believed Robert's statements, and would not have made the deed unless I had done so. Roberts said he procured the deeds from my Uncle Scriptor; that my Uncle had lost some of the papers relating to the land, which compelled him (Roberts) either to come and see me or to go into court—would not have had to have done either, if he had all the papers my uncle originally had. He said the land was worth only a dollar and a quarter an acre.

p. 35-36. *Jonathan Barnes*—Complainant's witness states: I am an attorney by profession, notary public, and justice of the peace, in Middletown, Connecticut. Took the acknowledgment of the deed from Charles H. Austin to Truman Roberts; does not remember any particular conversation passing at the time.

p. 64-68. *Thomas M. Austin*,—Complainant's witness, a resident of Ashford, Windham county, Connecticut, states substantially the same as his brother, Charles H. Austin, except that Roberts did not pretend to read to him a letter from his uncle, Reuben Scriptor.

p. 70-71. *Ira G. Murphey*,—Complainant's witness, stated: I am a justice of the peace; reside in Ashford, Windham county, Connecticut. Saw Roberts in August 1856, at his store in Ashford; was present when *Thomas M. Austin* deeded to Roberts; took the acknowledgment of the deed. About middle August 1856, Austin came into my store and asked my advice about conveying the land; gave him no advice; soon after Roberts came in, he and Austin talked some time about the land, Roberts urging him to convey; asked witness whether he had not better do so. I asked him how much land was worth, he said but little; said it was not worth \$75; had no buildings on it of any value, only a log hut or chantee. I told him if he had represented the matter correctly, it was p. 71. no great object to go there and fight for it; Roberts said he had a deed of it and could hold the land, and pulled out what he said was a deed

I never offered to look up Austin's heirs and get a deed from them, if he would pay the expenses; never made any offer to that effect. Gibbs p. 84-85. conveyed the land to Charles H. Cross, and I gave Cross the power of attorney to fortify his title. In 1837, before I gave said power of attorney to Cross, I made him a deed to the land, on his informing me that the deed from me to Gibbs had been lost. My deed to Gibbs was executed about 1825, as near as I can recollect.

This, together with the exhibits referred to and attached to the bill and answer, was all the evidence.

p. 3. At the April term, A. D. 1857, of the Stark County Circuit Court, the Court, upon hearing on the bill, answer, replication, exhibits and evidence, dismissed the complainant's bill at his costs.

The errors assigned are—

1. That the Court erred in making a decree dismissing the complainant's bill.
2. That the Court erred in not rendering a decree in accordance with the prayer of the complainant's bill.

N. H. PURPLE,
Solicitor for Complainant in Error.

///
Franklin H. Whiting

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Samuel Roberts

Abstr

Filed April 19, 1859

L. Belmont
Clerk

Franklin A. Maitry Plff in Error }
 24
 Truman Roberts Def in Error } Court
 Ottawa
 April Term
 1859.

And Now Counsel for Plaintiff in Error
 and says that in the Records and
 proceedings and in the Rendition of
 the decree in this case, there is Error in
 this to wit

1. The Court Erred in rendering a decree
 dismissing the Complainant's bill
2. The Court Erred in not rendering
 a decree in accordance with the
 prayer of the Complainant's bill

Wherefore he prays that said decree
 may be reversed, annulled and
 wholly set aside and that a decree
 may be made pursuant to the prayer
 of said Bill.

A. C. Purdie

Solicitor for Plff in
 Error

Aug 19. 1859.

1 At a circuit Court begun and held at
the Court House in the Town of Toluca within
and for the County of Stark in the State of
Illinois on Monday the twenty first day
of April in the year of our Lord One thousand
Eight hundred and fifty six present the Hon.
Jacob Gale Judge of the sixteenth Judicial
Circuit presiding C. G. Johnson States Attorney
Joseph Blanchard Sheriff and Jefferson Wick
Clerk. the following proceedings were had &c viz:

And afterwards to wit on the fifth day of the
said term of Court being April 25th 1856
The following proceedings were had &c viz

Franklin H. Whitney vs Truman Roberts In Chancery

And now on this day
this Cause coming on to be heard and
the said Complainant appearing by his
Attorney and the said defendant
appearing by Martin Shallenberger his
Attorney When the said defendant with
draws the answer to the Bill in this
Cause files and takes leave of Court to
Answer. It is therefore ordered by the Court
that this Cause stand continued till
the next term of this Court.

2
And afterwards to wit At A Regular term
of the Stark County Court began and held
At the Court House in the Town of Jordan
In the County of Stark and State of Illinois
on Monday the Twentieth day of April
In the year of our Lord one thousand Eight
Hundred and fifty seven present the Hon E. L.
Powell Judge of the sixteenth Judicial Circuit
In the state of Illinois presiding. Also Mc Clea
State Attorney Henry Bros Sheriff and
Jefferson Minor Clerk the following proceedings
were had to wit

On the fourth day of the
said term of Court being April 23rd 1857.

Franklin H Whitney ^{vs} Truman Roberts In Chancery.

Now on this day this
Cause coming on to be heard and the
said complainant appearing by Attorney
and the said defendant appearing by
Martin Shallenberger his Attorney when
It is agreed by the parties hereto that this
Cause be submitted on the Bill Answer
Replication Exhibits and testimony to be
decided by the Court in vacation and
decreed entered of Record as of this term

And afterwards At a Regular term of
 the State County Circuit Court began and
 held at the Court House in the Town of Toulon
 in the County of Stark in the State of Illinois
 On Monday the twentieth day of April in the
 Year of our Lord one thousand Eight hundred
 and fifty seven present Hon E. A. Powell
 Judge of the sixteenth judicial circuit in
 the State of Illinois presiding also McCleary
 State Attorney Henry Boes Sheriff and
 Jefferson Wilson Clerk the following proceeding
 were had to wit:

On the sixth day of the
 said term of Court being April 17th 1857
 the following proceedings were had to wit:

Franklin H. Whitney
 vs
 Thomas Roberts In Chancery.

This day this Cause came
 on to be heard upon Bill answer Exhibits
 and testimony and the Court being advised
 in the premises do order ad pro. and decree
 that the said Bill be dismissed. It is further
 ordered and decreed that the said defendants
 have and recover of and from the said Com-
 plainant his Costs and Charges in this
 suit expended and that the said complain-
 ant pay said Costs within thirty days from
 the filing of this decree and in default
 thereof that Execution issue as upon pro-
 gress at law.

Franklin H. Whitney
Human Robots
Copy of Record

4
In the Circuit Court of
Stark County Illinois of the
October AD 1855

To the Hon Rufus Peters Judge of the
said Court in Chancery sitting

Complaining Sheweth unto your
Honor your orator Franklin W Whitney
of Pulaski in the County of Oswego &
State of New York that on the Nineteenth
day of February AD 1818 a Patent was
in due form of Law issued by the
President of the United States to one
Charles Austin who was a Private in
Banks Company of the Thirty third
Regiment of Infantry for the North
East quarter of Section Thirty three
(33) of township twelve (12) North in Range
Six East (6) in the tract appropriated
by the acts of Congress for military
purposes in the state of Illinois a
Copy of which said Patent is hereto attach
ed as an exhibit marked D. and
made part of this bill The original or
a duly certified Copy thereof your
orator will produce upon the hearing
of this cause and your orator
further shews that the said real
Estate is now situated in the County
of Stark in the State aforesaid
And your orator further Charges
that some time in the year AD 1815
the said Charles Austin being in
Embarrassed Circumstances and

being in debt applied for assistance to one Ruben Scripser who then lived and resided in Cheshire County in the State of New Hampshire for assistance and the said Ruben Scripser then and there became his security upon a note of about Eighty Dollars which he the said Scripser was afterwards Compelled to pay And your Orator further Charges that the said Charles Austin about the time last afore said in order to secure the said Ruben Scripser the amount of money which he might have to pay by reason of such security made signed sealed and delivered to the said Ruben Scripser a Power of Attorney which bore date about the 25th day of March A.D. 1815. authorizing the said Ruben Scripser to sue for and recover such land as he said Charles Austin should be entitled to from the United States as a Soldier in Banks Company aforesaid a Copy of which Power of Attorney so far as the same has been preserved is herewith filed as an Exhibit marked "A" and made part of this Bill. The Original so far as the same has been preserved your orators will produce upon the hearing of this cause will then and there prove as near as they can do so the contents of such portions of said Power of Attorney as have not been torn off lost or destroyed as this Court shall direct

And your Orator further

6.

Charges that both your orator and the said Reuben Scriptor being ignorant of the law supposed that the said Power of Attorney authorised the said Reuben Scriptor to sell and convey the land herein before described now were they or either of them advised that it made any difference in law whether when said conveyance was made the said Charles Austin was dead or alive Your Orator therefore states that laboring under what they are now advised was a mistake of the law The said Reuben Scriptor as attorney of the said Charles Austin and acting under the said Power of Attorney sold to and your Orator then and there bought and purchased from the said Scriptor Attorney as aforesaid on the 18th day of January A.D. 1855 the said tract of Land herein before described for the sum or Price of Four Hundred Dollars and the said Reuben Scriptor then and there as such attorney conveyed the same to your Orator a copy of which said Deed marked "H" is hereto attached as an exhibit and made part of this bill The Original your Orators will produce upon the hearing of this Cause

And your Orator further Charges that the said Charles Austin departed this life some time about the year of our Lord 1835 intestate as your Orator is informed and believe and that at the time of his death he was seized in Fee Simple of the tract of Land before

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described and that at the time of his death he left Charles W Austin who is now a citizen and resident of Middletown in the County of Middlesex and State of Connecticut and Thomas M Austin who is now a citizen and resident of the town of Ashford Windham County and State of Connecticut his two sons who were born in lawful wedlock his only heirs at Law

And your Orator further Charges that the said Charles W Austin and Thomas M Austin as heirs at Law of the said Charles Austin deceased continued to be the legal owners of the said Real Estate inheriting the same from their said Father Charles Austin aforesaid until about the Eleventh and fifteenth day of August AD 1854 as herein after stated and shown

And your Orator further Charges that the said Reuben Scribner acting as attorney for the said Charles Austin under the Power of Attorney aforesaid previous to the conveyance herein before mentioned by him as such Attorney to your Orator to wit On the 18th day of November AD 1837 ~~by his~~ deed as Attorney as aforesaid sold and conveyed the said quarter section of Land to one Charles W Cross a copy of which said deed is hereto attached as an exhibit marked "b" and made part of this Bill

The Original your Orator will Produce upon the hearing of this Cause
And your Orator further Charges

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that on the Eighth day of January AD 1855 the said Charles Mc Cross and Melissa de Cross his wife by their deed of that date sold and conveyed the said quarter section of Land to your Orator a Copy of which said deed Marked "L" is hereto attached as an exhibit and made part of this Bill the Original your Orator will produce upon the hearing of this Cause

And your Orator further states that at the time the said several Conveyances were made to him as aforesaid he was and still is a Citizen of the State of New York that he purchased the same in good faith supposing he was obtaining a perfect title to said Land and that he had no knowledge nor information that any conveyance had previously been made to Truman Roberts or any other person as herein after stated and set forth And your Orator further Charges that on the 14th day of February AD 1855 the said Thomas M Austin by his deed of that date sold and conveyed all his Interest right and title in and to said Quarter section of Land to your Orator a copy of which said deed Marked "H" is hereto attached as an exhibit and made part of this Bill the Original your Orator will produce upon the hearing of this Cause

And your Orator further Charges that on the 14th day of February AD 1855 the said Charles Mc Austin

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Sammy A Austin his wife by their deed of that date sold and conveyed all his interest right and title in and to the said quarter section of Land to your orator a Copy of which said Deed marked H is hereto attached as an exhibit and made part of this Bill The Original your Orator will produce upon the hearing of this cause which said Deeds were duly acknowledged and recorded in the Recorders Office of Stark County on the 26th day of March A.D. 1855 By means of which ^{said} several premises the said Franklin W Whitney your Orator then and there became in Equity And but for the actings and doings on the part and behalf of the said Truman Roberts as herein after stated and set forth would have become the legal owner and have held the legal title in fee simple to said Quarter section of Land

Your Orator further Charges that some time previous to the month of August A.D. 1854 one Truman Roberts who was then and still is a citizen of the State of New York in the County of Oneida being one of those dealers in Real Estate commonly known and designated in the State of Illinois as Land Pirates having by virtue of his occupation or some other means made the discovery of the several facts herein before stated which had occurred previously to the date last aforesaid and that the said Conveyances from the said Reuben Scriptor of the said

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Real Estate was not of binding force or authority and that the title to the said real Estate was still in the said Charles W & Thomas M Austin as heirs at Law of the said Charles Austin deceased about the first day of August AD 1854 applied to the said Reuben Scripser and pretending that he had some title or claim to the said Land and requested the said Scripser to go with him to the Residences of the said Charles W & Thomas M Austin in the State of Connecticut and to try and persuade them to convey the said real Estate to the said Truman Roberts. As the said Reuben Scripser being the Uncle of the said Thomas M & Charles W and in his lifetime the Brother in law of the said Charles Austin the Patenter of the said Land which the said Reuben Scripser then and there wholly refused to do and informed the said Roberts that he had already sold and conveyed the said Land for a full and fair consideration under a Power of Attorney from the said Charles Austin to him as before stated.

And your Orator further Charges that notwithstanding the refusal of said Reuben Scripser to have any thing to do with the said transaction the said Truman Roberts immediately thereafter went to the State of Connecticut and hunted up the said Charles W and Thomas M Austin and about the middle of the

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said month of August AD 1855. applied to
them to make execute and deliver to him a
Deed of the said Land which was the first
knowledge or information which the said
Charles H & Thomas M Austin ever had that
they had ever had any claim or title to or
interest in the said Land And your
Orator further Charges that in order to
induce the said Charles H & Thomas M
Austin to convey the said Land to him
the said Truman Roberts & the said
Truman Roberts falsely and fraudulently
represented to the said Charles H & Thomas
M that he said Roberts had just come
from the residence of their Uncle Ruben
Scripter in the State of New York that
he was in Equity and saw the owner
of the said Land that he had purchased
the same of their Uncle Ruben Scripter
and had paid in full for the same
that some of the Papers shewing his
Title had been lost or mislaid so that
the same was on its face imperfect
That a Court would make him a
perfect Title to the Land for ^{the sum of} twenty dollars
But that he would rather pay a small
sum and have the land deeded to him
than go before a court to litigate the
matter there That the said Scripter had
offered to look up the said Charles H and
Thomas M Austin and get from
them a deed for said Land provided
he the said Roberts would pay his
Expenses or some other small sum that

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in fact said Land was of little value and not worth two Dollars and fifty Cents per Acre that he could enforce his Claim to the title in a Court of Equity and would do so unless they did the same to him and other words and representations to the same effect. All of which the said Charles W. and Thomas M. being wholly ignorant of the existence Location and value of the said Land and of all the other matters and things related to them by the said Truman Roberts believed and for their truth relied entirely on the representations and statements of the said Truman Roberts.

And your Orator further Charges that relying upon such representations the said Thomas M. Austin did on the Eleventh day of August A.D. 1854 for a mere nominal Consideration not exceeding the sum of two Dollars by his Deed of that date conveyed his interest in said Real Estate to the said Truman Roberts a Copy of which said Deed marked "C" is in the original is in the possession of the said Truman Roberts who is notified to Produce the same upon the hearing of this Cause.

And your Orator further Charges that relying upon the said representations of the said Truman Roberts the said Charles W. Austin on the Fifteenth day of August A.D. 1854 for a mere nominal Consideration not exceeding the sum of two dollars by his deed of that date conveyed

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and in truth the said Land was worth at the time of the said sale or conveyance to the said Truman Roberts at least the sum of Fifty dollars per acre which fact was well known to the said Truman Roberts at the time aforesaid.

And your Orator further Charges that the said Truman Roberts could not as he falsely and fraudulently represented to the said Charles W & Thomas M have applied to any Court whatever & have procured any title whatever in any manner to the said land or any part thereof And that this statement was wholly and entirely unfounded and gratuitous and all of the said Representations were made with an intent on the part of the said Truman Roberts to induce them to convey said Land to him without Consideration and with a design on the part of the said Truman Roberts to Cheat swindle and defraud the said Charles W & Thomas M Austin out of their said Land.

Your Orator therefore Charges that under the circumstances the said conveyance so made by the said Charles W & Thomas M Austin to the said Truman Roberts being procured by fraud as aforesaid was wholly and entirely void and the equitable title and right to the said land still remained in the said Charles W & Thomas M notwithstanding the said conveyances so by them

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made as aforesaid And your Orator Charges that the said Conveyances &c as aforesaid fraudulently procured by the said Truman Roberts ought in Justice and in Equity to be set aside and held for naught

And your Orator Charges that the actings and doings of the said Truman Roberts as aforesaid are contrary ~~and~~ ~~xxx~~ to Justice and Equity and tend to the manifest wrong and injury of your Orator in the premises

For as much then as your Orator is remediless at Law in the premises and can only have relief in Chancery where such matters are properly Cognizable and relivable he prays that the said Truman Roberts may be made defendant to this Bill that he may answer all the Charges and allegations therein contained fully and Particularly (but not upon oath) the oath of the said defendant being hereby waived under the Statute in such cases made and provided that upon the final hearing of this cause a decree may be made that the said Deeds so made by the said Charles H & Thomas W Austin to the said Truman Roberts may be set aside and held for naught and that in the meantime the said Defendant may be enjoined and restrained from selling or in any wise disposing of or encumbering said quarter section of Land or any part thereof & that your

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Orator may have such other and further relief in the premises as to justice and equity appertain and as in duty bound he will pay &c

He Prays also for the usual process of Subpoena against the said Defendant &c

Purple Souger & Pratt
Compts Solicitors

State of Illinois }
Marshall County } ss

N. W. Purple Being duly sworn says that he has been informed and verily believes the same to be true that Truman Roberts the Defendant above named is a non Resident of the State of Illinois & further said not Subscribed & Sworn

to before me this N. W. Purple
18th day of April A.D.
1855.

L. Fort Clerk of the
Circuit Court Court of Marshall Co Ills

Clerk will please advertise at once

Franklin W Whitney } In the Circuit
vs } Court of Stark
Truman Roberts } County October Term
A.D. 1855

In Chancery
I do hereby enter myself security for
Costs in this Cause and acknowledge
myself Bound to pay or cause to be

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paid all costs which shall accrue in
this action either to the opposite party
or to any of the officers of this Court purs-
uant to the laws of this State

Dated this 23 day of N^o 16 Purple
April A D 1855

Franklin W Whitney } In the Circuit
vs } Court of Stark
Griman Roberts } County October Term
A D 1855

In Chancery

Issue summons in the above
cause against the Defendant
returnable according to Law

Purple Sanger & Pratt
Compts Solicitors

State of Illinois } The People of the State of Illinois
Stark County vs } to the Sheriff of Stark County Greeting

We Command you to

summon Griman Roberts if he may be
found in your County personally to be and
appear before the Circuit Court of said
County on the first day of the next term
thereof to be holden in the Court House
in Toulon on the second Monday in
the month of October next then and
there to answer a certain Bill of
Complaint filed in our said Circuit
Court on the Chancery side thereof against
you the said Griman Roberts by Franklin

the within named person
Jas Blanchard Sheriff

Filed October 23rd 1855 J. Min. Clerk

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I cannot find
in my County
of Stark Co
any Return

H Whitney And have you then and
there this writ and make return there
on in what manner you execute the same
Witness Jefferson Weim Clerk of
our said Circuit Court and the
Seal thereof at Toulon this 2nd
day of September AD 1855

Jefferson Weim Clerk

Notice

Franklin W Whitney } In the Circuit Court
vs } of Stark County October
Term AD 1855
Gerrman Roberts }

Bill in Chancery

Affidavit having been filed in the office
of the Clerk of said Court That said Gerrman
Roberts is now resident of said State of Illi-
nois Now therefore notice is hereby given
to you the said Gerrman Roberts that
the above entitled Cause in said Court
that summons has been issued therein
returnable to the next term of said Court
to be holden at the Court House in Toulon
in said County on the second Monday
in the month of October next and that
unless you appear and Plead answer
or demur the said bill herein filed will
be taken for Confessed against you
Given under my hand at Toulon in
the County aforesaid this 22nd day of
August AD 1855

Jefferson Weim Clerk

N H Purple Solr for Com Plff

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Filed for record AD 1835
J. W. Minn Clerk

This is to Certify that the annexed notice
was published for six consecutive weeks
commencing with August 30 in the Henry
County Dial a Weekly Newspaper published
in Lawrence Henry County and State of Illinois
In accordance with the Statute in such
cases made & provided
Printers Fee 4.50
C Bassett
per Chambers

State of Illinois } The People of the State of Illinois
Stark County ss } To the Sheriff of Stark County Greeting

We Command you to
summon Truman Roberts if he may be
found in your County personally to be
and appear before the Circuit Court
of said County of Stark on the first day of
the next Term thereof to be held in the
Court House in the Town of Toulon on
the second Monday in the month of October
next then and there to answer a certain Bill
in Chancery filed in our said Circuit Court
against the said Truman Roberts by Franklin
H Whitney and have you then and there
this writ and make return thereon in
what manner you execute the same

Witness Jefferson Winn Clerk
of our said Circuit Court and the
seal thereof at Toulon this 24th
June AD 1835

Jefferson Winn Clerk

State of Illinois served on the within
People County named Truman Roberts
per 50
Copy 25
by reading to him this writ and giving him
a true Copy hereof this 7th day of July 1835
90
Filed March 5th 1856 Jefferson Winn Clerk Stark County Ills

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20 State of Illinois } of the October Term of the State
Stark County Circuit Court AD 1835

The Answer of Truman Roberts defend
ant to the Bill of Complaint of Franklin H
Whitney

This defendant now and at all times
hereafter saving and reserving to himself all
manner of benefit and advantage of exception
to the many errors and insufficiencies of the
said Complainant's said Bill of Complaint
contained for answer thereto or to so
much thereof as this defendant is advised
is material for him to answer answering
says that he admits that about the time stated
in said Bill a Patent issued from the United
States to the said Charles Austin for the Land
in said Bill mentioned but denies that Reuben
Scripture ever became security for said
Austin on a note for Eighty Dollars and
denies that said scripture ever paid any thing
said note admits that Austin executed to scripture
a Pretended Power of Attorney for said
Land but denies that said Power was a
valid one and charges that said Power
of attorney was void by act of Congress and
no right or title was therein or thereby
conveyed to said scripture to convey
said Land denies that complainant bought
the Land of scripture for Four hundred dollars
admits that Charles Austin died intestate
in 1835 leaving Thomas M and Charles H
Austin his only heirs denies that said
scripture conveyed said Land to Charles

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He Cross denies that Cross conveyed said Land to Complainant denies that said Purchases were made in good faith not knowing anything of former purchases denies that Thomas M and Charles H Austin ever conveyed said Land to Complainant, but charge that said Thomas M and Charles Austin in August AD 1854 Conveyed said Land to defendant for a valuable consideration in good faith as they had a legal right to do denies that he ever tried to persuade Scripture to get the Austins to deed to him denies that he made any false or fraudulent representations to said Austins or either of them defendant denies and says it is not true as alleged in said Bill that he defendant previous to the conveyances to him by the said Austins had no title or claims to said Land but Charges the contrary That on the sixth day of November AD 1821 and in the life time of the said Charles Austin one Benjamin Gibbs purchased said tract of Land from the said Reuben Scripture as atty in fact of said Charles Austin Patentee for the sum of one hundred Dollars and the said atty in fact then executed acknowledged and delivered to the said Gibbs a quit claim deed in which was a mistake locating the land west instead of East of the 4th Principal Meridian of said Lands which deed was duly recorded in the proper Office on the 15th ~~day~~ of October 1823 (a copy of which deed is herewith filed marked A and made part of this answer) That some time in the year 1853 I purchased said land from said Gibbs and

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the said Gibbs on the seventeenth day of
February 1853 by deed of Quit Claim of that
date conveyed the said Land to this defendant
which said deed was duly acknowledged and
recorded in the proper office on the 23rd day
of March 1853 a copy of which deed is herewith
filed and marked B and made part of this
answer and the said Defendant Charges that
he was the first purchaser for a valuable
consideration of said Land from said scripture
under said pretended Power of atty and the
first purchaser from said Thomas M and
Charles W Austin as he had a lawful right
to do and that he is both legally and equitably
entitled to hold said Lands against said
Complainants and the said Complainant
can show no good cause to this Court why
said deed should be set aside and be cancelled
Austin should be set aside and be cancelled
that he
defendant further answering says...
is not a Sand Pirate That if he was he
would not be so offensive to the morals of
Complainant as a Sand Shark which he
charges the Complainant to be because Sand
Pirates after they kill do not eat their victims
Sand Sharks do and now this defendant
having fully answered prays to be discharged
with his reasonable costs in this behalf
most wrongfully incurred &c
Barley Grauman & Wells Sols Truman Roberts
for Defendant

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This Deed made and entered into on this seventeenth day of February Eighteen hundred and Fifty three by and Between Benjamin Gibbs of the Town of Richland Oswego County and State of New York of the first part and Truman Roberts of the second part Witnesseth that the said party of the first part for and in consideration of one Dollar to me in hand paid by said party of the second part the receipt whereof is hereby acknowledged has granted sold and quit Claimed unto the said party of the second part Heirs and assigns all of my right title and claim unto the North East Quarter of section Thirty three (33) in Township Twelve (12) North Range Six (6) East and all other Int-erest I may have or any lands lying in the Military district State of Illinois to have and to hold the same with all the rights privileges and appurtenances thereto belonging unto the said party of the second part his heirs and assigns In witness whereof said party of the first part hereunto sets his hand and seal on the day and year above written

Witness Mary G. Welden Benjamin Gibbs

State of New York
 Oswego County ss On this 17th day of February A.D. 1853 before me personally came Benjamin Gibbs known to me to be the same Individual described in and who executed the foregoing Conveyance and acknowledged that he executed the same for the uses and purposes therein mentioned

J. B. Watson
 Justice of the Peace

Exhibit 11

22

State of New York
 Oswego County Clerk's Office ss I E M Hill
 Clerk of Oswego County do hereby Certify that
 J B Watson whose name is subscribed to
 the Certificate of the Proof of Acknowledgement
 of the annexed Instrument and thereon
 written was at the date of said Certificate
 a Justice of the Peace in and for said County
 and duly authorized to take the same and further
 that I am acquainted with the handwriting
 of the said Watson and verily believe the
 signature to the said Certificate of Proof or
 acknowledgement to be genuine and
 I further Certify that the said Instrument is
 acknowledged and in all respects executed
 according to the laws of this State In Testimony
 whereof I have hereunto set my hand and
 affixed the seal of said County this 19th day
 of February 1853
 E M Hill Clerk

Exhibit B

State of Illinois
 County of Stark ss I Jefferson Wain Clerk
 of the Circuit Court & Ex officio Recorder in
 and for said County do hereby Certify that the
 foregoing is a full copy of a Deed Recorded
 in the Recorder's office of said County on
 the 23^d day of March in Book 4 on page
 51
 (Witness my hand and official
 seal this 13th day of June AD
 1856
 Jefferson Wain Clerk
 & Recorder

Franklin H Whitney vs Truman Roberts

In the Circuit Court
of Stark County in Chanery
The Replication of the Com-
plainant to the answer of the Defendant
filed in the above Cause

This Complainant for Replication
to the said Defendants answer says that he
will aver and maintain his said Bill to be
true certain and sufficient and that the said
answer of the said Defendant is evasive
uncertain irrelevant untrue and insuffi-
cient

Wherefore he Prays as in and by
his said Bill he has prayed &c.

Purple & Pratt
Counsellors Solicitors

State of Illinois vs Stark County Circuit Court
County of Stark, October Term AD 1855

The Answer of Truman Roberts Defendant
to the Bill of Complaint of Franklin H
Whitney Complainant

This Defendant by Protestation not Confess-
ing or acknowledging all or any of the
matters or things in and by the said
Bill set forth and complained of to be true
in manner and form as the same are
therein set forth and alledged says that
there is no matter or thing in the said Bill

Continued good and sufficient in law
 to call this defendant in question in this
 Honorable Court for the same but there is good
 cause of Demurrer thereto and therefore this
 defendant doth demur therunto and for cause
 of demurrer this defendant saith that the
 Complainants said Bill (in case the said
 Allegations therein contained were true which
 this defendant doth in no suit admit)
 contains not any matter of Equity whereon
 he can ground any decree or give the
 Complainant any relief or assistance as
 against this defendant for further cause of
 Demurrer sheweth that by the said Complainants
 own showing in his said Bill the said
 Thomas M and Charles Austin were the
 grantees of the land mentioned in
 said Bill to defendant and Parties to
 the Contract which said Complainant
 by his said Bill seeks to rescind and the
 said Thomas M & Charles Austin are
 neither of them made parties to this Bill
 Therefore and for ^{divers} other ~~divers~~ good causes
 of Demurrer imperfections in said Bill cont-
 ained therein appearing this defendant
 doth Demur in law therunto and Honorable
 demands the Judgment of this Court whether
 he shall be Compelled to put in any other or
 further answer to said Bill and to be forever
 dismissed with his reasonable Costs &c

Bailey Bramant & Wells scls
 for Sft Bramant Roberts

State of Illinois } The People of the State of Illinois
 Stark County }

To Arthur B. Califf of Middle-
 town Middlesex Co Conn a Commissioner or
 to any Judge or Justice of the Peace of said County
 Know You That Trusting to your
 fidelity and circumspection We do hereby
 Authorize and require you to cause
 to come before you at such time and place
 as you may designate Charles W Austin
 of said Town in said County and Jonathan
 Barnes of the same place at Middletown
 aforesaid Witnesses on the part of the
 Complainant in a certain matter of
 Controversy now pending in our Circuit
 Court of Stark County in which Franklin
 McWhitney is Plaintiff and Truman Roberts
 is Defendant and then and there diligent-
 ly examine the said Witnesses upon Corporal
 Oaths touching the said Controversy upon all
 and singular the interrogatories hereto attached
 as well on the part of the Plaintiff as the defendant
 that you reduce to writing each of the said
 interrogatories in the order in which
 they are propounded together with the
 answers of said Witnesses and certify
 the same to our said Court under your
 hand and seal returning also this writ
 Witness Jefferson Weir Clerk of our
 said Court at Toulon in said County
 this 28th day of August AD 1855 the
 seal of said Court being hereto affixed
 Jefferson Weir Clerk

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Franklin W Whitney vs Truman Roberts In the Circuit Court of Stark County In Chancery

To Mr Truman Roberts

You are notified that on the 14th day of July 1855 the Complainant above named will sue out of the Office of the Clerk of the Circuit Court of Stark County a Commission in said cause directed to Arthur B. Baliff Esq of Middletown Middlesex Co Connecticut as Commissioner or to any Judge or Justice of the Peace of said County requiring said Commissioner Judge or Justice of the Peace to take the deposition of Charles W Austin of said Town and County and of Jonathan Barnes of the same place at Middletown aforesaid upon the following interrogatories to be read in evidence upon the part of the Complainant on the hearing of this cause

June 25th 1855 Purpl W Sauger & Pratt Solicitors for Complainant

Interrogatories to Charles W Austin
 1st What is your name age occupation and Place of Residence
 2nd Are you acquainted with the Parties to this suit. if so how long have you known them severally

Q^y. 3rd Did you ever know one Charles Austin who was a soldier in the war with Great Britain If so state when and where whether he was ever married. and to whom whether he ever had any children born in lawful wedlock if so what were their names ages and if alive their several places of residence if dead when they died and whether the said Charles Austin is dead or alive and when and where he died if dead

4th State whether you ever made and executed a Deed to the Defendant Truman Roberts If so state what Land was conveyed by said deed and under what Circumstances look at the Certified Copy of a Deed marked "A" now shewn to you and state whether you believe the same to be a copy of the original Deed executed by you to said Roberts and if so attach the same to this your Deposition State as near as you can remember the time you made said deed and whether you ever made any more than one Deed to the said Truman Roberts and what consideration he paid you for the same

5th State whether you had any knowledge that you had any interest in or title to said land until you was informed of that fact by the said Roberts

6th What Statements and Representations did said Roberts make to you to induce you to make said deed State fully and Particularly

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all the Circumstances and all the Conversation which passed between you at or about the time said Deed was so executed by you what induced you to Execute the same and whether you believed the Statements and representations of said Roberts to be true and whether you would have Executed said deed if you had known them to be false

7th Did he said Roberts say anything to you and what about your Uncle Reuben Scriptur Or did he pretend to read anything and if so what from a letter from said Reuben Scriptur relate particularly all that he said and did relative to this matter and whether he said anything and what about having purchased said Land or lost any of the deeds or papers & if so from whom did he say he had so purchased and what papers did he say he had lost

8th Did said Roberts say anything about applying to a court for a Title to said Land & if so what? State fully -

9th What if any thing did he say about the value of the said Land

10th Do you know any other matter or thing of benefit to either of the parties if so state the same fully and Particularly

Purple Sangre & Pratt
Corrupt Solicitors

Interrogatories to Jonathan Barnes
 1st What is your age occupation and place
 of Residence?

2nd Do you know the parties to this suit or either
 of them? If so how long have you known
 them?

3rd Have you heard the deposition of Charles
Mc Austin read? if so state whether you
 were present at the time of the making and
 execution of the deed therein mentioned and
 whether you are the person who took the
 acknowledgement of the said deed

4th Did the said Roberts at or about the time
 said deed was executed make any statements
 or Representations to induce the said Charles
Mc Austin to make said deed state fully
 and particularly all that you heard him
 say & saw him do in relation to the matter
 at that or any other time

5th Do you know any thing further of benefit
 to either party? If so state the same fully
Purple Sanger & Pratt
 Compts Solicitors

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Franklin W Whitney } In the Circuit Court
 Truman Roberts } of State County Ills

In Chancery

The Deposition of Charles W Austin taken before the undersigned on this 11th day of September AD 1855 by virtue and under the authority of the Commission hereto attached. The said Charles W Austin being first duly sworn to testify the truth the whole truth and nothing but the truth in answer to Interrogatory.

First - deposes and says that my name is Charles W Austin that I am forty one (41) years old a Boot Maker by trade and that I reside in Middletown in the State of Connecticut.

To Interrogatory -

Second He says - I have known Mr Roberts the defendant about one year I have known Mr Whitney the Plaintiff about six months.

To Interrogatory

Third He says - I knew one Charles Austin he was my father he was a soldier in the war with Great Britain of 1812 I have heard my mother say that he was in Banks Company 33^d Regiment my Father lived in Norwich Connecticut from my earliest recollection to the time of his death He was married to Lydia Burdick some time about 1810 or 1811 as my mother tells me He had four children born in lawful wedlock their names were Charles W Austin the deponent born

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September 5th 1814 Lydia Austin born
 October 14th 1816 died about twenty four
 years since - Thomas M Austin born
 about 1818 and now resides in Ashford
 in Windham County Connecticut. Edward
 Austin born July 13th 1827 died at the
 age of fifteen months My Father died at
 Norwich Connecticut about Twenty two
 years since

To Interrogatory

Fourth He says I executed a deed to
 Truman Roberts conveying One hundred and
 sixty acres of Land being the same that my
 father Received for services in the war with
 Great Britain in 1812 the Description of
 which I am unable to give except as
 from the Deed of my self to said Roberts
 a copy of which is hereto annexed The
 Circumstances under which I conveyed
 the said Land to the said Roberts were these
 viz About a year ago Roberts came to my
 House and inquired of me whether I was
 a son of Charles Austin I told him I was
 he told me he had some business with
 me about some bounty land that was
 my fathers I asked him to go into the
 House he declined It was as early as
 six o'clock in the morning He requested
 me to call up to the Hotel and see him
 there I did so He then said he would
 show me Deeds and papers showing that
 it belonged to him I then asked him why
 he came to see me as I did not know
 that I had any right or title to any land

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there He then said that I would have had if my Father had not disposed of his title He said that one great reason why he came on was that he had ascertained there was heirs but it made no other difference to him only that he was in New York and thought he would come up and see them but that he could hold it by applying to a Court and not cost him more than 30 or 40 dollars

He said he thought it was a quicker way for him to get title through us than to go to Court by paying us a little something for our trouble Expressly saying that he would pay nothing for the Land as it belonged to him He showed me deeds representing that they were obtained from my Uncle Reuben's signature That was the first I knew that I had an Uncle by that name

From the deeds he showed me and the statements he made to me I became pretty well satisfied that he was telling the truth and I wanted to save him the trouble of going to Court I told him I would wait a little while and write my Uncle about it He sort of hesitated and afterwards told told me he didn't see why I need to wait He didn't see why I could not be satisfied with his statement that it would save him the trouble of going to Court as he should do and hold it unless I saw fit to deed to him He then said he had a letter from my uncle and put his hand in his Pocket and took it out he then read as follows as near as I can recollect

"Dear Nephews I am glad to learn that I have Nephews I have not heard from you in many years" and then goes on to say that my friend Roberts will lay before you the papers and business concerning the land that was formerly your father's and goes on to state that it was in his hands and what disposal he made of it He said now it belongs to Mr Roberts and that he the said Roberts has the only right and title to it and that it will save myself trouble and expense if you will deed to Mr Roberts

He said he could hold it in spite of all and would if I did not see fit to deed - The reason why I did conclude to deed the land to Mr Roberts was that I might save my Uncle trouble and expense I never gave but one deed to Truman Roberts He gave me for my time and trouble a three dollar Bill which the Cashier of the Middletown Bank pronounced to be a worthless Bill I never received any more than the three dollar Bill before mentioned from the said Roberts The said Bill was entirely worthless to me I gave Mr Roberts the deed about one year ago I have examined the Certified Copy of a deed marked "A" attached to this deposition and which I desired to be so attached & which is now shewn to me and believe the same to be

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a true Copy of the original Deed which
I executed to said Roberts

To Interrogatory

Fifth He says I had no knowledge or
intimations whatever that I had any
interest in or title to said Land until
said Roberts informed me

To Interrogatory

Sixth He says I believed the statements of
said Roberts to be true and had I sup-
posed them to be false I should not have
executed the deed. All other questions
asked in the sixth Interrogatory are
fully answered in my answers to the
fourth Interrogatory

To Interrogatory

Seventh He says He said Roberts said
he procured the deeds from my Uncle
Scripture He told me that my Uncle
had lost some of the papers relating
to the Land which compelled him
the said Roberts to either come and
see me or to go into Court and that
he should not have had to do either
if he had all the papers that my Uncle
did originally possess Yes he did pretend
to read from a letter from my Uncle
Scripture as stated in answer to
interrogatory Fourth He also said
that he purchased said land of
my Uncle Scripture He did not
say when he so purchased it

To Interrogatory

Eighth He says he did forego-

-ing answers for Particulars

To Interrogatory

Ninth He says He said the value of the land was one Dollar and a quarter an acre to the extent and that some of the Government land had been sold for less

To Interrogatory

Tenth He says I do not know any other matter or thing of benefit to either of the parties
Chas W Austin

Franklin W Whitney } In the Circuit Court
Emmanuel Roberts } of Stark County Ills
In Chancery

The Deposition of Jonathan Barnes Esq taken before the undersigned on this 11th day of September A.D. 1855 by virtue and under the authority of the Commission hereto attached The said Jonathan Barnes being first duly sworn to testify the truth the whole truth and nothing but the truth in answer to Interrogatory

First He says I am sixty five years of Age an Attorney by profession and reside in Middletown in the County of Middlesex Connecticut I am also a Notary Public & Justice of the Peace

To Interrogatory

Second He says I do not know the Plaintiff I once saw a man whom I suppose to be the defendant in this cause and but for a short time only He called at my Office at what Particular time

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I do not precisely remember and I think
in relation to a deed of Land

To Interrogatory

Third He says I have heard the deposition
of Chas H. Austin read the deed alluded
to by Mr Austin is not before me nor a
copy of it If my name appears subscribed
to the deed as a Magistrate in taking the
acknowledgement I presume ^{that} it is genuine
but I have no distinct recollection of the
fact of taking the acknowledgement nor
of the particulars of the conversation between
the parties

To Interrogatory

Fourth He says If Mr Roberts made any
statements in my presence I do not recollect
them

To Interrogatory

Fifth He says I do not know any thing
further of Benefit to either party except that
since making answer to third Interrogatory
I have seen a copy of the deed alluded to
and am satisfied that I took the acknow-
ledgement of it as a Notary Public

Jonathan Barnes
State of Connecticut
County of Middlesex
I Arthur G. Balch
Commissioner appointed to take
depositions in the foregoing cause
do certify that the preceding depositions
of Charles H. Austin and Jonathan
Barnes were taken before me at my
office in Middletown Middlesex County
Connecticut on the 11th day of September

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A.D. 1855 That said Witnesses were first duly sworn according to Law that the interrogatories were severally propounded to them by me and that their several answers were by me reduced to writing and they severally subscribed their depositions in my presence

In witness whereof I have hereunto set my hand this 11th day of September A.D. 1855
 Arthur B. Caley
 Commissioner &c

This Deed made and entered into on the fifteenth day of August Eighteen hundred and fifty four by and Between Charles W. Austin (son and heir at Law of the late Charles Austin a private in Banks Company of the third third Regiment of Infantry in the last war with Great Britain) of Middletown Middlesex County and State of Connecticut Party of the first part and Truman Roberts of Rensselaer County and State of New York of the second part Witnesseth that the said party of the first part for and in consideration of one Dollar to him in hand paid by the said party of the second part the Receipt whereof is hereby acknowledged hath granted Bargained and sold and by these Presents do sell Convey and quit Claim unto the said party of the second part his heirs and assigns all his right title and claim unto the North East Quarter of Section Thirty three (33)

38.

In Township Twelve (12) North and Range six (6) East it being the same land patented to my Father for service rendered in the last war with England lying and being in the military district and State of Illinois To Have and to hold the same with all the rights privileges and appurtenances thereunto belonging unto the said party of the second part his heirs and assigns

In witness whereof the said party of the first part hereunto sets his hand and seal the day and year above written
Signed sealed and delivered Charles W Austin
In presence of Fredrick A Burwell
Jonathan Barnes

State of Connecticut
County of Middlesex

Be it Remembered that
On this fifteenth day of August in the year of our Lord one thousand Eight hundred and Fifty four before me Jonathan Barnes a Notary Public in and for the said State duly Commissioned and Sworn dwelling in said Middletown and authorized by Law to take the acknowledgement of deeds personally appeared Charles W Austin to me known to be the real person whose name is subscribed to the foregoing conveyance and acknowledged that he executed the same as his free act and deed for the uses and purposes therein mentioned In witness whereof I hereunto set my hand and Notarial Seal of

Embarrassed Circumstances and

39.

Office the day and year first above written

J. B. B.

Jonathan Barnes
Notary Public

State of Illinois
Stark County I Jefferson Weim Clerk
of the Circuit Court and ex officio Recorder of
Deeds in and for said County of Stark do
hereby Certify that the above and foregoing
is a correct and full copy of a Deed from
Charles W. Austin to Truman Roberts Recorded
September Seventh AD 1854 in Book C. on
Page 163 of the Stark County Records

Witness my hand and Official
Seal at my Office in Toulon this
4th day of April AD 1855
J. B. B.
Jefferson Weim Clerk
& Recorder

James Monroe

President of the United States of America. To all to whom these presents shall come greeting. Know ye That in pursuance of the acts of Congress appropriating ^{and granting} Land to the Late Army of the United States passed on & since the Sixth day of May 1812 Charles Austin having deposited in the General Land Office a warrant in his favor numbered 11.367 there is Granted unto the said Charles Austin late a private in Banks Company of the thirty third regiment of Infantry a certain tract of land containing one hundred and sixty acres being the North east quarter of Section thirty three of Township ^{Twelve} ^{North} in range Six east in the tract appropriated (by the acts aforesaid) for military Bounties in the territory of Illinois

To have & to hold the said quarter Section of Land with the appurtenances thereof unto the said Charles Austin and to his heirs and assigns forever

In testimony whereof I 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 this nineteenth day of February in the year of our Lord one thousand eight hundred and Eighteen and of the Independence of the United States of America the forty second.

By the President James Monroe
Josiah Mingo Commissioner of the General Land Office.

Recorded Vol 18 page 548

General Land Office

December 26. 1843

S Thomas H Blake Commissioner of the

Patent

Exhibit D

James Monroe Pres. U. S.

Charles Austin

~~340 1/2~~
340 1/2

General Land office do hereby certify that the
within is a true copy from the record of the patent
in this office. In testimony whereof I have
hereunto subscribed my name
and caused the seal of this of-
fice to be affixed at the city of
Washington on the day & year above written

Thomas H. Blake
Commissioner of the General Land Office

Power of Attorney
Charles Austin
to
Ruben Scription

Know all men by these presents that
I Charles Austin of Stoddard in the County
of Cheshire & State of New Hampshire for divers
good causes & considerations me hereunto moving
have made ordained authorized constituted &
appointed and by these presents do make
ordain authorize constitute and appoint
Ruben Scription of Stoddard aforesaid my
true & lawful attorney for me and in my name
and to my use or but to the use of him the said
Ruben Scription to ask demand sue for recover
& receive of the United States of America all and
every part & parcel of Land that is due to me the
said Charles Austin on account of services
rendered by me the said Austin to the said
United States as a Soldier in Sixth Banks
company in the thirty third regiment of Infantry
as may more fully appear by my discharge
and to have and to use all lawful ways and
means in my name or otherwise for the recovery
thereof. And on receipt thereof acquittance

Exhibit (A)

" Hampshire March 25th 1856

Personally appeared the above named Charles Austin and
acknowledged the foregoing instrument to be his voluntary act
and deed before me

J. Robbins } Justice of the Peace

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or other sufficient discharge for the same for me
and in my name to make seal and deliver
and to do all lawful acts and things whatsoever
concerning the premises as fully in every respect
as I myself might or could do if I were personally
present and an attorney or attorney under him
for the purposes aforesaid to make & at his pleasure
to make hereby ratifying allowing all and
whosoever my said attorney shall in my name
do or cause to be done in and about the premises
by _____ of I have
hereunto set my hand and seal this twenty
in the year of our Lord one thousand eight
hundred:-----

The words states on and aspects
were intended before signing
Charles Austin #

State of New Hampshire

Secretaries Office Concord

Jan'y 16. 1855

I hereby certify that at the date of the annexed
attestation Josiah Robbins was a justice of the
peace for the County of Cheshire in the said State duly
commissioned and qualified and that to his acts
and attestations as such full faith and credit
are and ought to be given in and out of Court.
And I do believe that the signature of said J.
Robbins thereunto is genuine

Ante testimony whereof I have hereunto
affixed the seal of the State the date above written
John L. Bradley Sec'y of State

This Indenture made this Eighteenth day of January in the year of our Lord one thousand eight hundred & fifty five. Between Charles Austin late a private in Banks company of the thirty third regiment of infantry by his lawful attorney Remon Scription of the town of Sandy creek County of Oswego & State of New York of the first part & Franklin H. Whitney Village of Perlaske County of Oswego & State aforesaid of the second part witnesses that the said party of the first part in consideration of the sum of four hundred Dollars to him in hand paid by the said party of the second part the receipt whereof is hereby confessed & acknowledged has bargained, sold, remised & quit claimed and by these presents doth bargain, sell, remise & quit claim unto the said party of the second part & to his heirs & assigns forever all that certain piece of land or tract of land, viz: the northeast Quarter of Section No. thirty three, in town twelve north in range six east and containing one hundred & sixty acres of land and is the same Quarter once deeded by James Monroe president of the United States of America to the said Charles Austin and lying in the tract of lands appropriated by the acts of Congress for Military bounty lands in the then territory & now State of Illinois. Together with all & singular the hereditaments & appurtenances thereto belonging or in any wise appertaining or the reversion & reversions, remainders & remainders unto, issues and profits thereof and all the estate right title, interest, claim & demand whatsoever

Exhibit. H. Charles Austin by his atty
Remon Scription
to
Franklin H. Whitney

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of the said party of the first part either in Law or equity with the said hereditaments & appurtenances To have & to hold the said interest of the said parties of the first part to the above described Quarter Section to the said party of the second part his heirs & assigns to the sole & only proper ~~of the~~ benefit & behoof of the said party of the second part his heirs & assigns forever. In witness whereof the party of the first part has hereunto set his hand & seal the day & year first above written

Charles Austin
by Ruben Scription
his attorney

Sealed & delivered in
presence of
B. F. Rhodes

State of New York ss.
Oswego County

On this eighteenth day of January in the year one thousand eight hundred & fifty five before me the subscriber personally appeared ~~the~~ Ruben Scription to me known to be the same person described in and who executed the within instrument & acknowledged that he executed the same as the attorney of the within named Charles Austin

B. F. Rhodes
Special County Judge &
Counsellor at Law

State of New York
Oswego County, Clerk's office
E. H. Hill