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William D. Murphy

vs

Ralph Lockwood

12874

1859

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STATE OF ILLINOIS, SUPREME COURT,

APRIL TERM, 1859.

RALPH LOCKWOOD
ads.
WM. D. MURPHY.
} *Appeal from Marshall.*

POINTS AND AUTHORITIES FOR APPELLEE.

BY W. B. SCATES,
Counsel for Appellee.

Filed May 19. 1859.
L. Leland Clk.

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Lockwood filed this bill 17th Oct., 1855, to compel Murphy to convey certain real estate to him, lying in Marshall county, Illinois.

The material allegations show, that he bought these lands of Murphy on the 5th April, 1851, for the sum of $3,046.80, payable as follows:

Cash,	$100.00
Note at four months,	806.80
Note at one year,	2,140.00

The payments made upon the land were as follows:

On 5th April, 1851,	$100
On 8th August, 1851,	100
On 2d May, 1855,	100

Besides improvements to value of $800 or more were made by Lockwood, his vendee and tenants.

They also paid taxes from date of purchase until bill filed, amounting to the sum of $197.34.

Making an aggregate sum of $1,100, and including $133.28 for taxes paid since bill filed, makes $1,233.28, which has been paid by Lockwood.

There was also $125 paid for taxes of 1858, and taxes of this year charged to Lockwood, and neither of them in the record.

The whole amount due on the day this bill was filed, was as follows:

1 note, due four months 5th Aug., '51,	$806.80	
Credit,	100.00	
Leaves,	$706.80	
Interest from due to 17th Oct., 1855, 4 yrs. 2 1-3 mos., at 6 per cent.,	177.85	
1 note, 1 year, due 5th April, '52, at 6 per cent.,	2,140.00	
Interest to 17th Oct., 1855, at 6 per cent., being 3 yrs. 6 1-3 months, is	452.96	
		$3,477.61
Cr. by cash, 2d May, 1855,		100.00
Bal. due at filing bill was		$3,377.61

Lockwood tendered, before filing bill, a sum of upwards of $3,600. (See record, p. 58–9, Hubbard's testimony.)

When this last payment was made, on 2d or 3d May, 1855, only about 5 months before this bill was filed, Murphy agreed to extend the whole credit for a further period of two months, which extended credit expired on the 2d or 3d July, 1855.

(See receipt on page 66, Record.)

This agreement has no condition making the time of payment at the extended day of the essence of the contract and material, though Murphy's counsel in their arguments would fain have it so understood.

The foregoing are the facts of this case in a nut-shell, for all the proof about Lockwood's embarrassments, the judgments against him, and the proceedings in bankruptcy, are irrelevant, and throw no light upon the equitable rights of these parties, more than as tending to show that Lockwood's delay in making payments grew out of, or might have arisen from these pecuniary embarrassments.

This presents the case of complainant below, and will be discussed in the first point I shall present.

The second question I propose to notice, will arise out of the facts connected with Murphy's attempt to perform a mutual dependent condition, in order to entitle himself to rescind this agreement, by putting Lockwood in default, by a failure on his part to pay the remainder of the purchase money.

I.

First, then, as to the sufficiency of the performance, and offers of performance on Lockwood's part, to entitle him to a decree for a specific performance.

In order to get at this, we look at once to the intention of the parties, as set forth in their agreement.

The agreement is one in the ordinary form, which, after setting forth the sale and purchase, the price, times of payment, and description of the property, provides as follows:

"And on the payment of all the herein described amounts, as they become due and payable, the said Wm. D. Murphy and his wife agrees to make and execute a warrantee deed, with full covenants, free from all incumbrances—except the taxes of 1851—for all of the described land, to the said Ralph Lockwood, his heirs or assigns."

First. Now here are most clearly mutual dependent covenants, and upon which neither party could bring an action, without having first performed his part or offered to perform it.

Platt on Covenants, 86 to 90.
Walker vs. Harris, Austr. R. 245.
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"So, under a contract to purchase land, generally, good and sufficient titles must be delivered or tendered before the purchase money can be recovered."

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"So a covenant by the vendee to pay, and of the vendor to convey upon payment, are dependent covenants, and an action to compel pay-

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Second. The covenant being a mutual, dependent one, required, in order to be enforced or rescinded by Murphy, ~~without~~ the tendering such a deed as the contract called for, in the former case; and in the latter, a tender of such a deed, demanding payment of the balance of the purchase money, and in case of its refusal, to tender back the purchase money which had been paid by Lockwood.

In support of the necessity of tendering a deed in order to demand and become entitled to payment of the balance, I refer again to the authorities cited under the *first* head above.

But to entitle Murphy to rescind for non-performance in withholding payment upon demand and tender of performance by him, it is necessary to tender back the purchase money paid, and place Lockwood in the same condition as at and before the purchase.

The case of Johnson vs. Jackson, 27 Miss. R. 498, is upon all-fours with the case at bar, except there no improvements were made.

Irwin purchased of Healy & Whiting a tract of land, for which he paid part of the purchase money, executed his notes for the balance, took a bond for title, and took possession of the land.

The condition of the bond was substantially like this, and was as follows: "Now if the said H. & W., Trustees as aforesaid, shall, on the punctual payment of said notes, and all taxes legally assessed on said land, and the surrender to them of this instrument, convey or cause to be conveyed to the said J. E. P. Irwin, his heirs and assigns, the above-described premises, with warranty of title."

Irwin conveyed his interest to Jackson, for the benefit of Pryor, and afterwards delivered up the bond to the agent of Healy & Whiting.

Whiting undertook to sell the land to Johnson, who paid part of the purchase money and gave his notes for balance; he took with notice, but procured an assignment of the title bond to Irwin.

Jackson filed the bill for the use of Pryor, tendering balance of purchase money, and obtained a decree.

The ground assumed against the bill and decree was, that a failure to pay the notes for the whole of the purchase money at their maturity, gave the venodrs a right to rescind the contract, and resume the ownership of the land.

The Court held the covenant to be a dependent one, and required an offer to convey; and that the vendors must also refund or offer to refund the purchase money advanced by the purchaser, and he must put the vendee *in statu quo.*

See also Wadlington **vs.** Hill, 10 Smee. & Marsh. 560.
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The same principle is laid down and sanctioned in
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Sugden substantially requires this of deposite-money.
1 Sugd. Vend. *306.

There was not only a total failure to tender a deed with full covenants, and for the land in Marshall county, which was the land purchased, and not land in Putnam county, as described in the deed tendered, and a total failure to return or offer to return the purchase money theretofore paid, but a total neglect to return or offer to return the negotiable notes given for the balance of the purchase-money, and to cancel the agreement and deliver it up, so as to put Lockwood *in statu quo.*

Third. Time was not of the essence of this agreement, and no subsequent agreement has been made modifying the agreement, or making time of the essence, either of the original agreement, or of an agreement for extended credit.

The agreement for the extended credit to 3d July, 1855, is contained in a receipt given for a payment of one hundred dollars on the purchase, as follows:

"Received, New York, May 3d, 1855, from Ralph Lockwood, Esq., one hundred dollars, on account of his contract, for the purchase of lands in Illinois, Town of Lyons, Putnam County; said contract bearing date April 5th, 1851, and described in deed of William D. Murphy and wife, (not yet delivered) to Ralph Lockwood; the delivery thereof being post-

poned in consequence of this payment until the third day of July next, when the balance of the purchase money is to be paid.

$100. WM. D. MURPHY."

It needs no argument or authority to show that this receipt does not make the time of the postponed payment material, and of the essence of this contract, even if it could be thus incorporated into the original agreement.

There is a very strong doubt implied in Sugden as above cited, whether a party can make time material by a subsequent notice to the end of rescinding the contract.

Where time is not made of the essence of the contract by the parties, whatever may be the doctrine of courts of law, courts of equity will decree a specific performance, unless there be very gross laches or very unreasonable delay.

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Besides this, there was no long or vexatious delay after this credit expired, for the bill was filed within about three and a half months afterwards, and Murphy entertained a proposition to convey a house to him in Brooklyn in payment, a month or more after this extended credit expired.

The whole delay is shown to be or to have been the result of misfortune, and not of wilful default or negligence, because it was occasioned by pecuniary embarrassments, and derangement of Lockwood's business.

No criminal fault is shown to have brought this misfortune upon the defendant.

Although plaintiff's counsel indulge in a morbid proclivity to abuse him for it without any proof to justify their censure.

But so far from deserving censure for his misfortunes in business, Murphy himself seems to have shown great sympathy and indulgence in allowing the contract to stand open until Lockwood or his vendee could complete the payment.

It is very probable there would have been no controversy or difficulty about the performance, when Lockwood could have commanded the means, had not a rise in property induced others to apply to Murphy to purchase at an advance. Then and not until then, did he manifest any disposition to press Lockwood to the wall.

This brings me to the *second* point that I propose to discuss.

II.

The covenant was a mutual and dependant one, and required a tender of a deed, with covenants as specified in the agreement to be made to Lockwood, and a return of the purchase money before he could rescind.

Neither of these things were done.

First. I have already shown that in order to entitle himself to rescind the contract the law required a return, or an offer to return the purchase money paid by Lockwood on the purchase, and to place him in *statu quo.*

To do this, it was also necessary to pay him the value of the improvements made by him, or the balance after deducting the value of the rents, and deliver up, or offer to deliver up the contract of purchase, and the negotiable notes given for the balance of the purchase money, and all taxes and assessments levied upon the land and paid by Lockwood or his vendee and tenants.

The agreement for the purchase neither made time of the essence of the contract nor imposed any forfeiture for non-payment, or other breach of the agreement.

The law imposes no such forfeitures; it is a matter of special agreement, and when not provided for by the parties in the contract, the law requires the party wishing and having a right to rescind, to refund the money paid and return whatever other thing may have been received as a part of the consideration, or to secure the consideration as a condition upon which he can be allowed to rescind and abandon the bargain.

Equity requires justice to be done in such cases, by restoring the other party to the same condition as at the making of the contract, and when this is not in the power of a party, the law simply denies him a right to rescind. His only remedy will be, under such circumstances, a specific enforcement of the contract or damages for its breach.

Can any one pretend that Murphy would have a right to rescind this agreement with these notes in the hands of a *bona fide* assignee? If not, has he any more right to do so, while he retains them in his own hands? It is no answer to say Lockwood would have a right and a remedy to compel Murphy to deliver them up. He must place the other party *in statu quo* and not leave him to pursue his remedies to regain his rights and former condition.

I deem it unnecessary to elaborate this position further, believing it to be unanswerable.

Second. I have shown that the covenants in the agreement was a mutual dependent covenant, and each party must show an offer to perform, else he could not insist upon the enforcement of the contract or a right to rescind it.

Murphy was therefore bound to tender a proper deed according to the provisions of the agreement.

The following extracts will show all the material parts of the deed tendered, necessary to compare its provisions with those required by the agreement, namely:

"have bargained and sold, and by these presents, do grant and convey."

After describing the lands, they are located as follows:

"Lying and being in the town of Lyons, Putnam County, in the State of Illinois."

The following are the covenants, namely:

"And the said parties of the first part, do hereby covenant and agree with the said party of the second part, *that at the time* of the *delivery hereof*, the said parties of the first part are the lawful owners of the premises above granted, and seized thereof in fee simple absolute, and that they will warrant and defend the above granted premises, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns forever."

I note, first, that these lands lie in *Putnam* County; the lands sold and described in the agreement, lie in *Marshall* County. So Murphy has never tendered a deed at all of the lands purchased.

Second, I note that the agreement provided for a deed with *full covenants.*

There are six covenants. *Full* covenants would require that each should be inserted in the deed, namely:

First. A covenant of seisin.

Second. That grantor has a good and perfect right to convey.

Third. That grantee shall quietly enjoy and possess it.

Fourth. That it is free from all incumbrances, leases, trusts, &c.

Fifth. Covenant for further assurances.

Sixth. The covenant of warranty.

Rawle on Covenants for Title, 28.

Here the grantor has studiously excluded the statute covenant even, arising upon the words "*grant, bargain, and sell.*"

Now the deed contains only the *first*, *second*, and *third* covenants. The *fourth*, *fifth*, and *sixth* are wholly omitted; and these are decidedly the most important and valuable of the covenants.

A deed with only such covenants could never be received as filling the covenant of the agreement for a deed with full covenants, even had it contained and conveyed the lands purchased. But when we come to *add* the two objections together, no Court can entertain for one moment the proposition that the terms of Murphy's covenant were fulfilled by such a deed.

This is one of those self-evident truths that need no argument to enforce. It is enough to state it.

III.

All that remains to be said, is to notice the appellant's positions and arguments.

I might dismiss this branch the subject by calling the attention of the Court to the fact, that all appellant's points are predicated upon the *assumption*, that somehow, or somehow else, time had become material and of the essence of this agreement.

This is wholly unsupported by the facts,—and that branch of their argument and authorities needs no further answer.

Again, his counsel proceed upon an assumption that defendants's pecuniary embarrassments are not a sufficient excuse for laches in the delay of payment up to May, 1855.

I know of no better or more satisfactory excuse. If an excuse for laches can only be received when it amounts to a performance, then all idea of excusing delay to rebut the charge of laches is at an end.

We do not pretend that this excuse would pay—or bar an action, or prevent Murphy from insisting at any time upon payment; but we do contend that it shows a reason for the delay, which excuses all fault for negligence.

He has shown himself, according to his pecuniary ability, eager, prompt and diligent. For Murphy was kind and indulgent to his embarrassments until May, 1855, when he began to urge payment; then Lockwood, by exertion, raised $100, which Murphy received, and extended the credit

two months. Although disappointed in raising the money 5th of July, Lockwood still struggled energetically to enable himself to make payment. He offered other property in Brooklyn. That not proving acceptable as payment, he casts about and is enabled, by loan or otherwise, to raise the amount early in October, 1855. Now here was not four months delay after the money fell due. Surely no one can complain that this is gross negligence or vexatious delay.

Murphy has no right now to complain that he indulged Lockwood from August, 1851, and April, 1852, until May, 1855, owing to his embarrassments.

We are much his debtors for the indulgence; but we protest against his giving us this indulgence, and then to come here and insist that that very indulgence is evidence of our laches and abandonment of the contract.

The only delay shown, contrary to the will and consent of Murphy, is what took place from the 5th of July until the filing of this bill in Oct. following, some three and a half months only.

No case can be found where time was not made of the essence of the contract, where the court has refused specific performance, on account of such a delay as this.

There is no change in Murphy's circumstances shown to make it inequitable to render this decree.

Whereas, on the contrary, we show that Lockwood would be greatly damaged by withholding the title from him.

He paid Murphy, 5 April, '51,	$100.00
" " " 8 Aug., "	100.00
" " " 5 May, '55,	100.00
" Made improvements, valued,	800.00
" Paid taxes to filing bill,	197.34
" " " since " "	258.00
Making an aggregate of	$1,555.12

which he has advanced on said lands. There were also $125.00 taxes for the year 1858, paid by said Lockwood, and the taxes of 1859, charge against said land.—Neither of these in the record.

Believing the above views fully answer all the grounds assumed by appellant's counsel, and the positions and authorities show it impossible for appellant to succeed in resisting this decree.

W. B. SCATES, for Appellee.

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Third. Time was not of the essence of this agreement, and no subsequent agreement has been made modifying the agreement, or making time of the essence, either of the original agreement, or of an agreement for extended credit.

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Although plaintiff's counsel indulge in a morbid proclivity to abuse him for it without any proof to justify their censure.

But so far from deserving censure for his misfortunes in business, Murphy himself seems to have shown great sympathy and indulgence in allowing the contract to stand open until Lockwood or his vendee could complete the payment.

It is very probable there would have been no controversy or difficulty about the performance, when Lockwood could have commanded the means, had not a rise in property induced others to apply to Murphy to purchase at an advance. Then and not until then, did he manifest any disposition to press Lockwood to the wall.

This brings me to the *second* point that I propose to discuss.

II.

The covenant was a mutual and dependant one, and required a tender of a deed, with covenants as specified in the agreement to be made to Lockwood, and a return of the purchase money before he could rescind.

Neither of these things were done.

First. I have already shown that in order to entitle himself to rescind the contract the law required a return, or an offer to return the purchase money paid by Lockwood on the purchase, and to place him in *statu quo*.

To do this, it was also necessary to pay him the value of the improvements made by him, or the balance after deducting the value of the rents, and deliver up, or offer to deliver up the contract of purchase, and the negotiable notes given for the balance of the purchase money, and all taxes and assessments levied upon the land and paid by Lockwood or his vendee and tenants.

The agreement for the purchase neither made time of the essence of the contract nor imposed any forfeiture for non-payment, or other breach of the agreement.

The law imposes no such forfeitures; it is a matter of special agreement, and when not provided for by the parties in the contract, the law requires the party wishing and having a right to rescind, to refund the money paid and return whatever other thing may have been received as a part of the consideration, or to secure the consideration as a condition upon which he can be allowed to rescind and abandon the bargain.

Equity requires justice to be done in such cases, by restoring the other party to the same condition as at the making of the contract, and when this is not in the power of a party, the law simply denies him a right to rescind. His only remedy will be, under such circumstances, a specific enforcement of the contract or damages for its breach.

Can any one pretend that Murphy would have a right to rescind this agreement with these notes in the hands of a *bona fide* assignee? If not, has he any more right to do so, while he retains them in his own hands? It is no answer to say Lockwood would have a right and a remedy to compel Murphy to deliver them up. He must place the other party *in statu quo* and not leave him to pursue his remedies to regain his rights and former condition.

I deem it unnecessary to elaborate this position further, believing it to be unanswerable.

Second. I have shown that the covenant in the agreement was a mutual dependent covenant, and each party must show an offer to perform, else he could not insist upon the enforcement of the contract or a right to rescind it.

Murphy was therefore bound to tender a proper deed according to the provisions of the agreement.

The following extracts will show all the material parts of the deed tendered, necessary to compare its provisions with those required by the agreement, namely:

"have bargained and sold, and by these presents, do grant and convey."

After describing the lands, they are located as follows:

"Lying and being in the town of Lyons, Putnam County, in the State of Illinois."

The following are the covenants, namely:

"And the said parties of the first part, do hereby covenant and agree with the said party of the second part, *that at the time* of the *delivery hereof*, the said parties of the first part are the lawful owners of the premises above granted, and seized thereof in fee simple absolute, and that they will warrant and defend the above granted premises, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns forever."

I note, first, that these lands lie in *Putnam* County; the lands sold and described in the agreement, lie in *Marshall* County. So Murphy has never tendered a deed at all of the lands purchased.

Second, I note that the agreement provided for a deed with *full covenants.*

There are six covenants. *Full* covenants would require that each should be inserted in the deed, namely:

First. A covenant of seisin.

Second. That grantor has a good and perfect right to convey.

Third. That grantee shall quietly enjoy and possess it.

Fourth. That it is free from all incumbrances, leases, trusts, &c.

Fifth. Covenant for further assurances.

Sixth. The covenant of warranty.

Rawle on Covenants for Title, 28.

Here the grantor has studiously excluded the statute covenant even, arising upon the words "*grant, bargain, and sell.*"

Now the deed contains only the *first*, *second*, and *third* covenants. The *fourth*, *fifth*, and *sixth* are wholly omitted; and these are decidedly the most important and valuable of the covenants.

A deed with only such covenants could never be received as filling the covenant of the agreement for a deed with full covenants, even had it contained and conveyed the lands purchased. But when we come to *add* the two objections together, no Court can entertain for one moment the proposition that the terms of Murphy's covenant were fulfilled by such a deed.

This is one of those self-evident truths that need no argument to enforce. It is enough to state it.

III.

All that remains to be said, is to notice the appellant's positions and arguments.

I might dismiss this branch the subject by calling the attention of the Court to the fact, that all appellant's points are predicated upon the *assumption*, that somehow, or somehow else, time had become material and of the essence of this agreement.

This is wholly unsupported by the facts,—and that branch of their argument and authorities needs no further answer.

Again, his counsel proceed upon an assumption that defendants's pecuniary embarrassments are not a sufficient excuse for laches in the delay of payment up to May, 1855.

I know of no better or more satisfactory excuse. If an excuse for laches can only be received when it amounts to a performance, then all idea of excusing delay to rebut the charge of laches is at an end.

We do not pretend that this excuse would pay—or bar an action, or prevent Murphy from insisting at any time upon payment; but we do contend that it shows a reason for the delay, which excuses all fault for negligence.

He has shown himself, according to his pecuniary ability, eager, prompt and diligent. For Murphy was kind and indulgent to his embarrassments until May, 1855, when he began to urge payment; then Lockwood, by exertion, raised $100, which Murphy received, and extended the credit

two months. Although disappointed in raising the money 5th of July, Lockwood still struggled energetically to enable himself to make payment. He offered other property in Brooklyn. That not proving acceptable as payment, he casts about and is enabled, by loan or otherwise, to raise the amount early in October, 1855. Now here was not four months delay after the money fell due. Surely no one can complain that this is gross negligence or vexatious delay.

Murphy has no right now to complain that he indulged Lockwood from August, 1851, and April, 1852, until May, 1855, owing to his embarrassments.

We are much his debtors for the indulgence; but we protest against his giving us this indulgence, and then to come here and insist that that very indulgence is evidence of our laches and abandonment of the contract.

The only delay shown, contrary to the will and consent of Murphy, is what took place from the 5th of July until the filing of this bill in Oct. following, some three and a half months only.

No case can be found where time was not made of the essence of the contract, where the court has refused specific performance, on account of such a delay as this.

There is no change in Murphy's circumstances shown to make it inequitable to render this decree.

Whereas, on the contrary, we show that Lockwood would be greatly damaged by withholding the title from him.

He paid Murphy, 5 April, '51,	$100.00
" " " 8 Aug., "	100.00
" " " 5 May, '55,	100.00
" Made improvements, valued,	800.00
" Paid taxes to filing bill,	197.34
" " " since " "	258.00
Making an aggregate of	$1,555.12

which he has advanced on said lands. There were also $125.00 taxes for the year 1858, paid by said Lockwood, and the taxes of 1859, charge against said land.—Neither of these in the record.

Believing the above views fully answer all the grounds assumed by appellant's counsel, and the positions and authorities show it impossible for appellant to succeed in resisting this decree.

W. B. SCATES, for Appellee.

William L Murphy
vs
Ralph Lockwood

Supreme Court
State of Ill
Apl Term 1859

The questions presented in this case by the pleading and evidence are somewhat complicated but those of most importance may be stated thus in short 1st — whether the complainant seeking a specific performance of the contract which he seeks to enforce has so conducted himself in performing the covenants & conditions of that obligation and has so far carried out the spirit & intention of the contract & the parties as to entitle him to the relief which he seeks, or whether on the other hand he has by delays & oppilatches, and acts of bad faith, forfeited all right to Equitable relief, considering the contract one in which time is not regarded as material in a court of Equity.

2d — Viewing the contract as one in which time is not necessarily material; and considering the lapse of time, & conduct of the parties with relation to each other, & the obligations assumed by them, by their contract, if all the delinquencies are not conceived to be of so vital importance as to place the complainant beyond the reach of Equitable relief; whether taking

those facts & circumstances into consideration the court will decree a specific performance of the contract, where there has been a Material change in the circumstances of the party seeking the relief, so as to affect the rights & remidies of the defendant, who resist the application, and also where there has been a material advance in the value of the property to be conveyed.

3d. Whether time although not by the terms of the contract expressly made Material becomes so from circumstances which subsequently occured, such as the change in the circumstances of the party complainant, & in the value of the property; and by the subsiquent anangment of the parties fixing a time when the contract should be finally executed & completed, or in the alternative avoided if not then consummated

4th Where time is not expressly made by the terms of the contract in its inception of the essence thereof, and does not from the nature of the case become so or become so by subsiquent anangment & stipulation between the parties whether it may become so at the election of either of the parties upon notice to the other or demand upon the other at the stipulated time, where the party demanding performance is in a condition to perform on

his part & is entitled by the terms of the contract to require performance.

5th Whether the complainant is entitled to any relief at all; and if any, to what extent & and as to whether laches to any extent will be tolerated will ~~be tolerated~~ depend upon the facts & circumstances surrounding each particular case; for each case must be decided upon its own peculiar merits. The court will examine the contract to see what the parties have there expressed, but it will not be limited to mere expressions it will examine every circumstance, every incident, pertaining to the entire transaction. It will investigate the matter & try the conscience of the parties & their case presented by every word, & act, & motive, & design, for the purpose of ascertaining not only the intention of the parties but the real merits of the cause. It will weigh the cause as in a ballance and will require not only that the parties observe the forms, but the substance of what the contract & the nature of the case requires. The court has a discretion, which is not bound or limited by what the parties have expressed; but what they really have in good faith intended. Yet it is not an arbitrary unlimited discretion but a reasonable, legal discretion; which while it regards

what the parties have intended. It requires those intentions to be carried out with diligence and honesty of purpose.

The complainant while tacitly admitting in his bill that he has been guilty of great delay in paying the purchase money undertakes to excuse himself upon the grounds that shortly after making the contract he became embarrassed in his circumstances and could not conveniently make payment thereof as it became due & that the defendant knowing these facts did not insist upon prompt payment but permited him to make payments from time to time as he conveniently could. That he paid $100 in hand on delivery of the contract, $100. on the 5th of August 1851 when the 1st installment of $806.80 became due, and $100. on the 3d of May 1853 which were receipted to him as payments & to be credited on his notes. It will be remembered that the ~~purchase~~ defend payments amounted to $3046.80 - of which amount $806.80 became due on the 5th of August 1851 & $2140. on the 5th of April 1852 that the notes were taken without security and without any provision for interest. The witness Hubbard in his deposition testifies that when this contract was entered into Lockwood was pecuniarily responsible, that

he was out after April 1857 doing a large business; was worth over $100.00; that he became insolvent some time between April 1857 & April 1858. Murphy admits in his answer that he Lockwood became hopelessly insolvent, but does not state the time when. The certified Transcript of the Judgments exhibited in the answer shows, that in 1853 & 1854 Judgments to the amount of over $14.000. were recovered in N.Y. against him. The record of his examination as a Judgment debtor before the City Judge of the City of Brooklyn shows that he had placed all his property out of his hands, & beyond the reach of his creditors in 1854, and that the property described in the Contract had been assigned, & transfered, to William B Green, & the assignment to Green exhibited shows that he Lockwood had transfered it for $200. The Notes, & protests attached show that he suffered the Notes given for the purchase money to be protested for non payment on the 8th of April 1852. The Depositions of Lewis & Murphy filed in the cause show that he was poor & unable to pay the purchase money on the 2d, & on the 3d of May 1855, & on the 5th of July 1855. as he admitted in the presence of the witnesses And the witness Hubbard testifies that the Judgments obtained against him in N.Y. still existed against him after the filing of the bill or at the time of taking the

Deposition. So that taking all of these facts & circumstances into consideration it is evident that he, after the making of the contract, became insolvent; or that, he fraudulently placed his property out of the reach of his creditors to delay the collection of the purchase money in this case, as well as his other debts; and it matters but little which horn of the dilemma he hangs upon, for neither are in his hands a Sword, or Shield,

But the circumstances would seem to indicate that he intended to defraud his creditors for he alleges in his bill that the lands transfered to Green had arisen in value $4000. and the testimony of Fleming taken on the hearing shows that they had arisen in value near $8000. whereas he had transfered them to Green for $200. as the transaction shows, & Green had retransfered them to Lockwood for a nominal sum. Again it appears that up to the 5th of July 1858 the complainant admits that he is poor & unable to get any money to make payment of the purchase money and that judgments exist against him (which cannot be collected) till after the commencement of this suit; but by some inexplicable turn he on the 8th of October is able to get the money to make full payment & become the absolute owner in fee of this property which is worth $8000. and that he is able to keep the

money on hand all this time ready to be paid over as the Court may direct. How does it come that he so opportunely discovers at this juncture the means of raising so readily this money, when he a few days before was entirely insolvent, & could not pay any of the many debts existing against him? How does it come that his energies are so quickened at this particular time? Is it that such a revolution has so suddenly & favourably taken place in his affairs that he is relieved of his embarrassments so unfavourable to these anxious desires which he professes in his bill, to fulfil his contract, & A were such a clog upon those honest intentions with which he has been characterised throughout this whole transaction? or is it the prospect of certain gain? the A gain of the sum of $5000 ~~do that~~ acquired without a struggle without a risk by means of a contract, by which he could not have been prejudiced by a turn of fortune or a change of circumstances, a contract with a party, who alone is bound by it & who could not hold him responsible had a reverse taken place, in the tide of affairs by which he would have to rely upon the personal responsibility of the complainants for redress, upon the contract? A that has quickened this new born zeal & honesty of purpose, and created

that anxious desire to fulfil the obligations of this contract; Or is it that some friend influenced by the same motives & designs has been induced to furnish the means, & divide the proceeds of this grand Speculation;

What are we to believe would have been the result if this property had on the 8th of October 1888 been worth $1000 or even the amount of the purchase money; Certainly we should have been deprived of this exhibition of good faith; that integrity & honor which is so glaringly portrayed in his petition to the Court, would have reposed itself unheard of in his conscientious bosom; and the community, the world, would have been deprived of the lesson & the example. The complainant would have reposed himself complacently with unsullied conscience behind his poverty as he had done before safe & secure: and would have defied the defendant, the law, & the courts of justice; and we should never have heard of this case. The defendant could have retained the land, it is true, but this would have been all; with this he must have been content.

This contract was made by the defendant with the confident expectation that he would get the purchase money when due by the terms of the contract. This is evident from the fact,

that the complainant was then wealthy, & pecuniarly responsible, & undoubtedly prompt, as he must be, to do a large business in the city of New York; as the evidence shows he was then doing; and from the fact that the defendant took his personal obligations without security, & without providing for interest, or penalty, or forfeiture, in case of default in the performance of the contract. His obligations were for no doubt when given but they afterwards became worthless. This was certainly a material change in the circumstances of this party claiming relief here, which is recognized by the courts as a ground of Equitable relief, not for the complainant as claimed by him as an excuse for the delay, but it is in the hands of the other party, a Sword or a Shield, which he may use as occasion required.

But it is claimed as an excuse for the delay on part of the complainant that the defendant suffered & permitted it. And it is true he gave a great deal of indulgence, but it seems he demanded his money on the 5th of August 1851, and it was not paid, but default was made. The money was again demanded on the 5th of April 1852 when the whole of purchase money became due, & default was again made in payment, & the notes were on the 8th of that month protested for non

payment. He demanded payment of the money
& tendered a deed on the 2d of ~~April~~ May 1855, four
years & one month after the making of the contract,
and default was again made, & the contract
declared at an end. The time was then extended
till the next day, when the money was to be paid,
& the deed delivered, or the contract formally
rescinded; on the 3d of April he again makes
default. but pays $100. and by plaintive
words & deceptions promises ~~the~~ ~~time~~ he yet
the defendant to defer the time of payment,
& tender of the deed, & rescision of the contract,
till the 3d of July next ensuing, when it was clearly
understood by the parties that the contract
was to be finally consummated or in case of
default was to be rescinded. On the 3d of July
he fails to appear, & makes default again
and does not even condescend to render an
excuse; on the 5th of the same month the
money was again demanded, & refused, & the
defendant formally declares the contract
at an end, & causes an affidavit of the
witness to the transaction, to be spread on
the records of the county, where the lands
lie, showing the rescision, for the purpose
evidently of removing an apparent cloud
which was hanging over his title so he might
again sell the lands, as is claimed in the bill,

he was attempting to do, when this bill was filed.

Now it is submitted whether after all this delay; after all these defaults; where the party asking affirmative relief & who is the only party guilty of gross laches & unnecessary & vexatious delays, who is the only party in whos actions & motives can be deemed unconscientious & unwarrantable designs. And where nothing is elicited in the whole case, which indicates any act, intent, or design, on the part of the defendant, but a purity of purpose & an anxious desire to carry out the provisions of the contract in its spirit & intention, it is to be determined as Equitable, and just, & right, that a decree shall be sustained which grants the relief prayed for in the bill. It certainly will furnish a remarkable precedent; A Strange Head of Equity. — Are all these defaults to go for nothing? Are Honesty, Fair dealing and Diligence to weigh nothing? Is the party who has sown nothing, who has reaped nothing, to reap his rewards in a plentiful harvest, And the party who has been faithful, & diligent, & honest, to be striped of all, And all this is to be called Equity

Murphy had failed to declare the contract void, & had kept it alive, & nursed & fostered it

& encouraged the complainant in his pretended misfortunes, he had practiced & exemplified in his character towards the complainant the part of the good Samaritan. He had practised in his conduct in this transaction all the graces which adorn the Honest man, he had exercised "Faith Hope & Charity" and he had forborn with the complainant till forbearance had ceased to be a virtue" And with the prospect in view of a gain of $8000. by rescinding the contract as he might have done at any time after default in payment of the purchase money; he on the 2d of May 1854 after he had avoided the contract again renewed it, till the next day & then renewed it again even longer than the complainant requested, till the 3d of July, & then forbore two more days before he finally declared the contract void. And yet the complainant charges him with "fraud and" unconscionable desire to take undue advantages of him, & of the contract, on account of the sudden rise in the value of the property & to cheat him out of his rights. "While he is guilty of as many latches & as much fraud as he lays at the door of the defendant"

There is undoubtedly a reason why the defendant did not attempt to enforce the contract sooner. It is evident that a suit

would have been unavailing, either to enforce the contract, or to recover damages for a noncompliance with it; and so for as the evidence shows it would still be unavailing, and that it has been for years, & now is, entirely optional with the complainant, whether he will carry out the contract, or the requirements of the decree, if sustained, for certainly there is no evidence that he has recovered from his embarrassments.

Then as to the second proposition whether the change of the circumstances of the complainant by which the rights & remedies of the other party, under & by virtue of the contract become impaired; and also the great change in the value of the property sold, renders time material, it seems to be established by many of the authorities refered to in this case, that in either case time becomes material, & that laches will not be tolerated. And in the first case put where there is a material change in circumstances, so as to impair the rights of the parties & destroy the remidies which they contracted for; why should not time be rendered materials and why should not a party whos rights & remidies have been impaired be absolved from the contract. In this case, as in all others, the owner of an estate sells it for the purpose of bettering his

condition, and converting the estate into cash or securities which will bring the cash, or other estate or some valuable thing. He may want to use the obligations which he receives for the purchase money for the purpose of raising means to purchase again, or may wish to convert them into cash, or transfer them for other property, and if they become worthless he should have that which he gave for them or the money when he contracted for the payment thereof to him. It certainly would be inequitable to compel him to keep the obligations beyond the time when they were to be paid, when they are worthless, to him, without his express assent thereto, there certainly could be no implied assent. Men usually expect to get their money when the contract for it and they make their arrangements & calculations accordingly, in applying the purchase money to whatever purpose they intended, and it would be ruinous if they can have neither the money they have contracted for, nor the estate they have sold, nor the security which they contracted for on the sale, and that a court of Equity will hold them to the contract, & enforce it against their will, at any future time within what is termed a reasonable time. But it is apprehended that courts of Equity of late years have never decreed specific performance of thise contracts where

there have been delays, & the contract has not been strictly complied with unless the parties have proceeded in the purchase after the time stipulated for the consummation of the contract has expired, or where both parties have stood by, & suffered the time to elapse without objection, or where the delay has been unavoidable from the occurrence of ~~events~~ unforseen events, not within the control of the parties, or when the parties (or one of them by the agent or permission of the other) has in accordance with the provisions of the Contract, or in furtherance thereof, so dealt with the property Contracted to be sold, or with the subject matter of the contract, that they are not in statu quo, & cannot be so placed by refusing to decree Specific performance. And when courts have decreed Specific performance in such cases, they have required the party to show some reasonable excuse for the delay, and that he has acted with an honesty of purpose, and sought no advantages of the other party by such laches & delays. In this case then it seems there is no diligence shown, on the part of the complainant but unreasonable, & vexatious delay, & the Appellant has from time to time insisted upon compliance with the contract, & has not willingly submitted to & acquiesced

in the latches; he has not resorted to the court of justice to enforce the contract, nor yet to rescind it, but he has done all that reason & justice & Equity would require of him, to carry the contract into effect; He has been indulgent & lenient, & forbearing; while he has seen a steady advance in the value of the property from day to day, & from year to year, and while his prospects of getting his purchase money was every day growing more hopeless; while he has been faithful to his promises, he has been honest in his intentions. And while he has failed in nothing which justice & Equity could require of him, the party seeking relief has failed in every thing: and yet it is assumed that all these things are to weigh nothing; The latches are to go for nothing; The defaults are to be overlooked; The acts of bad faith, of the complainant, & the uprightness, & honesty, of the defendant Murphy, are to be disregarded & lost sight of, for the reason that Murphy on the 3d day of April 1855, induced by the intrigues & faithless promises of Lockwood, was willing (after he had waited for his purchase money over four years, ~~was~~ & had declared the contract void) to renew his promises, that he would rescind the contract, & carry it into effect, on condition that the complainant

would on the 2d of July fulfill it.

This would indeed be a reasonable position and might entitle the complainant to Equitable relief, if he had fulfilled his promises, & undertakings; as he then agreed to do And then would have been a waiver of all the objections to the decree, if he had then paid the purchase money; but instead thereof, it add another default; another act of bad faith to the sum of all of those, of which, he was before guilty. It detracts from his rights, instead of adding to his Equities; but not only this he adds afterwards to his previous latches, for he does not attempt to apologize for his default, nor attempt to comply with the terms of his contract, as then renewed till over three months after the time then Stipulated had elapsed. Now when we consider the sum of all these delinquencies, and take into consideration the fact that the Complainant Lockwood was hopelessly insolvent during all this time and still is so; and that there has been such a material Change in the value of the property, if a court of Equity will exercise that extraordinary discretion in decreeing a Specific performance of this contract; it would be diffficult to presentthe case in which it would not

enforce the contract, when one is shown to exist between the parties. When will the case be found by which any discretion is left to the court wherein it will not use its powers; not that reasonable legal discretion recognized by the authorities under the head of Equity, but arbitrary unlimited discretion which seeks to know nothing of the case, further than that the parties have entered into the contract & that it exists. . . Mr Story says "Courts of Equity will not interfere to decree a specific performance except in cases where it would be strictly Equitable to make such a decree. There is no pretense to say, that it is the doctrine of Courts of Equity to carry into specific execution every contract, in every case, where that is found to be the legal intention & effect of the contract between the parties. If in any case, the parties have so dealt with each other in relation to the subject matter of a contract, that the object of one party is defeated, while the other party is at liberty to do as he pleases in relation to that very object. Or if, in fact the character & condition of the property to which the contract is attached have been so altered, that the terms & restrictions of it are no longer applicable to the existing state of things

in such cases Courts of Equity will not grant any relief, but will leave the parties to their remedy at law.

And again he remarks "Upon grounds still stronger Courts of Equity will not proceed to decree a Specific performance when the contract is founded in fraud, imposition, mistake, undue advantage or gross misapprehension, or wherefrom a change of circumstances, or otherwise, it would be unconscientious to enforce it." 2d Storys Eq jurisprudence pages 67 + 68

He lays down the rule that to entitle the plaintiff to a Specific performance he must show that he has been in no default in not having performed his agreement + that he has taken all proper steps towards the performance on his own part. If he is guilty of gross laches, or if he applies for relief after a long lapse of time unexplained by Equitable circumstances his bill will be dismissed. page 100

He remarks page 60 "In truth the exercise of this whole branch of Equity jurisprudence respecting the rescision + Specific performance of contracts is not a matter of right in either party but a matter of discretion not indeed of arbitrary, or capricious discretion

dependant on the mere pleasure of the judge
but of that sound & reasonable discretion
which governs itself as far as it may by general
rules & principles; but at the same time which
withholds or grants relief according to the
circumstances of each particular case
when these rules & principles will not
furnish any exact measure of justice
between the parties"

He also lays down the rule at page 95 that "it
requires a much less strength of case on
the part of the defendant to resist a bill to
perform a contract that it does on the
part of the plaintiff, to maintain a bill to
enforce a Specific performance" and that
the court will not decree a Specific perform-
ance when it would be imputable under
all the circumstances so to do, but will
leave the parties to their remedy at law
see pages 95 & 96 ibid

Now without considering the defences
presented in this case, that the parties have
by expres Stipulation after the making of
the written contract (on the 3d of May 1853)
made time of the essence of this contract
and that it has been forfeited by the
complainant Lockwood & has been
rescinded by Murphy (on the 5th of July

1855 And applying these Equitable rules & principles to this case under all the circumstances & incidences attending the whole transaction how this complainant can be entitled to any Equitable relief. How a man who has done no just act who has evinced no good intention who has been derelict in every essential which would entitle him to any consideration in a court of Equity can reap such plentiful harvest at the expense of this defendant who has been faithful & honest & just in every act & deed & intention; who has been diligent & faithful in every thing. If it be so then, that this decree is to be sustained under such circumstances there is no hope for the man who has been so unfortunate as to have entered into such contract; for it matters not what may be his necessities or what his fate may be if he should be disappointed in the fulfillment of the contract, he can have no relief, unless he shall stipulate expressly for a forfeiture of the contract, unless strictly complied with.

But then it matters but little whether the court shall consider the delinquencies of the complainant of sufficient importance to warrant them in refusing his prayer

or not, as by the anangment of the parties on the 2d of May 1855 time became of the essence of the Contract, so that no discretion was left to the Court to enforce the Contract, if not complied with on the 3d of July 1855. The parties on the 2d of May fixed upon a reasonable time for its performance, as the ultimatum to which they were to go in extending the time. It was expressly understood & determined by the parties at the time, that the Contract should end & be forfeited on the 3d of July if not then complied with. The deed had been tendered on the 2d of May, & the Contract declared at an end, but on the 3d of May there was by agreement of the parties a recusitation of the Contract, a renewal of the obligation of the parties on condition that the purchase money should be paid on the 3d of July, there was no provision extending the time longer, but it was clearly understood that it would not be longer extended. And it was as clearly & expressly agreed that the deed was then to be tendered & the Contract avoided if payment was not made. Both parties assented to this anangment. as is shown by the evidence of Lewis & Murphy, as well as the reciept given for the Money, on the 3d of May. For by the conversation of

the parties the transaction between them on the 2d & 3d of May as well as by the words of the receipt the intention of the parties is clearly evinced, that it was a mere extension of the time for the rescission of the contract, if default was made in payment of the purchase money. It is not essential that the parties express in so many words their intention, but if it can be ascertained from a view of the whole transaction, what was the real intention of the parties it is sufficient. On the 5th of July the deed was again tendered after default in payment, & the contract declared void this transaction assists in ascertaining the intention of the parties as to what they had intended on the 3d of May. This was the first opportunity, Humphy had to demand the money & tender the deed, & he done so, & formally declared the contract at an end. Lockwood made no objection he never then thought of denying the right to rescind the contract. This was all an after thought. If then this view of the case is correct this disposes of the whole case. Parties have a right to make time of the essence of the contract & when so done a court of Equity have no discretion to relieve the

party in default as is clearly recognized by courts of Equity, as a rule without exception or qualification.

But then this contract cannot now be enforced whether time was of the essence of the contract or not, as the act of demanding performance on the 6th of July, & tendering the deed, the default of Lockwood, & avoiding the contract, by Murphy, placed the complainant Lockwood beyond the reach of Equitable relief.

Mr Story says, Story's Eq Jurisprudence 2d page 107 refering to 6 Bevan R 124 "Even when time is of the essence of the contract it may be waived by proceeding in the purchase after the time has elapsed; and if it was not originally made by the parties of the essence of the contract yet it may become so by notice if the other party is guilty of improper delays in completing the purchase".

In Domenick vs Mitchell 4 Sandf. Sup. Ct. 374 it is said that in an agreement for the sale of lands time is always material when either party chooses that it shall be so each has a right to demand performance on the stipulated day & if the other party is then unwilling or unable to perform may actually elect to rescind the contract

and by such election he is wholely freed from its obligations and a court of Equity cannot afterwards decree a specific performance thereof; And the same principle is recognized in Doyle et al vs Tease et al 4 Scam 264 & 265 and Bannister vs Read et al 1 Gilm 99 and various authorities refered to in this case.

It would be indeed strange doctrine that a man who has made a contract for his purchase money cannot have it at the stipulated time, or avoid the contract and it would be still more strange if after he has spent four or five years in attempting to get his money, and in attempting in good faith to carry his contract into effect & utterly fails; & where the circumstances of the case are such that he cannot enforce the contract at all; where he has lost all remedy upon the contract, as it was made, that he can neither be allowed to have his money, nor his property, but that the courts of Justice will place him his fortunes, & his property, at the disposal

of the other contracting party, & place him at the mercy of his antagonist against whom he can have no remedy, no relief.

The poor man, or the man who is involved in pecuniary embarassments, who is forced to sell his estate which is all that he has, to better his condition, are the men who will feel most keenly the injustice & hardship of such a rule; Such law, such Equity is but a trap to ensnare the honest, upright man, who deals with his neighbour in good faith, expecting to get his purchase money when he contracts for it, while it is a shield to protect the knave who seeks nothing but advantage & Speculation. The establishment of such a rule, would let loose upon the unsuspecting owners of estates the unscrupulous designing herd of Speculators & who swarm the Country to deal without money & Speculate without responsibility upon the rights of honest men. Take this case as it is presented by the evidence where the party seeking Specific performance is a Speculator in wild lands, and is engaged in a large business East probably in reckless indiscreet Speculation

of various kinds; he is ostensibly a man of large means, & has an extensive credit, has the reputation of being prompt in his business transactions, he can purchase lands upon a credit to ten times or twenty times the amount of his real means, a reckless avaricious spirit of speculation leads him to extend his credit as far as he can, in the purchase of these wild lands which has for some years been the most fruitful source of speculation; he gives his personal obligations without any security without Intirest, & without penalty, or forfeiture, in case of default in payment; the parties of whom he purchases have, sold him their whole estate, and all their means, all they are worth is secured by his obligations merely, they in good faith, on the strength of his promises to pay the purchase money, enter into obligations, themselves, which they expect to meet & discharge, with the purchase money when due which they are to receive; but when the day of payment arives they cannot get their money; their obligations must be met, or inevitable ruin must follow them

The obligations which they hold for their lands which they have sold, are worthless, the man who owes them is insolvent, their estate, sold is tied up by the Contract of sale: they apply to the purchaser for their money, & he refuses payment; they urge the matter from Month to Month, & from Year to year, but with no better Success. It is useless to attempt to enforce the contract by Law as a Suit would be unavailing. They meet with an opportunity to sell their lands again & turn them into cash; and for the purpose of removing a cloud which is hanging over the title they formally declare the Contract void, and when they suppose the Contract is at an end, and all obstructions, are removed, ~~& sold~~ after the lapse of Months they are met with a bill in Chancery for Specific performance charging them with fraud and an inordinate desire to cheat & swindle the purchaser & speculate upon his rights. upon his means. Now these are some of the features of this Case as it is presented.

And if all these Equitable defenses interposed in this Case are to be disregarded

and if the party seeking specific performance is to have relief, under all the circumstances surrounding this case, then there is but little use to interpose a defence, And hereafter there will be but little inducement for purchasers of estate, to observe the terms & covenants of their contracts, or to act with an honesty of purpose.

It is ~~t~~ there claimed as a grounds of Equitable relief, that the Complainant has paid the taxes upon these lands for several years; But as to this we have to say that the Taxes were paid by him one year, & probably it may be infered that it was intended by the evidence of William B Green to be established that he paid the Taxes for Lockwood for several years. which evidence is not very conclusive upon this point. But however this may be it is not very material, as there is no evidence showing, or tending to show, that they were paid by authority of the defendant Murphy or with his knowledge, or assent, nor does the contract require Lockwood to pay them. And Murphy in his Answer expressly denies

+ the payment by his agent or direction
This was therefore a mere voluntary
payment for which he is not entitled to
any equitable consideration nor yet
is he entitled to any relief and cannot
recover the money thus paid much less
have the relief here sought; this doctrine
is clearly established by the authorities
refered to in this case concerning Voluntary payments
& part performance of contract. All
the motive that can be deemed for such
acts are to get some advantage of the
adverse party by making the payment of
these taxes; and in taking possession of these
lands & making improvements thereon
as the complainant alleges in his bill
he has done Moreover these improvements
if any were made & these acts of ownership
were in direct violation of the contract
and an infringment of the rights of the
defendant Murphy and detract from
the rights of Lockwood to Equitable relief
instead of strengthening his claims to
relief The acts of the party there must
be in accordance with the contract
& defendable exclusively thereto & not

in violation thereof as the party can have no relief See the doctrine laid down in Story Eq Jurisprudence 2d pages 82-83-84 & 85

And as to the doctrine contended for that these voluntary payments affords no grounds of relief See Wyman vs Howsworth 3 Barbour 369 Abell vs Douglass 4 Denio 305 Fleetwood vs The City of N.Y. 2 Sandford Sup Ct 475 Caldwell vs Peden 3 Watts 327 Elliott vs Swartwout 10 Peters (U.S.) 137 Wilson vs Ray 10 A & E 82

Where then any acts are done in pursuance of the provisions of the Contract or by the procurement or assent of the defendant it seems the Court may order an account thereof to be taken & award an allowance thereof though the bill ask for no such relief according to the doctrine in 2 Storys Eq Jurisprudence pages ~~pages~~ from 1174 to 1147 inclusive. And yet it seems to be doubtful whether such relief can be granted for there is none such prayed for and there is a remedy at law. Where probably there is in this case However the defendant confesses the right of the Complainant to have the relief and probably it is just

& Equitable that where a party has received a benefit under the contract & in pursuance of its provisions and it is rescinded or performance cannot be enforced against him that he should make the party confering the benefit whole as Court of Equity will allow compensation not favour forfeiture where relief can by granted

John Burns

Wm Murphy
vs
Ralph Lockwood
Appelants written argument

By S L Richmond

As my time expired before I had an opportunity of commenting upon the points made by Judge Pierpoint, I desire briefly to notice them in writing

Murphy was not required to surrender to Lockwood the notes until they should be paid, and if he had done so that ~~fact~~ fact would have been evidence of their payment, it was therefore necessary for Murphy for his own protection to keep for a time the notes. But I deny that Murphy by "his own showing had placed himself in a position where he either could not or would not "surrender" them, for the truth is that Lockwood filed a bill for conveyance in August 1855 which was afterwards dismissed by him and Murphy having prepared his answer on oath to that bill and sent the same to his atty finding that suit did not proceed though he had a right to deliver them. Besides at the interview the 2d or 3d of May the proof shows that Murphy told Lockwood that

he had the notes and that if he Lockwood was prepared to pay them he could have them

Again all that Murphy was required to do was to perform or offer to perform his part of the contract and it is no part of the contract that he should give up the notes until they were paid or that he would refund the payments made, and Lockwood cannot be injured by Murphy neglecting to offer back the money because he has always held the notes, and if the Court had decreed that the bill be dismissed, it could have also required that he refund the money (if the law is so) and that he surrender the notes, this is said in reply to Lockwoods 2d point

In reply to the 3d & 2d point I say that even admit that the contract was in force on the 8th day of July 1857 and that Murphy never offered to perform it, yet he did offer to perform it on that day and Lockwood then said that he was then insolvent and could not pay

And this certainly means Murphy
Denies Lockwood positively agreed
that he would pay the balance before
the 5th of July

As to the 4th point I reply
that Murphy did not treat with
Lockwood as late as August, or at
any time after July 5th 1855 about
the Contract, I know, that
Fleming indulges in some
loose general statements, about
what Murphy may have said
to him, But the whole of the
conversation between Murphy and
Lockwood, when the talk was had
about the house and lot in Brook-
lyn, is given by one of Murphys
witness, whose depositions are in
the record, and by it, the fact is
clearly shown, that Murphy told
Lockwood, that the old Contract
was "dead", and that he would not
talk with him about it, ~~if he~~ besides
one of these same witness of Murphy,
gives a different version of the interview
between Fleming and Murphy from
Fleming does, in fact Fleming is expressly
contradicted by Murphys witness

As to the 5th and 6th points I have to say that it is ~~[illegible]~~ idle to say that Murphy was not injured by the laches of Lockwood To ~~to~~ be kept out of his money for three years and a half without ever attempting to pay ~~[illegible]~~ until the 3d of May 1855 and take the chances upon the rise of the land, and then when the circumstances which surrounded the parties were ~~[illegible]~~ materially altered and the ~~land~~ land had increased in value three fold was about as effectual an injury I think as Lockwood could have perpetrated upon Murphy in this case

In reply to the 8th point, I say that even if the deed tendered was not sufficient, Murphys proof shows that Lockwood on the 2d of May read the deed over and, ~~and~~ made no objections, ~~to it~~ and the proof also shows that the same deed was again tendered on the 5th day of May and this I deem a full and complete answer to this point

One suggestion and I am done
It will appear from all the cases
& persons which decide the points
that the law is, that if the party
lies by for any considerable time
he must render some good Excuse
for his delay or a Court of Equity
will not interpose but leave the
parties to their remedy at law if they
have any. Now what Excuse does
Lockwood give for his delay of three
years and a half after the last
payment became due? None whatever
but the fact that he became embarrassed
that he was insolvent. Is that any
Excuse whatever? I do not see why a
man might not as well plead to
suit upon a promissory note that
he is not able to pay as set it up
in this case.

S. L. Beckwith

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Wm D Murphy
vs
Ralph Lockwood

Argument by
J. Burns and
S L Richmond

Filed April 30. 1859
L. Leland
Clerk

WILLIAM D MURPHY,
vs.
RALPH LOCKWOOD.

This is a Bill in Chancery for specific performance, filed by Lockwood *vs.* Murphy, in the Marshall Circuit Court, on the 17th day of October, 1855.

2 The Bill charges that Murphy and Lockwood, on the 5th day of April, 1851, entered into a written, sealed agreement for the sale by Murphy to Lockwood of certain real
2, 3 real estate in Marshall County, Illinois, and sets out a copy of the agreement.

2, 3 The agreement shows that the sale was for eight hundred acres of land, which is
2, 3 described therein, that Lockwood paid down $100, and agreed to pay $806 80 in four
2, 3 months, and $2,140 in one year from the date of the agreement; that for the last two sums
2, 3 of money Lockwood gave his notes to Murphy, and that upon the payment of all that
2, 3 should be due upon the contract Murphy and his wife should make and execute to Lock-
2, 3 wood their warranty deed, with full covenants, except as against the taxes of the year 1851.

That the contract was executed by Murphy and Lockwood only, and that at the
4 time of the purchase Lockwood contracted to pay the full value of the land.

4 That soon after the making of the contract Lockwood became embarrassed in his pecuniary affairs, and could not *conveniently* make payment according to the terms of the contract, and that Murphy did not exact prompt payment.

5 The Bill further charges that on the 8th of August, 1851, Lockwood paid Murphy $100 on the contract, and that Murphy endorsed the same on the note due at that time.

5 That on the 3d day of May, 1855, Lockwood paid the further sum of $100 on the contract, and that he had paid all the taxes assessed upon the land, since the making the
6 contract, which in the aggregate amounted to about $100.

6 That since the making of the contract Lockwood had entered upon and taken possession of the land and made improvements thereon to the value of $800.

6 That Murphy still holds the said notes; that he had never delivered, or offered to deliver, to Lockwood a deed for the land, according to the contract, and that the parties to the contract, nor either of them, had ever in any manner rescinded the same.

7 That on the 8th day of October, 1855, Lockwood tendered to Murphy $3,617.50, being the entire sum of money, of principal and interest, due upon the said notes.

7 That Murphy in order to cheat and defraud Lockwood out of what he had paid on
the contract, and out of the money he had paid for the taxes assessed on said land, and out
8 of his improvements made thereon, refused to receive the money tendered and make a deed for the land; that a deed wrs then demanded; that the land had, within a year previous to
9 the filing the bill increased in value four thousand dollars, which the bill charges was the reason why Murphy would not convey; that but for the pecuniary embarrassments of Lockwood he would have paid the notes, and insists that time is not of the essence of the contract.

10 The Bill waives an answer under oath and prays that Murphy may be compelled to specifically perform the contract.

13 The answer of Murphy admits the making the contract as charged in the bill; the
13 payment of the $100 down, and making and delivering to him of the notes for the balance
13 of the purchase money.

14 It denies that Lockwood contracted to pay all the land was worth when the contract
was made, but admits the pecuniary embarrassments of Lockwood, and insists that he was
14 bankrupt and refers to, and makes exhibits of transcripts of judgments rendered against
15 him in New York City, and to an examination of Lockwood under his oath, before the
city court of Brooklyn, New York, as an insolvent debtor, which took place in October,
15 1854, at which examination Lockwood admitted under oath, that he had no interest in any
lands in the State of Illinois.

16 The answer admits the payment of the $100 on the 8th of August, 1851, and the
like sum on the 3d day of May, 1855.

17 The answer charges that on the 2d day of May, 1855, Murphy tendered to Lockwood
17 a full covenant warranty deed for the land, as required by the contract, at his office, 107
17 South street, New York city, executed by himself and wife, and duly acknowledged, and
17 then demanded immmediate payment from Lockwood, of all that was due upon the con-
18 tract, and exhibits and makes a copy of said deed a part of the answer, that Lockwood
18 made no objections to the deed or acknowledgment, but refused to receive the same and pay
18 the balance of the purchase money, but requested time until the next day to get the money;
18 that the next day Lockwood called upon Murphy, and informed Murphy that he could not
18 get the money, but offered to pay then $100, on the contract, if Murphy would postpone the
19 payment of the balance of the money, until the 3d day of July, 1855; that Murphy assented
19 to the offer and received the $100 and that all the purchase money was due, and unpaid, on
19 the 1st day of July, 1855, except the said $200.

20 That on the 5th day of July, 1855, Murphy again tendered to Lockwood said deed,
31 a copy of which was attached to the answer, as an exhibit, and made a part thereof; and
20 again demanded payment from him, of the balance of the purchase money; that Lockwood
20 refused to pay the same, that Murphy then had the notes ready to be delivered to Lock-
20-21 wood, that Lockwood then said that he was poor, and could not get the money, and that he
was entirely insolvent.

21 That thereupon, Murphy caused the affidavit of Orando B. Lewis, (a copy of which
33-6 was attached to the answer, and made a part thereof) of the tender of the deed, and demands
21 of payment of the purchase money, to be recorded in the office of the recorder, of Marshal
21 County, Illinois, to show that default had been made by Lockwood, and that the contract
21 was rescinded, that Murphy received the $100 in the month of May, previous, upon the
21 ground, and consideration, only, that prompt payment should be made, of the balance of the
21 money, and that he never, in any other manner extended the time of payment.

22 That Lockwood had never paid any taxes on the land, but that since the making the
22 contract, other persons had paid them, although Murphy had always looked after them, with
22 a view of paying them, that Lockwood had never entered upon the lands or made any
23 improvements thereon, that Murphy still held the notes, which were negotiable.

23 The answer denies that the contract is still in force, and binding on Murphy, but
23 insists that the defaults and vexatious delays of payment of the purchase money released
23 him from performing the same.

24 It denies the tender of money, and demand of a deed on the 8th of October, 1855. It

24 denies that he ever intended to defraud or cheat Lockwood, or that he had even refused a
24 deed, and refused to receive the purchase money, or that he had threatened to sell the land.
24 It admits that the land ever since the making the contract had steadily increased in
24 value, and charges that Murphy well knew the same when he tendered the deed to Lock-
25 wood, and demanded payment of the money, and charges that Murphy had repeatedly no-
25 tified Lockwood that the contract was rescinded, that he did so May 2d, and July 5th,
25 1855, by reason of Lockwood not complying with the terms thereof, and of Murphy's
25 offers so to do, and insists that there had been on part of Lockwood unreasonable and
25 vexatious delays of payment, and offers to refund to Lockwood all the money he had paid
26 on the contract, and all the taxes he had paid on the lands, if any, and to bring into court
26 the notes, and surrender up the same to Lockwood, and insists that Murphy had been greatly
26 injured by reason of the non-payment of the purchase money when due, and charges that
37-9 Lockwood suffered the notes to be protested, and exhibits the protests.

40 Lockwood files his general replication to the answer, Feb'y 13, 1856.

43, 44 The proofs of Lockwood show the making the contract, and the terms thereof as set forth in the bill and admitted in the answer.

44 That by a written assignment dated July 22d, 1852, under seal, in consideration of
45 Two Hundred Dollars, Lockwood assigned, or undertook to assign, all his interest in the
45 land to William B. Green. That Wm. B Green paid the taxes on the land for the year
45, 47 1851, except one quarter-section of the same, which was paid by Joseph Van Buskirk.
48, 49 That for the year 1852, the taxes were paid upon one section of the land, by Wm. B.
49 Green, that the taxes upon one quarter-section of the land for the same year, was paid by Murphy, by James Powell, his agent, and that on the 9th of April, 1853, Wm. B. Green
50 paid the amount, $7.80, back to said Powell, and that William B. Green paid the taxes
51-3 upon all the land for the year 1853, and also for the year 1854, and that the taxes upon all
53-5 the land for the year 1855 was paid by Ralph Lockwood.

58 John W. Hubbard testified, that on the 8th October, 1855, Lockwood, at the office of
59 Murphy, 107 South street, New York, tendered to Murphy over $3,600, over $3,500 of
59 which was gold, and the balance in bills; that the tender was made on a land contract
59 made between the parties for land in Illinois; that he did not know where the lands were,
59 except that they were in Illinois; that Murphy refused to receive the money as tendered,
59 but insisted that the contract was at an end, and had been since the 3d of July, 1855, which
59 Lockwood denied, and claimed that the contract was in full force.

60 That at, and after April 1851, Lockwood was responsible and doing a large business;
60 that between 1851 and the 5th of July, 1855, his circumstances were altered; that there
60 were judgments recovered against him, and that there were still (11th September, 1856) judgments against him.

61 Wm. B. Green testified that after the assignment of the interest of Lockwood in the
61 land was made to him, he relinquished his interest in the lands to Lockwood, and that he
61 had often paid Lockwood's taxes, on his lands in Marshal county, as his agent.

62 The testimony of S. L. Fleming was taken orally in court, and he testified that he
62 saw Murphy at his office in August, 1855, that Murphy told him that the 3d or 5th of July
62 previous, he demanded of Lockwood payment for the land; that Lockwood told him
62 (Murphy) that he was poor, and had no money to pay at that time; that between the time

63 he had demanded the money, and the time of the conversation between Murphy and
63 Fleming, Lockwood had been to Murphy and told him that he had a house in Brooklyn
62 which he would like to trade to him (Murphy) on the land contract, that he (Murphy) said
63 he did not take it on account of the price, or the title, witness did not remember which;
63 that Murphy said he considered the contract rescinded and at an end, and had notified
64 Lockwood to that effect the July previous; that there were two young men in Murphy's
64 office at the time of the witness' conversation with Murphy, and that they heard a part of
64 the conversation; that their names were Murphy and Lewis; that he (Fleming) knew the
64 three prairie quarters of the land, and had a general knowledge of the balance; that in
64 1851 he thought the land might have been worth from $3 to $5 per acre; that about one-
64 half the land was barrens, which was not worth much at that time; that in 1855 the same
64, 65 lands were worth ten dollars per acre on an average, that there was a gradual rise in the
value of the land, from April 5th, 1851, to 5th April, 1855.

163 The suit having been heard at the January Term, A. D. 1858, but not determined
163 until the January Term, A. D. 1859, at which latter term, after the court had made a de-
163 cision, but before the signing of the decree, the complainant against the protest of the
163 defendant, Murphy, called Wm. B. Green to the stand, as a witness, who testified that
163 though he was not positive, yet his impression was, that when the case was heard, he tes-
163 tified that Lockwood was in possession of the lands, and had made valuable improvements
thereon, as stated in the Bill.

68 Orando B. Lewis testified that on the 2d May, 1855, an interview took place at
68 Murphy's office, in New York, between Murphy and Lockwood; that Murphy tendered to
68 Lockwood a deed for the lands; the deed being attached to the deposition of Orando B
176 Lewis as exhibit,— "A. E. F. Corey"—that Lockwood read it, and made no objections to
68 it, but stated that he had no money to take it up with, but that he would call the next day
68 and see what could be done; that Murphy replied to Lockwood that he had no desire to
68 take advantage of him, but the contract was dead long ago, that he would give him until
68 the next Saturday to take the deed, or the contract would be forfeited. That the next day
68 Lockwood returned to Murphy's office, and told Murphy that he was poor and unable to
69 take the deed; that at Murphy's orders Lockwood's account was shown him; that Lock-
69 wood then stated that he would pay then $100, on account of the contract, if Murphy would
69 extend the contract four weeks; that Murphy agreed to extend till the 3d of July then next,
69 which was done, and the one hundred dollars paid, and a receipt given therefor; that
70 Murphy, at said interview, demanded payment of the balance of the purchase money.

71 That on the 5th day of July 1855, another interview took place between Murphy
72 and Lockwood at 107 South street, New York; that at the orders of Murphy, he (Lewis)
72 again tendered to Lockwood the deed offered to him on the 2d day of May, 1855; that
72 Lockwood replied that he could not take it, that he had no money to take it up with; that
72 there were no notes offered, or demanded, by either Lockwood or Murphy on the 2d or 3d
of May, or the 5th of July, 1855.

73 That on the 6th of August 1855, Lockwood again called at Murphy's office, and said
73 he had a house in Brooklyn that would suit Murphy; that Murphy replied that the contract
73 affair was out of his hands; that he had had it cancelled from the records in Illinois; that he
73 had sent the affidavit of Mr. Lewis there, to the purport of Lockwood's non-fulfillment of

73 the contract, and that he would not now treat with him on that contract, as it was dead.

73 That on the 8th October, 1855, Lockwood and one Hubbard said to Murphy that he
73 had a tender to make him for the Illinois lands; that Lockwood then had with him a bag,
73 which Lockwood said contained $3500, which he tendered to Murphy; that Murphy told
73 Lockwood that he had no contract pending with him, and had not had any since the 5th of
74 July, 1855; that Lockwood then demanded his notes; that Murphy replied that he had
74 made affidavit to produce them in court, and for that reason could not surrender them then,
74 but that after he had produced them in court he would give them up to Lockwood; that he
74 had no intention to use them, but his purpose was merely to produce them in court; that
77 Murphy did not admit in the presence of the witness (Orando B. Lewis) and S. L. Flem-
77 ing, on or about the 15th September, 1855, that Lockwood had offered to pay for the land
77 by a house and lot in Brooklyn, nor that he (Murphy) went with Lockwood and examined
77 the property, nor that he would have taken the property if he had been satisfied with its
value.

79 Samuel B. Murphy another witness for Murphy, testified that an interview between
79 Murphy and Lockwood took place on the 2d day of May, 1855, at the office of Murphy,
79 107, South street, New York; that Murphy then tendered a deed to Lockwood for the land;
80 that Lockwood stated that he could not take it up for want of means but would call the next
80 day and see what could be done; that Murphy told him that he did not wish to take advan-
80 tage of the contract, and would give him until the next Saturday to take the deed, or the
81 contract would be forfeited; that when Murphy tendered the deed he asked Lockwood for
81 the purchase money, and that the deed tendered is the same deed referred to by Lewis in
81 his depesition.

82 That an interview took place between Murphy and Lockwood, on the 6th of
82 August following, that Lockwood asked Murphy to take a house and lot in Brooklyn, in
82 payment for the lands. that Murphy told Lockwood it was useless for him to make any
83 further offer on the old contract, as he considered it dead, but if he had any new proposi-
83 tion to make, he would listen to it.

83 That no notes were offered in presence of the witness, but that on the 2d May,
83 when the deed was tendered, Murphy told Lockwood that he had the notes in a pocket
83 book, and that he could have them if he was prepared to take them up, that Lockwood said
83 nothing about the notes, as witness recollects.

87 The witness further stated that he is a nephew of William D. Murphy, the defend-
ant in the court below.

88 Murphy then put in evidence the three notes given for the purchase money for the
88 land, amounting in all to $2946,80, together with the protests of the same, and each of
89, 90 them, by Gardner Spring, a Notary of New York.

91 Murphy then put in evidence the affidavit of Orando B. Lewis, of the non-fulfill-
92 ment of the contract by Lockwood.

By the record of the examination of Lockwood before John Greenwood, City Judge
of the City of Brooklyn, in the year 1854, as an insolvent debtor, at the suit of Joseph H.
136 Shephard and Nathan Hollister *vs.* said Lockwood, it appears that Lockwood admitted that
136 he had had within the two years then last past, some interest in wild land in Marshall
136 County, Illinois, that he had had a deed for the same, and that it had stood in his name,

136 that he did not know where his deed was, and that he had long since sold out his interest in the same.

140 And when during said examination he was asked whether he had had, within the 140 then last two years, any interest in any other property in the State o f Illinois ,he stated that he had not, to his knowledge.

169 By the final decree the court required that Murphy, within sixty days from the 169 adjournment of the Circuit Court of Marshall County, execute and deliver to Lockwood, a 169 warranty deed, for the land described in the bill, with covenants against all encumbrances, 169 except the taxes of the year 1851, and with release of dower by the wife of the said Mur- 170 phy, provided Lockwood paid or tendered to Murphy the sum of three thousand six hun- 170 dred and seventeen dollars and fifty cents, within the said sixty days, and appointed a 170 Commissioner to make such deed, in case Murphy should make default in making the same.

172 Upon the filing of which decree, the defendant, Murphy, entered his motion to set 172 aside the decree and to grant a new trial, which was overruled by the court, whereupon 172 Murphy prayed an appeal, which was granted, upon his entering into bond in the penal 172 sum of one thousand dollars, with Washington E. Cook as surety, within thirty days.

The errors assigned are as follows:

1*st*. The court erred in decreeing a specific performance of the contract referred to in the bill.

2*d*. The court ought to have rendered a decree dismissing the bill.

188 8

Murphy vs Lockwood

abstract

Filed Apl. 19. 1859.

L. Leland Clk.

188

"A Record of the Orders Decrees and proce-
"dings of the Circuit Court of Marshall Coun-
"ty in the State of Illinois. Began & holden
at the City of Lacon in & for said County on
Monday the fifteenth day of October in the
year of our Lord one Thousand eight hun-
"dred and fifty five. Present. The Hon. Mad-
"ison E. Hollister Judge of ninth Judicial
Circuit of the State of Illinois. In Chancery
sitting. Greenberry L. Fort Clerk of said Court
and James St. C. Boal his Deputy. Abram
Gardner Sheriff and Wm H. L. Wallace States
Attorney"

Be it remembered that on the 17th day of October A.D. 1855 Ralph Lockwood complainant filed his bill of complaint in said Circuit Court against William D. Murphy defendant for Specific performance which bill of complaint is in words and figures as follows to wit:

"In the Circuit Court of Marshall
County. October Term A. D. 1855."

Complainants Bill

"To the Hon. Judge of the said Court in Chancery
Sitting. Humbly complaining sheweth unto
your honor your Orator Ralph Lockwood for-
"merly of the City of Brooklyn and State of

Bill continued New York - state of the County of Marshall aforesaid that on the fifth day of April A. D. 1851 at the said City of New York He made a written contract under seal with one Wil- "liam D. Murphy of the said city of New York for the purchase by him your Orator of the said Murphy of certain Real Estate in said contract described; which said contract is in substance as follows.

"Articles of Agreement made and entered into this fifth day of April A. D. 1851 between Will- "iam D. Murphy of the City County and State of New York party of the first part and Ral- "ph Lockwood of the City of Brooklyn. County of Kings and State aforesaid party of the Second part Witnesseth that the said party of the first part for and in consideration of one hundred dollars to him in hand paid the Receipt whereof is hereby acknowledged have contracted and agreed to sell to the said party of the second part. all those cer- "tain pieces or parcels of land situate and lying in Marshall County in the State of Illinois. Bounded and described as follows to wit. South East quarter of section Seven also the East half of the North East quar- "ter of Section Nineteen also the West half of the North West quarter of Section Twenty

Bill continued

also the South West quarter of section Thirty -one. also the West half of section Thirty three Township Thirty North and Range one West of the third principal meridian be- "ing in all Eight hundred acres of land for the sum of three thousand and forty six doll- "ars and and Eighty cents. The Ballance Twenty nine hundred and forty six dollars and Eig- "hty cents is to be paid as follows Eight hun- "dred and six dollars and Eighty cents to be to be paid within four months from the date hereof and twenty one hundred and forty dollars (which notes are given for the said amount) is to be paid within one year from the date hereof. and on the pay- "ment of all of the herein discribed amount as they become due and payable the said William D. Murphy and his wife agree to make and execute a Warranty deed with full covenants free from all incum- "brances except taxes of 1851 for all of the above discribed land to the said Ralph Lockwood his heirs or assigns.

Witness Present: Wm D. Murphy

S. C. Murphy Ralph Lockwood

Which said Contract so signed and Execu- ted by the parties was then and there on the day of the date thereof duly delivered

Bill continued

to the said Ralph Lockwood and which said Contract was filed with and Recorded in the office of the Recorder of the said Coun-
"nty of Marshall on the 3rd day of October A. D. 1862. And your Orator will produce & prove the same upon the hearing of this cause. And your Orator charges that at the time of the Execution of said Contract he paid the said Murphy the sum of One hundred Dollars towards the same and gave his notes to said Murphy for the residue as stated and agreed upon in said Contract And your Orator further charges that at the time of said purchase he contracted to pay the full value of said land and in fact a high price for the same.

And your Orator further charges that shortly after the making of said contract he beca-
"me embarrassed in his pecuniary affairs and could not conveniently make prompt payment according to the terms and con-
"ditions of said Contract. and the said Murphy knowing that he had sold the land at a high price did not demand or exact punctual payment according to the terms of the contract. but permitted your Orator to pay a portion of the said notes from time to time as he conveniently

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could do. — and so on the 8th day of Augu-
-st A.D. 1851 your Orator paid also the
further sum of One hundred dollars on
the said contract towards said land for
which the said Murphy gave him a rece-
-ipt in substance as follows.

"Received New York August 8. 1851
on account of Notes due this day which is
to be endorsed on said note as part pay-
-ment thereof
$100. Wm D. Murphy "

And which your Orator charges was endor-
-sed on said note due the said 8th August 1851
given for said land in said Contract described.
And your Orator further charges that on the
third day of May A.D. 1855. your Orator
paid the said Murphy One hundred doll-
-ars more upon the said contract which
was accepted and received by said Mur-
-phy and agreed to be by him credited on
said notes. thereby distinctly admitting that
the said contract remained in full force
and unrescinded by the parties or either of them

And your Orator further charges that
since the making of said Contract he your
Orator has paid all the taxes assessed upon
the whole of said land which in the agg-

Bill continued "negate has amounted to the sum of about one hundred dollars or more. —

And your Orator further charges that since the making of said Contract he has entered upon said lands and taken possession of the same and made. and caused to be made large and valuable improvements on the same — to the amount in value of at least Eight hundred dollars And your Orator further charges that the said Murphy still holds. the said promi- "ssory notes so by him given for the pur- "chase money of said land (or has negoti- "ated the same) the same being negotiable notes and never has delivered or offered to deliver the same to your Orator — and your Orator gives notice to said Murphy to produce said notes upon the hearing of this cause. And your Orator further cha- "rges that the said Murphy never has deliv- =ered nor offered to deliver to your Orator a good and sufficient Warrantee deed for said premises as stipulated in said contract. And your Orator further charges that the said Contract between the said parties ne- "ver has been legally or otherwise rescinded by said parties or Either of them. But that the same still remained in full force

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and effect and wholly unrepeated and in no wise annulled; and that it would be wh. "olly unjust and inequitable that the same should not be specifically performed.
And your Orator further Charges that on the 8th day of October last, your Orator being desirous as he always had been of fulfilling said contract and paying said money (to his great surprise having heard that said Murphy had manifested some intention to sell said lands again to some other person or persons:) tendered and offered to pay to the said Murphy the sum of three thous. "and six hundred Seventeen 50/100 dollars in Gold & silver the same being the full and entire sum of principal and interest due the said Murphy upon the said notes hereinbefore mentioned, and he still is ready and willing and offers to pay the same in such manner as this Court may direct - But your Orator Charges that the said Murphy, intending to Cheat and defraud your Orator in the premises out of the said land and out of the moneys so paid by him to the said Murphy, and out of the value of the improvements made and the taxes aforesaid by your Orator afore. "said paid on the said land then and there

Bill continued

refused and still does refuse to receive the said money for said lands and to make a deed to your Orator for the same accord-ing to the terms of said Contract although at the time of such tender by your Orator such deed was duly demanded.— But on the contrary he the said Murphy now against all equity and good conscience threat-ens to sell and convey said land to some other person or persons. Still holding your Orators notes for the purchase money of the same. And your orator further charges that within a short period of time the said land has in-creased greatly in value so that the same is now worth at least four thousand dollars more than the same was one year ago. and that the sudden rise in the value of said property is the main reason why the said Murphy came to the sudden conclusion to treat the said contract forfeited and at an end. But your Orator charges that the said Murphy never at any time before said tender was made by him ever gave your Orator notice that he designed or intended to treat said contract as void set aside or rescinded by reason of your Orators failing to comply literally with the terms and conditions thereof.

And your Orator charges that but for his pecuniary embarassments aforesaid he would long since have paid said money so due and owing on said Contract. and submits that since the making of the same and since the recognition of the same there has been no unreasonable wilful or vexatious delay by your Orator in paying or offering to pay said money so due as aforesaid. He submits also that time is not made material nor of the essence of said contract. and that in justice and equity the same ought to be specifically performed by said Murphy.

Your Orator charges that the acts and doings of said Murphy in the premises are contrary to Equity and good conscience and tend to the manifest wrong. injury and oppression of your Orator in the premises.

For as much then as your Orator is remediless in the premises in a Court of Law and can only have redress in a Court of Chancery. He prays that the said William D. Murphy may be made defend-ant to this bill. that he may answer the same and each particular charge and allegation thereof / But not upon oath the oath of the said Defendant being hereby

Bill continued

expressly waived / that an injunction may be issued enjoining and restraining the said defendant from selling or in any manner interfering with or encumbering said lands until the further Order of this Court in the premises — That upon the final hearing of this cause a decree may be made requiring & compelling said defendant specifically to perform said Contract by making and executing to your Orator a deed in fee simple of said lands therein described according to the terms and conditions of said contract and that your Orator may have such other and further relief as to Justice and Equity appertain. — He prays also for the usual process against the said defendant & He will pray &c"

Ramsey & Fleming
Purple & Pratt
for Compt.

"Ralph Lockwood
vs
William D. Murphy } In the Circuit Court of Marshall County.

In Chancery

I do hereby enter myself security for costs in this cause and acknowledge myself bound to pay or cause to be paid all costs which

shall accrue in this action either to the opp"
"osite party or to any of the Officers of this
Court in pursuance of the laws of this State"
Dated this 17th" Oct 1855"

Silas Ramsey"

And on the day and year last aforesaid to wit on the Seventeenth day of October A.D. 1855, the same being on of the days of the Term aforesaid and the Court being then judicially sitting the following order was made and entered of Record to wit:

Appearance entered "Ralph Lockwood vs William D. Murphy } Bill for Specific performance

Be it remembered that this comes the defendant in person and enters herein his appearance and the complainant comes also by Richmond & Burns his attorneys."

A Record of the orders judgments Decrees and Proceedings of the Honorable Circuit Court of Marshall County in the State of Illinois began and holden at the Court House in the City of Lacon in and for said County on Tuesday the fifteenth day of February A.D. 1856, in pursuance of an order entered at the last Term of this court

Present the Hon- Madison C. Hollister Judge of Ninth Judicial

Circuit Court of the State of Illinois Wm H. L. Wallace States attorney for said Circuit, Greenberry L. Fort clerk of the said Circuit Court of Marshall county and by James St 6 Boal Deputy and Abraham Gardner Sheriff of said County and by H L Crane Deputy"

Be it remembered that on the Seventh day of February A. D. 1856, the same being one of the days of the Term last aforesaid and the Court being then judicially Sitting an order was made and entered of Record in Said Court to wit:

Rule to answer

"Ralph Lockwood vs William D. Murphy } Bill for Specific performance

Be it remembered that this day it is ordered that the defendant be ruled and required to answer the complainants Bill by or before Saturday morning"

And on the Eleventh day of February A.D. 1856, the Defendant filed his answer in Said Cause in Said Court, which answer is in words and figures as follows to wit:

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Defendants Answer

State of Illinois
Marshall County and circuit court thereof
to the February Term 1856

The answer of William S. Murphy the defendant to the bill of complaint of Ralph Dockwood the complainant.

This defendant now and at all times hereafter saving and reserving all manner of benefit & advantage of exceptions to the many errors & insufficiencies in the complainants bill of complaint contained for answer thereto. or to so much thereof as this defendant is advised it is necessary for him to make answer unto. He answers and says that he did on or about the fifth day of April A. D. 1851 enter into an agreement in writing under seal with complainant as is set forth in complainants Bill. which agreement was delivered to the complainant and that on or before the delivery thereof he received one hundred dollars from complainant as is set forth in said agreement and also received the promissory notes of complainant for the ballance of the purchase money for the land in said agreement described. That there were then and there three notes executed by complainant & delivered to this defendant one of which was payable in four months from the

-ed "A" and which are made a part hereof And defendant charges that on or about the 12th day of October A.D. 1854 at Brooklin in the County of Kings in the State of New York the complainant was examined under oath as a Judgment Debtor before Judge Greenwood Judge of the City Court of said City of Brook-lin touching the disposition of his property for two years previous to that time and that complainant then and there did depose and say on his oath that he had had property in Marshall County Illinois in his own na-me supposed to amount to about one thous-and acres of land which he had before the time of said examination conveyed by Deed to one William Hubbard and then to a fur-ther question to wit "what other property did you own or have you an interest in (if any) in the State of Illinois within the last two years except that which you have before testified about" said complt did answer and say upon his oath aforesaid "Not any to my knowledge" And Defendant charges that the land refered by said complainant in his said examination as having been con-veyed and deeded by him to said Hubbard were other and diferent lands that those mentioned in said agreement. and that said

Answer

complainant did then & there deny upon his oath aforesaid that he had any interest in any lands in the State of Illinois, and in the lands described in complainants bill of complaint. This defendant charges that on the 8th day of August A.D. 1851. the sum of Eight hundred and Six and 8/100 dollars became due on said agreement and admits that he did receive at that time one hundred dollars on the same and gave to complainant his receipt for the same in substance as is alleged in complainants bill. But charges that he did so under the solemn promise and assurance of complainant that he would pay the ballance of said payment within a few days thereafter to Defendant upon which promise of complainant defendant confidently then and there relied. Defendant admits that said one hundred dollars were endorsed on said note, one the said 8th day of August. Defendant admits that on the first day of May A.D. 1855. the complainant paid defendant one hundred dollars more upon said contract. But denies that he defendant thereby admitted that that said contract was in full force. But Defendant charges that for a long time prior to said first day of May A.D 1855 he de

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-fendant had lost all hope and confide-
=nce in the complainants paying him the
ballance of the money due on said contract.
and that he defendants had for a long
time therefore looked upon said contract
as being null void and of no binding force
and effect either in law or equity and had
so repeatedly notified and informed the
complainant. And this defendant further
answering says that on or about the first
day of May A.D. 1855 & prior to his receiv-
=ing said last mentioned one hundred doll-
=ars he wishing to have the matter of said
contract finally and definitely settled in
some way. and still being willing (altho-
=ugh not bound so to do) to convey to comp-
=lainants the land mentioned in said con-
=tract, and fulfill to the letter. the said
contract. made executed (together with
his defendants wife) and tendered & offer-
=ed to complainant at the office of defen-
=dant one hundred and seven South Street
New York a deed of conveyance for the
land described in said contract. which deed
was in all respects just such a deed as
is described in said contract. and there
and there demand of the complainant
immediate payment of the ballance of the

Answer

money due on said contract which deed was duly acknowledged and certified and a copy of which is hereto attached marked "B" and made a part hereof the original of which the defendant will produce in Court on the trial of this cause if required.

Defendant charges that complainant made no objections to said deed nor any part thereof nor to the certificate thereto attached. But stated that he had no money to pay the amount then due and unpaid on said contract to the defendant and requested the defendant to allow him until the following day at noon to procure the money and take the said deed. That complainant the following day came to the said office office of defendant before noon and informed defendant that he complainant could not get the money necessary to take up said deed and pay the ballance due on said contract. but that he would pay defendant then one hundred dollars on account of said contract if defendant would postpone the final delivery of said Deed and the payment of the Ballance of said money due on said contract until the third day of July A. D. 1895 to which proposition of the complainant the defen-

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=dant assented and gave to complainant a receipt for said One Hundred dollars (which the complainant them and there paid to him) in the words following to wit "Received New York May the third one thousand Eight hundred and fifty five from Ralph Lockwood Esq one hundred dollars on account of his contract for the purchase of Lands in Illinois. town of Lyons Putnam County. said contract bear=ing date April 3d one thousand Eight hun=dred and fifty one and described in Deed of William D. Murphy and wife (not yet delivered) to Ralph Lockwood the delivery thereof being postponed in consequence of this payment until the third day of July next when the ballance of the purchase money is to be paid

$100.— Signed W. D. Murphy"

The original of which was delivered to the com=plainant on the day of said payment of the one hundred dollars mentioned in said rece=ipt. This defendant charges that on said third day of July A. D. 1855 all of the purch=ase money mentioned in said contract was due and unpaid except two hundred dollars to wit. the said one hundred dollars paid

Answer

August 8th 1851 and the said one hundred dollars paid on said third day of May 1855 Defendant charges that afterwards on or about the 3rd day of July A.D. 1855 he again offered and tendered said Deed marked "B" to the complainant and demanded the payment of the ballance due on said contract and that the complainant then absolutely refus-ed to pay said ballance or any part thereof to complainant although the same had been due for more than three years and although this defendant then and there had the notes aforesaid of the defendant so made and delivered to defendandant as aforesaid ready to be delivered up to com-plainant and cancelled. This defendant further answering says that afterwards on the 5th day of July A.D. 1855 he again offer-ed and tendered to complainant the said deed marked "B" and then & there again demanded of and from complainant the payment of the ballance of the purchase money due on said contract and that complainant again then & there refused to receive said Deed and pay the money so then & there due and unpaid on said contract to defendant, and that comp-lainant then said that he was poor and

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unable to get the money and complainant then and on other occasions represented to defendant that from large and disasterous speculations in real in Brooklin New York he complainant had become and was wholly insolvent. Defendant charged that on said last mentioned refusal of complainant to receive said deed & pay the ballance of said money due on said contract this defendant caused an affidavit made by Orando B. Lewis and properly sworn to and attested to be filed for record in the office of the recorder of Marshall County Illinois which affidavit is hereto attached marked "C" and is made a part hereof. This defendant says that he recd. the last mentioned one hundred dollars only upon the ground that the ballance of the money due on said contract should be paid promptly on the 3d day of July A.D. 1855 and upon no other consideration whatsoever and denies most positively that he even directly or indirectly extended the time of payment of any of the money mentioned in said contract except as is herein before stated.

Defendant denies that complainant has paid any taxes on said land. he admits that he authorized the complainant to pay

Answer

the taxes thereon for the year 1851. but that he has never paid them. Defendant says that he paid the taxes on all the lands mentioned in said contract for one of the years since the year 1851 that the taxes for the other years since the making of said contract have been paid by other persons besides the complainant or defendant. but that the de= =fendant has for each year since the year 1851 caused enquiry to be made of the prop= =er officer for the taxes on said lands and has always learned that they had been paid by other persons except for the year when defendant paid the said taxes himself Defendant does not know what the taxes on said lands assessed since said contract was made amounts to. But defendant de= =nies that he ever authorized complainant to pay any taxes on said lands except for the year 1851. and even if complainant had paid them this defendant is not responsible to complainant therefor. Defendant denies that com= =plainant has entered upon said lands or that he complainant has made any improvements what= =ever thereon. and even if he had done so defen= =dant never authorized complainant so to do. But that any such act of complainants would be a palpable violation of said contract.

This defendant admits that he still holds the notes of the complainant that they are negotiable that he has never tried to negotiate them and believes that if he had so tried he never could have done so.

This defendant states that he has offered and tendered a good and sufficient Warranty Deed as stipulated in said contract to complainant as is hereinbefore stated. But that he always accompanied said offer and tender with a demand for the payment of the ballance of the purchase money due on said contract and charges that the complainant has uniformly refused such deed and pay said payment to complainant. Defendant denies that said contract is still in force and binding on him but insists that by reason of the complainants vexatious delay of the payment of the money due on the same the defendant was long since fully discharged from all liability to convey said lands therein mentioned to complainant and especially so by reason of the many offers and tenders of a conveyance by defendant to complainant and demands of the payment of the money due on said contract by defendant of complainant and of the refusals of complainant to receive such conveyance and pay the money due defendant and that now it would be inequitable and unjust to require this defendant to convey any of said lands to

complainant. This defendant further answers and says that complainant did not on the 8th. day of October last. or at any other time whatsoever tender to defendant the sum of three thousand six hundred seventeen 50/100 dollars in payment for said lands or any other sum of money whatever. Defendant denies that he ever had or that he now intends to cheat or defraud the complainant in any way or manner whatsoever Defendant denies that he either now or at any other time refused to execute and deliver a deed for said lands to complainant and to receive from him the purchase money therefor. Defendant denies that he lately has threatened to sell the lands mentioned in said agreement but insists that he has a lawful right to sell the same he being the owner thereof in fee simple and neither complainants nor any other person having any legal or equitable title thereto.

Defendant admits that said lands have steadely ever since said written contract was made increased in value and that he defendant was made aware of such increase in their value when he offered and tendered to complainant a deed for said lands and demanded the payment of him of the balance of the purchase money as hereinbefore

25 mentioned but defendant has no opinion of the present value of said lands.

Defendant denis that there has been any sudden rise in the value of said lands or that he has arrived at any sudden conclusion to treat said contract forfeited and at an end but charges that he came to that conclusion long ago

Defendant charges that complainant seems to have come to the sudden conclusion to get the land of the defendant and cheat & defraud defendant out of his pay therefor if he can. This defendant charges that he has repeatedly notified the complainant that said contract was forfeited recinded and at an end. that he so notified said complainant. on or about the 2d day of May 1855. & on or about the 3d day of July 1855 and also on or about the 5th day of July 1855 and also on divers other and defferent times. for the reason that complainant had failed to comply with said contract on his part.

This defendant insists that there has been on part of the complainant an unreasonable and vexatious delay of the payment of the money due on said contract. that he does not know whether. had it not been for the pecuniary embarassments of complainant he would not have paid said money or not but

Answer

defendant believes he would not have paid said money under any circumstances.
Defendant also insists that he is not responsible for the pecuniary embarassments of complainant nor ought he to be injured in consequence thereof. And this defendant hereby offers to refund and pay over to the complainant all the money that defendant has received on account of said contract and also all taxes that complainant has paid on said lands by authority of complainant if he has paid any and also to bring into Court all the notes he holds of the Complainant given in pursuance of said contract and have the same cancelled or delivered up to the complainant as this court may direct.
Defendant charges that in consequence of the vexatious and wilful delays of complainant in complying on his part with the terms and conditions of said contract he has been greatly injured that he has been deprived of the use of the money due on said contract and notes that complainant suffered and allowed said notes to be protested as will more fully appear by reference to the copies of the said notes and protests thereon here to attached marked "C" will more fully appear. And this defendants insists that

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time is of the essence of the said contract and that the terms & conditions of the same require that complainant should pay all the purchase money for said land within one year from the date of said bond and after said bond was broken by complainant the was no longer binding on this defendant All of which matters and things this defendent is ready to aver maintain and prove as this court shall direct and defendant prays to be discharged with his reasonable cost most unjustly expended."

William D. Murphy
By S. L. Richmond
his Solicitor"

Exibits with Answer

The Clerk of the City and County of Newyork. will please search in his office as follows

For Transcripts of
- Decrees in Chancery
- Judgments from the late and present Supreme Court
- Judgments from Superior Court
- Judgments from the Court of Common Pleas
- Judgments from other Counties

Also for Transcripts from the Marine and Justice Courts
Also for Surrogates Decrees and forfeited Recognizances

against the following persons;
Ralph Lockwood from 1 Jany 1848

Supreme
1853 Sept 5th Ralph Lockwood ads Standford.
Lockwood $6.705.00 Hay & McIntire

Kings Co. Supreme
" 9 Same ads Jasper A. Thurston & James H. Peterson $1.946.62 Geo. Catlin.

" 29 Same ads Same $401.37 Geo Catlin

Albany Co Supreme
Oct 5 Ralph Lockwood & John M. Cantin ads Nathan T. Higbie $233.06 P. Cagger

N.Y. Supreme
" 15 Ralph Lockwood Simpkd & ads Thomas Otis. LeRoy & David Smith $1.070.73 Hawley & Glover

Brooklyn City Courts
" 26 Ralph Lockwood ads Joseph H. Shephard & Nathan Bolister $2.592.63 Lewis & Browne

29

Supreme

1853 Oct 27 Ralph Lockwood ads James L. Morgan & Henry L. Weller and George Gregory #2476. 64 & Taggard & Pinckney

Brooklyn City Court

" " 28 Ralph Lockwood & William H. Seley ads John Butler & Oliver R Butler #5058. 11 C. J & C. Downey

Kings Co Supreme

1854 Jany 11 Ralph Lockwood and William H. Seley ads John Butler and Oliver R. Butler #356. 12 C. J. & C. Downey.

1853 Oct. 29

1854 Feby 28 Brooklyn City Court.
Ralph Lockwood ads The Newyork & Saugerties White Lead Company #94. 31 Smith & Woodward

1853 Oct. 12

1854 Feby 28 Ralph Lockwood, Charles T. Weig-and & Hames Beman ads The Newyork & Saugerties White Lead Company #557. 46 Smith and Wood-ward.

32

Supreme

1854 December 18 Ralph Lockwood and William H. Seeley ad Andrew W. Morgan and John Lee Smith $926.01 Elias Dusenbery.

None other found

October 10th 1855

L. S

R. B. Connoly

Clerk

Signed and Sealed

in presence of

Horatio P. Carr

State of New York

City & County of New York ss. On this 10th day of October A D 1855 before me personally came James Nack to me personally known who acknowledged that he subscribed the above search. that he subscribed the same by virtue of an authority from the said Richard B. Connolly Clerk of the City & County of New York and that the same is true according to the records kept in the office of the County Clerk

L. S

Horatio P. Carr

Notary Public

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"Copy"

This Indenture. made the Fifth day of April in the year one thousand eight hundred and fifty two Between William D. Murphy of the City of New York of the first part and Ann Letitia Murphy his wife. and Ralph Lockwood of New York City of the second part Witnesseth. That the said parties of the first part. in consideration of the sum of Three Thousand and Seventy Nine 00/100 Dollars to them duly paid before the delivery hereof. "have bargained and sold. and by these presents do grant and convey" to the said party of the second part his heirs and assigns for ever. All the West half of the North West quarter of Section Twenty and the East half of the North East quarter of Section Nineteen. and the North West quarter of section Thirty one of Township Thirty North and range one West of the Third principal Meridian. Containing Three hundred and Twenty 40/100 Acres be the same more or less. and all the South East 1/4 Section Seven of Township Thirty and range one West of the Third principal Meridian. Containing One hundred and Sixty acres be the same more or less. "lying and being in the town of Lyons. Putnam County in the State of Illinois." Also the North West 1/4 of Section 33. also the South West 1/4 of Section 33. Township 30 North and range one West of third principal Meridian containing 320 acres. be the same more or less. lying and being in the

town of Lyons Putnam County State of Illinois.
with the appurtenances. and all the estate. title and
interest. of the said parties of the first part therein
+ And the said parties of the first part. do hereby
covenant and agree with the said party of the
second part. that at the time of the delivery here=
=of. the said parties of the first part are the
lawful owner of the premises above granted and
seized thereof in fee simple absolute and that
they will Warrant and Defend the above granted
premises in the quiet and peaceable possession of
the said party of the second part his heirs and
assigns. for ever In Witness Whereof. the said
parties of the first part. have hereunto set their.
hands and seals the day and year first above
written.

Sealed and delivered
in the presence of
(Signed) Edwin F. Corey
(Signed) G.W. Thoms

(Signed) Wm. D. Murphy (L.S.)
(Signed) Ann Letitia Murphy (L.S.)

State of New York
City and County of New York ss. } By this Public
Instrument be it
known to all whom the same doth or may in anywise concern that I
Edwin F. Corey a Public Notary in and for the
State of New York by Letters Patent under the
Great Seal of State duly commissioned and sworn

33

dwelling in the City of New York. Do hereby cer-
-tify that on the thirtieth (30) day of April one
Thousand Eight hundred and fifty five before
me appeared William S. Murphy and Ann —
Letitia wife of said William S. Murphy whose
signatures appear on the within instrument and
who are personally known to me to be the real
persons who subscribed and executed the same
and acknowledged the same to be their free act
and deed. And Ann Letitia wife of said Will-
-iam S. Murphy and whose signature appears to
said instrument having been by me made acqua-
-inted with the contents thereof and examined se-
-parate and apart from her said husband acknow-
-ledged that she executed the same and relinqu-
-ished her right of dower in the premises therein
conveyed voluntarily, freely and without compul-
-sion of her said husband.

In Testimony whereof I have
hereunto affixed my official
seal and set my hand the
day and year aforesaid

L. S.

(Signed) Edwin F. Corey
Notary Public

"C"

State of New York
City and County of New York ss. Oramdo B.

Lewis of the City of New York. being duly sworn in due form of Law doth depose and say that on the fifth day of this month July 1855. deponent at the request of William S. Murphy of said City. executed to Ralph Lock=
=wood a deed from said William S. Murphy and Ann Letitia his wife for certain Lands in the State of Illinois to said Ralph Lock=
=wood bearing date Fifth day of April Eighteen hundred and fifty two for consideration of Three Thousand and Seventy Nine 0/100 Dollars which deed was duly executed and acknowledged before Edwin F. Corey a Public Notary in and for the State of New York on the Thirtieth day of April A. D. 1855. deponent further says at the time said Ralph Lockwood admitted that he had contracted to purchase said Land of said Murphy for the sum aforesaid and had given said Murphy Three notes in payment of the same and when paid in pur=
=suance to said contract. said Murphy was to deliver to him said Ralph Lockwood a War=
=ranty Deed for the same. Deponent further says at the time aforesaid the fifth day of July 1855 when deponent tendered the deed afore=
=said he demanded of said Ralph Lockwood at the request of said Murphy Three Thousand Five Hundred and Seventeen 2/100 Dollars. being

at the time the actual balance due said Murphy including interest and charges on said property at the time. Lockwood then said that the contract and the amount due was correct. that he had not got the money neither could he get the same as he was poor. Deponent further says. that the property described in said Deed of Murphy and wife to said Lockwood was bounded and de=scribed as follows. All the West half of South West Quarter of Section Twenty and the East half of the South East quarter of Section Nine=teen. and the North West Quarter of Section Thirty one of Township Thirty North and range one West of the third principal Meridian. con=taining Three Hundred and twenty 40/100 Acres be the same more or less. and all the South East quar=ter Section Seven of Township Thirty and ran=ge one west. of the Third principal Meridian containing one hundred and Sixty acres be the same more or less lying and being in the town of Lyons. Putnam County in the State of Illinois. also the North West quarter of Sec=tion Number Thirty three also the South We=st Quarter of Quarter of Section number thirty three Township Thirty north and range one west of third principal Meridian containing three hundred and twenty acres be the same more or less lying and being in the Town of

Lyons Putnam County State of Illinois.
And further deponent saith not.

O. B. Lewis.

Subscribed and sworn to before me this 18th
day of July A.D. 1855.

Edwin F Corey
Public Notary in and for the
State of New York duly commission
ed by Letters patent under the
Great Seal of State and dwelling in
the City of New York

L. S.

State of Illinois.
Marshall County } ss. I. G. L. Fort. Clerk of the
Circuit Court of the said
County of Marshall. and by virtue there of ex-offi=
=cio Recorder of said County: do hereby certify that
the Instrument of Writing hereto attached. and
which purports to have been executed by Orrando
B. Lewis was filed in said office. for Record on the
23rd day of July A.D. 1855 at 12 o'clock M. and
that the same was this day duly Recorded in Book
D at pages 721 & 722. In Testimony Whereof I
have hereunto set my name. and affixed the

L. S.

Seal of said Court. at the City of
Lacon. in said county. on this 10th
day of September A.D. 1855.

G. L. Fort Clerk

"Copy"

$816.80/100 Four Months after date I promise to pay William D. Murphy or order Eight Hundred and Six 80/100 Dollars for Value Recei=ved

New-York April 5th 1851

(Signed) Ralph Lockwood

106 Water Street N.Y.

Aug 8

"A"

"Copy"

$1070. One Year after date I promise to pay William D. Murphy or Order One Thousand and Seventy Dollars for value received.

New York April 5th 1851

(Signed) Ralph Lockwood

106 Water Sts N.Y.

Apl 8/52

"A"

"Copy"

United States of America }
State of New York } ss.

I. Gardner Spring. Jr.

Notary Public duly commissioned and sworn dwelling in the City of New York do hereby Certify that on the Eighth day of April in the year of our Lord one thousand eight hundred and fif=ty two at the request of The President and Directors of the Mechanics Bank. New York the original Promissory Note hereunto annex=ed was duly presented to Ralph Lockwood

"A"

the Maker at his place of business in said City and payment thereof was then and there demanded which was refused. Whereupon I. the said Notary at the request aforesaid. did Protest. and by these presents do publicly and solemnly Protest. as well against the Maker and Endorsers of the said Promissory Note. as against all others whom it doth or may concern. for exchange re-exchange and all costs. damages. and interest. already incurred. and to be hereafter incurred. for want of payment of the same. Thus done and Protested. in the City of New York. aforesaid. in the presence of John Doe and Richard Roe. witnesses

(Signed) Gar.d Spring
Notary Public Mechanics Bank

Quod Attestor

Copy

$1170. One Year after date I promise to pay William D. Murphy or Order One Thousand and Seventy Dollars for value received.
New York April 5th 1851

(Signed) Ralph Lockwood.
56 Water St. N.Y.
Apr 8/52

39

"Copy"

United States of America
State of New York } ss.

I. Gardner Spring Jr.

Notary Public duly commissioned and sworn dwelling in the City of New York do hereby Certify that on the Eighth day of April in the year of our Lord one thousand eight hundred and fifty two at the request of The President and Directors of the Mechanics Bank New York &. the original Promissory Note hereunto annexed was duly presented to Ralph Lockwood the Maker at his place of business in said City. and paym=ent thereof was then and there demanded & which was refused &. Whereupon I the said Notary at the request aforesaid. did Protest and by these presents do publicly and solemnly Protest as well against the Maker and Endorsers of the said Pr=omissory Note as against all others whom it doth or may concern for exchange re-exchange and all costs. damages and interest. already incurred and to be hereafter incurred for want of paym=ent of the same Thus Done and & Protested & in the City of New York aforesaid &. in the presen=ce of John Doe and Richard Roe witnesses

(Signed) Gar.d Spring
Notary Public Mechanics Bank &

Quod Attestor

Endorsed "Filed Feb 11. 1856. G L Fort clerk".

And on the 13th day of February A.D. 1856, the Complainant filed his replication which is in words and figures as follows to wit:

Replication "Ralph Lockwood vs. William D. Murphy } In the Circuit Court of Marshall County In Chancery

The Replication of Ralph Lockwood the Complainant above named to the answer of the Defendant William D. Murphy filed in this cause.

The said Complainant for Replication to said answer says. that he will aver and maintain his said Bill to be true certain and sufficient. and that the answer of the said Defendant is uncertain, untrue and in- "sufficient. to be replied unto by this complain- "nant. Wherefore he prays as in and by his said Original Bill he has prayed &c"

"Purple for Compt"

Endorsed "Filed Feb 13th 1856"

"G. L. Fort clk"

And afterwards to wit on the fourteenth day of April AD 1856 the same being one of the days of the April Term of said Court and the Court being there judicially sitting the following order was made and entered of Record in the cause of Ralph Lockwood against William D Murphy to wit:

Order for Continuance

"Ralph Lockwood vs William D. Murphy } Bill for Specific performance

Be it remembered that this day it is ordered by the Court that this cause be continued upon the agreement of the parties in open Court made."

And afterwards to wit on the twenty first day of May in the of our Lord One thousand eight hundred and fifty Seven the same being one of the days of May Term of said Court for said year the following order was made in said Cause and entered of Record to wit:

Order for Continuance

Ralph Lockwood vs William D. Murphy } Bill for Specific performance

This day came the parties by their counsel and by agreement this cause is continued.

38

40

42

And afterwards to wit on the fifteenth day of October A.D.1857, the same being one of the days of the October Term of said Court for said year the following order was made in said cause to wit

Order for Continuance

Ralph Lockwood vs William D. Murphy } Bill for Specific performance

This day on Motion of the Complainants Solicitor this cause is continued at the costs of the Complainant.

And afterwards to wit on the Sixth day of Febuary A.D. 1858, the complainant submitted his proof in support of the allegations in his bill contained which proof is in words and figures as follows to wit.

Complainants Proof.

"Articles of Agreement. made and entered into this the Fifth day of April 1851 Between William D. Murphy of the City County and State of New York Party of the first part. and Ralph Lockwood of the City of Brooklyn. County of Kings and State aforesaid Party of the Second part. Witnesseth. That the said party of the first part for and in Consideration of the sum of One hundred Dollars to him in hand paid. have contracted and agreed to sell to the said party of the second part. all those certain pieces or parcels of land "Situate and lying in Marshall County in the State of Illinois" Bounded and described as follows To Wit; South East Quarter of Section Seven also East half of the North East quarter of Section Nineteen. also West half of the North West quarter of Section Twenty also the North West quarter of Section Thirty one also the West half of Section Thirty Three Town" "ship Thirty North and range one West of the Third principal meridian being in all Eight Hundred acres of Land. For the sum of Three Thousand and Forty Six Dollars and Eighty cents.— The ballance Twenty nine Hundred and Forty Six Dollars and Eighty cents is to be paid as follows. Eight Hundred and Six Doll." "ars and Eighty cents to be paid within four mon" "ths from the date hereof. and Twenty one hun"

Proofs of Complainant

+

"ded and forty Dollars which notes are given for said amounts. is to be paid within One Year from the date hereof. — "and on the pay" "ment of all of the herein describe amount as they become due and payable. The said William D. Murphy and his Wife agrees to make and execute a Warrantie Deed with full Covenants free from all incumbrances (Except the Taxes of 1851 for all of the above described Land to the said Ralph Lockwood his heirs or assigns.

Interlined before signing "which notes are given for said amounts"

Witness present — Ralph Lockwood (Seal)

J. C. Murphy — Wm. D. Murphy (Seal)

Know all men by these presents that I Ralph Lockwood of the City of Brooklyn County of Kings and State of New York. Do hereby ass" "igne and set over unto William B. Green of the Town of Lyons County of Marshall State of Illinois for the Consideration of Two hun- =ded Dollars to me in hand paid by the said Wm B. Green at or before the sealing of the same the receipt thereof is hereby ack" "nowledged all my right title and interest to a certain contract in writing made by

Wm D. Murphy to the said Ralph Lockwood herein, on the fifth day of April 1851. for all those certain pieces or parcel of Land situate and lying in Marshall County in the State of Illinois - Bounded and descri-bed as follows To Wit the South East quar-ter of Section Seven also East half of the North East quarter of Section Nineteen also West half of the South West quarter of Sec-tion Twenty also the North West quarter of Section Thirty one also the West half of Sec-tion Thirty Three Township Thirty North and Range one West of the third principal meridian being in all Eight hundred acres of Land in Witness whereof I hereby Set my hand and Seal.

in the presence of

Brooklyn 22d July 1852

Ralph Lockwood (Seal)

(No 15)

State of Illinois }
Marshall County } Collectors Office Roberts Tp.
February 7th 1852

Received of Wm B. Green the Sum of Sixty five Dollars and 63 cents the tax-es due the State of Illinois. County of Marshall Town of Roberts for the year 1851

Acres	Description	Sec.	Town	Range	Value	Tax $	¢
40	N.W. N.W	7	30	1 W	132.	1.	40
160	S.E	7	30	1 W	330.	4.	28
160	N.E	8	30	1 W	264	2	81
160	N.W	8	30	1 W	330	3.	95
160	N.W	9	30	1 W	264	2.	56
80	W½	S.W	9	30	1 W	264	2. 97
80	E½	N.E	19	30	1 W	220	2 56
80	E½	S.E.	19	30	1 W	220	2. 08
80	W½	N.W	20	30	1 W	264	2 97
160		S.W	21	30	1 W	616	6 79
160		S.W.	23	30	1 W	616	6. 62
80	W½	S.E.	23	30	1 W	308	3 39
80	E½	S.E.	26	30	1 W	308	3 39
160		S.W.	24	30	1 W	616	6. 62
160		N.W.	25	30	1 W	616	6. 62
160		S.E.	25	30	1 W	616	6 62
						$ 65.	63

Thomas Cowen
Collector

(No 41)

State of Illinois
Marshall County } Collectors Office Roberts Tp.
February 7th 1852

Received of Wm B. Green the sum of Eighty six Dollars and 59 cents the taxes due the State of Illinois County of Marshall Town of Roberts for the year 1851

Acres	Description		Sec	Town	Range	Value	Tax	
							$	¢
160		N.E	26	30	1 W	616.	6.	62
160		S.E.	26	30	1 W	616.	6.	63
160		N E	27	30	1 W	616.	6.	63
160		N.W.	28	30	1 W	616.	6.	63
80	W 1/2	S.W.	28	30	1 W	308	2.	91
80	E 1/2	S.W.	29	30	1 W	440	4.	97
160		S.E	29	30	1 W	616	6.	60
80 ac	W 1/2	S.W.	31	30	1 W.	310	3.	41
160		N.W.	33	30	1 W	616	6.	63
160		S.W.	33	30	1 W	616	6.	63
80	W 1/2	S.W.	34	30	1 W	308	3.	39
160		N.E.	35	30	1 W	616	5.	83
160		N.E.	36	30	1 W	616	6.	63
160		S.E.	36	30	1 W	616	6	63
			Personal Tax			711	6	45
							$86.	59

Thomas Cowen
Collector.

(No 13)

State of Illinois }
County ss }

Feb 1852

Received of Joseph Van Buskirk Six 79/100 Dollars in full for the following State County, Town, and Special Taxes, on the following described Real Estate, in Township No 30 Range No 1 W and on Personal Property, due for

the year 1851. to wit:-

Description	Sec	Acres	100ths	Valuation		State Tax D	State Tax C	County Tax D	County Tax C	Town Tax D	Town Tax C	Township School Tax		District School Tax		Road Tax D	Road Tax C	Tax		Total Tax D	Total Tax C		
N.W.	31	160		6	16	3	56	1	84		43	Duplicate					96			6	79		

Thomas Cowen Collector for the town of Roberts.

(No 5)

State of Illinois, }
County of Marshall. } ss Collectors Office. Feby 11 1853

Received of William B. Green the sum of thirteen 25/100 Dollars the Taxes due the State of Illinois and the County of Marshall on the following described lands for the year 1852.

Description	Sec	Town	Range	Value		Total Tax
320 acres N½	33	30 N	1 W			13. 28

A. Green Collector

(No 4)

State of Illinois }
Marshall County } Collectors Office Feb 11th 1853

Received of William B. Green the sum of three 32/100 Dollars the taxes due the State of Illinois and the County of Marshall on the following described lands for the year 1852

Description	Sec	Town	Range	Value		Total Tax
80 acres N½ N.W.	20	30 N	1 W			3. 37

A. Green Collector.

49

(No 3)

State of Illinois } ss.
County of Marshall } Collectors Office Feb 11 1853

Received of William B. Green the sum of Two 37/100 Dollars the Taxes due the State of Illinois and the County of Marshall on the following described lands for the year 1852

Description	Sec.	Town	Range	Value		Total Tax
80 acres E½ N.E.	19	30 N	1 W			2.37

A. Green. Collector

(No 2)

State of Illinois, }
Marshall County } Collectors Office Feb 11 1853

Received of William B Green the sum of Four 44/100 Dollars as the taxes due the State of Illinois and the County of Marshall on the following described lands for the year 1852

Description	Sec	Town	Range	Value		Total Tax
160 acres S.E.	7	30 N	1 W		1852	4.44

A. Green Collector

$7.80

(No 14)

April 9 1853. Received of Wm B. Green Esq. the sum of $7 80/100 being the amount of taxes by me paid for Wm D. Murphy on N.W. qr. of 31 sec 30 North and Range 1 West for the year 1852

Thomas Powell

State of Illinois
Marshall County. } Collectors Office Feb 10 1854

Town of Roberts

Received of William B. Green the sum of twenty 63/100 dollars and cents. for taxes levied for State, County. and Township purposes. on the following described lands for 1853

Acres	Description	Town	Range	Value	Tax	
40	N.W. N.W 7	30 N	1 W	60	0. 86	
160	N.E. 8	" "	"	160	2. 14	
160	N.W. 9	" "	"	240	3. 14	
80	W/2 S.W 9	" "	"	160	2. 14	
80	E/2 N.E 19	" "	"	240	2. 90	
80	E/2 S.E. 19	" "	"	240	2 50	
80	W/2 N.W. 20	" "	"	240	3. 06	
80	E/2 S.E 22	" "	"	320	3. 89	
					$20. 63	

Abraham Green Collector of Roberts township

(No 7)

State of Illinois
Marshall County } Treasurers Office, Lacon
Feb 28 1854

Received of Jacob C. Salter the sum of three dol" "lars and Eighty nine cents. for taxes levied for State, county, and township purposes on the follow "ing described lands for 1853

Acres	Description	Sec	Town	Range	Value	Tax	
80	W/2 S.W.	33	30	1 W	320	3. 89	

Samuel Maxwell Treasurer Marshall Co. Ills.

51

(No 8)

State of Illinois
Marshall County. } Treasurer Office. Lacon.

April 20th 1864

Received of Joseph Van Buskirk the sum of Nineteen dollars and twenty cents. for taxes levied for State. County. and township purposes on the following described lands for 1863

Acres	Description	Sec	Town	Range	Value	Tax	
80	E½ NE	16	29	1 W	400	4	88
80	W½ NE	"	29	1 W	400	4.	88
80	E½ N.W.	31	30	1 W	400	4	72
80	W½ N.W.	"	30	1 W	400	4	72
						$19.20	

Samuel Maxwell Treasurer Marshall Co Ills

(No 6)

State of Illinois
Marshall County } Collectors Office. December 1864

Received of W.B. Green the sum of Fourteen dollars and Seventy five cents for taxes levied for State. County. and township purposes on the following described lands for 1864.

Acres	Description	Sec	Town	Range	Value	Tax	
80	E½ NE	8	30 N	1 W	80	1.	00
40	N.W. N.W.	7	30 N	1 W	60		75
80	W½ N.E.	8	" "	"	80	1.	00
80	W½ SW	9	" "	"	160	2.	00
80	E½ S.E	19	" "	"	240	3.	00
80	W½ N.W.	20	" "	"	240	3.	00
80	E½ S.E.	22	" "	"	320	4	00
						$ 14.	75

A.S. Myers Collector of Roberts Township

(No 17)

State of Illinois
Marshall County. } Collectors Office Feby 14 1855

Received of Wm B. Green the sum of Twenty nine dollars and fourteen cents for taxes levied for State. County and township purposes. on the following discribed lands. for 1854

Acres	Description		Sec	Town	Range	Value	Tax	
80	E½	N.W.	9	30	1	120	1.	50
80	W½	N.W	9	"	"	120	1.	50
80	E½	N.E.	19	"	"	240	3.	00
80	W½	S.W.	23	"	"	320	3.	36
80	W½	S.W	27	"	"	320	4.	00
80	E½	S.W	28	"	"	800	10.	—
80	W½	S.E.	28	"	"	480	5.	84
							$ 29	14

A. S. Myers. Collector of Roberts Township

(No 9)

State of Illinois.
Marshall County } Treasurer's Office Lacon
March 2nd 1855.

Received of Jacob Salter the sum of Four Dollars and Cents the Taxes due the State of Illinois and the County of Marshall. on the following discribed Lands. for the year A.D. 1854.

Description		Sec.	Town	Range	Acres	Value	Year	Amount Tax
W½	S.W.	33	30	1 W	80	320	1854	$ 4.00

Samb. Maxwell Treasurer & Collector of Marshall County

53

(No 10)

State of Illinois
Marshall County } Treasurer's Office May 3 1855.

Received of William B. Green the sum of Fifty dollars and Eighty nine cents the Taxes due the State of Illinois and the County of Mar-
shall on the following described Lands for the year A. D. 1853 & 1854

Description.	Sec.	Town	Range	Acres	Value	Year	Tax	
S.E.	7	30	1	160	320	1853	6.	14
"	"	"	"	"	"	1854	4.	00
S.W.	31	"	"	168	800	1854	10.	—
N.W.	33	"	"	160	640	1853	11.	86
E/2 S.W.	33	"	"	80	320	1853	5.	93
N.E	33	"	"	160	640	1854	8	00
E/2 S.E	33	"	"	80	320	1854	4.	00
				Acres 848				96
							$50	89

Sam[l] Maxwell Treasurer & Collector of Marshall Co

(No 16)

State of Illinois
Marshall County } Collectors Office Roberts Town 1855. Received of Ralph Lock-
wood the sum of Fifty Six dollars and Sixteen cents for taxes levied for State, County, and town-
ship purposes, on the following described prop-
erty, for the year 1855.

Acres	Description	Sec	Town	Range	Value	Tax	
160	S.E.	7	30	W 1	480	6	01
80	E/2 N.E.	19	"	"	160	4	06
80	E/2 S.E	"	"	"	320	5	96

80	W½	N.W.	20	30	W 1	480	6	17
160	N W		31	"	"	960	12	35
160	N W		33	"	"	880	11	13

A. S. Myers Collector of Roberts Township

State of Illinois
Marshall County } Collectors Office Roberts Town 1855

Received of Ralph Lockwood the sum of Fifty Six dollars and Sixteen cents for taxes levied for State, County, and township purposes, on the following described property for the year 1855

Acres	Description	Sec	Town	Range	Value	Tax	
80	E½	S.W.	33	30	1.W.	440	5	56
80	W½	S.W	"	"	"	560	6	92
							56.	16
80	W½	N.W.	33	"	"	320	4	16

A. S. Myers Collector of Roberts Township

(No 12)

State of Illinois
Marshall County } ss. Collectors Office. Town of Roberts December 22d 1856

Received of Ralph Lockwood the sum of Seventy seven Dollars and twenty two Cents, the Taxes due the State of Illinois and County of Marshall on the following described Lands for the year 1856

55

Description	Acres	Sec	Town	Range	Value	State County Tax	Town Tax	Town School Tax	Dist School Tax	Road Tax	RR. Interest Tax	Total Tax
S.E	160	7	30	1 W	480	6 24	24	96		96	96	9 36
E½ N.E.	80	19	"	"	320	4 16	16	64		64	64	6 24
W½ N.W	80	20	"	"	320	4 16	16	64		64	64	6 24
N.W.	160	31	"	"	960	12 48	48	1 92		1 92	1 92	18 72
N.W	160	33	"	"	880	11 44	44	1 76		1 76	1 76	17 16
S.W	160	33	"	"	1.000	13 00	50	2 00		2 00	2 00	19 50

Thomas Coven Collector $77.22

(No 18)

State of Illinois } No 14
Marshall County } ss.

Sany 9th 1808

Recived of Ralph Lockwood One Hundred & Twelve 25/100 Dollars in full for the following State. County. Town. and Special Taxes on the following described Real Estate. in township No 30 Range No 1 West and on Personal Property. due for the year 1807. to wit:-

Description	Sec	Acres	Valuation	State Tax D	State Tax C	County Tax D	County Tax C	Town Tax D	Town Tax C	Township School Tax D	Township School Tax C	District School Tax D	District School Tax C	Road Tax D	Road Tax C	RR Tax D	RR Tax C	Total Tax D	Total Tax C
S.E.	7	160	480	5	76				24			3.36		96		96		11	28
E½ N.E	19	80	320	3.	84				16			2.24		64		64		7.	52
W½ N.W	20	80	400	4	80				20			2	80	64		80		9	24
N.W.	31	160	960	10	02				48			9	60	1	92	1	92	20	44
N.W.	33	160	960	11	00				48			12	00	1	76	1	92	27	68
S.W	33	160	1120	13	44				56			14	00		88	2	24	31	12

$112.28

James Hoyt Collector for the Town of Roberts

57

4th if any such tender of money was made then state whether the Deft Wm D. Murphy refused or declined receiving the money so tendered?

5th if you know of any other matters or thing tending to the benefit of the complainant state the same as fully as though you were particularly interrogated thereto.

Ramsey & Purple
Sol's for Compt

Circuit Court. Marshall County State of Illinois

Ralph Lockwood
against
William D. Murphy

Deposition of John W. Hubbard a Witness produced on the part of the plaintiff and sworn and examined before us Commissioners by virtue of a Commission to us directed and delivered out of the Circuit Court of Marshall County. State of Illinois this Eleventh day of November

58

1806. John W. Hubbard a Witness on the part of the plaintiff in the above action being first duly sworn before us on the Holy Evangelists of Almighty God that the evidence to be given before us and the answers to the Interrogations to be propounded to him should be the truth. the whole truth and nothing but the truth testifies as follows.

To the first Interrogatory he says. My age is Forty Eight years. I reside in Stamford in the State of Connecticut. my occupation is that of a Merchant

To the Second Interrogatory. he says. I am acquainted with both the plaintiff and Defendant: I have known them both more than twenty years

To the Third Interrogatory. he says. I do know of a tender of money made on the part of the plaintiff to the Defendant in the fall of 1805 — On the 8th day of October 1805 I went with the plaintiff to the Office of the Defendant 107 South Street in this City and in my presence the plaintiff made a tender of some money to the Defendant the amount was over

Thirty Six Hundred Dollars there was over Thirty five Hundred Dollars in gold and some bills. I counted the money before I went to the Office of Defendent — the tender was made on a land contract for land in Illinois made between the plaintiff and Defendant — I can" "not state where the lands were situated except that they were in Illinois — I saw the contract and went with the plaintiff to be a Witness to his performance of his part of the Contract and saw the tender of the money made to said Defendant

To the Fourth Interrogatory he says the Defendant Mr. Murphy refused to rec" "eive the money as tendered — He declin" "ed, he he said there was no Contract now, it was at an End on the 5th July preceding

To the Fifth Interrogatory: He says I know of no other matter tending to the benefit of the plaintiff. The plaintiff stated in re" "ply to the Defendants remark that the contract was at an end that it was not so that the contract was still in existence.

Sworn to and signed by the Deponent at our } John W. Hubbard

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Office No 61 Wall Street
in the City of Newyork the
11th day of November 1806

Rich'd H. Bowen
James V. Hyatt } Commissioners

The Defendant William D. Murphy being per-
"sonally present now claims the right to cross
examine the Witness —

2. Was not the plaintiff after April
1801 pecuniarily responsible and largely
engaged in business?

Ans. He was about and after the time
Enquired of responsible and did a large
business. ——

2nd. — Had his circumstances altered
between 1801 and the 5th day of July 1805?

Ans His circumstances were altered —
he failed in business and there were Jud-
"gements recovered against him I can-
"not state when he became insolvent I be-
"lieve there are judgments still existing ag-
"ainst him. I believe in 1801 he was a
man of considerable property and was
over Ten Thousand Dollars.

Sworn to and signed by the Deponent at our Office No 6, Wall Street in the City of New York the 11th November 1806

John N. Stabbard

Richd N. Bowen
James N. Hyatt } Commrs

Ralph Lockwood
vs
William D. Murphy

In The Circuit Court
Marshall County Ills.
January Term 1858
In Chancery

William B. Green Sworn.

An assignment from Ralph Lockwood to William B. Green dated the 22d day of July 1852 introduce in Evidence says the signature is Ralph Lockwood — The assignment was made to me. I afterwards relinquished my interest in the lands discribed in said contract to Ralph Lockwood in April A. D. 1855 — Contract was delivered to me within two weeks — certainly within a month after the date thereof —

Of the Tax receipts marked 1. 2. 3. 4 & 5 I paid the taxes myself to the collector as spec.

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"ified in the said receipts — From the year 1851 to this time I often have paid the taxes of said Lockwood on his land in this county as his agent.

Tax receipts number from 6 to 18 inclusive on the back are offered and received in evidence "ved, the hand writing of the different off" "icers who signed the same being admitted

Samuel L. Fleming sworn

Knows the Defendant Wm D. Murphy. — I saw him at his office in New York City I think it was in August 1855 — the August previous to the commen" "cement of this suit. — Had a conversation with Mr Murphy upon the subject of the land contract with Mr Lockwood, he said he had served a notice or a paper upon Mr Lockwood some time previous to this interview demanding the payment of the money — I think that the demand all" "uded to was made the 3 or 5 of July previous — He said Mr Lockwood told him that he was poor & had no money to pay at that time — He then stated that between the time he had so given the

notice & the time I was there Lockwood came to him & told him he had a house & lot in Brooklyn that he would like to trade to him (Murphy) on the said land contract.— He said they went over and look-
"ed at the house but he didnt take it on account of the price of the house or the ti-
"tle to the lot which witness dont remem-
"ber— Witness does not profess to state the exact words. but gives the substance of the conversation.
The conversation was about the contract and the land in controversy in this suit.

Didnt you go there as the Attorney or at the request of Ralph Lockwood the com-
"plainant ? or of William B. Green?
Answer to both — No sir — Wasnt you the Attorney of Ralph Lockwood at the time:— No sir— Didnt you come right home and draw up a bill in Chancery for conveyance of the land in controversy in this suit ? I did soon after, with in a few days dont remember exactly how long after.
Did not the Defendant Murphy in the conver-
"sation alluded to inform you that the con-
"tract between him and Lockwood rescind-
"ed. He informed me that he considered the

contact at an end & that he had notified Lockwood to that effect in the early part of July 1855. — There were two young men in the office Clerks of Murphy when I was there they did hear a part of the conversation dont Know whether they heard the whole of it or not — ones name was Murphy the other I think was Lewis —. cant fix the precise date of my being in New York my best impression is that it was the fore part of August it might have been later as late as the 15th dont pretend to state the whole conversation. there was a good deal of talk about trading

Re Ex — I Know the land, am acquainted with the 3 prairie quarters & have a general knowledge of the character of the other land — In my Judgment the average value of the said land per acre in 1851 was I should say from 3 to 5 dollars per acre. but would not state definitely — It might have been worth 5 dollars an acre The barens were not worth that much at that time — about 14 barens. would not exceed 5 dollars. The same land in the year 1855 in my judgment was worth at least ten dollars an acre — the average

value.

Cross Ex

In that conversation I dont recollect that Murphy said he had refused to enter into any negotiations for said land with Doct. "wood & From the 5th day of April 1851 until the 5th day of April 1855 there was a gradual rise in the value of said lands Lands might have increased more in some one year than in others.

I think the said lands were worth more in 1852 than they were in 1851. might have been 50 cents an acre more & it might have been a greater increase — I think lands increased in value more rapidly in 1854 & 1855 than 1852

Received New York August 8th 1851 on account of his note due this day which is to be endorsed on said note as part payment thereof.

$100

Wm D. Murphy

66 Received New York May 3. 1855 from Ralph Lockwood Esq One hundred Dollars on account of his contract for the purchase of lands in Illinois town of Lyons Putnam County said contract bearing date April 5th 1851 and described in Deed of William D. Murphy and wife (Not yet delivered) to Ralph Lockwood — the delivery thereof being postponed in consequence of this payment until the third day of July next when the balance of the purchase money is to be paid

$100. Wm D. Murphy"

And on the day and year last aforesaid to wit on the sixth day of February A.D 1858 the defendant submitted his proof which is as follows to wit:

Defendants Proof "Deposition of Orando B. Lewis. The said Orando B. Lewis being first duly sworn doth depose and say in answer to the several interrogatories as follows to wit

Interog 1st "What is your age and where do you reside

Answer I am Twenty eight years of age. I reside in the City of New York.

Interrog 2d Are you acquainted with Ralph Lockwood said Complainant and Wm D. Murphy said defendant. if yea how long have you known them respectively?

Answer Yes. I have known Ralph Lockwood since the Spring of 1855 and Wm D. Murphy for six or seven years.

Interrog 3d Was you present at an interview between said complainant and defendant in the Spring of 1855 in the City of New York respecting certain lands in Illinois or the payment by the complainant to the defendant therefor? If yea state when such interview took place also the place where it took place. and who were present. state also what was said and all that was said by both the said Complainant and defendant or by any other person or persons in the presence of said com- "plainant and defendant or in the presence of the complainant respecting such lands or the payment of the same by the said Complainant also if you can give the descrip- "tion of such lands about which such con- "versation was had

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Answer I was present at an interview on both the Second and Third days of May 1895. on the second day of May Mr Lockwood came into Mr Murphy Office 107 South Street Newport with Mr Murphy it was the first time I had ever seen him. during the conversation Mr Murphy tendered him a deed for certain lands in the Town of Lyons Putnam County, Illinois. which deed is hereunto attached (Marked Exhibit A E. F. Cory Mr Lockwood read that deed and made no objection to it. he said he had no money to take it up with. he said then that he would call in tomorrow and see what could be done. to which Mr. Murphy replied that he had no desire to take advantage of Mr Lockwood or of the contract as that was dead long ago but he would give him until the next Saturday to take the deed or the contract would be forfeited. he shortly after left the office. the next day he returned and said he was poor and unable to take up the deed on account of business transactions in which he had been unfortunate. he appeared to be very much affected and was sorry that he had to break his contract. he said it had hurt him more than all his lapses Mr Murphy told

him he was willing to give him a chance that all Mr Murphy required that he should satisfy the contract. then I at Mr Murphys request showed Mr Lockwood a statement of his account. Mr Lockwood said he would pay One Hundred Dollars on account of the contract if he would extend it four weeks longer. Mr Murphy agreed to Extend the time until the third of July which was done and the One Hundred Dollars paid a receipt given a copy of which I now have (Exhibit B. E.F. Cory) Mr. Samuel B. Murphy was present on the second day of May but I do not think he was on the Third at the interview. The only description of the lands that I can give is the same as in the deed now before me Exhibit "A." E. F. Cory I have stated all that I Know positively to have been said there was some other conversation but I cannot now remember what it was

O.B. Lewis

Interrog 4th If you answer the last interrogatory above in the affirmative then you will state whether or not any deed was offered or tendered by the defendant to the complainant or by any other person by the direction or Authority of the defendant. State also whether or not (if any such deed was offered) any demand was made

70 by the defendant or person offering the deed of the complainant for the defendant of the purchase money for the said lands and if any such deed was offered as aforesaid you will attach to your answer to your answer hereto the Identical and Original deed so offered. State also whether the complainant accepted or refused said deed, and whether he paid or refused to pay the defendant the said purchase money, and all that was said by any one in connection with the offer of the said deed and demand of the money for the land therein described. State all that was said and done at said interview

Answer I cannot answer any further than I have done in my answer to the third interrogatory except that Mr Wm D. Murphy at the interview of the second day of May A.D. 1855 did demand the payment thereof

Interrog 5 State whether or not any interview after the one above referred to, in the Summer of the year 1855 took place between the complainant and defendant respecting the same subject matter referred to in the above interrogations If yea State when it took place where it took place who was present and what was said and

all that was said by the complainant and defendant or by any other person or persons in their presence or in the presence of the said complainant. State whether or not any deed was offered to Complainant by defend" "ant at this interview or by any other person by authority of defendant State also whether or not any demand (when said deed was offer" "ed as aforesaid) was made by defendant or by any other person by defendant authorized of Complainant of the purchase money for the land described in such deed. State the amount of money mentioned (if any) and if any such deed was offered you will attach the same Original Identical one to your answer hereto. unless the deed is the same one referred to in interrogatory fourth of these interrogations. and if said deed is the same you will so state. State all that was said or done by both the parties at this interview and all that was said and done by any other person or persons in the presence of the said Complainant and defendant or in the pres" "ence of the Complainant.

Answer An interview took place on the Fifth of July A D 1865 at the office of William L. Murphy 107 South. Street. between the Complainant

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and defendant. I was present at that inter-
view. I cannot say that any other person was
present. At the request of Mr Murphy I
tendered to the complainant the deed att-
ached to interrogatory Third (Exhibit A E.F.
Cony) I cannot say that any particular
sum was mentioned at this time Mr Lock-
wood answered that he could not take it
up. that he had not got the money to take
it up with.

Interog 6 State whether at either of the interviews
referred to in any of the foregoing interrog at-
ories. (if any such interviews took place) any
notes were offered (and what notes) to the
Complainant. if yea by whom were they off-
ered. when and where were they offered &.
And if any notes were not offered then state
whether the Complainant at any time during
either of the said interviews said anything
about them. if so what and whether he in-
sisted on seeing or receiving them any. if any
such notes were offered attach the same
ones to your answer hereto

Answer There were no Notes either demanded or off-
ered by either complainant or defendant at
any interview untill the Eighth of October A.D.

1895 Neither was there anything said about them previous to that time in my presence

Interog 7th do you know of any other matter or thing con-
-nected in any way with said above mentioned
suit, that may tend to the benefit of either
of the parties. if yea state the same as fal-
"ly as if you were specially interogated there-
"to.

Answer On the Sixth of August A.D. 1895 complainant
again called at our office 107 South Street
New York and said to defendant that he had
a house in Brooklyn that would suit. defen-
"dant answered that the contract affair was
now out of his hands as he had had it can-
celled from the records in Illinois and had
sent Mr Lewis' affidavit there to the purport
of Mr Lockwoods' non-fulfillment of the
contract and that he could not now treat
with him on that contract as it was dead.
On the Eighth of October A. D. 1895 the com-
"plainant accompanied by a Mr Stubbard
came to defendants office aforesaid and said
he had a tender to make him for the Illinois
Lands. he had with him a bag which he said
contained Three Thousand - five hundred
Dollars which he tendered to the defendant
the defendant said he had no contract pend-

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"ing with him neither had he had any since
the Fifth day of July last therefore could
not receive any proposals on the Contract
as there had not been any since the offering
and refusal of the deed on the Fifth of
July. Mr Lockwood demanded his notes
Mr. Murphy said he had made an affidav.
"it to produce the notes in Court and could
not give them now but would give them
when he had produced them in Court.
Mr Murphy said he did not wish to now
had not need them his purpose was merely
to produce them as he had made affidavit
to do. Defendant also told him that there
was a suit pending in Illinois which was
the proper place for these matters now.
Defendant, Complainant, Mr Hubbard and
a person named John R. Baker with myself
were present at this interview.

Cross Interrogatories

X Interrog. 1 If in answer to the third interrogatory
you say you heard a conversation between
the parties to this suit then state in answer
to this all that was said by each party
& state the language used & note your
general recollections.

Answer I have stated as fully as I could all that

was said in that direct interrogatory.

X Interrog. 2nd. If you say a deed was ever tender-
"ed to Lockwood & State the time when it was
done. State also whether the notes or any no-
tes were at that time tendered or offered to
said Lockwood & or offered to be given up
to him said Lockwood &.

Answer A deed was tendered on May Second 1865
and again tendered of July Fifth 1865. to
Complainant as I stated in my answer to
the direct interrogatories. No Notes were
tendered or offered

X Interrog. 3d If you answer that a deed was ten-
-dered Lockwood then State who made said
tender, the language used in making it, also
the precise language used by said Lockwood
in his reply (if he made any) to such tender

answer Mrs Murphy made the tender of the deed
on the Second day of May 1865 and I tendered
it on the Fifth day of July as I have before
stated in my answers to direct interrogatories
I can give no further direct answer than I
have given in my answers to my direct inter-
"rogatories as the time is so long elapsed

76 that I cannot remember the precise conv-
"ersation that took place.

x Interrog 4th If you state that deed was tendered said Lockwood on two seperate times then state the dates respectively. Were they or either of them before the third day of July 1855 & how long after the 3d of July 1855 the last tender was made. State also whe-
"ther the said Defendant at either of said conversations or at any other time during the summer or Fall of 1855 had any con-
"versation with said Lockwood about his said Murphys taking a House or other real Estate in the City of Brooklyn in payment of the notes given for the land in question & state all that was said by them in your presence concurring the same Did said Murphy the Deft go with Lockw-
"ood and examine the Real Estate spoken of for the purpose of taking it on the part of Murphy as payment as aforesaid. State all you know about the same.

Answer A deed was tendered on Second day of May 1855 and the last time on the Fifth day of July 1855 as stated in my answer to the Third and Fifth direct Interrogatories

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There was no conversation took place in regard to his taking property in Brooklyn for the Notes. I do not know that Mr. Murphy ever went to Brooklyn with complainant.

X Interrog 5th If you state that there was a conversation about the Brooklyn property in substance as stated in Cross Interrogatory 4 then state the exact time. if you can where it took place & did said Defendant on or about the 15th of September A. D. 1855 admit in presence of yourselves and one S. L. Fleming of Lacon Illinois that said Lockwood had offered to pay the notes for said land by conveying to said Murphy a House lot in the city of Brooklyn. that he said Murphy went with said Lockwood and Examined said property and that he would have taken said property for said notes. had he been satisfied with the value of said property and that said conversation & the Examination of said Brooklyn property was some time after the 3d day of July 1855 & did he not also then say that it (said Examination of the Brooklyn property) was after the tender or tenders of a deed for the land.?

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Answer Mr Murphy did not admit or say anything to Mr Fleming called for by this interrogatory in my presence

X Interrog. 7th Were you in the employment of the Defendant in the Summer of 1855 & at the present time — and how long have you been in his said employment. ?

Answer I was there and am now and have been since the Fall of 1853.

C. B. Lewis

(Copy of Bill attached to the Deposition of C B Lewis and referred to by him, and offered in evidence by the Defendant, see this Record commencing on Page 176 & ending on Page 178. Clerk K.)

Deposition of Samuel B. Murphy

The said Samuel B. Murphy being first duly sworn doth depose and say in answer to the several interrogatories as follows to wit

Interrog 1st. What is your name age and where do you reside

Answer Samuel B. Murphy, 21 years. I reside in New York City

Interrog 2nd Are you acquainted with Ralph Lockwood said Complainant and William D. Murphy said defendant. if yea. how long have you known them respectively

Answer I am acquainted with both I have known Lockwood about two years and Murphy for the past Eighteen or Twenty years

Interrog 3d Was you present at an interview between said Complainant and defendant in the spring of 1855 in the City of New York respecting certain lands in Illinois or the payment by the Complainant to the Defendant therefor? If yea State when such interview took place also the place where it took place and who were present State also what was said and all that was said both the said Complainant and defendant or by any other person or persons in the presence of said Complainant and defendant or in the presence of the Complainant respecting such lands or the payment for the same by the said Complainant also if you can give the description of such lands about which such conversation was held

Answer An interview took place on the second day of May 1855 between the Complainant and defendant at the office of defendant 107 South Street New York. Myself and Mr C. B. Lewis were present. defendant tendered to the complainant a certain deed

for land in the Town of Lyons. Putnam County Illinois which Complainant said he could not take up for want of means but would call the next day and see what could be done Mr Murphy said he did not wish to take advantage of the contract and would give him until the next Saturday to take the deed up or the contract would be forfeited.

Interrog 4th If you answer the last interrogatory above in the affirmative then you will state whether or not any deed was offered or tendered by the defendant to the complainant or by any other person by the direction or authority of the defendant State also whether or not (if any such deed was offered) any demand was made by the defendant or person offering the deed of the Complainant for the defendant of the purchase money for the said lands and if any such deed was offered as aforesaid you will attach to your answer hereto the identical and original deed so offered. State also whether the complainant accepted or refused said deed and whether he paid or refused to pay the defendant the said purchase money and all that was said

by any one in connexion with offer of the said deed and demand of the money for the land therein described state all that was said and done at said interview.

Answer I cannot answer more definite than I have in the previous answer except that I know that Mr Murphy did ask complainant for the money when he tendered him the deed the deed now shown me is the identical one tendered to complainant (Exhibit "A" E. F. Corey)

Interrog 5th State whether or not any interview after the one above referred to in the summer of the year 1855 took place between the comp-"lainant and defendant respecting the same subject matter referred to in the above interrogatories If yea State when it took place where it took place who was present and what was said and all that was said by the complainant and defendant or by any other person or persons in there presence or in the presence of the said complainant.

~~and defendant or by any other~~

State Whether or not any deed was offered to complainant by defendant at this inter-"view or by any other person by authority of defendant. State also whether or not any

82 demand / when said deed was offered as aforesaid / was made by defendant or by any other person by defendant authorized of Complainant of the purchase money for the lands described in such deed, state the amount of money mentioned (if any) and if any such deed was offered you will attach the same original identical one to your answer hereto unless the deed is the same one referred in interrogatory fourth of these interr, "ogations and if said deed is the same you will so state. State all that was said or done by both the parties at this interview and all that was said and done by any other person or persons in the presence of said Complainant and def, "endant or in the presence of the complain, "ant.

Answer The only interview (besides the one that I have referred to in my answers to the fore, "going interrogatories) that I was present at took place on the 6th of August 1855 at the office of the defendant 107 Coutts St, "ret. Mr Lewis, Complainant, Defendant and myself were present. Mr Lockwood asked defendent to take a House and Lot in Brooklyn in payment for the Illinois Land, Mr Murphy told him that it was useless to make any further offer on the

old contract as he considered it dead but if he had any new proposition to make he would listen to it. No deed was tendered by any person at that time

Interrog 6th State whether at either of the interviews referred to in any of the foregoing interrogatories (if any such interview took place) any notes were offered (and what notes) to the Complainant if yea by whom were they offered when and where were they offered and if any notes were not offered then state whether the complainant at any time during either of said interviews said anything about them if so what and whether he insisted on seeing or receiving them if any such notes were offered attach the same ones to your answer hereto

Answer No notes were offered in my presence but Mr Murphy told Mr Lockwood at the interview on the second of May 1865 that he had the notes in a Pocket Book that he could have them if he was prepared to take them up. I do not know that I ever heard Mr Lockwood say anything about the Notes.

Interog 7th Do you know of any other matter or thing connected in any way with said above mentioned suit that may tend to the bene" "fit of Either of the parties if yea state the same as fully as if you were specially inter" "ogated thereto

Answer I do not.

X Interog 1st If in answer to the 3d interogatory you say you heard a conversation between the parties to this suit then state in answer to this all that was said by each party and state the language used and not your general recollections

Answer I cannot answer any more than I have in answer to the direct interogatory

X Interog 2d If you say a deed was ever tendered to Lockwood & state the time when it was done State also whether the notes or any notes were at that time tendered or offered to said or offered to be given up to him said Lockwood

Answer I have stated in my Third direct interoga" "tory that the deed was tendered at the interview on the second day of May 1888

In relation to the notes all I know I have stated in my answer to the Sixth direct in„ "terrogatory.

x Interrog 3th If you answer that a deed was tendered Lockwood then state who made such tender the language used in making it also the precise language used by said Lockwood in his reply (if he made any) to such tender

Answer The deed was tendered by defendant and the language used by Lockwood in his re„ "ply I have given in my answer to the direct interrogatory

X Interrog 4th If you state that a deed was tendered said Lockwood on two seperate times then state the dates respectively. Were they either of them before the 3d day of July 1855 and how long after the 3d of July 1855 the last tender was made state also whether the said defendant at either of said conver„ "sations or at any other time during the summer or fall of 1855 had any conversation with said Lockwood about his said M„ "urphys taking a house or other Real Estate in the City of Brooklyn in payment of the Notes given for the land in question and

86 that was said by them in your presence concerning the same did said Murphy agree go with Lockwood and examine the Real Estate spoken of for the purpose of taking it on the part of Murphy as payment as aforesaid state all you know about the same.

answer I have stated that one tender was made on the second day of May 1866 any other I do not know anything about In relation to the conversation on the Brooklyn prop. "erty I have given it as far as I can in my answer to the Fifth direct interrogatory. Whether Mr Murphy ever went to Brooklyn with Complainant or not I do not know

X Interrog 5th If you state that there was a conversation about the Brooklyn property in substance as stated in cross interrogatory 4 then state the exact time if you can when it took place and did said said defendant on or about the 10th of September A. D. 1866 admit in the presence of yourselves and one C. L. Fleming of Macon Illinois that said Lockwood had offered to pay the notes for said land by conveying to said Murphy a House & Lot in the City of Brooklyn. that he said Murphy went with said Lockwood and

examined said property and that he would have taken said property for said notes had he been satisfied with the value of said property and that said conversation and the examination of said Brooklyn property was some time after the 3rd day of July 1900 and did he not also then say that if / said examination of the Brook" "lyn property / was after the tender or tender" ders of a deed for the lands

Answer The only conversation in relation to Brook" "lyn property at which I was present took place on the Sixth of August 1900. as I have be" "fore stated

X Interrog 6th. Are you Saml. B. Murphy a son of the defendant. State what relation if any you are of his

Answer No. I am his nephew

S. B. Murphy

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$816.80/100 Four months after date I promise to pay William D. Murphy or Order Eight Hundred and Six 80/100 Dollars for Value received —

New York April 8th 1901 Ralph Lockwood
106 Water Street N.Y.
Aug 28

$1070.— One year after date I promise to pay William D. Murphy or order One Thou "sand and Seventy dollars for value rece "ived

Newyork. April 8th 1901 Ralph Lockwood
106 Water St N.Y.
Apl 8/02

United States of America
State of New York } ss. I. Gardner Spring. Jr. Notary Public duly commissioned and sworn. dwelling in the City of New York. do hereby Certify. that on the Eighth day of April in the year of our Lord one thousand Eight hundred and fifty-two at the request of The President and Directors of the Mechanics Bank New York. the original Promissory Note hereunto annexed was duly presented to Ralph Lockwood the Maker at his place of

business. in said City. and payment thereof was then and there demanded. which was refused. Whereupon I the said Notary at the request aforesaid did Protest and by these presents do publicly and solmenly Pro-
=test. as well against the Maker and Endo-
=rsers of the said promissory Note. as against all others whom it doth or may concern. for Exchange re-exchange. and all costs. dam-
=ages and interest. already incurred. and to be hereafter incurred for want of Payment of the same.

Thus done and Protested. in the City of Newport R. aforesaid in the presence of John Doe and Richard Roe witn-
=esses.

L. S.

Quad Attestor.

Jard. Spring Jr.
Notary Public Mechanics Bank

$1970.^{\#}$ One Year after date I promise to pay William D. Murphy or Order One Thous-
=and and Seventy Dollars for Value received
New York April 5th 1901.

Ralph Lockwood
116 Water St N.Y.
apl. 5/02

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United States of America
State of Newyork } ss

I. Gardner Spring Jr a Notary Public duly commissioned and sworn dwelling in the City of Newyork. do hereby Certify. that on the Eighth day of April in the year of our Lord one thousand eight hundred and fifty two at the request of The President and directors of the Mechanics Bank Newyork. the original Promissory Note hereunto annexed was duly presented to Ralph Lockwood the Maker at his place of business in said city and payment thereof was then and there demanded which was refused Whereupon I. the said Notary at the request aforesaid. did Protest. and by these presents do publicly and solemnly Protest as well against the Maker and Endorsers of the said Promissory Note as against all others whom it doth or may concern. for Exchange. re-exchange and all Costs. damages and interest. already incurred. and to be hereafter incurred. for want of payment of the same

L. S

Thus done and Protested. in the City of Newyork aforesaid in the presence of John Doe and Richard Roe Witnesses

Gard. Spring Jr.
Notary Public

Quod Attestor

State of New York
City & County of Newyork } ss.

Orrando B. Lewis of the City of Newyork being duly sworn in due form of law doth depose & say that on the 5th day of this month 1855 deponent at the request of Wm. D. Murphy of said City tendered to Ralph Lockwood a Deed from said Wm. D. Murphy & Ann Letitia his wife for certain Lands in the State of Illinois to said Ralph Lockwood bearing date 5th day of April 1852 for consideration of $3079.85/100 which deed was duly Executed & Acknowledged before Edwin F. Corey a Public Notary in for the State of Newyork on 13th day April A.D. 1855. deponent further says at the time said Ralph Lockwood admitted that he had contracted to purchase said Land of said Murphy for the sum aforesaid & had given said Murphey 3 Notes in payment of the same & when paid in pursuance to said contract. Said Murphy was to deliver to him said Ralph

Filed July 23d 1855 at 12 O'Clock Noon G. L. Fort Marshall County

Lockwood a Warantee deed for the same
Deponent further says at the time afore-
"said the 5th day of July 1865 when depon-
"ent tendered the deed aforesaid he dem-
"anded of said Ralph Lockwood at the
request of said Murphy $35.17 2/100 being
at the time the actual Balance due said
Murphy including interest & Charges on said
propety at the time Lockwood then said
that the contract & the amount due was
correct, that he had not got the money
neither could he get the same as he was
poor. Deponent further says that the de-
"scribed in said Deed of Murphy & wife
to said Lockwood was bounded & descri-
"bed as follows, All the West 1/2 of the N.W.
1/4 of 20 & the E 1/2 of the N.E. 1/4 of 19 & N.W 1/4
of 31 of Township 30 N & Range 1 W of 3
principal meridian containing 320 40/100
Acres & S.E. 1/4 of 7 30 N. Range 1 W of 3d
principal meridian 160 acres be the same
more or less lying and being in the town
of Dyons Putnam County State of Illinois
Also the N. W 1/4 of Section 33 also the S.W.
1/4 of section 33 Township 30 North & Range
1 West of the 3d Principal Meridian con
taining 320 acres be the same more or
less lying and being in the town of

Lyons Putnam County State of Illinois
And further deponent saith not
O. B. Lewis

Subscribed and Sworn to before me this
Seal 18 day of July A. D. 1855
Edwin F. Corey Public Not.
any in & for the State of Newyork duly
commissioned by Letters Patent under State
Seal of State and dwelling in the City of
Newyork

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City Court of Brooklyn.

Joseph H. Shephard	No 2 same vs same
vs Nathan Hallister	No 3 same vs same
No 1 agst	No 4 same vs same
Ralph Lockwood	No 5 John A. Hughes vs same

Examination of Ralph Lockwood defendant as judgment debtor under orders herein of 24th and 28th Septbr. 1853 and 14th August 1854 Taken This October 1854 at City Court Room City Hall Brooklyn before John Greenwood City Judge of Brooklyn

Ralph Lockwood being duly sworn herein doth depose & say

Q What is your business?
A I am a Broker
Q Where do you reside?
A I reside in the City of New York
Q What Street and Number?
A 147½ Cherry Street I believe
Q Who keeps the House?
A An acquaintance of mine by the name of Mrs Reynolds
Q Did you ever own any property in the State of Michigan
(Withdrawn)
Q Have you within two years last past owned any property in the State of Michigan?

The Judge desires in the examination the party shall be confined in his enquiry to property which he had one year previous to granting the order for examination 28th October 1853

A. I have not

Q Have you within two years last past owned any property in the State of Illinois ?

A I have

Q Have you within two years owned any property known as the Allen Lippincott farm or property ?

A. I have not within two years owned any or had any interest in it I believe

Q Have you within two years executed any power of Attorney in relation to the Allen Lippincott property

Question objected to and Question allowed and Defendant directed to answer

A I have not executed any power of Attorney

Q Have you within two years executed any paper in or by which you profess to be the owner of or have an interest in said property ?

Objected to and same disposition as before

A I dont remember that I have

Q Where was the Allen Lippincott property or farm situated ?

A In Putnam County I believe in the State of Illinois

Q How much land was there in the farm ?

Objected to and Question disallowed

Q What are the circumstances arising or existing within two years last past with regard to your

connexion with or interest in said farm?

Objected to and defendant directed to answer

A Some four or five or six years ago a man wished me to purchase some notes against Allan Lippincott I did so He said if he got the notes he could attach some land that Allen Lippincott had in Illinois. I sent the notes out to him and he told me that he attached the land. since that time I understood from the man for whom I purchased the notes that he had sold out the land this two or three years ago. He wanted to use my name to attach the land as I was a nonresident.

Q How much did the notes amount to?

Objected to and answered subject to objection.

A I cant exactly tell, they might have amounted to one two or three Hundred dollars.

Q How much was the farm worth?

Objected to and withdrawn

Q Was you to have any interest in the transaction and if so what?

Objected to and Allowed

A. He said he would allow me one half of what he made out of it.

Q What has become of your interest in that property?

A I think it was closed up two or three years ago

Q How was it closed up?

A It was sold out I believe the farm has been sold and the proceeds closed up with me two or three years ago

Q Who was the man interested in the transaction with you?

Objected to and allowed.

A William Green. Lyons. Marshall County, Illinois I mean to say that I have no interest in that property and have not had for two years past

Q When. Where and how did you receive your interest in it within two years last past.?

A I received it in money here. it was sent on here to me two years or more ago.

Q How much did you receive?

A I received in the neighbourhood of $1000.

Q Have you executed a Deed or Conveyance?

Question Withdrawn.

Q Were you in the State of Illinois within one year past?

Objected to and withdrawn

Q Have you received any of the proceeds of that farm or anything for your compensation in the transaction within two years last past?

Objected to

A Not to my Knowledge

Q Did you ever know a man by the name of George Sharnick?

A I did

Q Do you know the houses commenced by him and finished by John A. Hughes on Dean Street?

A I do

Q Did you purchase those houses of John A. Hughes?

Objected to and withdrawn

Q Have you been in possession of those houses or collected the rents there of within two years last past?

A I have collected the rents of some of those houses within two years last past

Q Which of them

A Nos 92. 94 & 96 Dean Street I believe are the numbers

Q Who occupies those houses now?

A Mrs Sherwood occupies one I dont know who occupies the others. Over two years ago I sold those houses and had my pay for them at the time. I sold two of the houses to Daniel H. Curtis over two years ago I then hired the two houses of him at the rate of $900 a year for the two. I relet those houses after I hired them of Mr Curtis and received the rents of them up to August 1858 since that time I have received no rents from either of them The other one I sold to Edmond L. Smith over two years ago – since then I have collected the rents for him as his agent. –

Q Who held the title of the fourth house within two years past?

A Fisher A. Fisher.

Q Had or have you any interest in it within two years past?

A N. Sir

Q Did you purchase or have any interest in some lots bought of Samuel I. Denitsen within two

years last past in Schermerhorn Street near Hoyt - ?

A I have had no interest in it within two years past

Q Have you had any interest in a lot of ground within two years past on the North side of Schermerhorn Street 320 East of Smith Street?

A I had an interest in one lot in that locality within that time. I owned the entire lot.

Q What have you done with it?

A I sold it to Wm Hubbard over 13 months ago.

Q For how much?

A I dont remember the amount it was sold with some other property to him

Q What other property?

A Six mable houses in Fuist place together with three houses and lots in 4th place I think. I dont recollect any other There might have been but two houses in 4th place

Q What was the consideration?

A I dont recollect exactly but I should think it was $27,000

Q What incumbrances were there on this property?

A It was subject to Mortgages to the amount of $21,800

Q How was the surplus paid?

A I received it in cash

Q When?

100 A At the date of the deed or within a day or two thereafter

Q What have you done with the money?

A I paid borrowed money with part. I cant tell what I did with the whole of it

Q To Whom did you pay borrowed money?

A I cant tell

Q Can you name any person to whom you paid any part of that money?

A I dont that I can name any one

Q Have you any of it now?

A No Sir

Q How long did you keep any of it?

A Two or three days

Q To how many persons did you pay it?

A I cant tell

Q Did you at that time keep any Bank account?

A No.

Q Did you keep any books of account?

A I kept no books

Q Did you receive the surplus in money or check?

A Received it in money and checks

Q Whose checks?

A Checks from Stubbard & Co on E. M. Hubbard & Co

Q On what Bank or Banks?

A I think the Fulton Bank and some I think on the Market Bank

Q Was the whole $1. 850 of Mortgages mentioned

in the Deed due or owing on the delivery of the Deed?

A Yes. Sir

Q Do you Know Angeline Smith?

A I dont Know that I do Know her

Q Did you convey a house and lot on the South side of 4th Place between Clinton and Court Sts. Brooklyn within two years past?

A I conveyed a house to a widow named Smith on 4th place within 2 years past.

Q For what price?

A I think $5000 subject to a Mortgage of $3000.

Q What did you do with the money?

A I did not receive all the money I received $1000. & the balance I never got I took no security for it. she said she had to finish the house up and refused to pay the $500. on that account

Q What agreement if any did you make with her to finish up the house?

A I did agree to finish it up but did not do it.

Q Do you know what it cost her to finish it.

A I do not except from what she told me

Q Did you sell an adjoining house to Thomas McGinnis

A Yes. I believe thats the mans name

Q For how much?

A For $5000 I guess - subject to a mortgage for $3000 I think

Q How was the balance paid?

102 A He paid it all in Mason work which he had previously done for me.

Q Did you convey another in the Block in 4th Place to any other person?

A Yes Sir

Q To Whom?

A I cant from recollection know the name of the person but if the name is mentioned I may remember it

Q Did you convey one in 4th Place to Shannan & Kimball?

A No Sir

Q Did you convey one in 4th Place to William Stabbard?

A I did

Q For how much?

A For $5000 subject to a Mortgage of $3.000 or £9.500.

Q How was that paid for?

A In a Note which I think I received two years ago last May

Q What became of that note?

A I got it discounted at the Bank

Adjourned for further examination to October 4th 1854 at 9 A.M.

S. Greenwood
City Judge

Oct 4th 1854 9 A.M. Examination of Ralph Lockwood adjourned at Defendants request on ground that he feels unwell to Oct 5th 1854 at 10 A.M.

S. Greenwood
City Judge

Oct. 5th 1894 10 A.M. Examination of Ralph Lockwood continued

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Q What did you do with the money received for those notes

Withdrawn

Q Did you convey a house and lot on the South side of Dean Street to Shannon & Kimball within two years past?

A I did Sir

Q For what price?

A For $6400 or $6500.

Q Subject to what incumbrance?

A $4000

Q Were you paid the balance and how?

A They had some notes against me for about $3000. They agreed to do some work for me for which I agreed to give them the house

Q Have they ever delivered up to you those notes?

A No Sir

Q Do you know whether they held the notes at the time?

A I dont Know

Q Have you ever sued on any of those notes?

A No Sir

Q Do you know where the notes are now?

A I do not

Q Did you receive any money or written contract from Shannon and Kimball at the time for this property?

104 A I received a written contract but no money from them

Q Where is that contract ?

A It is last

Q What was the substance of that Contract ?

A They were to do some work & finish the ranges

Q To what amount ?

A I dont recollect

Q Was it as much as $1000. ?

A I think it was more, I cant recollect

Q Did they ever perform the contract ?

A They did not perform what they agreed in the con=
=tract

Q Have you ever settled with them ?

A No Sir

Q Did you sell a house & lot on the South side of 4th
Place Brooklyn about May 1853 to G. A. Higbie ?

A I dont remember that I did

Q Did you within two years ?

A I dont remember the name. I did sell such a house
but dont know to whom

Q For what price ?

A I dont recollect

Q What was it worth

Question Withdrawn

Q State as near as you can according to the best
of your recollection and belief, how much you
received for the house & in what manner it was
paid ?

A About $1500.

Q How was that paid?

A I dont Know. I believe in ten work previously done

Q Have you any of the proceeds of that sale?

A Yes Sir

Q Did you sell a house on the North side of Dean Street within two years to Geo. H. Stilwell?

A Yes Sir

Q For what price?

A. I dont recollect. It was virtually Warren Bemans house

Q. Did you convey two houses & lots on the South Side of 4th Place to Edward Kellogg in May 1858?

A I did

Q. For what price

A For $1.

Q Subject to what incumbrance?

A $600 or $700 I cant say positive

Q Why did you sell the two houses for $1?

A Messrs Gilligan & Bolton had some difficulty in settling with William H Seley. a law suit was commenced by Seley against them & I held the property to settle up with Gilligan & Bolton for work I agreed that it should be adjusted fairly and by an understanding with Gallagan & Bolton and to satisfy them more fully a Deed was given to Edward Kellogg when the affair was settled up about that time or a little after

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Edward Kellogg gave a quit claim of those houses without any covenant to me or Gilligan & Bolton

Q How long did Kellogg hold them?

A I dont Know.

Q Did you at the time owe Seley or Gilligan & Bolton

A. Gilligan & Bolton actually owed me for money advanced by me for Seley. In closing up Seleys & Gilligans & Boltons contract. Gilligan & Bolton gave back a Mortgage of $1000 on one of the houses to me & that was all the consideration I got for the houses except paying debts of Seely and my own in reference to the affair

Q What did you do with that Mortgage?

A I sold it to Voorhis the Lime dealer & received part in a debt I owed him and the balance in a note of $ or $000 which I got the money on. I dont Know the exact amount of the note

Q When did you sell the Mortgage to Voorhis or about when?

A About June 1866.

Q What did you do with the money?

A I dont Know now

Q Can you tell what you did with any of it?

A I cant remember.

Q Did you sell the house on the south side of 11th Place 315 feet west of Clinton Street Brook

lyn to Wm. Hubbard in May 1852 or May 1853 ?

A In May 1852.

Q Are you positive ?

Question Withdrawn

Q Did you sell William Hubbard a house in 4th Place Brooklyn in May 1853 ?

A If it was May 1853 it was the same house I have explained about in my examination on the 3d Instant

Q At what Bank was the note discounted which you received for the house in 4th Place sold to Wm. Hubbard ?

A At the Market Bank in Newyork in Fulton Street near the Fulton Ferry.

Q Did you keep an account there ?

A I did then

Q When did you discontinue keeping an account there ?

A I dont recollect

Q Have you kept an account there since June 1853?

A N. Sir.

Q Who held any mortgage on the 4th Place house sold to Hubbard ?

A I dont recollect but there was a Mortgage on it to my certain Knowledge.

Q How much was the note for you received from William Hubbard ?

A $2000 I believe

108 Q Did you sell a house and lot on Corner of Hall and Court Streets Brooklyn to Wm Hubbard in May 1853 ?

A I did

Q What was the Consideration ?

A I do not Know.

Q Was it over $5000. ?

A I think not.

Q Do you think it was about that sum ?

A I think it was.

Q Did you receive that sum ?

A No I did not

Q What did you receive ?

A I gave it to him for money that I owed him ?

Q How much did you owe him ?

A I do not Know the amount then
The house I sold was only enclosed & not half finished up

Q Who finished it

A Mr. Hubbard. The price of $5000. was what we supposed it would be worth when finished I dont Know what it cost to finish or what he allowed me for it as it was. I owed him more than it was worth at the time of the conveyance

Q Who occupied the property the last you Knew of it ?

A It was vacant the last I Knew.

Q Has Hubbard sold it since ?

A I dont Know.

Q Did you sell a house on S side 4th Place to Sam'l M. Moore in or about May 1853 ?

A Yes Sir

Q For What price ?

A I think $5,200.

Q Subject to what Mortgages ?

A $3000 I believe

Q Have you been paid the balance and how ?

A Yes Sir. In my own notes and money.

Q How much each ?

A I dont recollect.

Q Can you tell about how much ?

A I was nearly all my notes and my endorsements

Q Whose notes that you were endorser on ?

A The only one that I remember was I. C. Donnell note endorsed by J. B. Stryker & myself

Q What did you do with the note ?

A I did not take up the note. I left it with Moore & C. Donnell. afterwards paid it and that left $74 or $75 dollars due me which I got & spent

Q Did you in May or June 1853 sell a house and lot on the South side of Dean Street 212 feet West of Hoyt to Shannon Kimball & Co ?

A That is the same house to which I refered in my testimony above and supposed the question replied to. I think it was to Shannon & Kimball & Co and when asked above I supposed the

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question referred to that house. —

Q To whom did you sell the house next adjoining this on the West?

A To Shannon & Kimball in January or Febr.y 1855

Q For what price?

A For $6000. subject to a Mortgage of $4000. The balance was paid to me in work and in notes of mine to be delivered up in settlement of accounts between us. I did not receive any money or other property. —

Q Have the notes been given up?

A No Sir

Q Why were they not given up?

A In consequence of difficulties between Shannon Kimball & Co and William H. Seely

Q For what had these of yours notes been given?

A The notes were given to pay Seleys contract with Shannon & Kimball

Q Were these lent notes. or were they given for a consideration?

A I wish to explain the matter Seely made a contract with me to buy four lots of me in Dean Street. South side in 1852. and then Seely was to build four houses thereon. two of which are the above described houses and I was to advance him enough to make $4000 each on the houses. I believe Seely went on and enclosed the houses and I advanced

him the money and notes to make up the contract. Culey meetly finished up the houses but forfeited them to me by breaking his contract. He requested me to give notes to Shannon & Kimball for advances which I was to make to him and I gave them at Culeys request to Shannon & Kimball and Shannon & Kimball & Co and these are the notes which Shannon & Kimball agreed to deliver up for one or both of the houses. said notes were made near two years ago

Q Can you state from your best recollection and belief the amount of said notes?

A Between two and three Thousand Dollars.

Q What became of the other two houses?

A They were sold to Charles Belden for $5.300 each subject to a Mortgage of $4.000 on one and $5000 on the other They were not finished

Q How was the balance paid?

A I owed him the balance of money lent by him to me

Q How much did you owe him?

A More than the difference between the Mortgage & the consideration in money

Q When did you borrow the money of him?

A Several months before

Q Did you give him any evidence of your indebtedness to him?

A I did when I borrowed the money of him

Q Were they in Checks or notes ?

A Checks

Q On what Bank ?

A I dont recollect

Q Where did you keep your Bank account at that time?

A In four Banks I think

Q Name them ?

A The Atlantic Bank Brooklyn. The Mechanics Bank. Brooklyn The Market Bank Newyork and the Suffolk Bank Newyork

Q Were any of those checks given to Belden paid at either of those Banks. ?

A I dont recollect

Q Were any of those checks charged to you by either of those Banks ?

A I did

Q Where are those Books ?

A They are in my possession at Hiram Smiths corner of Smith & Schermerhorn Streets Brooklyn.

Q Are your accounts closed at those Banks ?

A They are

Q Did you sell a house on the South side of 4th Place # 294 West of Clinton Street to Joseph Wilson ?

A I did sell a house on 4th place to him about in that location for about $5.000 subject to a Mortgage of $3.500

Q How was the balance paid ?

A In Marble and Marble materials for buildings
He paid me all in Work and Materials

Q Do you know Levi B. Warner?

A I do

Q Did you sell him a house on South side of 4th Place?

A Yes Sir

Q For how much?

A $5.500 subject to a Mortgage for $3000 or $3.000

Q How was the balance paid?

A It was paid in marble to the whole amount

Q What became of the Marble?

A. It was put in the houses I owned in 4th Place

Q How many houses did you own there in 4th place?

A Eighteen

Q Did you own all those houses in 4th Place

A I had the title of 12 of them in my own name the other six the title was in Edward Kellogg and never was in me

Q Had you any interest in the other six?

A I dont think I have had within two years last past

Q do you remember when those houses or any of them were conveyed by Kellogg?

A I dont

Q Was it before or after the conveyance by you to Warner?

114 A I dont recollect

Q Did you sell a house and lot to Gilligan & Bolton on 4th Place?

A Yes Sir

Q For what price?

A $5.000 subject to a mortgage of $3.000 I think the balance was paid in Marble

Q How many houses and lots did you convey to Gilligan & Bolton within the last two years?

A I dont recollect

Q Did you convey more than two?

A I dont Know

Q Did you convey more than one?

A I dont know from my present recollection

Q Was the marble delivered to you before you executed the Deed?

A It was

Q How much marble was delivered?

A The amount exceeded in value the balance payable on the house

Q Did you convey ten lots in or about July 1876 to William S. Disney?

A Yes

Q For what Price?

A For $100. I think that was the consideration money

Q What amount did you receive?

A I received my two notes of $500 each Disney I think held them

Q Where are those Lots ?

A On the southerly side of 9th Street between 5th and 6th Avenues

Q What were those notes given for ?

A For a part of the consideration of these same Lots

Q Did you sell two houses and lots on the West side of Smiths Street 22 feet 9 inches North of Dean Street to Thomas M. Gibbons ?

A I did

Q For What price ?

A $7.500 I think subject to a Mortgage of $5.000.

Q How was the balance paid ?

A By Gibbons giving up my notes and checks for the balance to the whole amount of such balance. Mr Gibbons dont owe me anything.

Q Did you convey a house in 2nd Place to Charles Belden in August 1853

A I did

Q For how much ?

A I dont recollect I cant tell what amount. It was conveyed subject to Mortgages of $ 600. the house was not finished — I did not finish it I dont know who finished it. —

Q How was the balance paid ?

A It was paid in Cash at the time

Q How much cash did you receive ?

A I dont Know

Q Did you convey a house and Lot on the South

side of 4th Place 210 feet West of Clinton to Charles Belden in August 1893 ?

A I did

Q For what price

A I did

Q For how much ?

A About $4.500 the house was not finished up

Q Subject to what Mortgages ?

A About $3.000 I received the balance part in Cash and part for money I owed him. I received about $500. in Cash and the Balance in an account he had against me.

Q What did that account consist of and what was it for ?

A. It was for cash lent

Q When and Where ?

A It was previous to the sale at his office in Wall Street New York

Q On What securities did he loan you money ?

A On my Checks.

Adjourned to Monday Oct 9th 1894
at 9½ A. M.

9th October Examination Continued

Q How many Checks ?

A I cant say

Q On what Bank or Banks ?

Q Where are those Lots ?

A On the northerly side of 9th Street between 5th and 6th Avenues

Q What were those notes given for ?

A For a part of the consideration of these same Lots

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A It was paid in Cash at the time

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A I dont Know

Q Did you convey a house and Lot on the South

side of 4th Place 210 feet West of Clinton to Charles Belden in August 1853 ?

A I did

Q For what price

A I did

Q For how much ?

A About $4,500 the house was not finished up

Q Subject to what Mortgages ?

A About $3.000 I received the balance part in Cash and part for money I owed him. I received about $500. in Cash and the Balance in an account he had against me.

Q What did that account consist of and what was it for ?

A. It was for cash lent

Q When and Where ?

A It was previous to the sale at his office in Wall Street New York

Q On What securities did he loan you money ?

A On my Checks.

Adjourned to Monday Oct 9th 1854
at 9½ A. M.

9th October Examination Continued

Q How many Checks ?

A I cant say

Q On what Bank or Banks ?

A I dont recollect

Q During what month?

A It was I think nearly two years ago the precise time I cant remember

Q What did you do with with the $5000. received from Belden.?

A I dont Know what I did with it.

Q How many houses and Lots did you convey? to Hubbard by Deed of the 31st of August 1853

A Eight houses and lots and one vacant Lot

Q Where were they?

A Six marble houses on First Place. Two Brick houses on 4th Place and one vacant lot on Schermehorn Street

Q Who held the 16 Mortgages mentioned in this deed?

A Alexander C. Bergen had 4 on 4 Marble houses in First Place amounting to $26.000 A man from Boston whose name I do not now recollect had one Mortgage for $6.000 on another in first place.

Edward Kellog had a second Mortgage for $1100 on one house in first place — also one other second Mortgage on another for $1700. Edwin G. Smith had another second Mortgage on one other for $2700. The other Marble house I cant remember who held the Mortgages There were two Mortgages on the last amounting to —9— or

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$10.000 In fourth place there was one held by the Coin Exchange Insurance Company on one of the Houses for $3000. I think There was one other on the other house held by I dont recollect whom now for $3.500 - There was another second Mortgage of $1000. I Think held by Edmund L. Smith. I dont recollect any more on those houses at the present time — on the lot of ground there was a Mortgage of $300. held by some persons whose name I do not now remember. I am not sure but that there is another Mortgage on the vacant lot

Q Who executed those Mortgages?

A I executed them all but one on the vacant lot I dont remember of whom I purchased the lot

Q Did you own any other Real Estate on Smith Street

A I did not.

Q Who owned the houses on Smith Street near Schermerhorn Street you were superintending within two years past

Question Objected to and answered subject to objection

A Keman Smith I believe

Q Under what contract if any were you to work on them or superintending them?

A I was working under an agreement with Hiram Smith — It was not in writing.—

Q What was that agreement.?

A I agreed to build three Brick houses for him in October 1852. He was to furnish the funds I erected the houses

Q Did Smith furnish the funds?

A He did

Q How much?

A He furnished me enough to finish the houses he furnished in States which I got discounted and applied the proceeds to finish the houses

Q Do you Know how much it cost?
to erect those houses?

A They cost to build about $13.000 or in that neighborhood I think.

Q Did you agree to erect them for any particular price?

A I did

Q What was that price?

A For about $500. less than they cost. I agreed to do them for $13.000

Q Did you own these lots within two years last past?

A I did not

Q Have you settled with Heman Smith for that transaction?

A I have not

Q Who occupies the houses?

A I dont Know who occupies them now.

Q Did you let them to Tenants or any Tenant or either of them.?

A Not to my Knowledge

Q Did you ever receive any rent from either of those houses within two years past?

A Not to my Knowledge

Q When were those houses finished?

A About the 1st May 1853

Q Have you had any interest in those houses or lots within two years past. other than in the contract above mentioned?

A No Sir

Q Have you within two years past owned any Real Estate in the City of Newyork?

A I have

Q What did it consist of?

A It consisted of a Triangular piece of land situated on 44th Street near third avenue Equal to two lots of ground or thereabouts

Q Is it encumbered by any Mortgage if so for how much?

A About $2100.

Q What became of those lots?

A The mortgage was foreclosed and it was sold at Sheriffs Sale for about enough to pay the Mortgage and Expenses

Q When was it sold?

Withdrawn

Q Have you owned any Real Estate within the last two years in Suffolk County. Long Island?

A No Sir

Q Had or have you any interest in any Real Estate in Suffolk County within two years past?

A No I have not

Q What Mortgages have you held or owned on Real Estate within two years past?

A Im addition to the one I assigned to Voorhies above stated I have held or owned no other that I Know of

Q Have you held or owned any Chattel Mort=gages within two years past & if so what one?

A About two yeais ago it was supposed I had an interest in an Assignment of a lease to Edmund L. Smith on some property in Jay Street Brooklyn which it was supposed was owned by Trumbull. About 20 months ago the building was burnt up— Mr Smith had it insured and he got the amount of his Insura=nce which was about $1000.

Q Did you realize or receive any of that money & if so how much?

A I dont think I realized any money Smith kept it for what I owed him.

Q On what securities did you lend money to Trumbull?

A I have not loaned any to him within two

122 years

Q Have you within two years owned or held any promissory notes made by some man for sashes & Blinds or doors sold by Trumbull and carried to Calfornia?

A I dont think I have

Q If you have never owned such notes what did you do with them?

Objected to and objection sustained

Q Have you endorsed over or delivered such note to any person within two years past and if so to whom?

A I have not within two years

Q Have you had within two years in any shape the proceeds of such notes or the notes themselves?

A Not to my Knowledge

Q Did you state to Mr Lewis at the time or since the fire you mentioned, that you had those notes or any of them?

Objected to and question submitted to the Judge and the Defendant directed to answer, and Counsel for Defendant excepted to decision of the Judge

A I dont recollect of stating so

Q Do you remember having a conversation with Mr. Lewis at his house after the fire on the

subject of this property & the Insurance upon it

Objected to & question submitted & defendant directed to answer & Counsel for Defendant excepted to Decision

A I dont recollect where it was Mr Lewis was telling me about Trumbulls affairs and stated that Trumball owed him money or that he was acting as Trumballs Attorney. that Trumball was trying through him (Lewis) to get insurances Mr Lewis supposed there would be some trouble about it. I recommended him to get insurances as soon as possible. I dont recollect that the notes were mentioned in the conversation

2 Who had thosenotes at the time of the conversation above refered to?

A I dont Know

2 Was there any agreement express or implied between you and William Hubbard that you should after the deed of August 31st 1853 have any interest in the premises conveyed by that deed or the proceeds thereof

A No Sir

2 Have you offered any of the houses or lots coined by deed. for sale?

A I have tried to sell those houses for Mr Hubbard as broker

Q Did you succeed in selling any of them ?

A Yes Sir

Q To whom, and what house did you sell ?

Withdrawn

Q Which of them and to whom did you sell them

A I sold one to Samuel Engler the Middle one of the five or first place for $ 6000 I think

Q Did you receive any commission for that sale ?

A I Did

Q How much ?

A I dont know how much.

Q Was it more or less than $1000.

A It was less than $100.

Q When and from whom did you receive it ?

A I cant recollect what time I received it of Mr. Hubbard

Adjourned by consent to the 11th Instant

J. Greenwood

City Judge

October 11th 1854 at 11 A. M. Examination of Ralph Lockwood continued

Q In what way did Mr Hubbard pay you that Brokerage ?

A He paid me in money

Q Did he pay you in Checks or Bills ?

A I dont recollect

2 Where did he pay it to you?
A At his office 209 Front Street New York
2 Who was present?
A I dont recollect who was.
2 Subject to what incumbrance was that House conveyed?
A I hardly know. as the arrangement was made between Hubbard & Engle. my mortgage on the house was left as a part of the purchase money & Mr Engle executed a Mortgage to Hubbard for part of the purchase money
2 Was that the only one of the houses you formerly owned within two years which you have sold as a Broker?
A I closed up a Bargain for one other House in first place between William Stubbard & and one Mr Hillsburgh The Contract price I believe was $10.000
2 Have you received your commission for that?
A No Sir
2 What was you to have?
A There was no agreement about it
2 Do you Know whether there is any custom any price for Brokerage for services in selling such houses?
A I believe the is from one half to one per cent. I dont Know whether the deed for that house has been delivered or not

126 Mr Stubbard and myself had a blow up about it and he says that the agreement was that I was to sell the houses without a Commission as he had had a hard time of it.

2 Was that true or not?

a Yes.

2 Why then did you charge and get a Commission on the house sold to Engle?

a I told him I was pinched for money and must have some.

2 Did he make any objections to the commission on the house sold to Engle?

a He did make objections but in consequence of my pressing him so hard he paid me

2 Are these two the only houses you formerly owned that you have sold as Broker since you owned them?

a I sold one of the houses to Thomas McGinnis corner of Church & Court Streets for John W. Stubbard for $5.500

2 What did you get for this service?

a I do not recollect exactly $20 or $30

2 When was that?

a It was in October or November 1855

2 What did you do with the money?

a I dont Know

2 So that all of these houses that you have

since. sold as Broker ?

A I think it is

2 What promissory notes if any did you have or own the 1st of October 1853 ?

A Dont Know

2 Had you any ?

A I dont Know that I had

2 Where did you Keep your notes Checks or evidences of money demands about the 1st of October 1853 ?

A I dont recollect now where

2 Did you at that time carry usually with you a pocket book or Portmonie ?

A I think I did.

2 Where is that ?

A I dont Know.

2 What did you do with it ?

A I dont recollect.

2 Do you now carry with you a Pocket Book or Port Monie ?

A I sometimes have a small pocket book in my pocket ?

2 Where is that now ?

A I dont Know

2 When and Where did you see it last ?

A I dont recollect.

2 How much money was in that Pocket Book when you saw it last ?

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A I dont Know

Q Have you any promissory note or notes made or endorsed by Jeremiah O'Donnell or Francis B. Stryker in your possession or under your control?

A Not that I Know of

Q Have you any interest in any such note or notes as owner or otherwise?

A None except as surety on it. which note is in the hands of Mr Lewis or Mr Hughes

Q When did you part with your interest in that note?

A I had no interest in it I acted as a Broker to negotiate this note in October 1853 —

Q How much was that for?

A It was for $600 I think

Q From whom did you receive it?

A Jeremiah O'Donnell

Q What did you give him for it. or for what did you receive it?

A I dont recollect how I got it or what I gave for it?

Q Had you at the time any other paper on which Stryker or O Donnell was maker or endorser?

A I dont recollect that I had

Q Was the day you transferred the note to Hughes the same day that the original

order was served on you on or about the first day of Oct 1853 ?

A I believe it was. but it was transferred by me before the order was served on me

Q What money if any had you when the order was served on you on or about the 1st of Oct. 1853 ?

A None at all to my Knowledge

Q Had you at that time and just before the service of the order paid any person any money and if so to whom did you pay it and how much ?

Objected to and answered subject to objection

A I think I paid Mr John A Hughes some thirty or forty dollars at that time.

Q Do you not recollect taking that money from a roll of money in which you had a $10 Bills after that payment?

A I cant recollect

Q Do you recollect making the remark at the time of the service of that order "that it was served a little to soon. that you intended to be ready for it or words to that effect ?

A I dont recollect making the remark and further I dont believe I did.

Q What did you receive from Mr Hughes

13D for the note and money handed to him?

a I think I received an assignment of a judg-
ment in favour of Hughes against Henry A.
Raymond and Charles A. Reigand and my-
self to William Hubbard executed to Hughes

2 For how much was the Judgment?

a I suppose it was for about $600.

2 Has that Judgment been collected?

a I understand it has. In reference to this judg-
ment I wish to state. Mr. Hughes was anxious
that I should get him his money on his judg-
ment against Raymond & as his Lawyers Lewis
and Brown had not got him the money I told
him I would try and get him the money. I asked
him if Stryker and O'Donnells note could be
discounted or whether he would take that note
for the Judgment some $600. He said he thou-
ght he would - Before that time O'Donnell
had applied to me to get some money as a Broker
for himself. I told O'Donnell that I thought
I could negotiate the note if he would give
$30 or $40. which at that time I owed Hughes
for a check which he held against me. I neg-
otiated the note and went to Hughes with it
and told him if he would assign that
Judgment to Wm Hubbard that he could
have the note for the Judgment. We went
into Lewis & Browns office and had the note

transfered to Hughes and I received the assign-
ment to Wm. Stubbard and paid Hughes about
$40. for my checks which he held against
me. I took the assignment over to Mr.
Stubbard and left it with him. I believe that Mr.
Stubbard gave me the money to buy the note
to get the assignment of this Judgment. I
received the money of Wm. Stubbard before
that day. This was all before the order was
served on me.

2 How much money did you receive of Stubbard
to buy the note?

a I cant say

2 Did you receive the whole amount of Stubbard
which you paid to O'Donnell for his note?

a I dont know

2 Did you advance any money of your own to-
wards paying O'Donnell for that note?

a I dont recollect.

2 In what manner did Stubbard advance the
money in checks or notes?

a I dont recollect

2 When did you pay O'Donnell the money?

a I dont recollect

2 Did you collect any part of the Judgment
against Raymond and Sergand and if so
how much and when?

a I collected part of the money of Raymond

under the Judgment and paid Hubbard the money. I cant say how much. it was several months afterwards.

2 Did you receive more than one payment on account and if so how many?

a I received it in two or three little payments & paid them over to Hubbard whatever they were

2 Was the whole amount of the Judgment paid?

a Hubbard said it was closed that he had collected the Balance

2 From whom did you receive the payments?

a From Henry S. Raymond

2 Did you give him receipts for those payments if so. in whose name (withdrawn)

2 Had you any interest in that Judgment except as being one of the parties defendant?

a No Sir

2 Have you any memorandum Books or other Books in your possession or under your control in which you have been in the habit of Keeping accounts of your business affairs.

Objected to Withdrawn.—

2 Have you within two years last past kept or had in your possession or under your control any memorandums or statements in writing wherein you kept an account or accounts of your business transactions?

a I had Bank Books and memorandum

papers between Mr Culley and myself and a Memorandum Book between Culley Myself nothing else

2 Had you or have you any others?

A I have no others

2 Who Kept the account between you and Wm Stubbard?

A I dont Know?

2 Did Mr Hubbard Keep it?

A I suppose he did

2 Did you Keep the account?

A I did not

2 Have you ever settled with Mr Stabbard by any Book or Books Kept by him within two years?

A I have not

2 Have you Kept any account of your transactions with Hiram Smith?

A Only a memorandum account

2 Where is that account?

A I dont Know where it is

2 Have you that account in your possession or under your control?

A I have it not in my possession I suppose it is under my control.

2 In whose possession is it?

A It is in Mr Hiram Smiths possession.

2 Did you hand him that account?

134 A Some 16 months ago I made him a State-
ment of the account and endeavoured to
get a settlement with him which as yet
has never been done ?

2 Have you any other statement of his accou-
nt in your possession or under your control?

A Not to my Knowledge

2 Did you Keep any counterpart of that State-
ment ?

A I dont recollect.

2 Do you Know a lawyer by the name of Patterson?

A I have seen such a man

2 Does he occupy one of the houses you sold
within two years ?

A I understand he did or do

2 Which house ?

A In fourth Place one I sold to Wm Habbard

2 Did you ever ask him to pay rent of that
house to you within six months ?

A (Subject to Objection) No Sir

2 Did you state to him that that house
belonged to you ?

A No Sir

2 Did you offer a promissory note to Ransom
Beman for about $300. within six months
past and ask an advance or loan up-
on it of fifty dollars or thereabouts stating
that you wanted the money to pay your

Expense to Philadelphia ?

A. (Subject to Objection) I asked Ransom Beman to loan some money one day within six months past and I think the amount was $50. I did not give him security and I dont recollect that I offered him any particular security

2 Had you at that time any promissory note (if what one ?

A I dont recollect

2 Have you not had any promissory notes belonging to you within a year last past ?

A I dont recollect

2 Have you had any suit or action pending in any Court in this State in your favor within one year past ?

A Yes Sir

2 Have you within two years past. ?

A No not to my Knowledge

2 What was the name of the School mistress that occupied one of the Dean Street Houses?

A I think it was Mrs Hall she occupied one of the houses from three to five years ago

2 Did you sue her for the rent.

(Answered subject to objection)

A Yes Sir

2 Did any other person as assignee of you sue for this Rent ?

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A Not within two years past

Examination adjourned to 9½ A. M 12th Inst.

12th October 1854

2 You have stated in this examination that you have owned property in Illinois within two years but not the Allen Lippincott farm?

What property if any have you owned in Illinois within two years past?

A I owned some little interest in some property there.

2 What was it and where was it situated?

A There was some wild unoccupied lands in Marshall County Illinois

2 What quantity?

A I cant recollect

2 Have or had you a deed of that land?

A I had a deed it stood in my name.

2 Where is that Deed now?

A I dont Know where the deed is. I sold out my interest a long time ago.

2 Who did you deliver the deed to?

A I dont remember who.

2 Was any other person connected with you in interest in that land and if so whom?

Objected to and answered under objection

A William B. Green of Lyons Marshall County Illinois

Q What amount of interest had you in that land?

Objected to and answered subject to objection

A I had an interest of about 10 per cent commission on the amount of sale or for whatever it sold for.

Q Did you or William B. Green or both of you pay for that land?

A Mr William B. Green I think paid for about three quarters of the land

Q What quantity of land was there?

A I cant recollect

Q Was there 100 acres?

A More than that.

Q Was there 1000 acres?

A I suppose there was

Q Was there 5000 thousand Acres?

A No

Q Was there 3000 Acres?

A No

Q Was there 2000 Acres?

A I should think not

Q When was that land sold?

A I dont recollect exactly when it was sold

Q Was it sold by you or ~~by~~ Green and if so state as near as you can the time of the sale and by whom?

A It was sold by me about the 5th 6th or 10th of September 1853

at which time he did retain some part of the consideration. He said there would not be enough in his hands to pay and and said if I had any thing else I must sell him something to pay him on the contract and money I owed him. I told him I had some lands in my name in Marshall County Illinois. He said then I must sell him those lands. I then delivered him this deed for the land.

2 Do you know what amount of borrowed money you owed him at that time?

a I do not

2 Did you owe him $1000.?

a I owed him from $1000. to $3000

2 Did you have a settlement with him for borrowed money at that time.

a I did not

2 Did you ever have a settlement with him for money borrowed of him within two years?

(Withdrawn)

2 Have you had any settlement with him for borrowed money within two years past?

a I believe not

2 Have you within ten years past conveyed or disposed of any of your property while you were in the state of Illinois?

(Withdrawn)

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Q Have you been in the State of Illinois within two years past & if so at what time?

Defendants Counsel objects to the Question and advises the Defendant not to answer the same unless directed by the Judge to answer. The Judge directs the witness to answer & Defendants Counsel excepts.

A I have, I was there in January 1854 I think.

Q What other property did you own, or have an interest in, if any in the State of Illinois within the last two years, except that of which you have before testified about?

A Not any to my Knowledge

Q What amount of money had you in your possession when you left for Illinois in Jan. "nary 1854?

A I dont recollect. I borrowed $20. of Mr Hub- "bard or Mr. Wilson and I had $5. of my own. That is all I had when I went.

Q From whom did you receive any money while you were gone, and if so from whom?

A I recived some that I borrowed from Mr. Green

Q How much?

A I suppose $60

Q Did you bring any money from Wm. Green to Wm Hubbard or to any other person?

Objected to and Sustained

Q Did you bring any other money from Mr Green?

A Not to my recollection

Q Did you take with you a power of Attorney from Wm Hubbard in relation to the land you had conveyed to him?

A No Sir

Q Have you negotiated a sale of any of that land in Illinois since you conveyed it to Wm Hubbard?

A No Sir

Q Has any of it been sold to your Knowl-
"edge?

A I understood that Mr Hubbard had sold some of the land. This I learned from Mr Hubbard?

Q Have you received any of the proceeds of said sale?

A No Sir

Q Was that sold while you were in Illinois?

A No Sir

Q What became of the $100 you say you borrowed from Mr Green?

A I used it in paying my personal expenses

Q Did you in October 1853 pay any money to R. C. Underhill or Ingraham and Under-
"hill and if so how much?

A Not to my Knowledge

Q Did you about two years ago purchased

142 a Judgment against Joseph Carman & if so from whom?

A Not within two years I think

Q Have you within three years?

A I have had a Judgment against Joseph Carman

Q How much was that Judgment for?

A I think about $200.

Q Have you collected that Judgment or any of it and when?

A It was compromised and satisfied of rec„ „ord about 15 months ago I think I got about $70 for it.

Q Did you confess a Judgment to a brother of yours in Sepr 1853 and if so what was his name & how much was the Judgment for?

A I did to Harford Lockwood in Septr 1853 but I do not recollect how much?

A I think it was about $6000.

Q What was the consideration of that Judg„ „ment?

A It was for cash lent me and notes against me which he held. and accounts.

Q When did he loan you the money?

A I dont recollect part of it was some years be„ „fore but I can't recollect how late was the last. He made up his account against me and I supposed it Correct. and confessed

Judgment for the amount

Q Had you received any of that money as late as May 1866?

A I dont recollect

Q When and from whom did he get the notes against you that you speak of?

A I dont recollect

Q To whom had you given thase notes or any of them?

A I dont recollect It was more than two years ago.

Q Have you since the confession of that Judgment paid Harford Lockwood any money?

A No Sir

Q Has he collected any of that Judgment?

A Not to my Knowledge.

This testimony being read over to the Witness he now desires to explain as to the difference between the consideration in the Deed to Wm Hubbard of 31st Aug. and the Mortgage. The balance was $5.250. This was paid by three promissory notes made I think by J.W. Hubbard & Co. two for $1.200 each. These were discounted by John W. Hubbard and I received his checks & I can't say what I did with the money There was third note for $2.750 made by some parties. This I placed on

144 the hands of I. W. Hubbard as security that it would not cost Wm Hubbard to finish up the houses conveyed by the Deed more than $2.500 Wm Hubbard went on to finish up the houses and ascertained that the cost of finishing up was several thousand dollars and he kept the note of $2.750 to meet the deficiency on a/c of my contract with him on which note I have not as yet received anything. In reference to my pocket I supposed that the question in relation thereto referred to the one I had in October 1853. I have since carried a pocket Book which I now have in my pocket.

Q Does it contain now any notes or other evidence of debt due by any person or persons to you?

A No Sir

Q Have you in your possession or under your controll any notes or other evidences of debt due by any person or persons to you?

A No Sir

Q Has any other person or persons in their possession or under their control any notes Mortgages or other evidences of indebtedness belonging to you or in which you have an interest?

A Not to my knowledge

2 Do you own or have you any interest in any Bank Stock or any other Stock?

A Not to my Knowledge.

2 Have you any of the money or proceeds received by you as appears by the foregoing examination to wit

$1000. from Wm. Green

$2.000 from William Hubbard

$1.000 from William Hubbard

$1.000 from Angeline Smith or

$.500 from Charles Belden

A No Sir

2 What have you done with it?

A I dont Know.

2 Have you or had you in your possession within two years. any notes. Checks Receipts or other evidences of debt due by you to any person or persons which you have paid or satisfied with any of the money received by you as above stated?

Objected to and Defendant directed to answer and Counsel for Defendant excepted to decision

A Not to my Knowledge.

2 Can you name any person or persons to whom you have paid the whole or any part of the money received by you as above stated?

146 a I cannot name any person.

Ralph Lockwood

The examination of the defendant is here closed by mutual consent. The plaintiffs attorney proposing however to examine Witnesses

S. Greenwood

Oct. 12th 1854 City Judge

The defendants counsel now moves that the defendant be discharged from cus- "tody upon his examination which the plaintiff opposes and the Judge reserves his decision thereon he not having read the examination nor heard argument thereto

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The City Court of Brooklyn

No 1 Joseph H. Shepard & Nathan Hollister agst. Ralph Lockwood

No 2 Same v same
No 3 Same v same
No 4 Same v same
No 5 John A. Hughes v same

To Ralph Lockwood the defendant & to S. T. Waring Esq his Counsel & Attys Gent. take notice that the plaintiffs in the above action will examine witnesses before John

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Greenwood Esq City Judge of Brooklyn in City Court Room City Hall Brooklyn on Monday the 23rd Inst at 11 O' Clock A. M. in the proceedings supplemental to execu" "tion herein pending before him.

Dated October 21st 1854

Yours &c

Lewis & Browne

Plffs Attys.

To Ralph Lockwood

Sir— By an order of Judge Greenwood— you have a right to be present at the examination of Witnesses on Monday next. as per within notice— provided you signify to the Sheriff of Kings County in wri" "ting your desire to be present.

Dated Oct. 21st. 1854

Yrs &c

Lewis & Browne

Plffs Attys.

The City Court of Brooklyn

Joseph Shepard &
Nathan Hollister
agst.
Ralph Lockwood

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Same } Same } Same } John A. Hughes
No 2 v } No 3 v } No 4 v } No 5 v
Same } Same } Same } Same

The plaintiffs in the above entitled action having given notice of their intention to examine Witnesses in the proceedings supplementary to execution before me on Monday 23rd Inst. at 11 A. M. I direct that if the defendant shall personally or by his attorney express in writing to the Sheriff of Kings County, his desire to be present at such examination for the purpose of attending the same or of cross examining said Witnesses the said Sheriff may bring him before me at my Chambers at the time before mentioned for the purpose aforesaid. But this order is to be without prejudice to the rights of the relators in the Cases in which said Lockwood has been committed who are the Plaintiffs in the above actions and the said Lockwood is to remain in Custody of the said Sheriff and to be again conveyed to the Jail of the County of Kings at the close of said examination.

Dated Oct 21st 1854 E. Greenwood

(Duplicate) City Judge

Oct. 23rd 1854. Plaintiffs by the Attorney's and Defdt. personally and by Counsel present examination of Witnesses proceeded with and examination to be continued tomorrow morning at 9½ A.M. a time to which the matter is adjourned

J. Grunwood
City Judge

(Duplicate)

Oct 24th 1854. Parties present as above examination of Witnesses proceeded with. Further adjourned by consent till 26th Instant at 9½ A.M. further order to apply

J. Grunwood
City Judge

(Duplicate)

Oct. 26th 1854. Parties appear as before Mr. Lewis moves for an order to direct defdt. to pay &c Mr Waring moves for an adjournment to enable him to examine witnesses — adjourned to 28th Inst at 10½ A.M.

John Grunwood
City Judge

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The City Court of Brooklyn

No 1	Joseph H. Shepard & Nathan Hollister agst Ralph Lockwood	No 2	The same agst. The same
No 3	The same agst The same		The same agst The same
	John A Hughes agst The Same		Examination of Witnesses on behalf of Plaintiff

Hiram Smith of the City of Brooklyn being duly sworn and examined says. I know the Defendant. I reside in Smith Street near Schermerhorn: I am a Brush Manufacturer

2 Have you had any business transactions with the Defendant within two years past?

A I think I have

2 What were they?

A He built three houses for me in Smith Street

2 Under any contract and if so what?

A There was a written agreement between us

2 Where is it?

A I cant say. I dont know whether Lockwood

has or I have it. It may be somewhere about my house

2 Have you ever had a settlement with Lock.. "wood for that lot?

a No Sir

2 When did he receive the last money from you on that lot?

a I dont Know that I can give you the day or date it was about 18 months ago – If I had my memorandum Book with me I could state the date.

2 How much in all has he received on accou.. "nt of that lot?

a $12.691

2 Was there any extra work done to the houses not covered by contract?

a No Sir.

2 From Whom did you purchase those lots?

a Mr Cottrell.

2 Had Mr Lockwood any interest in those lots at that time or since?

a. No Sir

2 Have you purchased any real Estate from Ralph Lockwood within two years?

a No Sir not within ten years

2 What other business transactions have you had with Ralph Lockwood within two years?

a None other

152 Q By the Judge. When was the first pay"ment made to Lockwood on account of that Job?

A On the 15th of November 1852.

The defendants Counsel con"sents that the Witness answer the following question.

Q What was the gross amount of that contract with Lockwood?

A He agreed to build the houses for $3.800 Each.

Sworn to 23rd Oct. 1854 Hiram Smith
before me J. Greenwood
City Judge

The City Court of Brooklyn.

No 1 Joseph H. Shepard
Nathan Hallister
agst
Ralph Lockwood

No 2 The same
agst
The same

No 3 The same
agst
The same

No 4 The same
agst
The same

No 5 John A. Hughes
agst
The same

Examination of Witnesses on behalf of Plaintiffs

Seanbury Nissam being duly sworn and examined says that he is an attorney & Counsellor at Law residing in the City of Brooklyn. The Counsel for the Defendant attends pursuant to an order made by Judge Greenwood dated Oct 21st 1854 for the exam- "ination of Witnesses herein which is here- "unto annexed. and objects to any Exam- "ination of Witnesses and such examination is proceeded without prejudice to any of the defendants rights

The Witness now proceeds

I Know the Defendant. I had a conver- "sation with the defendant in September 1853. I met him in the Street in Newyork This was a few days after the 8th September 1853 I was asking about his business and buildings. and we talked about the subject and he then said he had moved to New- "York and was living there that he had conveyed some of his property and Buildings I think and I asked him why he did not compromise with his creditors. and asked him also if his Counsel had not advised him to that effect. then he repeated that he had sold some and that he knew enough without any advice to take care of himself and that he had it where

154 nobody could get it. the above is the substance of the conversation.

Sworn to 23rd Seabury Kissam
October 1854 before me
S. Greenwood
City Judge

Silvanus D. Lewis being duly sworn and examined says.

2 Do you Know Ralph Lockwood?

A Yes.

2 Had you any conversation with him in reference with the claims of the Plaintiffs in these actions. and if so State the same and when and where they occurred?

A I had a number of Conversations with him on those subjects soon after the entry of the Judgments in 1853 I stated to him that I perceived by the records that he had sold all or nearly all of his real Estate. He said he had. I asked him how many houses he had sold, he said thirty eight. I said I hoped he had got money enough out of them to make a fair compromise with his creditors. he said they had sued him and they must look to the law to get their money or words to that Effect & added "I am not fool enough to put it

where lawyers can find it" at the time I served the orders on him about the first of October 1853 at my office in the presence of John a. Hughes one of the plaintiffs the defendant stated that they (the orders) came rather too soon. that he intended to have been fully prepared for them & at the same time he paid Mr Hughes after the service of the orders about $50. I received the money from Lockwood and counted it. He took it from his pocket Book in which he had other money left at the time & I saw at least two $10 bills among other bills which I could not see the denomination of at the time after the payment of the $50.

Witness being cross examined by the Counsel for Defendant says

2 Are you one of the Plaintiffs attorneys herein?
a Yes Sir
2 When you first Engaged?
a About June 1853
2 Did you know before the time you served the orders that Lockwood was expected at your office?
a I think I did
2 Who informed you?
a From John a. Hughes or from some person through whom he had sent to me

156 Q Did you know on what business he was to come to your office?

A I did

Q Did you expect that he was coming to pay money?

A No Sir. I simply knew that he was to pur-
"chase and take an assignment of a Judg-
"ment from Mr Hughes. I was requested to be present and draw the assignment which I did. I drew the assignment before I rece-
"ived the money I think I am not sure I served the orders after I had drawn the assignment and it was executed and de-
"livered

Q Did you serve the order before Lockwood paid you the money or after?

A After he paid the money — I cant say what Bank the two $10 Bills were on or whether they were good or bad.

The other Bills I saw were Bank Bills I cannot describe them except that they look-
"ed like other Bank Bills. I saw the face of one and part of the end of the other. He was counting out the money. He was in my office He was in my office at the time about half an hour.

Q Did not the Defendant at the time you served the said orders on him say that

he came to your office under an express assurance from Mr Hughes one of the Plaintiffs in said action. that no papers should be served upon him. or words to that effect?

A He did. and Witness adds that defendt "ant said at the same time" but as you have served the order in the Shepard cases I wish you would serve one also in Hughes case and consider it served at the same time. as I do not wish Shepard v Hollister to get any prefference over Hughes" and I assented thereto and served the order in the Hughes case

2 Was you the attorney of record or Counsel of either of the parties in the Judgment of which you drew the assignment thereof?

A I was one of the Attorneys

Sworn to the 23rd Oct. 1804 before me

S. D. Lewis

I. Greenwood

City Judge

Oct 24th 1804

William Hubbard a Witness being sworn & Examined says I am engaged in the commission business at 209 Front Street New York. I purchased a house

158 in May 1853 of Ralph Lockwood the def-
"endant in 4th Place in the City of
Brooklyn. I dont remember the exact
amount of the consideration about $5,000.
It was Mortgaged for $3000. and I paid
him the balance to wit $2000 by a note
of the firm of which I was a member at
3 or 4 months, I think 3 months. It was
paid at the Market Bank when it fell
due. Defendant told me he got it dis-
"counted at the Bank before it matured
I purchased from him on the 31st August
8 houses and lots in one Deed.. two in
fourth place, six in first place and one
lot in Schermerhorn Street Brooklyn, The
balance of the consideration over the in-
"cumbrances on the property was $5200.
I think. This balance was paid by three
notes, two of $1200. each and the other
$2700. I delivered all the notes to Defen-
"dant on the 1st day of September 1853.

The notes were dated that day and
were payable, two in 60 days and the
largest one at 90 days or 4 months. I have
paid both of the notes of $1200. Each
I paid them to John M. Hubbard who
had discounted them for Lockwood.
John M. Hubbard discounted one and

gave Lockwood the money for it the day of its date, and the other a day or two there" "after. The large note was deposited in John M. Hubbards hands by Lockwood as security to me for the completion of the houses by Lockwood, or rather, that the expense of completing them should not exceed a certain sum. I think the sum of $2,000 The finishing did exceed that sum about $5200 and I sold some of un" "finished. The note of $2700 has been given up by consent of Lockwood & cancelled. About the 5th September 1853 or some days later in September 1853. I purchased of Ralph Lockwood some land in Illinois I think the consideration was $3000 or that was about the sum specified in the Deed. I had sold him before this some land in Illinois which he had not paid me for, and he owed me some other money and I gave him up those claims and we settled. I think I paid him very little money at the time.

Examined before me — William Hubbard

this 24th day of Oct"

1854. — I. Greenwood

City Judge &c &c

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Oct. 26 The parties appear before with Counsel and it is admitted as evidence herein that the $1500 recd by Deft. from Angeline for the house and lot conveyed to her by Defdt. was received on or about the day of the date of said deed to Wit February 18th 1853 and the $500 from Charles Bolden was recd on or about the 1st day of September 1853 the day when the said Deed was recorded. —

Plaintiffs rest the case on their part Mr Waring Counsel for Defendant asks time to procure Witnesses for Deft.

The further examination of Witnesses is herein adjourned on Defts motion to 28th October at 11 O'clock A.M. at same place

Oct. 26th 1854

I. Greenwood

City Judge of Brooklyn

State of New York
County of Kings
City of Brooklyn. } ss.
Clerks office of the
City Court of Brooklyn

I do hereby certify that I have compared the foregoing Copy of an "Examination of

Ralph Lockwood defendant as Judgment debtor under orders herein of 24th and 28th Sept 1853 and 14th August 1854 at City Court Room City Hall Brooklyn before John Greenwood "City Judge of Brooklyn" and the papers under the title "Joseph H. Shephard and Nathan Hallister again" "st Ralph Lockwood, and of the endor" "sements thereupon with the records of the same remaining on file in this office and that the same are correct transcripts therefrom and of the whole of said records

L. S.

In testimony whereof I have caused the seal of the City Court of Brooklyn to be here" "unto affixed this 6th day of Oct 1856.

Sam L. Harris

Deputy Clerk

of the City Court of Brooklyn

State of New York
County of Kings
City of Brooklyn

I. Erastus D. Culver Judge of the City Court of Brooklyn do hereby Certify that Sam L. Harris the person subscribing the foregoing certificate was on the

Sixth day of October 1866 therein mention"
162 "ed the Deputy Clerk of the City Court of
Brooklyn. and that I am well acqu ain"
"ted with the handwriting of the said
Sam L. Harris, and know the name
Sam L. Harris, subscribed to the said
certificate is his proper and genuine sig"
"nature.

L. S.

In testimony whereof I have
caused the Seal of said
Court. The City Court of Broo"
"klyn to be hereunto affixed this Sixth
day of October 1866.

E. D. Culver
City Judge City Court Brooklyn N. Y"

"Pleas before the Circuit Court of Marshall County in the State of Illinois at a Term thereof began and held at the Court House in the City of Lacon in Said County, on Monday the 24th day day of January in the year of our Lord one thousand eight hundred and fifty nine. Present the Hon M Ballou judge of the 23d judicial circuit of the State of Illinois presiding

George N. Stiff States attorney for said Judicial Circuit

Thomas Ellis Sheriff of said Marshall County. and

James Wescott clerk of said Circuit Court."

Be it remembered that on the 11th day of February AD 1859 the same being one of the days of the Term last aforesaid and the Court being then Judicially Sitting proceedings were had in the Suit of Ralf Lockwood against William D. Murphy as follows to wit

Evidence for Complainant

Lockwood vs Murphy } Ejectment

In the Circuit Court Marshall County January Term 1859

Wm B Green Sworn Says he is not positive but his impression is that on the trial of this cause at a previous term of said court he testified that Lockwood was in possession of the premises or land & that valuable improvements were made thereon as Stated in the said Bill.

And on the said twelfth day of February AD 1859 a Decree was made by said Court in said cause and entered of Record to wit

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Decree.

Ralph Lockwood
vs.
William D. Murphy

Circuit Court of Marshall County Illinois of January Term 1899. For Specific Performance

Now at this term again comes the complainant by Purple & Pratt & Ramsey his solicitors and the Defendant by Richmond & Burns his attorneys and it appearing to the satisfaction of the Court that the defendant has been duly served with process herein and having filed his answer to said Complainants bill. And now this cause coming on to be heard upon the said complainants bill the answer of the defendant and replication and Oral proof taken and reduced to writing in the presence of the Court, Exhibits tax receipts and depositions and it appearing to the satisfaction of the Court that the said complainant on the fifth day of April A.D. 1891 at the City of Newyork made a Written Contract with the defendant of said City to purchase of the said defendant the following described Lands situated in the said Marshall County and State of Illinois described as follows to wit the South East quarter of Section Seven also the East

Decree
Continued

half of the South East quarter of Section Nineteen also the West half of the South West quarter of Section Twenty also the North West quarter of section Thirty one also the West half of Section Thirty Three Township Thirty North and Range one West of the third principal meridian being in all Eight hundred acres of Land and that the said complainant agreed to pay to the said defendant for said la" "nd the sum of Three Thousand and forty six Dollars and Eighty cents. and that the said complainant at the time of said purchase paid to the said defendant the sum of One Hundred dollars cash and that the said complainant agreed to pay to the said defendant the sum of Eight hundred and six dollars and Eighty cents within four months from the date of said contract and Twenty one hundred and forty dollars within one year from the date of said Contract and that the said complainant made executed and deli" "vered to the defendant his two promissory Notes for said amounts and the said defendant agreed upon the payment of said sums of money by that complainant to ma" "ke execute. and deliver to him a warran"

"tee deed with full Covenants free from all
"incumbrances except taxes of 1851 which
said Written contract was Recorded in the
Recorders office of Marshall County on the
twenty third day of October 1852 and that
the said price agreed upon between said
plaintiff and defendant was at the time
the full value of the land and that short
"ly after the making said contract the
said complainant became embarassed in
his pecuniary affairs and could not con
"veniently make prompt payment according
to the terms and conditions of said con
"tract. And it further appearing to the
Court that the said Defendant did not
demand or exact of the complainant punc
"tual payment according to the terms
of the contract but permitted the said
complainant on the 8th day of August
1851 to pay to the said defendant the
sum of One hundred dollars and for
which the said Defendant gave to the
complainant a receipt as charged in
said complainants Bill of complaint
and that the same was in part payment
for the amount due upon said land
and that on the third day of May A.D.
1855 the said complainant paid to the

Decree continued

defendant one hundred dollars more upon said contract for said Land which was accepted and received by said deponent and agreed to be by him credited on the said notes given for said land.

And it further appearing to the Court that the said complainant has since the making of said Contract paid all the Taxes assessed upon the whole of said land so purchased by him of the defendant. and it further appearing to the court that the said complainant since the making said Contract has Exercised acts of own "ership over said Land.

And it further appearing to the court that the said defendant at the time of filing the Bill herein still held the promissory notes made by the said complainant to the defendant for the amount amount of said purchase money for said Land or had "negotiated the same & that the said notes were Negotiable & that the said defendant never delivered or offered to deliver to the complainant said notes. And it further appearing to the court that the said de, "fendant has never delivered to the comp, "lainant a good and sufficient Warantee deed for said land as stipulated in the

168 said contract. and it further appearing to the Court that the said contract between the said complainant and defendant has never been legally or otherwise rescinded by said parties or either of them and that the same still remains in full force and effect & wholly unrepealed and in no wise cancelled.

And it further appearing to the Court that on the 8th day of October A. D 1888 the said complainant tendered to the said defendant and offered to pay to him the sum of Three thousand Six hundred and seventeen dollars and fif- "ty cents in gold and silver coin & that the same was the full sum of principal and interest due the said defendant up- "on said notes and contract before mentioned and that he is still willing and offers to pay the said sum of money in such manner as the Court may direct and that the said defendant refused to receive the said money and deliver to the complainant a deed for said Land in accordance with the said contract and that at the time the said complainant made the said tender to the defendant he demanded a deed

Decree continued

in accordance with said contract and that the said defendant refused to deliver such deed to complainant.

And it further appearing to the Court that the said defendent did not offer to pay to the said complainant the said sums of money paid by the complainant to the defendant upon said contract and notes or the money paid by the complainant for taxes upon said land from the year 1900 until the filing said complainants bill herein.

And the Court being fully advised in the premises it is therefore ordered adjudged and decreed by the Court that the said defendant within sixty days from the adjournment of this Court shall make execute and deliver to the said complainant a Warantee deed with full covenants free from all incumbrances except taxes of 1901 and subsequent year with release of dower of the wife of said defendant of the following Lands to wit the South East quarter of section Seven also the East half of the North East quarter of Section Nineteen also the west half of the North West quarter of section Twenty also the north west quarter of section

Thirty one also the West half of Section Thirty Three, all in Township Thirty North and Range one West of the third princip-
al meridian in Marshall County Illinois provided the said complainant tenders or pays to the said Defendant the sum of Three Thousand Six hundred and seventeen dollars and fifty cents, at his office or place of business or when he may be found in the City of Newport within said Sixty days from the adjourn-
ment of this Court, and in case the said defendant shall upon the tender of the said sum of money as aforesaid re-
fuse to receive the same and make a deed to the complainant as above herein directed that then Lunsford Broa-
ddus Esq. be and is hereby appointed a commissioner to make execute and deliver to the complainant a deed for the land herein described and it shall be the duty of the said complainant to file with the said Lunsford Broaddus an affidavit of himself or some other person made before any Clerk of a Court of Record in the City of Newport and attested with the seal of said Court thereunto attached, and upon

Decree continued

the filing said affidavit with the said Lunsford Broaddus and paying to him said sum of Three Thousand Six hundred and seventeen dollars & fifty cents to be by him paid to Defendant on demand and for the same by Deft it shall be the duty of the said Lunsford Broaddus as special Commissioner to make out execute and deliver to the said complainant a deed for said before described land conveying all the right title claim and interest of the said defendant in and to the said Land to said Complainant his heirs and assigns, and it shall be the duty of the said special commissioner to make report of his doings to this Court at the next term thereof. and it is further ordered adjudged and decreed by the Court that the complainant recover of and from the defendant his costs and charges by him about his said suit in this behalf expended and that he have execution therefore

M. B.

Saturday February 12. A.D. 1859

Motion to set aside Decree

Ralph Lockwood vs William D. Murphy } Bill for Specific performance

And now comes the defendant by his solicitors Richmond & Burns

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and move the court to set aside the Decree entered in this cause, and to grant a new trial herein, and the Court having considered said motion doth order that the same be overruled. And now again comes the defendant by his solicitors and pray an appeal to the Supreme Court of this State, which Appeal is allowed upon the defendant filing a Bond in the sum of One thousand dollars conditioned according to law, with Washington C. Cook as security in thirty days from the adjournment of this Term of this court."

prayer for an appeal

And afterwards to wit on the twenty eighth day of February A.D. 1859 an appeal Bond was filed in said cause in said Court which Appeal Bond is in words and figures as follows to wit:

Appeal Bond

"Know all men by these presents that We Willi-
"am D. Murphy and Washington C. Cook are
held and firmly bound unto Ralph Lock-
"ood in the penal sum of one Thousand Doll-
"ars lawful money of the United States for the
payment of which well and truly to be made
we bind ourselves our heirs Executors and
administrators jointly severally and firmly
by these presents. witness our hands and
Seals this the Seventeenth day of February
A. D. 1859.

The condition of the above obligation
is such that whereas at the January Term
of the Marshall County Circuit Court held

Appeal Bond

in and for the County of Marshall in the State of Illinois in the year Eighteen hundred and Fifty nine. the said Circuit Court rendered a final Decree against the above bounden William D. Murphy for a Specific performance and for costs in a certain suit in Chancery wherein the said Ralph Lockwood was complainant and the said William D. Murphy was defendant which said decree was then and there rendered in favor of the said Ralph Lockwood from which said final decree and the judgment of the said Circuit Court in rendering the same the said William D. Murphy appealed to the Supreme Court of the State of Illinois.

Now if the said William D. Murphy shall duly prosecute his said appeal with Effect and shall pay the said judgment and the judgment in the Supreme Court of said State and all costs interest and damages in said suit which have accrued or which may accrue, in case the said decree and judgment shall be affirmed then the above obligation shall be void. otherwise to remain in full force and effect

Wm D. Murphy seal
H. E. Cook seal

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United States of America
State of New York } ss

By this Public Instrument be it Known to all whom the same doth or may in anywise concern. that I. Edwin F. Corey a Notary Public. in and for the State of New York. by Letters Patent under the Great Seal of State duly commissioned and sworn dwelling in the City of Newyork; Do Hereby Certify. That on the day of the date hereof. before me personally appeared William D. Mur, "phy personally Known to me to be the same person described in and who executed the annexed instrument of writing. and acknow, "ledged to me that he had voluntarily and freely executed the same. for the uses and purposes therein stated.

L. S.

In Testimony Whereof. I have subscribed my name and caused my Official Notarial Seal to be hereunto affixed the Twenty third day of February in the year of our Lord one thousand eight hundred and fifty nine. in the 83d year of the Independ, "ence of the United States of America"

"Edwin F. Corey
Notary Public of the State of Newyork"

Endorsed "Filed February 28th 1859. James Wescott clerk"

State of Illinois }
Marshall County } ss I, James Nescott clerk of the Circuit Court in and for said County and State do certify that the foregoing is a full and complete transcript of the proceedings had, and the papers on file in said Court in the cause of Ralph Lockwood against William D Mursley as the same remains of Record in said Court.

In Testimony whereof I have hereunto set my hand and affixed the Seal of said Court at Lacon in said County this twenty Second day of March A.D. 1859.

James Nescott
Clerk

Fees for Record & certificate $35.50

The following is a copy of Deed attached to Deposition of Orlando B Lewis and referred to by him -

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Deed

This Indenture, Made the Fifth day of April in the year one thousand eight hundred and fifty two, Between William D. Murphy of the City of New York, of the first part and Ann Letitia Murphy his wife, and Ralph Lockwood, of New York City, of the second part, Witnesseth, That the said parties of the first part, in consideration of the sum of Three Thousand and Seventy Nine 30/100 Dollars to them duly paid before the delivery hereof, have bargained and sold, and by these presents do grant and convey to the said party of the second part, his heirs and assigns, forever, All the West half of the North West Quarter of Section Twenty, and the East half of the North East Quarter, of Section Nineteen; and the North West Quarter, of Section Thirty one, of Township Thirty North, and range one West of the Third principal Meridian; Containing Three hundred and Twenty 40/100 Acres. be the same more or less; and all the South East 1/4 Section Seven, of Township Thirty, and range one West, of the Third principal Meridian: Containing one hundred and Sixty Acres, be the same more or less: lying and being in the Town of Lyons, Putnam County, in the State of Illinois, Also the North West 1/4 of Section 33; also the South West 1/4 of Section 33, Township 30. North and Range one West, of third principal meridian; containing 320 acres; be the same more, or less: lying and being in the town of Lyons, Putnam County, State of Illinois with the appurtenances,

and all the estate, title and interest, of the said parties of the first part therein. And the said parties of the first part, do hereby covenant and agree with the said party of the second part, that at the time of the delivery hereof, the said parties of the first part are the lawful owners of the premises above granted, and seised thereof in fee simple absolute, and that they will Warrant and Defend the above granted premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, forever.

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

Sealed and delivered in the presence of Edwin F. Corey T. W. Thorne } ~~Wm D. Murphy~~ (seal) ~~Ann Letitia Murphy~~ (seal)

offered to Ralph Lockwood July 5 at N Y who declined to take it Stating as a reason that he had not the money to pay for the land W D M 1850

State of New York — City and County of New York } ss. By this Public Instrument be it known to all whom the same doth or may in any wise concern that I Edwin F. Corey a Public Notary in and for the State of New York by Letters Patent under the Great Seal of State duly commissioned and sworn dwelling in the City of New York, Do hereby Certify that on the Thertieth (30th) day of April one thousand Eight hundred and fifty five before me personally appeared William D.

Murphy and Ann Letitia wife of the said William D. Murphy whose signatures appear to the within instrument and who are personally known to me to be the real persons who subscribed and executed the same and acknowledged the same to be their free act and deed. And Ann Letitia wife of said William D. Murphy and whose signatures appears to said instrument having been by me made acquainted with the contents thereof and examined seperate and apart from her said husband acknowledged that she executed the same and relinquished her right of dower in the premises therein conveyed voluntarily freely and without compulsion of her said husband.

Seal

In Testimony Whereof I have hereunto affixed my my official seal and set my hand the day and year aforesaid.

Edwin F. Corey Notary Public

Exhibit "A" E. F. Corey

State of New York, City County of New York } ss. Orrando B. Lewis of said City being duly sworn deposes and say that the names of William D. Murphy and Ann Letitia Murphy signed to the within deed were traced after the fifth day of July 1855 by William D. Murphy himself.

Sworn to before me this 24th day of Sept 1856. } O. B. Lewis

Edwin F. Corey Jun

William D. Murphy
or
Ralph Lockwood } Appeal from Marshall County

And now comes the said appellant William D Murphy and says that, in the Record and in the proceeding thereof there is manifest Error in this towit

1st That the Court Erred in decreeing a specific performance of the Contract referred to in the bill

2 The Court ought to have rendered a decree dismissing the bill.

Wherefore in consequence of the Errors aforesaid the said appellant prays that the said decree and judgment aforesaid may be wholly reversed annulled and for nothing esteemed

Richmond & Burns
Solicitors for Murphy

In nullo est Erratum
P. H. Pruple for appellee

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William Murphy

vs

Ralph Lockwood

Record

Filed April 19, 1855

L. Leland

Clerk