

No. 12181

Supreme Court of Illinois

Woodward

vs.

Blanchard

71641  7

99
Mr Woodward
vs
Mr A. Blanchard

1855

12181

April.
Term 1854 Pleas before the Honorable circuit
court of the County of Marshall in
the State of Illinois. Begun and holden
at the Court House in the City of Lacon
in and for said county. On the Eleventh
day of April in the year of our Lord one
thousand eight hundred and fifty four
Present and Presiding The Honorable
Edwin S Leland Judge of the ninth
judicial circuit - court of the State of
Illinois. William H L Wallace States
Attorney. Greenberry L Fort clerk and Henry
L Crane Sheriff

Be it Remembered that heretofore To Wit
on the 12th day of April A.D. 1854.
came William A Blanchard by Erastus
W Hazard his Attorney. And filed
herein his declaration in Ejectment
against William Woodward. - -
Which said declaration is in words
and figures as follows To Wit. -

William A Blanchard } Marshall County Circuit
vs } Court April Term AD 1854
William Woodward }

Narr William A Blanchard plaintiff, who is a citizen of the State of Indiana, complains of William Woodward, defendant, who is a citizen of Marshall County, State of Illinois in a plea of Ejectment.

For that said Plaintiff heretofore to wit, on the first day of February A D 1854 at and within the County of Marshall State of Illinois was possessed of a certain lot, piece or parcel of land lying and being in the County of Marshall aforesaid, with all the privileges and appurtenances thereunto belonging or in any wise appertaining in his own right in fee which said lot, piece or parcel of land is described and distinguished as lot number two hundred and eighty on town plat of the town of Henry in said County of Marshall, included in section sixteen, in township thirteen North, Range ten East of the fourth principal meridian, containing eighty feet by one hundred and sixty feet, and being so thereof possessed he the said defendant afterwards on the same first day of February A D, 1854, entered into possession of said premises and unlawfully withholds from said plaintiff the possession thereof to the damage of the said plaintiff One hundred dollars for the recovery of which and the premises he brings suit

E. W. Hazard
att'y for Plff.

William A Blanchard } Marshall County Circuit Court
vs } April Term A.D. 1854
William Woodward }

Service of
Notice

William A Blanchard, plaintiff, who is a citizen of the State of Indiana, complains of William Woodward, defendant, who is a citizen of Marshall County State of Illinois, in a plea of ejectment. —

For that said Plaintiff heretofore, to wit:— on the first day of February A.D. 1854 at and within the County of Marshall State of Illinois was possessed of a certain lot, piece or parcel of land lying and being in the County of Marshall aforesaid, with all the privileges and appurtenances therunto belonging or in any wise appertaining in his own right in fee which said lot, piece or parcel of land is described and distinguished as Lot number two hundred and Eighty, on town plat of the town of Henry in said County of Marshall, included in section sixteen in Township Thirteen North, Range Ten East of the Fourth principal Meridian, containing Eighty feet by One hundred and sixty feet and being so thereof possessed by the said defendant afterwards on the same first day of February A.D. 1854 entered into the possession of said premises and unlawfully withholds from said plaintiff the possession thereof to the damage of the said plaintiff One Hundred dollars for the

recovery of which and the premises aforesaid he
brings suit.

E. W. Hazard

Atty for Plaintiff

To Mr William Woodward

Sir - Take notice

that the foregoing Declaration will be filed on
the third day of the next (April) Term A.D. 1854
of the Circuit Court of Marshall County, and that
upon filing the same, a rule will be entered
requiring you to appear and plead to such declaration
within twenty days after the entry of such rule,
and that if you neglect to appear and plead
a judgment by default will be entered against
you and the plaintiff will recover possession of
the premises above described.

Feb. 24th 1854

E. W. Hazard

Atty for Plff.

William A. Blanchard } Marshall County Circuit
vs } Court April Term A.D. 1854
William Woodward }

I do hereby enter myself as
security for costs in this cause and acknowledge my-
self bound to pay or cause to be paid all costs
which may accrue in this action, either to the
opposite party or to any of the officers of this

Court in pursuance of the laws of this State and
the practice of said Court.

Feb. 24th 1854

Charles Nick

Served the foregoing declaration & Notice
with Bond for costs being thereto attached by
reading the same to the said William Woodward
and by delivering to him a true copy thereof this
23^d day of March A.D. 1854

Henry C. Cram Sheriff
of Marshall County - Ills

State of Illinois }
Marshall County } I Henry C. Cram being first
duly sworn according to law says that the state-
ments contained in the foregoing return as made
by me is true.

Subscribed and sworn to
before me this 23^d day of
March A.D. 1854.

Henry C. Cram

G. S. Fort Clerk

Pleas before the Honorable Circuit Court
of the County of Marshall in the State of Illinois
began and holden at the Court House in the
City of Lacon in the County of and State
aforesaid. on the seventeenth day of October
in the year of our Lord one thousand eight
hundred and fifty four.

Present and Presiding the Honorable Edwin
S Leland Judge of the ninth judicial circuit
court of the State of Illinois William
H S Wallace States Attorney of said
circuit and Greenberry S Fort
Clerk of said Court and Henry L Crane
Sheriff of said County. and among
other things the following proceedings were had

Be it remembered that ~~this comes~~ the Defendant
herein having heretofore filed his plea which
is in words and figures as follows that
is to say.

Be it remembered that on this twenty third day of October A.D. 1854 it being one of the days of said term of said Court comes the Defendant by Ramsey & Fleming his attorneys and files herein his plea which said plea is in words and figures as follows, to wit:-

Plea.

Blanchard Circuit Court of
vs } Marshall County Illinois
William Woodward }

Now comes the Defendant by Ramsey & Fleming his attorneys and says that he is not guilty of unlawfully withholding the premises claimed by the plaintiff as alleged in the declaration and of this he puts himself upon the Country

Ramsey & Fleming
for Deft

Be it remembered that on this ~~day~~ comes
Twenty third day of October. 1864 it
being one of the days of said Term
of said Court, among other things
the following proceedings were had.
That is to say.

William A Blanchard

vs.

William Woodward

} Ejectment

Judgment

Be it remembered that
this day comes this cause on to be heard and
tried and the Plaintiff appears by E. M. Hazard
his Attorney as well the defendant in person
and by Ramsey & Fleming his Attornes.
And the issue being joined upon the Defendants
plea to wit that he is not guilty in manner
and form as charged in Plaintiffs declaration
and this cause, by express agreement of the parties
in open Court made is submitted to the
Court for trial and a jury waived. And
after hearing the evidence adduced and the
argument of Counsel the Court finds the
defendant guilty in manner and form
as in said Plaintiffs declaration mentioned
And that ^{the} said William A Blanchard Plaintiff
is seized thereof in fee simple
It is therefore considered ordered and

adjudged by the Court that the said Plaintiff have restitution of the said Premises in said Plaintiff's declaration mentioned That is to say Lot No. Two Hundred and Eighty on Town plat of the Town of Henry in said County of Marshall included in section sixteen in Township Thirteen North. Range ten East of the fourth principal Meridian containing eighty feet by one hundred and sixty feet from the said defendant and it is ordered that a writ of restitution issue to the Sheriff of said County to execute and command him to remove the said defendant from said premises and to deliver ~~to~~ the possession thereof to the said Plaintiff. And it is further considered and adjudged by the Court that the said Plaintiff have and recover of the said defendant his costs and charges by him about his suit in this behalf expended and it is ordered that execution issue therefor.

Be it remembered that on this Twenty eighth day of October AD 1854 it being also one of the days of said Term of said Court that among other things the following proceedings were had and the following Order entered which is in words and figures as follows To Wit:

Order
allowing
Appeal

William A Blanchard

vs
William Woodward

} Ejectment

Be it remembered that
this day comes the said defendant in person
and by Ramsey & Fleming and prays an
appeal to the Supreme Court of this State, which
appeal is allowed upon condition that the
said defendant enter into bond in the
penal sum of One hundred dollars, with
Chester S. Woodward as his security, within
Thirty days from the adjournment of this court.

Be it remembered that on this 28th
day of October A.D. 1854. came again the
Parties and file herein the bill of Exceptions
which is settled by the Court and
which is in words and figures as
follows to wit. —

Bill of
Exceptions

William A Blanchard } Ejectment in the Circuit-
vs } Court of Marshall County.
William H Woodward }

Be it remembered that upon
the trial of this cause the plaintiff to maintain the
issue on his part read in Evidence a patent
from John Reynolds Governor of the State of
Illinois to Albert Reeves dated 15th August
1834 which reads as follows:

John Reynolds Governor of the State of
Illinois. To all to whom these presents shall
come greeting. Whereas it appears from a
return made to the Auditor of Public Accounts
by Nathaniel Chamberlain School Com-
missioner and Agent for the inhabitants
of Putnam County that in pursuance of
the act of the General Assembly of the State
of the State of Illinois entitled "An act
authorizing the sale of Section numbered six-
teen or such lands as may be granted in lieu
thereof to the inhabitants of such townships
for the use of schools" approved January 22, 1829
and the act amending the above recited act approved
February 15, 1831, and the act approved March 1, 1833
the said School Commissioner did on the
day of Eighteen hundred and
sell to Albert Reeves of the County
of Putnam and State of Illinois a certain

Lot of Land lying ~~within the~~ ^{in the} ~~boundary~~ ^{boundary} aforesaid being part of Section numbered Sixteen granted by the United States to the State of Illinois for the use of the inhabitants of Township number Thirteen North Range Ten East of the fourth principal meridian for the use of Schools known and designated on the map of the said Section as made by the Trustees of School lands within said Township as Lot number two Hundred and Eighty of Section Sixteen in Township thirteen North Range Ten East of the fourth principal meridian containing Eighty feet by One Hundred and Sixty feet by survey and that the said Albert Reeves has paid to the school commissioners,

for the said lot of land the price for which the same was sold. In Consideration whereof the State of Illinois doth hereby grant bargain sell and convey unto the said Albert Reeves the Lot of land aforesaid with the appurtenances thereof. To have and to hold the same unto him the said Albert Reeves and to his heirs and assigns forever in fee simple as a sure perfect and absolute estate. In testimony whereof I have I have caused these letters to be made Patent and the great seal of State to be hereunto affixed. —

Given under my hand at Van
dalia this 1st day of August 1834

By the Governor

John Reynolds

A. P. Field

Secretary of State

Countersigned

James T. W. Whipple

Auditor P. A.

The Defendant objected to said Patent as being in itself insufficient Evidence of Title in said Reeves which said objection the Court overruled and admitted the evidence and the Defendants counsel then and there excepted to the opinion of the Court. The Defendant then offered in evidence a deed from Albert Reeves and Wife dated September 22nd A.D. 1853. to the plaintiff for the same Land described in the Patent before set forth which was read without objection. The Defendant admitted that he was in possession of the premises described in the declaration at the time of the service of the declaration. This was all the evidence introduced by the plaintiff. The Defendant to maintain the issue on his part read in evidence a Deed from the Auditor of Public Accounts of the State of Illinois, dated on the 21st day of February A.D. 1846 for the said Lot which said Deed was in the words and figures following.

to wit: The Auditor of Public Accounts of the State of Illinois To all to whom these presents shall come greeting. Know ye that whereas it appears from the certificate of the clerk of the County Commissioners Court of Marshall County that he did on the first day of September eighteen hundred and forty five at the Town of Gason in conformity with the requisitions of an act of the general assembly entitled "an act regulating the assessment and collection of the public revenue" approved March 3- 1845 expose to sale the same having been forfeited to the State for the non payment of the Tax interest and cost due thereon for the years 1839 & 41 the following described Town Lots to wit Lots No Two hundred & Seventy (270) Two hundred & seventy one (271) Two hundred and eighty (280) & two hundred and Eighty one (281) in the Town of Henry Marshall County Illinois. And whereas at the time and place aforesaid Chester. S. Woodward became the purchaser of the Town Lots aforesaid and has paid the said clerk the sum of five Dollars and Eighty two cents the price at which the same was sold and by these presents as Auditor of the aforesaid State do grant bargain and sell all the right title interest and

claim of the State of Illinois to the real property
above described to the said Chester V. Woodward
his heirs and assigns to have and to hold
said part lot or parcel of Land to the said
Chester V. Woodward and his heirs and assigns
forever. In testimony whereof I have hereunto
subscribed my name and affixed

the seal of my said
Office this Twenty fourth
day of February A.D. 1846

Wm L D Ewing

Auditor of Public
Accounts

Recorders Office March 3^d 1846

State of Illinois Marshall County

I John Purus Recorder of said County
hereby certify that I this day Recorded the
within Deed in Book C pages 535 & 36.

John Purus Recorder

The Plaintiff objected to said deed
being read in evidence which said ob-
jection the Court overruled and admitted
the evidence. Plaintiff counsel then ex-
cepted to the opinion of the Court - Defendant
then offered in evidence a deed from Chester

S Woodward to William H Woodward dated
January 20th A.D. 1852 to the Defendant for
the same Land described in the patent before
set forth which was read without objection
Defendant then offered in evidence the
collectors receipts for the State County Township
Road and School Tax for the years 1847, 1848
1849, 1850, 1851-1852 & 1853 upon said
Lot which were read without objection

Defendant then introduced Archibald
Spence who testified that he plowed up the
Lot in controversy in the fall of the year 1845
for said Chester S Woodward, that he rented
the same from said Woodward in the Spring of 1846
the same being then fenced and that he raised
a crop upon said Land that year and
paid the rent to said Chester S Woodward that
said Lot has been in the possession of said
Chester S Woodward and said William S
Woodward from that time until the present
that said William H Woodward has resided
upon said Lot for the last three or four years
there being a house upon the same, the house
being built three or four years ago and trees
and shrubby ^{there being his actual residence on the lot before then} planted ^{on} upon said Lot. This
was all the evidence in the cause. The plaintiffs
counsel insisted that the evidence offered by the
defendant was insufficient to maintain

this action on his part and the defendants counsel insisted that the evidence offered by the plaintiff was insufficient to enable him to maintain this action, The Court decided that the plaintiff was entitled to recover under the evidence, and gave judgement accordingly for the Plaintiff. And the Defendants counsel then and there excepted to the Decision and judgement of the Court, aforesaid and requested the Court to sign and seal this bill of exceptions which is done

Edwin S. Celand,
Judge &c



Be it remembered that on this Twenty third day of November AD 1854 it being within the time allowed by the order in which to file this appeal Bond the Defendant comes and files his said Bond which is in words and figures as follows to wit:—

Appeal
Bond

Know all men by these presents that We William Woodward and Chester J Woodward of the County of Marshall and State of Illinois are held and firmly bound unto William A. Blanchard in the penal sum of one hundred dollars for the payment of which well

and truly to be made we and each of us bind our
selves our heirs executors & Admins firmly by
these presents. Signed sealed and dated At Vacou
this 23^d day of November A.D. 1854.

The condition of the above bond is such
that in the above entitled suit which was
decided at the October Term A.D. 1854 of
the Circuit Court of said County and where-
as the said William Woodward has taken an
appeal to the Supreme Court of the State
now if the said William Woodward shall
well and truly and without delay prosecute
his appeal with effect and shall pay all
costs that may be awarded against him
in said Supreme Court upon the trial
or dismissal of said appeal and shall
abide the order or decision of said su-
preme Court then this bond shall be
null and void otherwise to remain in
full force. Signed, sealed and approved
before me this 23^d day of November
A.D. 1854

W. W. Woodward *Seal*
Chester S. Woodward *Seal*
by Silas Ramsey
his Atty in fact

State of Illinois }
Marshall County } p

J. Greenberry L. Fort
clerk of the circuit-court of said County
do hereby certify that the foregoing is
a true and correct transcript of the record
and copies of the papers in the case of
William A. Blanchard, against William
Woodward a suit in Ejectment heard
and tried in said court at the October
Term thereof A.D. 1854, as appears in
my office

In Testimony whereof I
have hereunto set my hand
and affixed the seal of said
court at Lacon in said
County this 30th day of
May A.D. 1855.

Greenberry L. Fort,
clerk.

Clerks fees

Transcript \$5.00

Cert & seal . 35

\$5.35

And now comes The said appellant
by Glover & Co. his atty & says That in
the record & proceedings aforesaid and
in the rendition of the Judgment
aforesaid there is manifest error in
this to wit

The Court erred in admitting
in evidence the Patent from John Reynolds
& Rees

The Court erred in finding the
issue for the plaintiff

The Court erred in rendering the Judgment
aforesaid in manner & form aforesaid

The finding of the Court was not
sufficient to support the Judgment

For which errors & others in said record
Manifest he prays said Judgment be
reversed

Glover & Co. for appellant

Forinder in error

E. W. Hazard for appellee

~~W. H. Hazard~~ for appellee

99

William A. Blanchard
et al.

William Woodward

Transcript

Filed June 15. 1855.
S. Deland Clk.

Chas Geo & Sons

1855

The Journal

Wm. A. Blanchard
et al.

William Woodward } In the Supreme Court of
vs } the State of Illinois
William A. Blanchard } Error to Marshall Co.

This is an action of ejectment brought by William A. Blanchard the appellee against William Woodward, the appellant, to recover possession of Lot No. 280 in the town of Henry, County of Marshall (formerly Putnam) State of Illinois, included in Section No. 16, township 13 North, Range 10 East of the 4th P.M.

On trial the deft. admitted possession of the premises. The Plaintiff then read in evidence a Patent from the State of Illinois conveying the Lot in controversy to Albert Reeves (a copy of which Patent may be seen in the abstract filed in this case, but not in the Record, as the Clerk by mistake inserted a wrong one) to which said Patent the defendant objected as insufficient &c. and has assigned error therefor.

The ground of objection never having been stated by counsel I find it difficult to anticipate the point that may be raised against the admission of said Patent in evidence. The Court will therefore, I trust, make allowance if I fail to correctly anticipate the objection to be raised, and blindly fortify myself at a point not to be attacked. I frankly acknowledge my inability to discover any ground whatever to sustain an objection to the ~~inadmissibility~~ insufficiency of the deed or its inadmissibility in evidence that strikes my mind as having even the shadow of plausibility in it. I may however in this

betray my own want of sagacity and consequent lack
of skill in ~~my~~ making my defense. The Court are
aware that by Act of Congress passed April 18th 1818
entitled "An Act to enable the People of the Illinois Territory
to form a Constitution and State Government and for
the admission of such State into the Union on an
equal footing with the original States" offered to the
people of the territory for their free acceptance or
rejection certain propositions, which if accepted
by the People of said Territory were to be obligatory
upon the United States, one of which propositions
was "that section sixteen in every township, and when
such section has been sold, or otherwise disposed of,
other lands equivalent thereto, and as contiguous
as may be, shall be granted to the State for the
use of ~~such~~ the inhabitants of such township for
the use of schools" which propositions were accep-
ted by an Ordinance passed in Convention Aug.
26th 1818. thereby vesting the aforesaid sections (16)
in the State of Illinois as provided in said Act.

By acts of the Gen. Assembly of the State of Illinois
approved, Jan. 23^d 1829, Act approv. Oct. 15th 1831, and
Act approv. March 5th 1833. it was provided that
whenever the inhabitants of any township should
desire the sale of the Common School land of
the township, they shall present a petition to the
School Commissioner of their County for the sale
thereof, which petition should be signed by at least
two-thirds of the white male inhabitants of the township
over twenty one years of age &c. The Act contains other
provisions, which I deem it unnecessary to recite
here, as they are undoubtedly familiar to the
Court. Now it may be urged by the Counsel

for the appellant that this Patent partakes of the character of a Sheriff's & Collector's deed, and that it was incumbent upon the part of the plaintiff to have laid a foundation for the introduction of said Patent, ~~by showing~~ by showing all the provisions of said acts to have been complied with, prior to the issuing of the Patent, before reading said Patent in evidence. If such position be taken I ~~must~~ respectfully refer the Court to Sec. 35 of the School Law, Rev. Stat. page 501. This section first declares that every purchaser of Common School Land shall be entitled to a Patent from the State, conveying and assuring the title: and directs that Patents shall be made out by the Auditor from returns made to him by the School Commissioner, that said Patent shall contain a description of the land granted, shall be in the name of and signed by the Governor, countersigned by the Auditor, with the great seal of State affixed thereto by the Secy of State, and shall operate to vest in the purchaser a perfect title in fee simple. The deed or Patent in this case is in perfect conformity with the act, and recites the fact that it was made from a return made to the Auditor of Public accounts by Nathaniel Chantlain School Commissioner and agent for the inhabitants of Putnam County. I take it that the deed in the language of the act "operates to vest in the purchaser a perfect title in fee simple," and that the Patent is evidence of the fact, and that which was required to be done in order to obtain the Patent, is presumed to have been done legally and properly, otherwise the Auditor would

not have made out the Patent. It was made his duty to make out the Patent from the return made by the Commissioners, and the presumption is that the ~~Commissioner~~ Auditor made out his Patents in conformity with that return. There is this distinction between a Sheriff's and Collector's deed and the Patent in question. The Sheriff and Collector by process of law, when duly compelled with, and by virtue of his sale, divests the person named in his writ (against the will of that person,) of the title to the property sold, and vests the title in the purchaser in this Patent. at the request of the party interested to wit: the inhabitants of the township, the State divests itself of the title in said land, and vests the same in the purchaser. I will not trouble the Court by further argument upon this point, as I apprehend the principles which govern the Case for more familiar to the Court than myself.

The plaintiff next offered in evidence a deed from Abner Reeves to William A. Blanchard the plaintiff which was read without objection and here rested his case.

The defendant then read in evidence a deed from the Auditor of Public Acts dated Feb 24th 1846, to Chester S. Woodward, ~~which is in the same form and for the~~ which was objected to by Plff. and objection overruled by the Court, and accepted by Plff. The deft then offered in evidence a deed from C. S. Woodward to William Woodward the defendant, dated June 20th 1862 for said lot. Deft. next offered the Collecting receipts for 1847. 48. 49. 50. 51. 52. & 53. for taxes.

Luckinbal Spence then testified that the premises

in question have been under improvement since the year 1845. That the lot has been in possession of Chester S. Woodward or William Woodward from that time until the time of trial. That William Woodward, deft. below has resided on said lot for the last 3 or 4 years. Need close the evidence

The defendant claiming that his title is such that connected with his possession and payment of taxes for seven consecutive years entitles him to the benefit of Section 8. of the Revised Statutes, p. 349.

This section requires that the land claimed by defendant should be possessed by actual residence there for seven years, as provided in Sec. 9. The proof shows the premises in question to have been improved and cultivated by Chester S. Woodward from 1845 up to 1852, that they were then conveyed to his son William Woodward, the appellant who has resided on said lot ever since, making some 3 or 4 years. This proof does not meet the requirement of the statute, ~~four~~ seven years actual residence, the defendant cannot therefore avail himself of that Statute.

The defendant may also claim that if he is not within the provisions of the aforesaid Statute, that nevertheless he is within the statutory provisions contained in Section 8. of Chap. 24 of the Rev. Stat. p. 104 entitled conveyances. To defeat the defendant's claim (should he make one) on this point I need only to refer the Court to the fact that the defendant has not made out a prima facie title. The deed ~~from~~ from the State to Chester S. Woodward recites that

whereas it appears from the Certificate of the Clerk
of the County Commissioners Court of Marshall
County that he did on the first day of September
AD 1845 at the town of Lucan in conformity with
the requisitions of an Act of the General Assembly
approved March 3^d 1845, expose to public sale, the
same having been forfeited to the State for the non
payment of the taxes, interest & costs due thereon
for the years 1839 & 41 the following described Lots
to wit No. 270 - 271 - 280 - 281 in the town of Henry
Marshall County Ill." The Act of March 3^d 1845
Sec. 80. p. 449 of Rev. Stat. directs that all lands and
town lots which have been forfeited to the State shall
be exposed to sale and sold ~~at~~ Public Auction on
the first Monday of Sep. 1845. Section 79 of the
same Act provides that "Every tract of land or
town lot offered for sale by any collector as here-
inbefore provided, and not sold for want of
bidders, shall be, and the same is hereby declared
forfeited to the State of Illinois, and thenceforth
all right, title and claim of the former owner
or owners, shall be considered as transferred
to and vested in the State" Not raising the
question as to the validity or constitutionality
of the rights of the State to forfeit the lands
of its citizens in this manner, concerning
which I query, I will proceed to state that
I find no other law that makes mention
of forfeiting the lands to the State under
such circumstances, but I do find the law
to have been, in the years 1839 & 41, the time
when this lot of land was struck down to the
State to have been this. "If no person shall

offer to pay the said amount (the amt of the taxes) for the whole tract, the same shall be struck off to the state, and the state set down as the purchaser thereof for the said amount due thereon as aforesaid." I ask was this a forfeiture to the state; if so, then ~~the~~ all land sold to bidder was a forfeiture to the purchaser. Did the Act of 1845 warrant the sale of said lot as land forfeited to the state; when the state had only become the purchaser under the provisions of the Act aforesaid? See Purples Real Estate Statutes page 256. Sec. 35. Whether it was right and proper for the Clerk of the County Commissioners Court to sell said lot or not as land forfeited to the state, I maintain that the state at the sale of said land for the taxes of 1839 and 1841 occupies the position of a purchaser, and like any other purchaser, is, as well as all holding under her bound to show a valid judgment and precept before it can be contended that a prima facie Case of title is made out. The defendant in this case holding under said deed, if he would ^{have} availed himself of the benefit of the aforesaid Statute, to wit: Sec 8. of Chap 24. Rio Stat. should have produced in evidence, a valid judgment and a valid precept, the same as he would have been required to do, had he held under any other purchaser but the state. This he failed to ^{do}, and cannot therefore ^{justly} claim to be within the provisions of said act.

It is assigned as error that the Court erred in rendering the judgment in manner and

form aforesaid" also "That the finding of the Court was not sufficient to support the judgment"

It is true the Clerk in making up his record has omitted the word "premises" using in its stead the word "thereof" producing it may be contended some ambiguity or uncertainty, but I take it that the Court are bound to presume in favor of a correct finding by the Court below where the question is one of mere doubt. Again if the rendering of the judgment is not correct in manner and form, I suppose it would not be ground of reversal of judgment, but a matter to be corrected by the Court. The finding of the Court was "the defendant is guilty in manner and form as charged in the said plaintiff's declaration mentioned, and that the said William Blanchard, plaintiff is seized thereof in fee simple" meaning ~~the~~ seized of the premises mentioned in the plaintiff's declaration; and the judgment which follows as the Court will see is based upon such finding as the language clearly indicates to wit: "It is considered ordered and adjudged by the Court that the said plaintiff have restitution of the said premises in said plaintiff's declaration mentioned from the said defendant and that a writ of restitution issue therefor" The Clerk certainly could be at no loss in making out his writ of restitution as to the premises to be described, to wit those in the plaintiff's declaration mentioned. Now it is a maxim in law that "a passage will be best interpreted by reference to that which precedes and follows it." Upon this principle there can be no misunderstanding the

true meaning of the foregoing passage. In construing a deed, the law will judge of a deed, or other instrument, consisting of divers parts or clauses, by looking at the whole; and will give to each part its proper office, so as to ascertain and carry out the intention of the parties. I apprehend this rule applicable to the present case. Another maxim applicable to the question in issue is "That is sufficiently certain which can be made certain". Telling that I have already said more upon the points in issue than the safety of my cause really demands I submit^{it} to your Honors without further argument.

E. W. Hazard
for Appellee

William Woodworth
 &
 William A. Blanchard

Argument
 for Appellee

Filed July 24, 1855

L. Deland Clerk

It is insisted by the appellant in this case that the proof shows that his defence was clearly made out

- 1st The Rev Statutes page 349 sec 8 & sec 9 provides that 1 Year possession, ^{& actual residence thereon} & payment of taxes under a connected title from any person authorized by law to sell land for the non payment of taxes shall be available to defeat this action, we insist that the proof in this case shows actual occupation & cultivation & payment of taxes for 1 Year
- 2^d We present the question whether such a deed from the Auditor be not a colour of title made in good faith which coupled with payment of taxes for seven successive Years protects the holder of such deed to the extent of his paper title.
Is not the Auditors deed colour of title, we insist that to require us to produce and prove the ~~deed~~ Judgment and precept under which the land was sold to the state accompanying the Auditors deed would require us to make a perfect title by way of showing colour of title
- 3 The finding of the Court will not support the Judgment. The form of the finding is as follows. The Court finds the defendant guilty in manner & form as in said plaintiffs declaration mentioned And that said

William A. Blanchard is seize thru in fee simple

The Statute provides that the verdict shall specify the estate which shall be established on the trial by the plaintiff in whose favor it shall be rendered whether such be in fee or Res Stat p 207 See 7th

There is no finding what estate the pty was in the premises

The Grammatical construction of the finding is that the pty is seize of the declaration in fee simple, but it certainly is not true that the finding shows that pty was seize of the premises in fee simple.

The evidence does not support the declaration

The plaintiff in his declaration claims, "Lot No two hundred & eighty on on town plat of town of Henry in said county of Marshall in divide in section 16 in Township 13 North Range 10 East of the 4th principal Meridian containing 80 feet by 160 feet

The Patent which is the foundation of pty's title is for

"A lot of land lying in the county aforesaid being a part of section numbered 16 in Township 13 North Range 10 East of 4th principal Meridian Granted by the United States to the State of Illinois for the use of the inhabitants of Township No 13 North

Rang 10 east of the 4 principal Meridians
for the use of schools known and design-
-ated on the map of said section
as made by the Trustees of school lands within
said Township as Lot No Two hundred and
eighty of section 16, ^{Town 13} North Rang Ten east of the
4 principal Meridians

There is no evidence showing
or tending to show that Lot No 280 in the town
of Henry is Lot 280 of Sec 16 T 13 R 10,
the lots may have been $\frac{1}{4}$ a mile apart
The patent should have been accompanied
by proof showing the lots thus differently
described to be the same, as it is there is no
proof that the lot mentioned in the pet's
declaration & the lot mentioned in the
plea are the same

It seems to me there is no
answer to this objection

B. C. Cook

11 Dec R 402

William Woodard

vs

William A. Blanchard

Argument for Appellants

B. C. Coover