

14640

No. _____

Supreme Court of Illinois

Meixsel

vs.

Lutz

STATE OF ILLINOIS.
SUPREME COURT,
THIRD GRAND DIVISION.

No. 209

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

Marshall

75

Lat

1864

State of Illinois, } Third Grand Division,
SUPREME COURT, } APRIL TERM, A. D. 1864.

GEORGE P. MEIXSELL *et al.*

vs.

JOHN LUTZ.

ERROR TO TAZEWELL.

This was a bill filed by the defendant in error, February, 1862, alleging that he recovered a judgment against one Phares Meixsell, one of the defendants, on the second day of September, 1861, for \$525 and costs, and had execution issued and returned, no property found, against Phares Meixsell; and that Meixsell was well able to pay it, but had fraudulently conveyed his property to defraud his creditors; and alleging that, on the 21st of September, 1852, Phares Meixsell was indebted to him in the sum of \$1,000, and said indebtedness originated in money loaned and work and labor done by him for Meixsell; that Phares Meixsell bought of James Phillips the west half of the northeast quarter of section thirty-one, town twenty-three, range four, and took deed in the name of George P. Meixsell, his son, then but five years old, and without money to pay for the same, and that Phares Meixsell actually paid for the land; and that he loaned Meixsell part of the money to pay for the land; and that Meixsell was at that time greatly indebted to other persons, and took the conveyance in the name of George P. Meixsell, to hinder and delay his creditors; and that Phares Meixsell is still greatly indebted; and that the deed from Phillips to George P. Meixsell ought to be set aside, and the land made subject to his debts, &c.; making Phares Meixsell and George P. Meixsell defendants, waiving their answers under oath, and praying that the deed from Phillips might be set aside, and for general relief.

4. The defendants, Phares Meixsell in person, and George P. Meixsell by his guardian, *ad litem*, deny all material allegations in the bill, and call for strict proof.
5. To which Lutz filed a general replication, and on hearing the evidence
6. in the cause, the court entered a decree setting aside the deed from James Phillips to George P. Meixsell, as fraudulent, and requiring, in default of payment of the judgment and costs to Lutz, that the land be sold to pay the same, &c.; to all of which the defendant, George P. Meixsell, excepted,
7. &c.

And the testimony in the cause was as follows:

A judgment in favor of Lutz, in the Tazewell county court, against Phares Meixsell, September 2d, 1861, for \$525 and costs.

Execution on said judgment, dated 14th September, 1861, and returned by the sheriff, no property found, December 2d, 1861.

Lutz then called James Phillips, who testified that he made a contract with Phares Meixsell, about September, 1851, to sell him two tracts of land, one of which was the land in controversy; the contract was verbal;

that Phares Meixsell paid him for it, and he made the deed to this tract to George Meixsell, the son of Phares Meixsell, at his request. The son paid
 11 no part of the purchase money. The deed was made September 1st, 1852. On cross-examination, he stated the money was paid at different times, and the last payment about September, 1852. Both tracts were paid for at the same time, and witness don't recollect to whom he conveyed the other tract.

12 Lutz then called one Frederick, who testified that he had known George Meixsell since 1850; he was then about five or six years of age; that Lutz worked for Phares Meixsell from 1850, for five or six years. Lutz got \$500 or \$600 at St. Louis, in 1851. Lutz told witness this; he had no knowledge of it himself. Phares Meixsell told witness he borrowed money of Lutz; did not say when, or what money; this was four or six years ago.

To all of which evidence defendants objected and excepted.

Lutz then called one Stoner, who testified that Phares Meixsell told him that he had a tract of land, 80 acres, conveyed to his son George, to keep his eastern creditors from bothering him, though he claimed he had paid them, and that they were not creditors. This was in 1858. He had heard Meixsell say he had some of Lutz's money, but he did not say how much. Lutz worked for Meixsell in 1857, and in 1856, when witness first came out to the country. Meixsell has been in possession of the land witness speaks of ever since he knew it.

Lutz then called one Hagerman, who testified that he knew all the parties, and had for a long time; that George P. Meixsell was now about fourteen or fifteen years old; knew Lutz in 1852, when he came to Meixsell's; he worked for Phares Meixsell about six or seven years; don't remember just when he came to Meixsell's, or when he left. Lutz's work was worth about \$15 per month. Don't remember whether he worked in the spring and summer of 1852 or not.

13 Lutz then called one Trowbridge, who testified he had known Meixsell about eighteen years; thought Lutz came to Meixsell's as early as 1850; can't say certainly; thinks he was there from five to seven years. He was sick part of the time; is of impression he was not working for wages all of the time. The west half of the northeast quarter of section thirty-one, town twenty-three north, range four, lies east of and adjoining the 60 acre tract on which Meixsell is, and adjoining witness' land. Meixsell told witness the land was bought of Phillips and deeded to George; understood that Lutz got money from St. Louis, and know of his going to St. Louis for several years; understood from Meixsell that he got money of Lutz. The first time Lutz went to St. Louis was in 1851 or 1852; and don't know when Meixsell told me he got money of Lutz; and think George is about fifteen or sixteen years old. On cross-examination, he said that he was called to Meixsell's to witness the will of Lutz, in 1854 or 1855. Lutz was then very sick, and thought he would die. Thinks Lutz was gone a week at a time, and went yearly to St. Louis. He understood that Lutz was not working on wages all the time, but was making his home at Meixsell's. He did not work as if he was working for wages; understood this from Lutz and Meixsell; can't say when; I understood that Lutz was not going to work for wages, and was not going to work so hard, and was going to make his home there for life, and don't think he did work so hard; can't say whether this was before or after his sickness. I heard Meixsell say in the conversations we had about the land, that it was purchased with money he got through his wife, and none of Lutz's money went into it. This Lutz objected to.

On re-examination, he stated he did not know of Meixsell getting money through his wife, only as Meixsell told him; and he further stated, on cross-examination, that the conversations about the title to the land and the conveyance thereof were before the commencement of this suit.

- ¹⁴ To all of which evidence for Lutz, of the statements of Lutz and of Phares Meixsell, the defendant, G. P. Meixsell, at the time objected and excepted, because of the interest of said Phares Meixsell in making said statements, and because of their incompetency; but the court overruled the objections, and suffered the statements to be given in evidence, and George P. Meixsell excepted.

Defendants then called Silas Doud, who testified that he knew Lutz and Phares Meixsell; had known Meixsell since 1845, and Lutz since he first came to Meixsell's; don't remember exactly when that was; knows the tract of land sold by Phillips to Meixsell; at one time had a conversation with Lutz about the land; don't remember what time. He said the land was conveyed to George. More than a year after the contract was first made with Phillips, I think it was, that Lutz told me this. In this conversation Lutz approved of the transaction.

On cross-examination he said that, at the time of this conversation, Lutz was still working at Meixsell's. The time was some time after I learned the deed was made; I can't tell the exact time.

The defendant, George P. Meixsell, here moved the court for leave to examine the other defendant, Phares Meixsell, in his behalf; which motion was allowed by the court, and Phares Meixsell was sworn and testified:

That he knew George P. Meixsell; he was his son; knew Lutz, and was the same Meixsell mentioned in James Phillips' deposition, as having purchased the west half of the northeast quarter of section thirty-one, town twenty-three, range four. The contract was made about July, 1851, and the first payment was made September 29, 1851, and the last payment September 6, 1852. The deed was made September 21, 1852. Phillips was sick and sent for \$20, and consequently the deed was not made until after the payment. The money paid for the land was money that belonged to my wife; the money received from her father, and in part from her father's estate, after his death. A proposition was made by Lutz, in conversation with me and my wife, that if she would invest her money in the north 80 for the boy, he would get the money and take the south 80. This conversation was previous to making the contract. At the time, she had the greater part of the money derived from her father on hand; she got the balance afterward. She got her money about as follows, viz:

The first in March, 1848, from \$90 to \$100; the next Nov. 2d, 1850, \$125; on May 8th, 1851, \$60; May 6, 1852, \$70; July 1, 1852, \$43.

By the bargain with Phillips I was to pay \$4 50 per acre. Lutz was apprised of the fact that the deed was to be taken to my son before it was made to him. Lutz knew the deed was made to my son a few days after it was done. The south 80 conveyed by Phillips to Dolcher, is the same one that Lutz was to take. I sold it to Dolcher in the fall of 1851, for the same I had contracted to pay Phillips. Lutz did not furnish the money to pay for the south 80, as he had proposed to do. Mr. Lutz knew, from what I told him, that Dolcher was to take the land at the contract price. Lutz took the deed over to Dolcher himself. I did not invest any money of Lutz's in said land. I had not received any money of him when the deed was executed. Lutz commenced working for me about June, 1850,

at \$10 per month, or \$120 per year. I furnished him in clothing, boots and shoes, tobacco, what he wanted to drink, did his washing, &c., in payment for his services. He was sick some time, and spent some time in going to St. Louis. In 1850, he lost about a month in sickness and going to St. Louis; in 1851 he lost about two months by sickness; in 1852 he lost about two months by sickness, &c. He was dangerously sick in 1852; and made his will. He was sick at my house. Mrs. Meixsell waited on him. In 1852 we run over the accounts, but had no final settlement, to see what money he had had; what clothing, &c, he had had. He said the balance due him should go against the doctor's bill and attendance of Mrs. Meixsell during his sickness. This accounting was had not a great while after he recovered from his sickness. It was after the making of the deed. He continued to work for me until about September, 1858. I knew Martin Stoner, at the time he speaks of. I did not owe anything to eastern creditors. I did not owe any when I came to the country, nor when I bought the land, nor when it was paid for. Mr. Stoner and I are not on very good terms. There has been a controversy between us, and hard feelings between our families. I remember stating to Stoner that the deed was made to my son on account of the money of my wife being invested in the land at the request of her and Lutz.

On cross-examination he stated: My wife got from her father and his estate about \$500; don't recollect the exact sum. The first payment was in 1848. The identical moneys were not paid to Phillips. The second payment was sent in a certificate; it was part of her father's estate, and was sent by her agent, one Bryce, as were all the other sums named. None of these identical moneys were paid to Phillips. I think my wife got the same as the other heirs, and don't know whether her father made a will or not. There was an administrator appointed, who paid the money to the agent.

The two 80s were for sale. Lutz said if my wife would take the north 80, he would take the south 80. He told me to make the contract, and he would pay for it. I made the contract for the south 80, and paid part of the money. I raised the money myself. Lutz did not go to St. Louis in 1850. The first time he went to St. Louis was in 1851. He brought no money in 1851. On his return from St. Louis in 1852, he brought about ninety dollars. It was after the land was paid for, the latter part of September, 1852, I got the ninety dollars from him. He was not well when he returned from St. Louis, which was in September or October of 1852. He was violently sick at my house but once. In 1853 he got some money from St. Louis; don't know how much. I had borrowed no money of him at the time the deed was made. I may have owed Lutz a few dollars for labor. I gave him \$25 or \$30 when he went to St. Louis. I don't recollect how much his clothing was per annum. I cannot say how much I paid him up to the time the deed was made. I was not indebted east when the deed was made. I might have owed Lutz a few dollars on final settlement, if we had made one. He got no money the first time he went to St. Louis. The second time he did, and this I borrowed.

The defendant then moved the court for leave to examine Mrs. Meixsell, wife of Phares Meixsell, in his behalf, which motion was allowed; and on being sworn, she stated she was the wife of Phares Meixsell, and mother of George P. Meixsell, and was present at the conversation between her husband, herself and Lutz; and Lutz proposed that I should put money I had coming from the east in north 80, and he would get money from St. Louis, and take south 80. He came to our house in June, 1850. He was to work for ten dollars per month. He first went to St. Louis in 1851, but got no money. He went again in 1852. He got back from St. Louis the latter part of September, 1852. I don't know how much money he

brought back. He was violently sick in September and October of 1852. He was sick about six weeks in 1851. He lost about ten days' time in going and returning from St. Louis; was sick in fall of 1852, when he made his will. Lutz agreed, after his sickness in 1852, that the balance due for his wages was to go to pay his doctor's bill, me for my services in waiting on him, and what was left, George was to have. This was in the fall of 1852. I saw my husband give Lutz \$25 or \$30 when he went to St. Louis the second time. I know of my husband furnishing him clothing, good substantial wear. I had them made up myself. I did his washing and waited on him when he was sick. Mr. Meixsell furnished him boots and shoes, and I furnished him six pairs of socks per year. Father gave me a little over \$90 when I left there. After his death I got \$125, \$60, and some other amounts in checks. This is the money Lutz wanted me to put in the land. The money was invested at my request, upon the proposal of Lutz, for the benefit of the boy.

17 On cross-examination, she said, Lutz came in 1850, and did not go to St. Louis that year. He went in 1851, but got no money. Went again in 1852, and got some money. There were seven or eight children, heirs of my father. I don't know what the others got. He made no will, and don't know how much of his estate was to divide. I got between \$400 and \$500 from him and his estate. The \$90 paid me was to make me equal in setting out with the other children. Mother was administratrix, and my agent collected my part of her. I got money in 1853 and 1854, from the estate.

Defendants here rested.

The plaintiff, Lutz, through his counsel, then moved the court to swear the complainant as a witness in his own behalf, to which defendant, George P. Meixsell, objected; but the court overruled objections, and Lutz, the plaintiff, was sworn as a witness, and testified that he knew the defendants; went to work for Phares Meixsell in June, 1850. He was to give me \$120 per annum. I went to St. Louis in August or September, 1850, and got money from Beck & Falk to pay my expenses that trip. My nephew, Nicholas Fredrick, came up from St. Louis with me on my return. I got no money that trip; went after my clothing. I had ague three or four times, two or three days. Worked for Beck & Falk two weeks, and lost a week or more going to St. Louis; altogether lost three or four weeks that year. Went to St. Louis in 1851, about the middle of August; got \$8 or \$10 to pay my expenses down, and brought back \$125 in silver and gold. I loaned the money to Meixsell. He spoke for it; said he would give me good interest. In 1851 I was not sick; I lost about a week or ten days. I threw off a month for lost time. I went to St. Louis in September, 1852, and Meixsell gave me \$5 or \$10 to pay my expenses. I brought that time back \$130, and loaned it to Meixsell. I did not know that the land was deeded to George until I went to Stoner's to work; Stoner told me. I don't know that the money I loaned him was paid to Phillips for the land, but he owed me, when he paid for the land, four hundred dollars. He owed me wages for 1851 and 1852, \$164, and borrowed money, \$255, in all \$419, before September 21st, 1852, when the deed was dated. I believe it was 1853 or 1854 that I was so seriously sick, when Trowbridge was sent for to witness my will. I don't know that I ever told Meixsell to take the deed in his boy's name. My washing and mending were to be thrown in, not taken from my wages. I got from Meixsell in clothing, tobacco and lost time, twenty-five or thirty dollars per year, except the year I was so sick, when I lost more time.

On cross-examination, he stated: My money fell due in St. Louis, first payment, July, 1851. I left my trunk, with sundry clothes in it, and went

after it, not after the money. When I loaned money to Meixsell, I took his note. I have not got it now. I told him to buy the 160, Phillips' land. I wanted the rest of the land after Meixsell took the length of his 60 out of it. I don't know anything about taking the deed from Phillips to Dolcher. I did not take the deed, because I did not get all my money, only one payment, \$130. This was the second payment, but I did not get money enough to pay for the land.

On re-examination, he said: I gave up Meixsell small notes and took one large one, which I sued him on.

Defendant called Henry Vogle, who testified that he knew Lutz and Meixsell, and that when Lutz first went to St. Louis for his money, he did not get any.

Complainant now recalled Martin Stoner, against the objections and exceptions of defendants, who testified that his wife was a sister of Mrs. Meixsell, and that there was due and paid to my wife from her father's estate, in 1852, \$50; in 1853, \$48; and in 1854, \$45; and this was all my wife received up to that time. She was entitled to an equal share. None of the heirs got any money prior to 1852. I have been married to my wife since 1843. Her father died in 1848. I don't know about his giving Mrs. Meixsell money before his death, and don't know that Meixsell was indebted east when we talked about the conveyance to his son.

On cross-examination, he said: My wife's mother and N. Leister administered. I don't know that the money was not sent.

Complainant then called John Beck, who testified, he knew the parties.
 10 Lutz went to St. Louis in 1850. I gave him money to go with. He went after harvest.

On cross-examination, he said: I know it was in 1850, because when Lutz hired to Meixsell, it was understood in the bargain that he should help me harvest that year.

Complainant next recalled N. Fredrick, against the objections and exceptions of defendants, who testified that Lutz went to St. Louis in 1850, about the middle of August. I came up with him.

And this was all the testimony in the case.

And the plaintiff in error assigns for error in the foregoing record:

1. The court received improper evidence for the complainant.
2. The testimony given in the case does not support the finding of the court, or the decree rendered.
3. The decree is manifestly against the law and the facts.
4. The decree, upon the evidence, should have been for the defendants, and the bill dismissed.

209 36
Eugene Murrell
et al.

John Lutz

Abstract

Exhibit to Report

Filed March 20, 1864
J. L. and M.

one negro one, which I send him on.
On re-examination, he said: I gave up Murrell small notes and cash
money enough to pay for the land.
one payment, \$130. This was the second payment, but I did not pay
over. I did not take the deed, because I did not get all my money; only
of it. I don't know anything about taking the deed from Phillips to Murrell.
I wanted the rest of the land after Murrell took the patch of his 60 out
his note. I have not got it now. I told him to pay the 100 Phillips had
after it, not after the money. When I loaned money to Murrell, I had

and the bill dismissed.
4. The depositions upon the evidence should have been for the defendants,
and the bill dismissed.
5. The depositions are manifestly against the law and the facts.
6. The testimony given in the case does not support the finding of the
jury on the facts.
7. The court received improper evidence for the complainant.
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Complainant next testified N. K. Smith, against the defendants and except
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To all of which evidence defendants objected and excepted.

Lutz then called one Stoner, who testified that Phares Meixsell told him that he had a tract of land, 80 acres, conveyed to his son George, to keep his eastern creditors from bothering him, though he claimed he had paid them, and that they were not creditors. This was in 1858. He had heard Meixsell say he had some of Lutz's money, but he did not say how much. Lutz worked for Meixsell in 1857, and in 1856, when witness first came out to the country. Meixsell has been in possession of the land witness speaks of ever since he knew it.

Lutz then called one Hagerman, who testified that he knew all the parties, and had for a long time; that George P. Meixsell was now about fourteen or fifteen years old; knew Lutz in 1852, when he came to Meixsell's; he worked for Phares Meixsell about six or seven years; don't remember just when he came to Meixsell's, or when he left. Lutz's work was worth about \$15 per month. Don't remember whether he worked in the spring and summer of 1852 or not.

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On re-examination, he stated he did not know of Meixsell getting money through his wife, only as Meixsell told him; and he further stated, on cross-examination, that the conversations about the title to the land and the conveyance thereof were before the commencement of this suit.

- ¹⁴ To all of which evidence for Lutz, of the statements of Lutz and of Phares Meixsell, the defendant, G. P. Meixsell, at the time objected and excepted, because of the interest of said Phares Meixsell in making said statements, and because of their incompetency; but the court overruled the objections, and suffered the statements to be given in evidence, and George P. Meixsell excepted.

Defendants then called Silas Doud, who testified that he knew Lutz and Phares Meixsell; had known Meixsell since 1845, and Lutz since he first came to Meixsell's; don't remember exactly when that was; knows the tract of land sold by Phillips to Meixsell; at one time had a conversation with Lutz about the land; don't remember what time. He said the land was conveyed to George. More than a year after the contract was first made with Phillips, I think it was, that Lutz told me this. In this conversation Lutz approved of the transaction.

On cross-examination he said that, at the time of this conversation, Lutz was still working at Meixsell's. The time was some time after I learned the deed was made; I can't tell the exact time.

The defendant, George P. Meixsell, here moved the court for leave to examine the other defendant, Phares Meixsell, in his behalf; which motion was allowed by the court, and Phares Meixsell was sworn and testified:

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The first in March, 1848, from \$90 to \$100; the next Nov. 2d, 1850, \$125; on May 8th, 1851, \$60; May 6, 1852, \$70; July 1, 1852, \$43.

By the bargain with Phillips I was to pay \$4 50 per acre. Lutz was apprised of the fact that the deed was to be taken to my son before it was made to him. Lutz knew the deed was made to my son a few days after it was done. The south 80 conveyed by Phillips to Dolcher, is the same one that Lutz was to take. I sold it to Dolcher in the fall of 1851, for the same I had contracted to pay Phillips. Lutz did not furnish the money to pay for the south 80, as he had proposed to do. Mr. Lutz knew, from what I told him, that Dolcher was to take the land at the contract price. Lutz took the deed over to Dolcher himself. I did not invest any money of Lutz's in said land. I had not received any money of him when the deed was executed. Lutz commenced working for me about June, 1850,

at \$10 per month, or \$120 per year. I furnished him in clothing, boots and shoes, tobacco, what he wanted to drink, did his washing, &c., in payment for his services. He was sick some time, and spent some time in going to St. Louis. In 1850, he lost about a month in sickness and going to St. Louis; in 1851 he lost about two months by sickness; in 1852 he lost about two months by sickness, &c. He was dangerously sick in 1852, and made his will. He was sick at my house. Mrs. Meixsell waited on him. In 1852 we run over the accounts, but had no final settlement, to see what money he had had; what clothing, &c., he had had. He said the balance due him should go against the doctor's bill and attendance of Mrs. Meixsell during his sickness. This accounting was had not a great while after he recovered from his sickness. It was after the making of the deed. He continued to work for me until about September, 1858. I knew Martin Stoner, at the time he speaks of. I did not owe anything to eastern creditors. I did not owe any when I came to the country, nor when I bought the land, nor when it was paid for. Mr. Stoner and I are not on very good terms. There has been a controversy between us, and hard feelings between our families. I remember stating to Stoner that the deed was made to my son on account of the money of my wife being invested in the land at the request of her and Lutz.

On cross-examination he stated: My wife got from her father and his estate about \$500; don't recollect the exact sum. The first payment was in 1848. The identical moneys were not paid to Phillips. The second payment was sent in a certificate; it was part of her father's estate, and was sent by her agent, one Bryce, as were all the other sums named. None of these identical moneys were paid to Phillips. I think my wife got the same as the other heirs, and don't know whether her father made a will or not. There was an administrator appointed, who paid the money to the agent.

The two 80s were for sale. Lutz said if my wife would take the north 80, he would take the south 80. He told me to make the contract, and he would pay for it. I made the contract for the south 80, and paid part of the money. I raised the money myself. Lutz did not go to St. Louis in 1850. The first time he went to St. Louis was in 1851. He brought no money in 1851. On his return from St. Louis in 1852, he brought about ninety dollars. It was after the land was paid for, the latter part of September, 1852, I got the ninety dollars from him. He was not well when he returned from St. Louis, which was in September or October of 1852. He was violently sick at my house but once. In 1853 he got some money from St. Louis; don't know how much. I had borrowed no money of him at the time the deed was made. I may have owed Lutz a few dollars for labor. I gave him \$25 or \$30 when he went to St. Louis. I don't recollect how much his clothing was per annum. I cannot say how much I paid him up to the time the deed was made. I was not indebted east when the deed was made. I might have owed Lutz a few dollars on final settlement, if we had made one. He got no money the first time he went to St. Louis. The second time he did, and this I borrowed.

The defendant then moved the court for leave to examine Mrs. Meixsell, wife of Phares Meixsell, in his behalf, which motion was allowed; and on being sworn, she stated she was the wife of Phares Meixsell, and mother of George P. Meixsell, and was present at the conversation between her husband, herself and Lutz; and Lutz proposed that I should put money I had coming from the east in north 80, and he would get money from St. Louis, and take south 80. He came to our house in June, 1850. He was to work for ten dollars per month. He first went to St. Louis in 1851, but got no money. He went again in 1852. He got back from St. Louis the latter part of September, 1852. I don't know how much money he

brought back. He was violently sick in September and October of 1852. He was sick about six weeks in 1851. He lost about ten days' time in going and returning from St. Louis; was sick in fall of 1852, when he made his will. Lutz agreed, after his sickness in 1852, that the balance due for his wages was to go to pay his doctor's bill, me for my services in waiting on him, and what was left, George was to have. This was in the fall of 1852. I saw my husband give Lutz \$25 or \$30 when he went to St. Louis the second time. I know of my husband furnishing him clothing, good substantial wear. I had them made up myself. I did his washing and waited on him when he was sick. Mr. Meixsell furnished him boots and shoes, and I furnished him six pairs of socks per year. Father gave me a little over \$90 when I left there. After his death I got \$125, \$60, and some other amounts in checks. This is the money Lutz wanted me to put in the land. The money was invested at my request, upon the proposal of Lutz, for the benefit of the boy.

- 17 On cross-examination, she said, Lutz came in 1850, and did not go to St. Louis that year. He went in 1851, but got no money. Went again in 1852, and got some money. There were seven or eight children, heirs of my father. I don't know what the others got. He made no will, and don't know how much of his estate was to divide. I got between \$400 and \$500 from him and his estate. The \$90 paid me was to make me equal in setting out with the other children. Mother was administratrix, and my agent collected my part of her. I got money in 1853 and 1854, from the estate.

Defendants here rested.

The plaintiff, Lutz, through his counsel, then moved the court to swear the complainant as a witness in his own behalf, to which defendant, George P. Meixsell, objected; but the court overruled objections, and Lutz, the plaintiff, was sworn as a witness, and testified that he knew the defendants; went to work for Phares Meixsell in June, 1850. He was to give me \$120 per annum. I went to St. Louis in August or September, 1850, and got money from Beck & Falk to pay my expenses that trip. My nephew, Nicholas Fredrick, came up from St. Louis with me on my return. I got no money that trip; went after my clothing. I had ague three or four times, two or three days. Worked for Beck & Falk two weeks, and lost a week or more going to St. Louis; altogether lost three or four weeks that year. Went to St. Louis in 1851, about the middle of August; got \$8 or \$10 to pay my expenses down, and brought back \$125 in silver and gold. I loaned the money to Meixsell. He spoke for it; said he would give me good interest. In 1851 I was not sick; I lost about a week or ten days. I threw off a month for lost time. I went to St. Louis in September, 1852, and Meixsell gave me \$5 or \$10 to pay my expenses. I brought that time back \$130, and loaned it to Meixsell. I did not know that the land was deeded to George until I went to Stoner's to work; Stoner told me. I don't know that the money I loaned him was paid to Phillips for the land, but he owed me, when he paid for the land, four hundred dollars. He owed me wages for 1851 and 1852, \$164, and borrowed money, \$255, in all \$419, before September 21st, 1852, when the deed was dated. I believe it was 1853 or 1854 that I was so seriously sick, when Trowbridge was sent for to witness my will. I don't know that I ever told Meixsell to take the deed in his boy's name. My washing and mending were to be thrown in, not taken from my wages. I got from Meixsell in clothing, tobacco and lost time, twenty-five or thirty dollars per year, except the year I was so sick, when I lost more time.

On cross-examination, he stated: My money fell due in St. Louis, first payment, July, 1851. I left my trunk, with sundry clothes in it, and went

after it, not after the money. When I loaned money to Meixsell, I took his note. I have not got it now. I told him to buy the 160, Phillips' land. I wanted the rest of the land after Meixsell took the length of his 60 out of it. I don't know anything about taking the deed from Phillips to Dolcher. I did not take the deed, because I did not get all my money, only one payment, \$130. This was the second payment, but I did not get money enough to pay for the land.

On re-examination, he said: I gave up Meixsell small notes and took one large one, which I sued him on.

Defendant called Henry Vogle, who testified that he knew Lutz and Meixsell, and that when Lutz first went to St. Louis for his money, he did not get any.

Complainant now recalled Martin Stoner, against the objections and exceptions of defendants, who testified that his wife was a sister of Mrs. Meixsell, and that there was due and paid to my wife from her father's estate, in 1852, \$50; in 1853, \$48; and in 1854, \$45; and this was all my wife received up to that time. She was entitled to an equal share. None of the heirs got any money prior to 1852. I have been married to my wife since 1843. Her father died in 1848. I don't know about his giving Mrs. Meixsell money before his death, and don't know that Meixsell was indebted east when we talked about the conveyance to his son.

On cross-examination, he said: My wife's mother and N. Leister administered. I don't know that the money was not sent.

Complainant then called John Beck, who testified, he knew the parties. Lutz went to St. Louis in 1850. I gave him money to go with. He went after harvest.

On cross-examination, he said: I know it was in 1850, because when Lutz hired to Meixsell, it was understood in the bargain that he should help me harvest that year.

Complainant next recalled N. Fredrick, against the objections and exceptions of defendants, who testified that Lutz went to St. Louis in 1850, about the middle of August. I came up with him.

And this was all the testimony in the case.

And the plaintiff in error assigns for error in the foregoing record:

209 36
Georg Meissel Stet
As

John Lutz

Abstract
Eva & Lozeumel

Gileil Apr. 20. 1864
J. Heand ckr

On re-examination he said: I gave up Meissel small notes and not
money enough to pay for the land.
one payment \$130. This was the second payment but I did not have
of it. I did not know anything about leaving the deed from Meissel to the
I wanted the rest of the land after Meissel took the benefit of his
his note. I have not got it now. I told him to pay the 100 dollars and
after it not after the money. When I found money to Meissel's 100

On re-examination he said: My money did not go to St. Louis but
I was to give it to him. I had more the
money and had some money in my hands. I had then Meissel in charge
of the deed in his box's name. My writing and writing was to be
sent to him to witness my will. I don't know that I ever told Meissel to
it was 1852 or 1853 and I was so strongly told when Meissel was
\$410 before September 25th 1852 when the deed was given. I gave
me money for 1853 and 1854 and returned money \$200 in all
but he never got it. I had the land and Meissel's paper. He once
told me that the money I should give him was sent to Meissel for the land
deed to George and I went to St. Louis to see him. I gave him
back \$130 and found it to Meissel. I did not know that the land was
and Meissel gave me \$20 or \$10 to pay my expenses. I thought that time
I thought of a note for the time. I went to St. Louis in September 1852
and got Meissel in error assigns for error in the foregoing record:
and the rest of the testimony in the case.

about the estate of August. I came up with him
those of defendants who testified that note went to St. Louis in 1850
(Complaint next recalled M. Frohlich against the objections and except-
help me before that year.

On cross-examination he said: I know it was in 1850 because when
note given to Meissel, it was understood in the bargain that he should

after Meissel.

Complaint then called John Lutz and asked him to prove the facts.

related. I did not know that the note was sent.

On cross-examination he said: I don't know whether and X. Meissel assign-

was indicated when we called him to the stand.

the money being paid to Meissel.

the money was not sent to Meissel.

in 1852 or 1853 and this was all

the money was not sent to Meissel.

the money was not sent to Meissel.

the money was not sent to Meissel.

the money was not sent to Meissel.

the money was not sent to Meissel.

the money was not sent to Meissel.

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Mas.

To a Term of the Circuit Court begun
and held at the Court House in Pekin
within and for the County of Tazewell and
State of Illinois on the first Monday of the
month of February A.D. 1862, Present, the
Honorable James Harriott Judge of the 21st
Judicial Circuit of the State of Illinois,
composed of the Counties of Mason, Tazewell &c
Chapman Williamson Sheriff and George A.
Harlow Clerk, to wit:

Be it remembered, that on the 3rd day of January
A.D. 1862, a Bill was filed in the office of the Clerk of the
Circuit Court of Tazewell County Illinois, on the Chancery
side thereof, in the words and figures following, to wit:

State of Illinois } ss. In Circuit Court To
Tazewell County } February Term 1862.

To the Hon James Harriott Judge of the
21st Judicial Circuit of the State of Illinois in Chancery
sitting.

Humbly complaining sheweth unto your Honor, your
orator John Lutz of Tazewell County, Illinois, That at a
Circuit Court in and for the County of Tazewell and State
of Illinois begun and held at the Court House in Pekin on
the first Monday in the month September 1861, on the 2^d
day of said September 1861, your orator recovered a Judgment
against one Thares Weissell for the sum of Five hundred

and twenty five $\frac{03}{100}$ Dollars and costs of suit, and
 your orator further shows that afterwards on the 14th day
 of September A.D. 1861, an execution was issued upon
 said Judgment directed to the Sheriff of Bazewell County
 to execute, and afterwards on the 2^d day of December A.D.
 1861, said execution was by said Sheriff returned no
 property found, which said records and proceedings yet
 remain on file in this Honorable Court, and which your
 orator prays to read upon the hearing of this cause, your
 orator further shows that said Meixsell is well able to pay
 said Judgment but has fraudulently conveyed his
 property for the purpose of defrauding his creditors, your
 orator further shows that on or about the 21st of
 September 1852, and while said Phares Meixsell was
 indebted to your orator in the sum of nearly one thousand
 dollars and which is the indebtedness in part upon which
 said Judgment referred to is founded for work and
 labor and for money loaned by your orator to said
 Meixsell, said Phares Meixsell purchased from one
 James Phillips the West half of the North east quarter
 of Section thirty one in Township twenty three (23)
 North of Range four West of the 3^d principal meridian
 in Bazewell County and took the deed in the name
 his son George P. Meixsell who was then only five years
 of age, and had no means money or property whatever with
 which to pay for the same, but the same was actually paid
 for by said Phares Meixsell, and part of the money
 was then loaned by your orator to said Meixsell with
 which to purchase said land, and your orator further

shows that said Thaus Meixsell was that time greatly
indebted to other persons than your orator, and that
Thaus Meixsell in taking the conveyance of said above
described land to his son George P. Meixsell did it for the
purpose of delaying and hindering his creditors, and is
a fraud upon the rights of the creditors of said Meixsell
and your orator further shows that said Meixsell was
at the time of said conveyance and still greatly indebted
and that said deed from said James Phillips to said
George P. Meixsell for the said West half of the North east
quarter of Section thirty one in Township twenty three
North of Range four West of the 3^d principal meridian
ought be set aside and the same made subject to the
Judgment of your orator. In consideration whereof, and
in as much as your orator is remediless except in this Hon^{ble}
Court where matters of this sort are properly cognizable,
To the end therefore that the said Thaus Meixsell and George
P. Meixsell may be made parties defendants to this bill, and
true perfect answer make to all and singular the allegations
thereof as fully and particularly as though the same were
again here repeated and they specially interrogated but not
upon oath the oaths of said Defendants being expressly
waived, and that said deed made by said Phillips to said
George P. Meixsell may be set aside and the said land above
mentioned and described may be sold to pay your orator
said Judgment and costs and costs of this suit and for
such other and further relief as the nature of the case may
require. Will your Honor also grant unto your orator
the People's writ of Subpoena to be directed to the Sheriff

of Bazewell County Illinois commanding him to summon
 said defendants Charles Mixsell and George P. Mixsell
 to personally be and appear before your Honor at the Court
 House in Pekin on the first Monday in the month of
 February 1862, then and there to answer the premises and
 abide the order and decree of this Honorable Court.
 Roberts & Ireland
 complainants vs
 John Lutz by
 Roberts & Ireland Esqs

Now afterwards, to wit: on the same day a summons
 was issued in said cause in the words and figures following
 to wit:—

State of Illinois) ss. The People of the State of Illinois, Do
 Bazewell County) the Sheriff of said County, — Greeting:
 We command you that you summon Charles
 Mixsell and George P. Mixsell if in your county, person-
 ally to appear before the Circuit Court of Bazewell County,
 on the first day of the next Term thereof, to be holden at the
 Court House in the City of Pekin, on the first Monday
 in the month of February next, to answer to a certain
 bill of complaint, filed in our said Circuit Court, on the
 Chancery side thereof, against them by John Lutz, and
 to do and receive whatever our said Court may order
 and decree in the premises, and have you then and
 there this writ, and make due return thereon in what
 manner you execute the same.

Witness George H. Marlow, Clerk of



said Circuit Court, and the seal thereof
affixed, at Pekin, this Third day of
January A.D. 1862.

Geo. H. Harlow Clerk.

Which summons was on the 21st day of January
A.D. 1862, returned by the Sheriff of Tazewell County with
the following endorsement, to wit:—

Served the within summons
by leaving a copy of the same with each of the within named
Thares Weissell & George P. Weissell this 16th day of January
A.D. 1862.

C. Williamson B. C. C.

L. B. Chambers Deputy

Now afterwards, to wit: at a Term of the Circuit
Court begun and held at the Court House in Pekin, within
and for the County of Tazewell and State of Illinois on the
first Monday of the month of February A.D. 1862, and on
the 3rd day of said month, it being the 1st day of said
Term the following proceedings were had, to wit:—

John Lutz

vs
Thares Weissell &

George P. Weissell

} Bill for Relief

Now comes the complainant by his
Solicitors Roberts & Ireland, and it appearing to the Court
that the Defendants have been duly served with process herein,

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and it further appearing to the Court that the defendant
George P. Meixsell is a minor under the age of 21 years.
It is ordered by the Court, that B. E. Pettyman be appointed
Guardian ad litem for the said minor defendant, and
on motion of complainant the defendants are ruled to
answer by Friday morning.

Now afterwards, to wit: on the 6th day of
February A.D. 1862, the answer of Phares Meixsell was
filed in said cause, which said answer is in the words and
figures following, to wit:-

" State of Illinois) ss February Term A.D. 1862.
" Tazewell County) of the Circuit Court of Tazewell Co.

" John Lutz)
" vs.) In Chancery
" Phares Meixsell &
" George P. Meixsell)

" The answer of Phares Meixsell one of the
" defendants to the Bill of Complaint of John Lutz complainant.

" This defendant now and at all times hereafter reserving
" unto himself all benefit and advantage of exception which
" can or may be had or taken to the many errors uncertainties
" and other imperfections in the said complainants said Bill
" of complaint contained for answer therunto, or unto so much
" and such parts thereof as this defendant it is advised is or
" are material or necessary for him to make answer unto,
" this Defendant answering saith, that he has no knowledge

of a Judgment having been recovered against him by said
complainant in the Circuit Court of Tazewell County
Illinois at the September Term 1861. for the sum of Five
hundred and twenty five ⁰³/₁₀₀ Dollars and costs of suit
and therefore denies that such is the fact. Defendant further
says he believes there was an execution served upon him
by the Sheriff of Tazewell County in the year 1861. in
favor of said complainant but whether it was the execution
mentioned in the complainant's Bill, and whether the
Sheriff returned it no property found the defendant
has no knowledge and therefore denies it. The Defendant
denies that he is able to pay the Judgment mentioned
in said Complainant's Bill if any, such Judgment had
been recovered against him, and denies that he has fraudu-
lently conveyed his property for the purpose of defrauding
his creditors, defendant further denies that on or about
the 21st day of September 1852, and while said defendant
was indebted to said complainant, that said defendant
purchased the land described in said Bill of one James
Phillips and took the deed in the name of his son George
P. Meixsell, and further denies that the same was
actually paid for by said defendant with his own money
or that any part of the money paid for the same was
loaned to defendant by the said complainant, said
defendant denies he was indebted to other persons than
complainant on the 21st day of September 1852. and further
denies that he took the conveyance of said land to his son
George P. Meixsell, and denies that such conveyance was
made to the said George P. Meixsell for the purpose of

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" delaying and hindering the creditors of said defendant
" and denies that said conveyance was a fraud upon the
" rights of said creditors of defendant, and denies that
" at the time of said conveyance he was greatly indebted.
" And now having fully answered the said complainant's
" Bill of Complaint the said defendant humbly prays
" to be hence dismissed with his reasonable costs and
" expenses in this behalf most wrongfully sustained.
" Couy Green
" Solicitors for Defendant } Charles Meixsell

Now afterwards, to wit: on the 10th day of
February A.D. 1862, the answer of B. E. Pettyman, Guardian
ad litem, was filed in said cause in the words and figures
following, to wit:

State of Illinois } In Circuit Court
" Dazewell County } February Term 1862.

" John Lutz)
" ")
" Charles Meixsell)
" George P. Meixsell)

The answer of George P. Meixsell and
" infant under the age of twenty one years, to wit: of the age
" of fourteen years or thereabouts, by Benjamin E. Pettyman
" his Guardian ad litem.

" The said infant defendant by B. E.

" Prettyman his Guardian ad litem for answer unto the
" said bill of complainant says that he is an infant under
" the age of twenty one years, and prays the Court to protect
" his interest in the matters in said Bill and compel said
" complainant to prove all the allegations fully and
" particularly.

" B. B. Prettyman
" Guardian ad litem

" Now afterwards, to wit: on the same day the com=
plainant filed his replication in said cause in the words
and figures following, to wit:

" State of Illinois } ss. In Circuit Court
" Sangamon County } February Term 1862.

" John Lutz }
" vs. } In Chancery
" George P. Meixsell
" Phares Meixsell

" The replication of John Lutz,
" complainant to the answer of Phares Meixsell and
" George P. Meixsell the defendants.

" This replicant saying
" and reserving unto himself all and all manner of
" advantage of exception to the manifold insufficiencies
" of the said answer, for replication hereunto saith that
" he will aver and prove his said Bill to be true certain
" and sufficient law to be answered unto, and that said

1) " answer of said defendant is uncertain, untrue and
" insufficient to be replied unto by this replicant, without
" this that any other matters or things whatsoever in the
" said answer contained, material or effectual in law
" to be replied unto, confessed or avoided, traversed or denied
" is true; All which matters and things this replicant is,
" and will be ready to aver and prove as this Honorable
" Court shall direct, and humbly prays as in and by
" his said Bill he hath already prayed.

John Lutz by
Roberts & Ireland Esqs

Now afterwards, to wit: at a Term of the Circuit Court
begun and held at the Court House in Pekin within
and for the County of Tazewell and State of Illinois
on the first Monday of the month of September A.D.
1862, and on the 18th day of said month, it being 8th day
of said Term, the following proceedings were had, to wit:

John Lutz

vs.
Charles Meixsell &
George J. Meixsell

Bill for Relief

This cause is ordered to be continued

Now afterwards, to wit: at a Term of the Circuit
Court begun and held at the Court House in Pekin
within and for the County of Tazewell and State of
Illinois on the first Monday of the month of February A.D. 1863.

and on the 9th day of said month, it being the 7th day
of said Term the following proceedings were had, to wit:

John Lutz	}	Bill for Relief
^{vs.} Phares Meixsell		
George P. Meixsell		

This cause is ordered to be continued,

Now afterwards, to wit: at a Term of the Circuit
Court begun and held at the Court House in Pekin within
and for the County of Tazewell and State of Illinois, on
the first Monday of the month of September A.D. 1863,
and on the 2^{3rd} day of said month, it being the 15th day
of said Term, the following decree was entered in said
cause in the words and figures following, to wit:

State of Illinois	}	In the Tazewell County Circuit Court September Term A.D. 1863,
Tazewell County		

John Lutz	}	In Chancery Bill for Relief
^{vs.} Phares Meixsell		
George P. Meixsell		

And now at this day this cause coming
on to be heard the complainant by Roberts & Suland his Solicitors
and the defendants by Green & Prettyman their Solicitors
and it appearing to the Court that the answers of the
defendants have been duly filed in this cause, and

the complainants replication thereto; and it appearing to
 the Court from the evidence adduced on the hearing of the
 cause that the principal allegations of complainants Bill are
 sustained by the proofs, and that the defendant Phares
 Meixsell did on the 2nd day of September A.D. 1852, buy of
 James Phillips the following described land, to wit: The
 West half of the North east quarter of Section thirty one
 (31) in Township twenty three (23) North of Range four
 West of the third principal meridian in Tazewell County,
 Illinois, and took the deed for said land in the name of his
 son George P. Meixsell one of the said defendants, and that
 at the time of buying said land of the said Phillips by the
 said Phares Meixsell, and taking the deed in the name
 of his son George P. Meixsell, he the said Phares Meixsell
 was indebted to the said complainant, and that the said
 deed was so taken in the name of the said George P. Meixsell
 to hinder the creditors of the said Phares Meixsell, and that
 the same was a fraud upon said creditors, and it further
 appearing to the Court that the said complainant did on
 the 2nd day of said September A.D. 1861, in the Tazewell
 County Circuit Court recover a Judgment against the
 said Phares Meixsell for the sum of Five hundred and
 twenty five & ⁰³/₁₀₀ Dollars and costs of suit, and that execution
 thereon was issued on the 14th day of September A.D. 1861,
 and returned by the Sheriff of said Tazewell County
 no property found; and it further appearing to the Court
 that the said defendant Phares Meixsell has no other
 property, with which to satisfy said complainants

Judgment. And the Court being fully advised in the premises. It is therefore ordered, adjudged and decreed by the Court that the said defendant Phares Weixsell pay to the said complainant within six months from this date, the amount of said Judgment so obtained in the Tazewell County Circuit Court on the 2nd day of September A. D. 1861. together with the interest and cost thereon amounting to the sum of Five hundred and ninety six dollars and ninety seven cents (\$596.⁹⁷) together with interest from the date of this decree to the time of sale, and in default of said payment by the said defendant Phares Weixsell said land so described in said complainant's bill as conveyed by the said James Phillips to the said defendant George P. Weixsell to-wit: - The West half of the North east quarter of Section thirty one (31.) in Township twenty three (23) North of Range four (4) West of the third (3^d) principal meridian in Tazewell County, Illinois, or so much thereof as shall be sufficient to satisfy the aforesaid sum and interest and the costs of this proceeding, be sold by the Master in Chancery of the Court at the front door of the Court House in Pekin Tazewell County Illinois for cash in hand, he having first given four weeks notice of the time, terms and place of sale by publication in some public newspaper published in Tazewell County Illinois, and that the proceeds of said sale be applied first to the payment of said sum so decreed to be paid by the said Phares Weixsell to the said complainant, and the costs of this proceeding, and second, the residue proceeds if any to be paid to the legal representative of the said George P. Weixsell if he has any (he being a minor) and

if he has no legal representative the overplus if any shall be brought into Court, subject to the further order of this Court and that said Master report to this Court at some term hereafter his proceedings herein.

James Harriott
 In the giving of which said Judgment & Decree, ^{the Defendant} then & there at the time excepted
 Now afterwards, to wit: on the 26th day of said month, ~~it was~~ the following Bill of Exceptions was filed in said cause, to wit:

State of Illinois } In Circuit Court
 Dagwell County } September Term 1860.

John Lutz

vs
 Pharo Meixsell &
 George P. Meixsell

For Relief

Be it remembered that on a hearing of said cause all of the following testimony was read in evidence, the objections and exceptions thereto being taken at the time of offering said evidence.

The complainant to sustain the issues on his part offered in evidence, the Record of a Judgment in his favor vs Pharo Meixsell, in the words and figures following, to wit:

At a Term of the Circuit Court begun and held at the Court House in Pekin within and for the County of Dagwell and State of Illinois, on the first Monday of the month of September A.D. 1861.

and on the 2^d day of said month, it being the 1st day of
said Term. Present Honorable James Harriott Judge of
the 2^d Judicial Circuit of the State of Illinois, composed
of the Counties of Mason, Pazzwell &c. Chapman
Williamson Sheriff and George H. Harlen Clerk, the
following proceedings were had, to wit:-
1st Day Monday September 2nd 1861.

John Lutz)
Phares Weissell) Assumpsit
Jacob Reese)

Now comes the Plaintiff by his
attorneys Roberts & Ireland, and the defendant Phares
Weissell having been regularly served with process, was
three times solemnly called, came not but made
default. It is therefore considered by the Court that the
Plaintiff hath sustained damages by reason of the breach
of promises in the declaration mentioned, but because
those damages are unknown to the Court, the Clerk is
ordered to make an assessment thereof, and he having
assessed those damages to the sum of Five hundred
and twenty five ⁰³/₁₀₀ Dollars (\$525⁰³/₁₀₀) and made
report thereof which is approved by the Court, It is
therefore ordered and adjudged by the Court, that the
Plaintiff have and recover of the said defendant Phares
Weissell, the damages aforesaid, in firm aforesaid
assessed, likewise the costs and charges by him about his
suit expended, and that execution issue therefor.

The complainant next introduced in evidence the Execution issued upon said Judgment, and the endorsements thereon, which said execution and endorsement is in the words and figures following, to wit:

State of Illinois vs. The People of the State of Illinois. To the
 Bazewell County) Sheriff of said County, - Greeting;

We command you that of the goods, chattels, lands and tenements of Charles Weissell to be found in your county, you cause to be made, the sum of Five hundred twenty five & $\frac{03}{100}$ Dollars, damage, and Six & $\frac{50}{100}$ Dollars costs, which on the 2^d day of September A.D. 1861, in our Circuit Court for said Bazewell County, John Lutz recovered against the said Charles Weissell impleaded, with Jacob Kiese. And have you that money, damage and interest thereon, from the said ^{day of} 2^d September 1861, ready in ninety days from the date hereof, to render the said John Lutz, And you hereof make due return with an endorsement of the manner in which you shall have executed the same.

Witness George H. Harlow, Clerk, and the Seal of said Court, at Pekin, this 14th day of September A.D. 1861.

Geo H. Harlow, Clerk Circuit Court
 per J. P. Griswold Deputy

"Endorsed"
 Come to hand Sept 18th 1861 at 9 o'clock A.M.
 C. Williamson D.C.C.

" I return this Execution, to property found or money
" made December 2^d 1861.
" Dec 6^o, C. Williamson E. C. C.

The complainant next introduced in evidence
the Deposition of James Phillips, which said Deposition
is in the words and figures following, to wit;

" The Deposition of James Phillips of Delevan in
" the County of Bazewell and State of Illinois a witness of
" lawful age produced, sworn and examined upon his
" corporal oath on the Twentieth day of January A.D. 1862,
" between the hours of Eight o'clock A.M. and Six o'clock P.M.
" of said day at the office of Roberts & Ireland in the City
" of Pekin in the County of Bazewell and State of Illinois
" by me A. O. Sawyer a Notary Public in and for the
" Town of Pekin, in the County of Bazewell and State
" of Illinois, duly authorized by law to take depositions, and
" in accordance with the provisions of a certain notice,
" dated Pekin December twenty third, A.D. 1862, which
" is hereto attached, the receipt of a copy of which is ack-
" nowledged by B. E. Prettyman December twenty fourth
" A.D. 1862. For the examination of James Phillips a
" witness in a certain suit and matter in controversy
" now pending and undetermined in the Circuit Court
" of Bazewell County and State of Illinois, wherein John
" Lutz is complainant and Phares Weissell & George P.
" Weissell are defendants, in behalf of the said complainant.
" The said parties having appeared by their attorneys the said
" witness James Phillips being first duly sworn by me

as a witness in said cause previous to the commencement of their examination to testify the truth & the whole truth on the part of the complainant as well as the defendants in relation to the matters in controversy between the said complainant and defendant as far as he should be interrogated, testified and deposed as follows.

Interrogatories propounded to James Phillips and answers thereto.

First Interrogatory "What is your name, age, place of residence and occupation and do you know the parties to this suit?"

Ans. "My name is James Phillips, my age about sixty five years, my place of residence Delevan, Sagewell County, I only know Phares Meixsell."

Int- 2nd "Did you ever make a contract with Phares Meixsell to sell him any land, if so, state when the contract was made and what the land was if you remember."

Ans. "I have made a contract with Phares Meixsell to sell him some land. The contract was made sometime about September A.D. 1851. There was two pieces of land I can now only give the numbers of one, which is the West half of the Northeast quarter of Section thirty one, Town twenty three, Range four in Sagewell County."

Int. 3rd "Was that contract written or verbal?"

Ans. "It was verbal."

Int 4th " State who paid you for the land, and to whom you made the deed.

Answer " Phares Meixsell paid me for the lands. I made the deed to George Meixsell: Phares Meixsell's son.

Int 5th " Did his son pay you any part of the money

Ans " Not any of it. to the best of my recollection.

Int. 6th " At whose request did you make the deed to Phares Meixsell's son.

Ans. " Phares Meixsell came to my house with the Justice of the Peace Squire Kinnear I believe and took my acknowledgment. I was confined to the house at the time, it was his Phares Meixsell's request that it should be made to his son. Phares Meixsell brought the deed all prepared to my house for me to sign.

Int 7th " Do you remember about what time the deed was made.

Ans. " September the first of 1852. I think it was dated.

Int 8th " Do you know of any other matter or thing of importance to the parties to this suit if so please state the same fully.

Ans. " I do know that I do.

Cross Interrogatories

Interrogatory 1st " How long before the date of the deed was the contract made?

Ans. " About a year

Interrogatory 2nd " How were the payments made by Weissell and when was the payment ^{that was} last made to you made?

Ans. " He paid me at different times, The last payment was made September the Sixth A.D. 1852, with the exception of five dollars, that finished the payments.

Int. 3rd " Have you any knowledge from whom Weissell received the money?

Ans. " I have no knowledge.

Int. 4th " To whom did you convey the other piece of land?

Ans. " I do not remember, it was finished paying for at the same time.

James Phillips
 " I, A. B. Sawyer of the County of Tazewell and State
 " of Illinois a Notary Public duly appointed to take
 " the deposition of the said James Phillips a witness
 " whose name is subscribed to the foregoing Deposition

" do hereby certify that previous to the commencement of
" the examination of the said James Phillips as a
" witness in the said suit between the said John Lutz
" complainant and the said Phares Weixsell and
" George P. Weixsell defendants - he was duly sworn by me
" to testify the truth in relation to the matters in controversy
" between the said John Lutz complainant, and the said
" Phares Weixsell and George P. Weixsell defendants, so
" far as he should be interrogated concerning the same,
" that the said deposition was taken at the office of
" Roberts and Ireland in the City of Pekin, in the County
" of Bazewell & State of Illinois on the Twentieth day
" of January A.D. 1863, between the hours of Eight
" o'clock A.M. and six o'clock P.M. of said day, and
" that after said deposition was taken by me as aforesaid
" the Interrogatories and answers thereto as written
" down, were read over to the said witness, and that
" thereupon the same was signed and sworn to by the
" said deponent before me the oath being administered
" by myself as a Notary Public at the place and on
" the day and year last aforesaid.

A circular notary seal with the word "Seal" in the center, surrounded by a decorative border.

A. B. Sawyer
Notary Public
Town of Pekin Ill.

The complainant next called as a witness
Nicholas Frederick, who being duly sworn, testified
as follows.

My name is Nicholas Frederick, know parties

to suit, known Lutz 25 years, known others since 1850. Geo P. Meixsell was then a little boy about 5 or 6 years old. Lutz worked from 1850. - 5 or 6 years for P. Meixsell. Lutz got between \$500 - and \$600 - at St Louis. P. Meixsell told me that he borrowed money from Lutz. He did not say what money he borrowed from him, this was 4 or 6 years, he did not say what time he borrowed the money. Lutz got first payment from St Louis in 1851, as he told me. I do not know that he got money from my own knowledge.

Defendant George P. Meixsell objected at the time to all of the above testimony as to the statements of Lutz or Phares Meixsell, but the Court overruled the objection, and defendant George P. Meixsell excepted.

The complainant next called Martin Stoner, who being first duly sworn testified as follows.

My name is Martin Stoner, know parties to this suit. Meixsell told me that he had a tract of land conveyed to his son George, an 80 - we were on the land at the time, it was the piece that was deeded to George. He told me that he had it so deeded to keep creditors at East from bothering him, though he claimed that he had paid them and that they were not creditors, this was in 1858. I have heard P. Meixsell say he had some of Mr Lutz money. Did not say how much. Lutz worked for Meixsell when I

come here in 1857. He worked for Meixsell in fall of 1856. when I first came out, I have heard some talk about his working for M. before that but dont recollect. The 80 spoken of lies between the roads East & West of Meixsell's house, it adjoins the 60 acres on which Meixsell's house stands on the east. As far as I know Meixsell has been in possession of the land ever since, ^{Cross examined} Meixsell's house stands about 20 yards East from the Road running North and South by Hagumans & Droubridge.

The complainant next called James Haguman who being first duly sworn. testified as follows.

My name is James Haguman, know the parties to this suit. have known Meixsell 16 or 17 years have known Lutz since first time he came to Meixsell's. Know Geo P. Meixsell Meixsell's son. have known from boy up. I should suppose he is not over 14 or 15 at furthest. I knew him 1852. Know that Lutz worked for Meixsell - a good while, I should think 6 or 7 years I cant tell exactly. - I cant tell what year Lutz came there. I think he left there about four years. I do not know the time he left there I cant state correctly. Lutz labor was worth \$15- per month, could not say whether Lutz was working for Meixsell previous to Spring and Summer of 1852. I saw Lutz there about the time he commenced working. he continued to work there until the time he left pretty constantly. ^{Cross examined} Cant tell whether Lutz went to St Louis during the time nor

whether he was sick during the time.

The complainant next called Jesse Drowbridge who being first duly sworn testified as follows.

My name is Jesse Drowbridge know parties to this suit, Have known Weixsell 18 or 20 years, know Lutz worked for Weixsell, I should think he went to Weixsell's as early as 1850, or perhaps earlier, cant tell exactly, to the best of my knowledge and recollection I should think he was there from 5 to 7 years, I know he was sick sometimes, my impression is he was not working for wages all the time, W/2 of E 31. 23-4 - if this is tract in controversy it lies East and adjoining the Co on which Weixsell house is on the East lying lengthwise and adjoining my land. Weixsell told me that the land was bought from James Phillips and deeded to his son George. I understood that Lutz got money from St Louis. I know of his going for several years to St Louis as the time came around Weixsell got money from Lutz as I understood from Weixsell. The first time Lutz went to St Louis was in 1851 or 1852. Cant say when it was Weixsell told me he got money from Lutz, know George since he was a baby, I think he is about 15 or 16 years old not far from it. ^{"Crops examined"} On one occasion I was called to Weixsell's to sign a Will for Lutz, he was sick then, he thought he would die, I think it was in 1854 or 1855

I think from his situation he would not be able to work for 3 or 4 weeks. I think he was gone a week at a time on his trips to St Louis and went yearly until he finished his business. I understood Lutz was working there not on wages all the time but was making his home there a part of the time and did not work as if working for wages. I understood this from Lutz and Meixsell. I cant tell when I understood this. I understood that Lutz was not going to work for wages and was not going to work so hard as he had at first but was going to make his home there for life and I think he did not work so hard. I cant say whether it was before or after sickness. I dont know how Lutz got his tobacco and clothing. I have heard Meixsell say in conversations we had about the land that it was purchased with money he got through his wife and none of Lutz' money went into it (Meixsell's declarations objected to)

Re Examined

Question - Do you know whether Meixsell got any money through his wife (objected to by)

Answer - I dont know only as Meixsell told me -

I have heard some of those declarations of Meixsell's in regard to the money of his wife's within a week. - I cant say that I heard any of these declarations of Meixsell about money of his wife's previous to the commencement of this suit - I think they were all since.

Cross Examined

The conversations about the title to the land and

the conveyance thereof was previous to the commencement of this suit.

Defendant George P. Meixsell objected to all of the above testimony given for Plaintiff at the time when it was offered which attempted to show the statements of Phares Meixsell because it was incompetent evidence against defendant George P. Meixsell, the said Phares Meixsell at the time was interested against said George P. Meixsell in his title to the said land. But the Court overruled the objections severally at the time, and the defendant George P. Meixsell then and there excepted.

Here Complainant rested.

The Defendant to maintain the issue on their part called as a witness Elias Doud, who being first duly sworn testified as follows.

I know P. Meixsell and Lutz. knew Meixsell first in 1845. knew Lutz when he first came to Meixsell's don't know exact time but some time after I knew Meixsell. Know the tract of land sold by Phillips to Meixsell. At one time I had conversation with Lutz about the land. I can't say at what time. He said land was conveyed to George. I think more than a year after contract was first made with Phillips that Lutz told me this. In this conversation Lutz approved of the transaction.

— Cross Examined —

At the time of this conversation Lutz was still working at Meixsell's. The time was some time after I learned the deed was made. I cant tell exact time I learned that deed was made.

Defendant George P. Meixsell
here moved the Court for leave to examine the defendant Phares Meixsell as a witness in his behalf which motion ^{overruling the objection of Lutz & exceptions} was allowed by the Court, and the said Phares Meixsell being first duly sworn testified as follows.

Know George P. Meixsell the defendant in this suit. He is my son. I know Mr Lutz. I am the Meixsell named in the deposition of James Phillips as having made a contract for the purchase of W¹/₂ A. & E. 31, 23, 4. The contract was made about July 1, 1851. the first payment was made Sept 29, 1851. The last payment was made on Sept 6, 1852. The deed was executed on the 21st Sept 1852. Mr Phillips was sick at the time the last payment was made and sent for the \$20- consequently the deed was not made until afterwards. The \$20- was paid at my house. The money paid for the land was money that belonged to my wife. The money she received from her father in part, and part from his estate after his death. A proposition was made by Lutz in conversation with me and my wife that if she would invest her money in the North 80. for the boy, that he would get the money and take the South 80. This conversation was previous to making the contract. At the time she had the greater part of the money derived from her father on hand, she got the

balance afterwards. She got the first money in March 1848 from \$90- to \$100-

November 2, 1850. \$125⁰⁰

May 8, 1851. \$60⁰⁰ about

May 6, 1852. \$70⁰⁰ about

July 1, 1852. \$45⁰⁰

By the bargain with Phillips I was to pay \$4⁵⁰ per acre. Lutz was apprised of the fact the deed was to be taken to my son before it was made to him. Lutz knew the deed was made to my son a few days after it was done. The South 80. conveyed by Phillips to Dolcher is same one Lutz was to take. I sold it to Dolcher in fall of 1851. for same I had contracted to pay Phillips. Lutz did not furnish the money to pay for the South 80. as he had proposed to do - Mr Lutz knew from what I told him that Dolcher was to take the land at the contract price - Lutz took the deed over to Dolcher himself - I did not invest any money of Lutz in said land. I had not received any money of him at the time of the execution of the deed. Lutz commenced working for me about the 1st of June 1850 at \$10- per month or \$120- per year - I furnished him in clothing, boots and shoes, tobacco, what he wanted to drink, done his washing &c. in payment for his services - He was sick some time and spent some time in going to St Louis - In 1850. he lost about a month by sickness and going to St Louis - In 1851. he lost about 2 months by sickness - In 1852. he lost

2 months time going to St Louis & had spell of sickness - In 1851. he was not dangerously sick, In 1852, he was dangerously sick expected to die, he made a will. He was sick at my house, Mrs Weissell waited on him. In 1852, we run over the accounts but had no final settlement to see what money he had had, what clothing &c he had. He said that the balance due him should go against the Doctor bill and the attendance of Mrs Weissell during his sickness. His accounting was had not a great while after he recovered from his sickness, it was after the making of the deed. He continued to work for me until about Sept 1858. - I know Martin Stoner - At the time Mr Stoner speaks of I did not owe anything to Eastern creditors - I did not owe any when I came to the country nor when I bought the land nor when it was paid for. - Mr Stoner and I. are not upon very good terms - there has been a controversy between us and hard feeling between our families. I remember of stating to Stoner that the deed was made to my son on account of the money of my wife being invested in the land and at the request of her and Lutz.

- Cross Examined -

My wife got from her father and her father's estate \$500 - more or less, I can't recollect exact amount. She got first money from him in 1848, when we were there on a visit - The identical monies were not paid to Phillips - I had used the identical monies got from him - The second payment was sent in a

16
certificate, this came from her father's estate - he was
then dead - The money was sent by a man named
Bryce who was the agent. - Her father had been dead
since April 1848. I did not pay the identical monies
derived from second payment to Phillips. The third
and fourth payments mentioned came through
Bryce. I think I used these monies as I did the
others or a part - I think she got same amount from
her father's estate as the other heirs. I don't know
whether he made a will or not - there was an
administrator appointed, I believe he paid the monies
to the agent. The two 80th. were for sale. Lutz said if my
wife would take her money for North 80. he would
take the other one. He told me to make the contract
and he would pay for it, I made the contract for the
South 80. and paid part of the money. I raised the
money myself. Lutz did not go to St Louis in 1850.
The first time he went to St Louis was in 1851. He
brought no money in 1851. on his return from St Louis.
In 1852 he brought about \$90. from St Louis. it was after
the land was paid for - latter part of September I got
the \$90. from him - In 1852 Lutz was violently sick
he was not well when he returned from St Louis, it was
in September or October 1852. He was not violently sick
but once at my house. In 1853 he got some money
from St Louis - I don't know how much - I had
borrowed no money from Lutz at the time deed was made.
I may have owed Lutz a few dollars for labor. I gave
Lutz from \$25. to \$30. when he went to St Louis - I gave

him money when he went. I dont recollect how much his clothing was per annum. - I cant say how much I had paid him up to the time the deed was made - I was not indebted at the time deed was made in the East. I might have been indebted ~~to him~~ a few dollars to him (Lutz) on final settlement if we had made one - He got no money the first time he went to St Louis, the second time he did, the money got then I borrowed.

Defendant George P. Meixsell, here moved the Court for leave to examine as a witness in his behalf Mrs Meixsell wife of Phares Meixsell which motion was allowed by the Court in this cause ^{against the objections and exceptions of counsel for Lutz} and she was produced, sworn and testified as follows -

I am the wife of Phares Meixsell and mother of defendant George P. Meixsell - I was present at conversation between my husband, Lutz and myself - Lutz then proposed that I should put money I had coming from the East in North 80, and he would get his money from St Louis and take the South 80. He came to our house in June 1850, he was to work for \$10 per month. He first went down to St Louis in 1851, but got no money, he went again in 1852. He got back from St Louis the latter part of Sept 1852. I dont know how much money he brought back - He was violently sick in Sept & October 1852. He was sick about 6 weeks in 1851. he lost about 10 days at a time going to and returning from St Louis. He was sick in fall of 1852 at the time he made his will.

Lutz agreed after his sickness in 1852. that the balance due for him wages was to go to pay his doctor bill, me, for my services in waiting on him and what was left George was to have - this was in fall of 1852. - I know of my own knowledge I saw my husband give Lutz between \$25- & \$30- to go to St Louis the second time he went - I know of my husband furnishing clothing good substantial wear - I had them made up myself - I done his washing and waited on him when he was sick - Mr Meixell furnished him boots and shoes - I furnished him 6 pair of Socks per year - My father gave me a little over \$90- when I left there - after his death I got \$125- \$60- and some other amounts in checks - This is the money Lutz wanted me to put in the land - The money was invested at my request upon the proposal of Lutz for the benefit of the boy.

Cross Examined -

Lutz came in 1850. - he did not go to St Louis that year - In 1851. he went. did not get any money - in 1852 he went again got some money - I dont know how much - There were 7 or 8 children of my father - I dont know how much the other heirs got - He made no will - I dont know how much there was of his Estate to divide - I have received between \$400- & \$500- from him and his Estate - My father gave me \$90- to make me equal in setting out with other children - My

mother was adm^r of father's estate - Our agent collected of her - I got money in 1853 and 1854 from the Estate.

Defendants here rested for the present.

The Plaintiff through his counsel now moved the Court to swear the complainant as a witness in his own behalf, to which the defendant George P. Meixsell by his guardian and counsel objected, but the Court overruled the objections, and suffered said Lutz to testify, to which the defendant George P. Meixsell by his guardian and counsel, then and there objected and excepted, and the said Lutz being duly sworn then testified as follows.

Know Phares and George Meixsell - Went to work for Meixsell in June 1850. He was to give me \$120 - per annum, - I went to St Louis in August or September 1850. I got money from Becht and Fulk to pay my expenses that trip - My nephew Nicholas Fredericks came up from St Louis with me on my return - I got no money that trip, went after my clothing - I had a fever 3 or 4 times - 2 or 3 days, worked for Becht & Fulk 2 weeks and lost a week or more going to St Louis - lost 3 or 4 weeks altogether that year - Went to St Louis in 1851, about middle of August - I got \$8 - or \$10 - to bear my expenses down. I brought home \$125 - in silver and gold - I loaned the money to Meixsell he spoke for it - said he would give me good interest - In 1851, I was not sick, I sat

about a week or ten days. - I throwed off a month for lost time - I went to St Louis in 1852, Meixsell gave me between \$5. + \$10. to bear my expenses down. I went down that year about beginning of September, I was gone between a week and ten days, I brought money back with me that time - \$130 - I loaned it to Mr Meixsell - I did not know that the land was deeded to George until Stoner told me when I went to Stoners to work - I dont know that the money I loaned to Meixsell was paid to Phillips for the land but he owed me \$400. when he paid for the land. He owed me wages for 51 + 52 \$164. and loaned money \$255 - in all \$419. before the 21st of September 1852 when deed was dated. I believe it was in 1853 or 1854. 53 I think that I was so seriously sick. When Drowbridge was sent for to witness my will - I dont know that I ever told Meixsell to take the deed in his boys name. My washing and mending was to be thrown in, not taken from my wages - I got from Meixsell in clothing, tobacco and lost time \$25. or \$30. per year except the year I was so sick, when I lost more time.

Cross Examined -

My money fell due in St Louis first payment in July 1851. - I left my trunk with sundry clothes in St Louis, went after it, - not after money when I loaned money to Meixsell I took his note I have not got it - I told him to buy the 160 of Phillips I wanted the rest of land after Meixsell took the length of his 60

acres out of it. I don't know anything about taking the deed from Phillips to Dolcher. I did not take the land because I did not get all my money but only one payment of \$130. This was the second payment but I did not get money enough to pay for the land.

Re-Examined

I gave Meixsell up small notes and he gave me large one, one issued on

The Defendants now called as a witness Henry Vogel who being first duly sworn, testified as follows -

I know Lutz & Meixsell, knew them at the time land was bought. I understood from Meixsell that Lutz was to furnish money to buy land. He went to St Louis to get money but did not bring any at that time.

The Complainant has recalled Martin Stoner who testified as follows. (the Defendants objected to recalling this witness)

My wife is sister of Mrs Meixsell, there was due and paid to my wife from her fathers estate in April '52. \$50 -

in 1853,

\$48 & odd cents

in 1854,

\$45 & odd cents

this was all my wife received up to that time, she was entitled to an equal share. This was all the money coming to her. None of the heirs got any money prior to 1852. I have been married to my wife since 1843.

my wife's father died in 1848. I don't know about him giving Mrs Meixsell money before his death. I don't know that Meixsell was indebted in the East before or at time of our conversation about his conveying land to his son.

Cross Examined

My wife's mother & A. Leister administered, I don't know that the money was not sent.

The complainant next called as a witness John Becht who being first duly sworn testified as follows.

Know parties to suit, Lutz went to St Louis in 1850. I gave Lutz money to go with. He went some time after harvest.

Cross Examined

Did not see him go. I know it was in 1850, because when Lutz hired to Meixsell it was understood in the bargain he should help me harvest that year.

The complainant next recalled A. Frederick who testified as follows. (Defendants objected to the recalling of this witness)

Lutz was in St Louis in 1850, about middle of August, I came up with him.

The foregoing evidence together with the Deposition of James Phillips filed in this cause

was all the evidence given in this case.

James Harriatt (seal)

State of Illinois) ss
Dazellwell County)

I George H. Harlow Clerk of the Circuit Court within and for said County, do hereby certify that the foregoing 36 pages contain a full true and complete transcript of the Record & Proceedings had in the cause therein named as fully as the same appears of Record in my office.

In Testimony whereof I have hereunto set my hand and the seal of said Circuit Court at office in Pekin this 30th day of October A. D. 1863.

Geo H. Harlow Clerk
per A. P. Griswold Deputy



Geo. P. Mixsell Off in error

D. P. Ct. 32 J. Sen.

Appellate Court

A. D. 1864

John Lutz - Off in error

And the said Plaintiff in error comes and says that in the foregoing Record in the above Cause there are the errors and proceedings therein there are errors and is manifest error in this viz:

- 1 The Court erred in permitting the statements of Thomas Mixsell to be given in evidence against Geo. P. Mixsell
- 2 The Court erred in permitting John Lutz the Complainant in the Cause to testify in his own behalf.
- 3 The Court erred in rendering a Decree in the Cause against Geo. P. Mixsell - it should have been for defendants and the bill dismissed -

And for these and other manifest errors in the foregoing Record the Complainant George P. Mixsell prays that the Decree in the Cause may be wholly reversed.

Geo. P. Mixsell

Attorney

Collector

And the said defendant is
served by Robert Ireland his Solicitor
hereby into his appearance and then
was proved and agreed that
the same may stand for trial
at the next time of the Court
and say that in said record
and proceeding there is no
manifest error and that
the same ought to be affirmed

John Gentry
by Robert Ireland
his Solicitor

209³⁶
George P. Muxael et al
John Lutz -

Record on Iron

Filed April 20. 1864
L. Leland
Clerk

\$10⁰⁰ by Deft appointed