

in evidence the same one referred to by you in your answer to last interrogatory? Did you see the parties execute the deed and did you sign the same as subscribing witness?

Answer

Yes, I did

Direct examination closed and Defs. counsel proceeded with his cross examination

Cross Interrogatory 1st

Mr. Sutherland failed in business a short time after the execution of the deed. referred to did he not, and made an assignment in consequence of such failure?

Objected to by Complainant's Counsel

Answer

I cant say how long after the date of the deed, but some time thereafter I understood that he became embarrassed in his pecuniary circumstances. I do not recollect distinctly as to any assignment. I never drew on for him. I have no distinct recollection as to the time

Henry A. Clark

Henry J. Wright a witness on the part of the Com

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Henry J. Wright a witness on the part of the Com

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plaintiff was produced and sworn and by consent of parties was permitted to testify—

Interrogatory 1st

Were you a clerk of R. P. Saunders in the summer of 1850?

Answer

Yes sir,

Interrogatory 2^d

(Do you recollect of an order being given by Mr. Whitcomb to Mr. Sutherland to trade with or give orders upon R. P. Saunders in July 1850?)

Objected to by Defts counsel

Answer

I can't say I do.

Interrogatory 3rd

(Do you know of Mr. Sutherland trading with Mr. Saunders on Mr. Whitcomb's account during the early part of the summer of 1850?)

Answer

I know that Mr Sutherland traded with Mr. Saunders, and I understood that it was on Mr Whitcomb's account but cannot say positively that

It was so

Interrogatory 4th

Was it not understood by you and the rest of the clerks that he was trading on Mr. Whitson's account?

Objected to by Defts. Counsel.

Answer

I cant speak positively to any thing - the business was done in so slack a manner - to the best of my belief it was.

Here several bills are handed to witness and offered in evidence which are hereto attached and marked with the letters of the alphabet from "B. to L" inclusive

This was objected to by Defts counsel -

Interrogatory 5th

Have you examined the papers just handed you and now in the hands of the commissioner and marked with the letters of the alphabet from "B. to L" inclusive and do you know them to be correct and were they given at the time or times upon which they bear date and were the bills of goods therein set forth delivered to Mr. Sutherland on Mr. Whitson's account?

Answer

I have examined the papers and these

marked B. E. F and I are correct - the others were made out by some one employed there or the partner A Brown the hand writing. I couldn't say whether the goods mentioned in B. E. F. and I, were delivered to Mr. Luther Lane or not, nor whether they were sold on Mr. Whitcomb's account.

Henry J. Wright

The further examination of witnesses was continued indefinitely

October 26th. The parties by their respective Counsel met pursuant to agreement and proceeded to the examination of witnesses on the part of complainant

December 15th. 1854. The Parties met pursuant to agreement - Present H. S. Monroe counsel for Complainant and H. G. Miller Counsel for Respondents and proceeded with the examination of witnesses on the part of Respondents

Samuel M. Warner a witness on the part of Respondents was produced and sworn and testified as follows -

Interrogatory 1st

Have you already been examined as a witness on the part of the Complainant in this case?

Answer - Yes Sir, I believe I have.

Interrogatory 2^d

In answer to the second direct interrogatory in your former examination you speak of having purchased a note of Defendant Whitcomb, a note made by George H. Pratt. Did you at or before such purchase examine the Records of deeds in the office of the Recorder of Cook County for the purpose of ascertaining whether the payment of said note was secured by mortgage of Real Estate in said County? If yes, who was with you when you made such examination and is the note referred to one of the notes mentioned in the mortgage, a certified copy of which is now shown to you? (Here copy of Mortgage was read Defendant's Exhibit "A" was shown to witness)

This Interrogatory was objected to by Complainant's Counsel

Answer

Yes Sir, I think I did. I think Mr. George H. Pratt was with me. I should think the note referred to was one of the notes mentioned in said mortgage.

Interrogatory 3rd

Did you find a mortgage on Record to secure the payment of said note by conveyance of Real Estate for that purpose, and was the mortgage a certified copy of which has been shown to

you the one so formed?

Answer

I found a mortgage on Record to secure the payment of said note. I should think it was. Depend on Exhibit A, was here offered in evidence by Defendants' counsel

Interrogatory 4th

Can you state where the lands conveyed by said mortgage are situated? If so, state.

Answer

In Cook County, in this state some sixteen miles North West of Chicago

Interrogatory 5th. When you made the examination of the records as you before stated, did you find recorded any deeds executed by E. D. Sutherland & wife to George H. Pratt and conveying to said Pratt the lands described in the said mortgage? If yes, state whether the deeds, artificial copies of which are now shown to you are the ones you then found recorded?

Here Defendants Exhibits B & C, were shown to witness,

Answer — I don't recollect distinctly but think

Said - I recollect distinctly that the mortgage referred to was given by Mr. Pratt to Mr. Sutherland to secure the payment of these notes. I think the papers marked Defendants Exhibit B & C. and now shown to me are copies of the Receipts I found there.

Here the Defendants offered in evidence papers marked Defendants Exhibit B & C. before shown to witness.

The direct examination was closed and Complainant's counsel cross examined witness -

Cross Interrogatory 1st

From whom did you get the notes referred to? Do you know whether the said notes were paid? If yes, to whom and by whom?

Answer

I think I got one of the notes from Mr. Whitcomb and the other from Mr. Anderson. I paid the notes, the first to Mr. Whitcomb and the second to Mr. Anderson.

S. Mr Warner

The further examination of witnesses was continued until Saturday the 16th instant at 10, O'clock A.M.

December 16th A.D. 1854 the parties were present by the respective counsel pursuant to adjournment.

Matthias D. Ogden a witness on the part of the defendants was produced, sworn and exam-

ined and testified as follows—

Interrogatory 1st

Are you acquainted with the parties in this suit Plaintiff and Defendants? If either which of them, and how long have you known them?

Answer.

I know Mr. Whitcomb, Mr. Gurley and B. H. Raymond, and Elias B. Sutherland. I am not acquainted with Mr. Borden or Francis H. Sutherland. I have known Mr. Gurley Whitcomb and Raymond several years—have known Mr. Sutherland three or four years.

Interrogatory 2nd

Are you one of the grantees named in the Power of Attorney now shown to you?

Answer.

I am.

Then Defendants offered in evidence paper marked Defendants Exhibit "D" and also deed from Elias B. Sutherland to Truman Whitcomb and marked Defendants Exhibit "E"

Complainant's Counsel consents that the execution of the contract marked Defendants exhibit "F" be proved by proving the signature of the grantors therein and that the testimony of the

subscribing witness thereto for that purpose be waived.
 Here the Defendants counsel offered in evidence paper
 writing marked Defendants Exhibit "F" also Defend-
 ants Exhibits "G", "H", "I".

Interrogatory 3rd

Are you acquainted with the premises described
 in Defendants Exhibit "E" now shown to you, and
 were you acquainted with their value in August 1850
 If yes, please state their value at that time,

Answer

Yes Sir, I am acquainted with the premises
 I think the premises
 was worth about two hundred dollars per acre in
 August 1850. I was acquainted with their value in
 August 1850

Interrogatory 4th.

Please state the means by which you became
 acquainted with the value of those lands in August 1850

Answer

I was an agent for Mr. Canada and had the
 care of his property a part of which was Block 48 as
 well as agent for other lands in that vicinity. I had
 occasions to know the value of property as I was selling
 some in that vicinity.

Interrogatory 5th

How long had you been a resident of Chicago at that time?

Answer

Fourteen years and two months.

Interrogatory 6th

State if you know whether the market value of these premises had materially advanced during the two years next preceding August 1850? If yes, to what extent?

Objected to by complainant's counsel

Answer

I don't think they had advanced a great deal tho a little probably not fifty dollars an acre.

Interrogatory 7th

Do you know the length of the East and West line of the premises described in Deft's Exhibit "C" now shown to you? If yes, state the length of these lines and state also if you know the quantity of land contained in the description mentioned in the said Exhibit?

Answer

I know the length of the East and West line. The East line is 507 feet and the West line is 511

just, I had it surveyed by a good surveyor in my office
there is one acre and $54\frac{2}{1000}$ of an acre —

Interrogatory 8th

Please state if you know the true length in rods
and parts of a rod of the East line of said Block 48 men-
tioned in said exhibit "G"

Answer

The East line of said Block exclusive of streets on
north & south side is thirty rods and twenty four
thirty thirds of a rod —

Interrogatory 9th

How long is it including streets and when
the streets referred to laid out prior to August 1850?

Objected to by Complainant's Counsel

Answer

Thirty five rods and $\frac{1}{10}$ of a rod. They were
designated as streets on the plat of the ^{Canal} Trustees Subdi-
vision prior to August 1850, I think in 1848

The direct examination ^{of witness} on the part of Defts.
was here closed

Cross Interrogatory 1st

Was the lot whose value you have estimated

1780-81

of equal value, with the one on the south side of Lake Street directly opposite?

Answer

I think it was at that time.

Cross Interrogatory 2^a

Did you in August 1850 sell any land in the immediate vicinity of said Lot?

Answer

We were selling lands both beyond and on this side, though I think not in Section Seven.

Cross Interrogatory 3^a

Was your attention particularly directed to the land in said Lot 48 in August 1850 with a view of estimating its value?

Answer

I can't be so precise as that. I think that in the summer or fall of 1850 our attention was called to it, particularly - I may be mistaken as to time but I think that was the time.

Cross Interrogatory 4th

In your estimate of the quantity of land described in Exhibit "C" do you rely on your

own ^{measurement} ~~employment~~ or that of another, and are you a practical surveyor?

Answer

I rely on the measurement of another John B. Gerrard who is a practical surveyor and a correct one. I am not a practical surveyor.

Maxlon D. Ogden

John B. Gerrard a witness on the part of Defendants was produced sworn and examined and testified as follows—

Interrogatory 1st

What is your business?

Answer

I am a practical surveyor and am in the employ of Ogden Jones & Co.

Interrogatory 2nd

How long have you been engaged in that business and how long in their employ?

Answer

I have been a surveyor since the year 1847. I have been in the employ of Mr. Ogden four years.

Interrogatory 3rd — Have you ever surveyed

The premises described in Exhibit "E" now shown to you? If yes, When? State the length of the East line of the premises,

Felice F. Canda a witness on the part of the Defendants was produced sworn and examined ^{and} ~~as~~ testified as follows

Interrogatory 1st

Are you the son of Florimond Canda one of the parties to the agreement contained in the paper now shown to you and marked Defendants Exhibit "F" and were you in August 1850 acquainted with the premises described in said agreement and their value at that time? If yes, state how much the same were worth.

Objected to by complainants Counsel
Answer

I am the son of Florimond Canda I have been acquainted with those premises from the time my father bought them in 1848 to the present time. I was absent from Chicago from March 1850 to January 1st 1851 I don't know any thing of their value in August 1850 —

Interrogatory 2nd

Are you acquainted with E. B. Sutherland

one of the defendants in this suit, and did he reside on said premises during the winter of 1851 and had you during the year 1851 any conversation with the said Sutherland with regard to his having sold said premises or the premises on which he then resided?

If yes, state when and where such conversation was had and all that the said Sutherland said upon that subject.

Objected to by Complainant's Counsel

Answer

I am acquainted with E. B. Sutherland. I do not know that he resided on said premises during the winter of 1851. I saw Mr. Sutherland at his house in the Spring of 1851 in Chicago. Mr. Sutherland then told me and my father that he had sold to Mr. Whitcomb this land and wanted my father to get a deed from my uncle to convey the property to Mr. Whitcomb.

During the Spring of 1851 Mr. Sutherland came to my father's house twice and made the same request.

Here the direct examination of witness on the part of Defts was closed.

Witness Banda was cross examined by Complainant's Counsel.

Cross Interrogatory 1st

(Did Mr. Sutherland during the conversation referred to say anything about having loaned money of Mr. Whitcomb? If yes, state what he said.

Answer

I don't recollect of his saying that he had borrowed money of Mr. Whitcomb.

Cross Interrogatory 2nd

Do you recollect at or about the time referred to of being on the said lot with Mr. Sutherland? If you do you recollect of his telling you that he owned it?

Answer

I do not recollect any thing about being there at that time - I was there about 18 months ago with Mr. Gerard. Mr. Sutherland might have been there. I have no recollection of his telling me that he owned it.

Cross Interrogatory 3rd

Are you sure that Mr. Sutherland during the conversation first referred to by you, did not say that he had conveyed the land or conveyed it to Mr. Whitcomb as security?

Answer

I understood that he had sold it.

Cross Interrogatory 4th

Might he not have so said?

Answer - I did not hear him say so.

Felice F. Canada

April sixth A. D. 1855 the parties met at my office
72 Lake Street pursuant to agreement - Present H. J.
Monroe counsel for Complainant and H. G. Miller
Counsel for Defts.

H. B. Sheddings a witness on the part of the Defts.
was produced, sworn and examined and testified
as follows -

Question 1st

Are you an Attorney at Law and were you a prac-
tising attorney in Chicago during the year 1852?

Answer

I am an Attorney, and was a practising Attorney
in Chicago in 1852.

Question 2^d

Is the paper writing now shown to you in your hand
writing? And was the same executed in your presence
I/so. When & where was the same executed, and who was
present?

Answer

Yes it is in my hand writing - it was executed in
my presence according to the best of my recollection it was
executed at its date, at my office in Chicago. I have no
means of recollecting when it was executed but from the pa-
per itself. I think Mr. Gurley was present & Mr. Whitcomb,
myself and A. L. Rich or our Clerk. Don't recollect of any
person being present - it was executed by Mr. Whitcomb.

Here paper marked Defts. Exhibit "I" was offered

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in evidence by Defts.

Question 3^a

Was the contract referred to in the memorandum just shown to you and marked Defts. Exhibit "I" left with you at the time of the execution of such memorandum and did you subsequently draw the deed now shown to you marked Defts. Exhibit "H"?

Answer

The contract referred to in Defts. Exhibit "I" was left with me at the time of the execution of the memorandum and I feel very positive that the contract marked Defts. Exhibit "F" is the contract referred to in Defts. Exhibit "I". I drew the deed marked Defts. Exhibit "H" but at what time I only know from its date.

The direct examination of witness Selbinger was closed here - and the cross examination of witness was pursued by Plffs. counsel -

Cross Question 1st

Might not both the first paper you spoke of and the deed have been antedated?

Answer

Yes it might - they were executed on different days so that one or ^{the} other of them must have been antedated.

2^a Cross Question — Do you remember of Mr.

Whitcomb's wishing the paper to be dated at a particular time?

Answer

I do not remember that any thing was said about the date of the papers at the time of their execution?

3^d Cross Question

Have you any positive recollection at the time either of those papers were executed

Answer

I have no recollection as to the time.

Cross examination closed and direct examination resumed

4th Question

Have you any reason to suppose the memorandum referred to by you, was executed on any other day than that of its date, and what is your best impression as to the time the same was executed?

The last clause of last question objected to by Plffs. counsel.

Answer

I have no reason for supposing that it was executed on any other day than its date, although

I am now told that the time of its execution is called in question in this suit. I have no impression on the subject other than from the date of the paper, as stated in my answer to a former interrogatory.

The statement of the witness as to what he was told is objected to by Defs. Counsel

H. R. Melbings

William B. Egan a witness on the part of the Defs. was produced sworn and examined and testified as follows—

1st Question

Are you a resident of Chicago and how long have you resided in Chicago?

Answer

I am a resident of Chicago and have resided in Chicago about 25 years.

2nd Question

Were you acquainted with the value of real estate in said City and vicinity in the year 1880?

Answer

Yes,

3rd Question

Were you acquainted with the value of land in East part of Section 7 Township 39 at that time?

Answer

Tolerably well - I bought several Blocks of the Canal Trunks in that section, certainly either in 1850 or 1851

4th Question

What was the value of land by the acre in the East portion of Cut Lot 45 in said Section in August A. D. 1850?

Answer

I would say about \$200 per acre for the East portion

5th Question

What were your means of knowing the value of Lands in the East part of Section 7 at that time?

Answer

I was a frequent purchaser and watcher at Canal sales, and studied and examined the relative value of every Block in that Section.

Direct examination of witness closed

1st Cross Question by Plff's Counsel

Did you buy or sell any land in that section during the year 1850?

Answer — To the best of my recollection I did

off a Block at the canal sales it may be in 1849 but I think it was in 1850 in the S. W. portion of the Section for about \$700⁰⁰ it was ~~an~~ inferior land to that in Block 48, I bid it off but did not take it. I did not sell any.

2^a Cross Question

Are you sure that the East part of Block 48 was worth no more than \$200⁰⁰ per acre in August 1850 and do you distinctly recollect the price or value of Land in that vicinity at that particular time?

Answer

That is my best recollection, Knowledge and judgment. — I cannot say with any particular distinct recollection — my judgment and recollection with regard to the value of property then are connected with the Canal sales which took place in the years 1849, 1850 and 1851. I think the sales to which I refer were in the Spring of those years.

W^m B. Egan

William Whitney a witness on the part of the Deft. was produced, sworn and examined and testified as follows — on the direct examination
1st Question — Are you a resident of Chicago

and how long have you resided in Chicago?

Answer

I am - It is seven years last November that I came to Chicago to reside,

2^d Question

Were you acquainted with the value of real estate in Chicago & vicinity in the year 1850?

Answer

I was acquainted with the value of property in Chicago and vicinity at that time. My means of knowledge was by attending sales by the Canal Trustees and from the private sales by individuals.

3^d Question

Were you acquainted with the value of lands in the East part of Section seven, Town 39 during that time?

Answer

Yes Sir, I was.

4th Question

What was the value of land by the acre in Block 48 in Section 7 in Town 39 in your judgment?

Answer

I should think the land was worth from one hundred and fifty to one hundred and seventy five dollars per acre in 1850.

5th Question

Can you state whether the prices for which

lands were held in that vicinity had advanced during the two years prior to 1850?

Answer

I could not because I did not become acquainted with the value of land in that vicinity until the canal sales in 1850.

Witness was cross examined by Plff's Counsel.

1st Cross Question

Have you any definite knowledge as to the value of the East part of Block 48 in said Section in August 1850?

Answer

I have not.

Cross examination closed and direct resumed

6th Question

Upon what is your judgment of the value of lands in Block 48 in Section 7, in August 1850 based?

Answer

Upon the sales made by the Canal Trustees of different Blocks in the same ~~and~~ ^{but} Section further West, also in the offer of a Copartnership in the purchase of another Block, I think immediately North of Block 48, shortly after the sale in May fronting North on the Rail Road —

Direct examination closed. and Cross-examination resumed

2^d Cross Question

Is not the East part of Block 48 the most valuable part of Section seven, Town thirty nine?

Answer

It is —

W^m W. Whitney.

V. C. Turner a witness on the part of the Defts was produced, sworn and examined and testified as follows on the direct examination

1st Question

Are you a resident of Chicago and how long have you resided in Chicago?

Answer — I am a resident of Chicago and have resided in Chicago over 8 years

2^d Question — Were you acquainted with the value of real estate in said City and its vicinity during the year 1850

Answer — 3^d Question I was to some extent

3^d Question

What were your means of knowledge?

Answer I was purchasing on my own and others account.

4th Question. — Were you acquainted with the value of lands in the East part of Section 7 Town 39 at that time?

Answer — I have a general impression what they were worth at that time for the reason that Clark and Turner purchased two Blocks in that section at that time.

5th Question — What in your judgment was land

worth by the acre in Block 48 Section 7 in August 1850.
 Answer — My impression is somewhere from one hundred
 & fifty to two hundred dollars per acre.

Witness cross examined by Plff's Counsel
 1st Cross Question — Have you any definite know-
 edge of the value of land in the East part of Block 48
 in said Section in August 1850?

Answer — I have not

W. C. Turner

The further examination of witnesses was adjourned
 until April 7th, A. D. 1855 at 10 o'clock A. M. by the
 consent of Counsel for the respective parties.

April seventh - parties met pursuant to agreement
 Present - the attorneys of the respective parties.

James H. Reese a witness on the part of the Plffs,
 was produced sworn and examined and testified
 as follows —

1st Question — Are you engaged in the real estate
 business in Chicago and how long have you been so engaged?

Answer — I am engaged in the Real estate business
 in Chicago and have been so engaged more or less for the last
 twenty years.

2^d Question — Were you acquainted with the value of
 real estate in said City during the year of 1850 and what
 were your means of Knowledge?

Answer — I was acquainted with the value of
 real estate in said City ^{at that time.} My means of
 knowledge ^{was obtained} by being engaged in that business at the

time and attending public sales.

3^d Question — Were you acquainted with the value of lands in the East part of section seven in Town 39 during that period?

Answer — I was somewhat acquainted with the value of lands there.

4th Question — What was land worth by the acre in the East part of Block 48 in Section 7 in August 1850?

Answer — It was worth in my opinion two hundred and fifty dollars per acre.

Cross examined by Plff's Counsel

1st Cross Question — Did you buy or sell any land in the vicinity of Block 48, Section 7 Town 39 during the year 1850?

Answer — I don't recollect that I did.

2^d Cross Question — Have you any definite knowledge as to the value of the East part of Block 48 in August 1850?

Answer — No.

Direct resumed

5th Question — Upon what is your judgment of its value at that time based?

Answer — It is principally formed from a sale of Block 11 in Section 17 eight months earlier at three hundred dollars per acre. Block 11 is about $\frac{1}{2}$ mile nearer the centre of the City than Block 48.

6th Question — During the period of eight months prior to August 1850 what was the ^{rate} ~~value~~ of increase in the value

of lands in that vicinity?

Answer — I judge it to have been about twenty five per cent.

James. H. Rees,

Peter Page a witness on the part of the Plaintiff was produced sworn and examined and testified as follows —

1st Question — How long have you been a resident of the City of Chicago and have you been engaged in buying and selling real estate during your residence here?

Answer

I have resided here nearly Eighteen years, I have not followed buying and selling real estate as a business but have bought and sold more or less —

2nd Question

X Were you acquainted with the value of lands in the East part of Block 48 Section 39 in the month of August 1850? If so state your means of knowledge.

Answer

I have a general knowledge of its value at that time — My means of knowledge is from a sale I made in Block 63, the second Block South of 48 which was considered of somewhat less value than Block 48 in November 1849 I made sale of an acre in Block sixty three for five hundred dollars. I knew of another sale in the same Block near the same time for five hundred dollars.

3rd Question

Value of the

What was the East part of Block 48
in said Section in August 1880 by the acre—
Answer—

Well I should say from seven hundred
to a thousand dollars per acre—

4th Question

Did Land advance rapidly in value
in that vicinity during the years 1849 & 1850?
Answer—

There was considerable advance in the
value of lands in that locality but not more
as much as since that time—

5th Question—

Was you the owner of Land in that
vicinity at that time, and was your attention
particularly directed to its value?

Objected to by Defts Counsel—

Answer—

I was the owner, and my attention
was called particularly to the value of land
in that locality—

Prof examined by Defts Counsel

1st Cross question—

To whom did you sell land in
Block 63, in the year 1849?

Answer— To James Wilcox—

2nd Question

What were the terms of payment?

Answer—

Two hundred dollars down — one hundred and fifty in one year, and one hundred and fifty in two years, for one acre — with interest at six per cent per annum —

Peter Page—

The further examination of witness was postponed until Wednesday April 11th at 10 o'clock —

Parties met pursuant to agreement, & maid L. B. Castle Esq. a witness on the part of Plaintiff, was produced, sworn and examined and testified as follows—

1st Question

How long have you resided in Chicago, and what is your business?

Answer—

I came to Chicago about ^{ten} years ago and have resided here most of the time since. Merchandising, Rail-roading and real estate has been my business—

2nd Question

Was you acquainted with the value of real estate in Chicago, in August 1877?

Answer—

Well I was somewhat—
3rd Question—

Was you acquainted with the value of Land in the East part of Block 48. Section 7. Town 39. by the acre in August 1850. If yes, state your means of knowledge—
Answer—

I knew something of the value of it. I was looking for property to buy for some of my friends who had money. I think I was at Mr. Sutherland's some time in the summer or fall of 1850. on a visit. I was talking with him and Mr. Taylor about the prices of property. My attention was particularly called to the value of property in that particular locality. I afterwards made a bargain with Mr. Sutherland for an acre some time in the Spring of 1851.

4th Question

What in your opinion was the East part of Block 48. worth by the acre in August 1850.
Answer.

My opinion is that it was worth one thousand dollars per acre.

Cross-examined by Defts Counsel.

1st Cross examined Question.

It was in the Spring of 1850. was a fact, that you bargained with Mr. Sutherland for an acre.

Answer.

I could not make any answer to that question now - I was of the impression it was in 1851. and could not change it until I looked over some of my papers -

2nd Cross Question

Might it not have been in the Spring of 1852?

Answer

Well it is not impossible -
3rd Cross Question

If it was in the Spring of 1852, that you made this bargain, it was in the Fall of 1831 your attention was first called to the value of this property - and that you visited Sutherland was it not?

Answer

If it was in the Spring of 1852, I made the bargain - it was in the Fall of 1831 my attention was first called to it - and when I visited Sutherland -

4th Cross Question -

If it was in the Spring of 1852 you bargained for an acre, in Block 48. it was in the Fall of 1831 was it not that you had reference to, when you spoke of the value of the Land in your answer to the fourth direct interrogatory?

Yes
3rd Cross Question

Was your opinion of its then value based to any extent at all, influenced by the conversation you had with Sutherland & Taylor, spoken of in your answer to the direct interrogatory?

Answer

It was - for I think very much of Mr. Taylor's opinion -

E. H. Castle

E. S. Prescott, a witness on the part of the Defs, was produced and sworn and made the following deposition -

1st Question

Have you been acquainted with the value of Lands in Chicago, and its vicinity, for the last six years - if so, state your means of knowledge -

Answer

Yes, I have - During that time I have been agent for the Canal Lands, and have had occasion to examine the price of lands -

2nd Question -

Were you acquainted with the value of Lands in the East part of Section seven in said city during the year 1850?

Yes—
3rd Cross Question

Was your opinion of its then value based to any extent or at all influenced by the conversation you had with Sutherland & Taylor, spoken of in your answer to the third direct interrogatory?

Answer

It was—For I think very much of Mr. Taylor's opinion—

Ed. H. C. as to

E. S. Prescott, a witness on the part of the Defs, was produced and sworn and asked questions as follows—

1st Question

Have you been acquainted with the value of Lands in Chicago, and its vicinity, for the last six years—If so, state your means of knowledge—

Answer

Yes, I have—During that time I have been agent for the Canal Lands, and have had occasion to examine the price of lands—

2nd Question

Were you acquainted with the value of Lands in the East part of Section seven in said City during the year 1850?

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Crop examined by Plffs Counsel
1st Question -

Was your attention called to the value of Land in that Block during the month of August of that year, or about that time?

Answer -

I am not aware that it was -

E. S. Prescott

April 12th 1855. Justice and Foreman of the court -
Present H. S. Messer, Counsel for Plffs and
Wm. Miller, counsel for Defs.

Wm. C. E. Wood, a witness on the part of the Plaintiff, was produced, sworn and testified as follows -

1st Question

Were you acquainted with the value of Lands by the acre in the East part of Block 46. Section 7. Town 39. City of Chicago, in August 1850. If yes, state your means of knowledge -

Answer

Yes Sir. I think I was acquainted with its value - My means of knowledge was, having grown in the immediate neighborhood, and selling.

2nd Question

Who was in possession of said East part of said Block in August 1850. and did those in possession claim to own the property?

~~238~~
Answer

I don't know who was in possession of said Land in August 1850.

3rd Question -

What was the East part of said Block worth by the acre in August 1850. with the improvements -

Answer

I should think it was worth from seven to eight hundred dollars per acre, with the improvements at that time -

Cross-questioned by Depts Council -
1st Cross question

In your judgment of the value of the property at that time, do you speak of its value, as if what in your judgment it would sell for in canal time - as then sales were usually made. -

Answer - My judgment is based on its value in canal time. -

2nd Cross question -

The cash value would have been much less at that time, would it not?

Answer -

Not any less than the difference of interest of the money at that time -

A. C. Wood -

James H. Reed recalled on the part of the 1st Question

What was the difference between the cash value of real estate in the city of Chicago in the summer of 1830. and its value upon land time
Answer

From twenty to twenty five per cent in my opinion
James H. Reed

State of Illinois
Cook County } J. S. C. W. Davenport, Clerk
City of Chicago } Before, in and for the City of Chicago
in the County and State aforesaid, do hereby certify
that previous to the examination of the said
Reuben Taylor, John Rogers, J. S. McDermott, J. W.
Bradt, J. S. Paces, C. D. Fritz, Thomas B. Dyer,
Harry Warner, Simon Doyle, Samuel M. Warner,
Stephen Bronson, Henry W. Clark, H. S. Wright, E.
B. Sutherland and Mahlon D. Cyden, John B. Givens
J. B. K. Stebbins, Wm Whitney, Felix T. Canda, L.
Turner W. B. Egan, James H. Reed, Peter Page,
Edward H. Castle, E. S. Prescott, and A. C. Wroe
as witnesses, they were each duly sworn according
to law to testify the truth in relation to the
matter in controversy between Frances Sutherland
by her next friend W. M. Raymond, complain-
ant and James W. Bodin, Truman White

comb, Elias B. Sutherland and Jason Gurley, defendants, so far as they should be interrogated about that said deposition were taken by and before me at my office, Number Seventh Two Lake Street, in the City of Chicago, Pursuant to the notice hereto attached - That after said interrogatories and answers were written down by me, they were read over to said witnesses and several subscribed by them in my presence - I further certify that the counsel for the respective parties were in attendance, and cross-examined the witnesses on the several days when the foregoing depositions were taken,



GIVEN UNDER MY HAND AND
Notarial Seal, this 10th day of
April A.D. 1858.

G. W. Davenport
Notary Public

Commission Expires 21st of day
Employed 14 days
Received of James Baden / 45.
E. B. Sutherland / 30

Frances Sutherland
by her next friend.
B. W. Raymond
vs.

James W. Borden
 Truman Whitcomb
 Elias B. Sutherland
 Jason Gurley

In the Cook County
Circuit Court of Ills.
on the Chancery
side

It is hereby stipulated and agreed by and between the parties in the above entitled suit that the depositions taken in this case before J. W. Davenport Notary Public be read in evidence on the trial of this cause, the parties agreeing to waive all informalities in taking or certifying to the same, subject however to all legal exceptions each party claiming the full benefit of all exceptions to witnesses interrogatories or answers taken during the examinations of witnesses

Dated Chicago
June 19th. 1855

Henry S. Monroe
Att'y for Compt
Hayne & Miller
for Defts.

It is further stipulated by & between the parties to the above entitled suit that the Deeds & writings not properly proved in the taking of the depositions above referred to may be proved at the hearing & that the depositions not signed

~~238~~

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may be regarded as properly & regularly before the
Court

Henry S. Monroe

Atty. for Compt

This Indenture made and entered into this
Twenty-ninth day of May in the year of our Lord
one Thousand, Eight-hundred and Fifty, between
Elias B. Sutherland of Chicago, Cook County,
and State of Illinois, of the first part, and
William Wheeler of the same place of the
second part—

Witnesseth that the said party of the
first part in consideration of the sum of
seven hundred dollars to him duly paid, of
which he has received the receipt, and before the sealing and delivery of
these presents and in further consideration
of the trust hereinafter mentioned, has
granted, bargained and sold, and by these
presents, does ^{grant} bargain, sell and convey
to the said party of the second part, and
assign all the right, title, interest, claims or
demand whatsoever of the party of the first
part of in and to a certain contract for deed
executed by H. Banda, to William Jack on
December 6th 1878, and assigned by William
Jack to said party of the first part for two
acres of Land in Lot No 48, Section 7, Town
39. of Range 14. E. as laid out by the Canal
Trustees, which contract and assignment
are recorded in the Recorder's office of Cook
County, Illinois, June 26th 1879, in Book
No 30, page 712, and also all buildings and

improvements situated on said two acres. and also any deed, a conveyance of said two acres which may hereafter be made by said Canda, his heirs or assigns, said deed when made, to be made to said party of the second part, subject in its operation in all respects to the provisions of trust herein recited.

The said two acres being the same that said party of the first part now resides on — to have and to hold the same with the appurtenances to the said party of the second part and his assigns forever, In trust for the following purposes, to wit — for the use and benefit of Frances Helen Sutherland, wife of Edw. B. Sutherland, to pay the rents, issues, and profits of the said premises to the said Frances Helen Sutherland, or to such person or persons as she in writing shall direct, for her ^{sole} and separate use, and at the death of the said Frances Helen Sutherland, then to the use of such person or persons, and for such estate, estates, or charges, as the said Frances Helen Sutherland, by her last Will and Testament in writing, or any writing, purporting to be her last Will and Testament, shall give and devise said premises. The said Frances Helen Sutherland to have the sole power to give and devise said prem

Myffs

Exhibit A

ing to whomsoever she may direct and choose
But reserving and conferring power of said
party of the second part to sell and convey
said premises by good and sufficient deed
in case said Frances Helen Sutherland, her
heirs or assigns should so order to be expres-
sed in writing—

In witness whereof, I have hereunto set
my hand and seal the day and year first
above written—

In the presence of } Elias B. Sutherland
Henry W. Clark }

State of Illinois } ss.
Cook County } I, Henry W. Clark, a Notary
Public, in and for said county ^{in the} & state aforesaid,
do hereby certify that Elias B. Sutherland who is personally known to me to be
the same person whose name is subscribed
to the annexed Trust Deed appeared before
me, this day, in person, and acknowledged
that he had signed, sealed and delivered
the said instrument of writing as his free
act and deed for the uses and purposes there
in expressed.



Given under my hand and official
seal this first day of June A.D. 1850
Henry W. Clark
Notary Public

Copy

George H. Pratt and Wife

To Elias B. Sutherland.

This Indenture made this Thirtieth day of October, in the year of ^{our} Lord One Thousand Eight Hundred, and Forty nine, Between George H. Pratt & Margaret his wife, of Cook county and State of Illinois, of the first part, and Elias B. Sutherland of the same place, of the second part - Whereas the said George H. Pratt party of the first part, is justly indebted to the said party of the second part in the sum of Four Hundred and Fifty dollars with interest secured to be paid by two certain promissory notes of \$225.00. each & interest bearing from date herewith drawn by said George H. Pratt in favor of Elias B. Sutherland in order now due October 1. 1850. and the other due October 1. 1851. Now therefore this Indenture witnesseth that the said party of the first part for the better securing the payment of the money aforesaid with interest thereon according to the tenor and effect and true intent and meaning of the said promissory note above mentioned, and also in consideration of the further sum of One Dollar to them in hand paid by the said party of the second part at the delivery of

these present, the receipt whereof is hereby
acknowledged, have granted, bargained, sold
remised, aliened and conveyed and by
these present do grant, bargain, sell, remis-
alien and convey unto the said party of
the second part, his heirs and assigns forever,
all the South East-quarter of the South
East-quarter of Section Twenty Five Town-
ship Forty-one Range Eleven East, also the
North East quarter of the North East quarter
of Section Thirty Six Township Forty-one Range
Eleven East. Also the South East quarter of the
North East quarter of Section Thirty Six Township
Forty-one Range Eleven East all of which are
being in the Chicago Land District and all
containing One hundred and Twenty acres
more or less, To have and to hold the same to-
gether with all and singular the tenements
hereditament privileges and appurtenances
thereunto belonging or in anywise appertain-
ing with the rents issues and profits thereof
and also all the estate interest and claim
whatsoever in law as well as in equity which
the party of the First part have in and to
the premises hereby conveyed unto the said
party of the second part his heirs and assigns
and to their only proper use, benefit and
 behoof forever, Provided always and these

And in consideration of the sum of ten hundred and eight Dollars to me paid in cash of George H. Pratt party of the first part, his heirs, executors or administrators shall well and truly pay or cause to be paid to the said party of the second part, his executors, administrators or assigns the aforesaid sum of money with such interest thereon at the time and in the manner specified in the above mentioned promissory notes as they each become due respectively according to the tenor and effect and true intent and meaning thereof that then and in that case these presents or anything herein expressed shall be absolutely null and void.

present are upon this express condition. That if the said George H. Pratt party of the first part, his heirs, executors or administrators shall well and truly pay or cause to be paid to the said party of the second part, his executors, administrators or assigns the aforesaid sum of money with such interest thereon at the time and in the manner specified in the above mentioned promissory notes as they each become due respectively according to the tenor and effect and true intent and meaning thereof that then and in that case these presents or anything herein expressed shall be absolutely null and void.

In witness whereof the said party of the first part hereunto set hand and seal the day and year first above written.

Signed sealed and delivered } Geo. H. Pratt (Seal)
in presence of B. B. Lincoln } Margaret Pratt (Seal)

State of Illinois }
Cook County } J. B. B. Lincoln, a Justice of
the Peace for in and for the
said County in the State aforesaid do hereby
certify that George H. Pratt is personally known
to me as the same person whose name is
subscribed to the above instrument of writing

Wm. C. Walker

appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument of writing as his free and voluntary act, for the uses and purposes therein set forth. And the said Margaret Pratt, wife of the said George H. Pratt, having been by me examined separate and apart and out of the hearing of her husband, and the content and meaning of the said instrument of writing having been by me made known to her, she acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and seal, the first day of November A.D. 1849.

B. B. Lincoln
Justice of the Peace

Ch. 25, 197 Filed for Record
February 22nd 1850 And
Recorded in Book No 8
of Mortgage page 239H

State of Illinois
County of Cook J. Lewis D. Hoard, Clerk of
the Circuit Court and Ex. Officer

recorder, and for said County in the State
aforesaid, do hereby certify that the within
and foregoing instrument is a true and cor-
rect Copy of a Mortgage filed for record in my
office and recorded in Book No 8 of Mortgages
page 239 of and also the release or discharge of
the same on the margin of said Record. and
in which said Mortgage, George H. Pratt and
Wife are Granters, and Elias B. Sutherland
is Grantee. Witness my hand, and the seal
of said Court at Chicago, this Twenty-second
day of November A.D. 1834.



L. D. Hoard,

Clerk & Ex. Off.
Recorder -

Defendants Exhibit A

E. B. Sutherland Esq To Geo. H. Pratt

This Indenture made this thirteenth day of October in the year of our Lord, one thousand eight hundred and forty nine—

Between Eliaz B. Sutherland and Frances H. Lippiger, of Cook County and State of Illinois, of the first part, and George H. Pratt of the same place, of the second part ("Depts. Exhibit K.")

Witnesseth that the said party of the first part for and in consideration of Fifty Five Dollars in hand paid by the said party of the second part the receipt whereof is hereby acknowledged, have remised, released ^{and sold} and conveyed and quit claimed, and by these presents, do remise, lease, sell, convey and quit claim unto the said party of the second part—his heirs and assigns forever, all the following described lot: a parcel of land situated, lying and being in the Chicago Land district and known as

The South East quarter of the North East of quarter of Section thirty-six in Township four one, North Range Eleven East of the Third Principal Meridian—To have and to hold the same together with all and singular, the appurtenances and privileges thereunto belonging and in anywise appertaining, and all the estate, right title interest and claims whatsoever of

the said party of the first part: either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part - and the said party of the first part, for himself, his heirs, executors, and administrators does covenant and agree to, and with, the said party of the second part - his heirs and assigns that he will warrant and forever defend the aforesaid premises to be free and clear of all claim or claim of any or every person or persons claiming or to claim by, through, or under him and none other. In witness whereof, the said party of the first part have hereunto set their hands and seals, this day and year first above written -

Signed, sealed, & Delivered } Elias B. Sutherland
 In presence of Henry W. Clark } Francis H. Sutherland (Seal)

State of Illinois }
 Cook County } ss I, Henry W. Clark, a Notary Public in and for the said County in the State of Illinois - Do hereby certify that Elias B. Sutherland and Francis H. Sutherland his wife, personally known ^{to} me as the same persons whose names are subscribed to the within Deed appeared before me this day in person, and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act. And for the uses and for

passes therein set forth —

And the said Francis H. Sutherland, wife of the said Elias B. Sutherland, having been by me examined, separate and apart, and out of hearing of her husband, and the contents and meaning of the said instrument of writing having been by me fully made known and explained to her, she acknowledged that she had fully and voluntarily executed the same, relinquished her dower to the lands and tenements therein mentioned, without compulsion of her said husband; and that she does not wish to retract the same.

Given under my hand and seal of office this twenty sixth day of October A.D. 1849.

Henry W. Clarke
Notary Public —

Ct. Clk. 270 Filed for Record 27 Dec 1850
S Recorded in Book 39 of Deeds page 106

State of Illinois }
Cook County } ss I, Lewis D. Board, Clerk of
the Circuit Court, and Ex Officio recorder, in and
for said County in the State of aforesaid, do hereby
certify that the within and foregoing instrument
is a true and correct copy of a Deed

Filed for Record in my office the 27th day
of December 1830 and Recorded in Book 39
of Deeds page 106. in which Elias B. Sutherland
and wife are Grantees, and George H. Pratt
is Grantee—



Witness my hand and seal of
said Court at Chicago, this twenty
third day of November A.D. 1834.

L. D. Hoard
Clerk & Recorder

Defts "B"

E. B. Sutherland And wif to Geo. H. Pratt

This Indenture made this Thirteenth day of
October in the year one thousand eight hundred
and forty nine Between Elias B. Sutherland
and Frances H. his wife, of Cook County and State
of Illinois of the first part, and George H. Pratt
of the same place, of the second part—

"Defts Exhibit C."

Defts

Exhibit "C."

Witnesseth that the said party of the first
part, in consideration of the sum of seven hun-
dred and thirty five dollars to them duly paid
before the delivery hereof have granted, bargained
and sold, and by these presents do grant, bargain
sell and convey to the said party of the second

part- his heirs and assigns forever all -
 The South East-quarter of the South East-quarter
 of Section Twenty Five Township Forty one, Range
 Eleven E. also the North East-quarter of the
 North East-quarter of Section Thirty six of Town-
 ship Forty one, Range Eleven E. both lying in the
 Chicago Land District, and containing Eighty
 acres more or less - With the appurtenances and
 all the estate, title and interest of the said
 party of the first part therein, and the said
 Elias B. Sutherland does hereby ^{convey} ~~convey~~ and
 agree with the said party of the second part, that
 at the time of the delivery thereof, he is the ^{sole} ~~sole~~
 full owner of the premises above granted, ^{and} ~~and~~
 thereof in fee simple, absolute that he will
 warrant and defend the above granted premises in
 the quiet and peaceable possession of the said party
 of the second part - his heirs and assigns forever
 and that they are free from all encumbrances
 of any kind whatsoever -

In Witness whereof the said party of the
 first part have hereunto set their hands and
 the day and year first above ^{written} ~~written~~

Signed, Sealed and Delivered } Elias B. Sutherland (inc.)
 in presence of Henry W. Clarke } Henry W. Sutherland (inc.)

State of Illinois

Cook County

Subscribed, Henry W. Clark, a Notary Public

lie, in and for the said County, in the state aforesaid.
 To hereby certify that Elias B. Sutherland and
 Francis B. Sutherland his wife, personally known
 to me as the same persons whose names are
 subscribed to the above deed, appeared before me
 this day, in person, and acknowledged that they sig-
 ed, sealed and delivered the said instrument of
 writing, as their free and voluntary act, and for
 the uses and purposes therein set forth, and the
 said Francis B. Sutherland, wife of the said Elias B.
 Sutherland having been by me examined separate
 and apart, and out of the hearing of her husband
 and the contents and meaning of the said in-
 strument of writing having been by me fully made
 known and explained to her, acknowledged that
 she had freely and voluntarily executed the
 same, and relinquished her dower to the lands
 and tenements therein mentioned, without con-
 sension of her said husband, and that she
 does not wish to retract the same.

Given under my hand and seal Notarial
 this twenty sixth day of October A.D. 1834.



Henry W. Clarke
 Notary Public—

Ch 28.241 Filed for Record 27 December 1830 }
 & Recorded in Book 39 of Deeds, page 107 }

State of Illinois of
Cook County. J. D. Hoard, Clerk of the
Circuit Court, and Ex. officio recorder in and for
said County in the state aforesaid, do hereby cer-
tify that the within and foregoing instrument is
a true and correct copy of a Deed filed for
Record 27th day of Dec. 1850 & Recorded in Book
39 of Deeds, page 107. in which Elias B. Sutherland
and wife are Grantors, and George H. Pratt is
Grantee—



Witness my hand and the seal of said
Court, at Chicago this twenty third
day of November A.D. 1854.

J. D. Hoard.

Clk & Recdr—

(Defts Ex "C")

Defts
Exhibit "D"

Know all men by these presents, that Charles
Canda and Adele Canda, his wife, of the city and
State of New-York, have made, constitute
and appointed, and by these presents, do make,
constitute and appoint William B. Ogden, Mar-
tin D. Ogden, & Edwin H. Sheldon and Edwin W.
La Bar of Chicago, in the state of Illinois, them
or either of them, jointly or severally, our true and
lawful Attorneys in and for us and in our
name, place and stead, to take upon themselves

either jointly or severally as aforesaid, the charge, care and management of the lands hereinbefore mentioned, that is to say:

Out Lots Fifty eight (48) and Thirty four (34) in the Canal Trusts subdivision of section seven (7) in Township thirty nine (39) North Range (14) Fourteen, East of the 3rd 11' S. 1/2 W. in the City of Chicago, County of Cook, and State of Illinois. And to survey, layout, subdivide the same, and to make maps and plats thereof, to acknowledge such plats for us, as our Attorneys or Attorney aforesaid—

"Depts. exhibit D"

And to lease, sell and dispose of a contract of the leasing, sale and disposition of the said Lands, or any portion thereof, for such consideration and upon such terms of payment as they or either of them may deem sufficient and right, and for our interest; and in pursuance of any such contract or sale, and for the purpose of summoning the same, we do hereby authorize and empower them, or either of them, to make, execute, acknowledge and deliver all proper and necessary papers, deeds and conveyances in the law, that may be required, to convey all our right title and interest in and to said premises with such covenants of warranty as to our

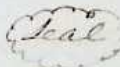
Depts
Exhibit D

said Attorneys or either of them shall seem proper, all our right, title and interest of, in or to the lands before mentioned. And we do also hereby authorize and empower our said Attorneys or Attorney, them or either of them, as aforesaid, to ask demand, sue for, recover and receive all moneys that may become due from any person or persons, from or on account of said lands, or any portion thereof and to make and deliver good and valid receipts, acquittances and discharges therefor, and also in our names or otherwise, as the said Attorneys or Attorney shall find or deem requisite or proper to take and adopt, in any court or courts, or before any magistrate, judge or tribunal of the United States, or of any state or territory thereof, all such legal measures and proceedings as they or either of them may think requisite in order to preserve, protect and defend our title, interest and possession in the said lands or any portion thereof, and to remove any intruder or intruders, prevent any trespass, and for the recovery of any damages against any trespasser or trespassers, by reason of unlawful possession, detainer or wrong doing upon the lands before mentioned, or any portion thereof—giving and granting unto our said Attorneys or Attorney, them and each of them, jointly and severally, full power and authority to do and perform all and any

act and thing whatsoever requisite and necessary to be done in and about the premises, as fully, to all intents and purposes, as we might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that our said Attornies or Attorneys, they or either of them, or their, or his substitute, shall lawfully do, or cause to be done ^{by virtue} thereof—

In Witness whereof, we have hereunto set our hands and seal, the Ninth day of February, in the year one thousand, eight hundred and Fifty three—

Charles Canda 

C. Canda 

Sealed and delivered }
In presence of }
J. C. Lawrence }

J. C. Lawrence

State of New York) Be it remembered that on the
New York City & County) Ninth day of February, in the year
one thousand, eight hundred and fifty three, in the
County aforesaid before me Joseph C. Lawrence a Commissioner residing in said County, duly appointed and commissioned by the Government seal of Illinois, to take the acknowledgement and proof of deeds, and other instruments of writing under seal to be read or recorded in some state of Illinois, personally appeared Charles Canda and Adm. Canda

his wife, who are personally known to me, to be the persons whose names ~~are~~ ^{are} subscribed to the foregoing Power of Attorney, as having executed the same, and acknowledged that they had executed the same for the uses and purposes therein expressed. And the said Adele Canda, wife of the said Charles Canda, being of lawful age, and having been by me separate and apart from her said husband, examined, and the contents of the said deed fully made known and explained to her, acknowledged that she had executed the same, and relinquished her dower to the lands and tenements therein mentioned voluntarily and fully, and without compulsion of her said husband—

In witness whereof, I have hereunto set my hand, and affixed my official seal as Commissioner of the said State of Illinois, at my office in the County of Philadelphia, and State of Pennsylvania,



This twelfth day of February A.D. 1833.

Joseph Jackson C. Lawrence

Commissioner of
The State of Illinois, for
the County of New York

Defendants Exhibit "B"

This Indenture made this Thirtieth day of August
 A.D. 1830. Between Elias B. Sutherland of Chicago
 Cook County Illinois, party of the first part, and
Truman Whitecomb of the same place, party of
 the second part. Witnesseth that for and in
 consideration of the sum of Six hundred dollars,
 paid by said party of the second part, to said party
 of the first part, the receipt whereof is hereby ac-
 knowledged, the said party of the first hath bar-
 gained, sold, assigned, aliened, released, remised,
 conveyed and confirmed, and by these Presents,
 doth grant, bargain, sell, alien, assign, release and
 convey unto said party of the second part, and
 unto his heirs and assigns Forever. All of that
 part and portion of Out Lot 46 July Eight (83)
 in the Illinois & Michigan Canal Trustees Subdi-
 vision of Sec. 7. Township 39. Range Fourteen. 14. East.
 described as follows, to wit. Commencing at the
 South East Corner of said Out Lot, 43. running
 thence West upon Lake Street. 12 Rods. thence
 North July (70) Rods, thence East twelve (12)
 Rods, to the East line of said Out Lot 48. thence
 South upon said East line of said Out Lot, 48.
 to the place of beginning—

And further. The said party of the
 first part doth hereby assign to said party of the
 second part, that certain Contract of Sale or Co-
 lligate of Purchase executed by one Flourmond

"Deft's
 Exhibit
 C"

Canda, to one William Jacks, dated the sixth day of September A.D. 1848. In three Acres of said Out Lot 48. of said Canal Trustees Subdivisions of Sec 7. above mentioned. upon which there has been paid the sum of Two hundred and Eight Four ~~thousand~~ - ⁵⁵ pro. dollars ~~are~~ to be still paid there on with interest. As said P. Canda one half of the last named sum falling due on the 4th day of September 1830. and one half of same on 6th day of September A.D. 1832. which said sum last above named, said party of the second part agrees to pay, and subject to which the Conveyance is made - the said party of the first part hereby authorizing said party of the second part to receive, have and demand of said P. Canda the Deed covenanted and agreed to be made by said P. Canda, in and by said Contract of Sale, or Certificate so executed by him as aforesaid, to William Jacks -

To have and to hold.

The said premises above bargained and described with the appurtenances and buildings thereon, unto the said party of the second part, and his heirs and assigns forever.

And the said party of the first part, for himself, his heirs, Executors, Administrators and assigns, doth hereby covenant bargain and agree to and with the said party

principle business is not to be having an equal
 money or balance of 8281 dollars 80 cents dollars

of the second part, his heirs and assigns - that
 upon the payment of the said sum and sum
 of money so due to P. Canda. as aforesaid upon
 said Certificate of purchase, above described and
 assigned, that said P. Canda will well and
 truly assure and convey a perfect, absolute and
 indefeasible Estate of inheritance in Law in
 fee simple by good and sufficient Deeds of con-
 veyance to said party of the second part, of said
 premises so described and bargained as aforesaid
 and hereby conveyed by said party of the first
 part, to said party of the second part, his heirs
 and assigns - and that said premises are
 free and clear of all former and other grants,
 sales, levies, taxes and incumbrances, of what
 kind or nature soever - And the above bargain-
 ed premises in the quiet and peaceable posses-
 sion of said party of the second part, his heirs
 and assigns, against all and every person or
 persons - lawfully claiming or to claim the
 whole or any part thereof the said party of the
 first part shall and will warrant and
 defend - Subject to the payment of such
 sum or sums as are due to P. Canda aforesaid.
 And that in case of failure on the
 part of said P. Canda to convey such title as
 aforesaid, to said party of the second part, as
 shall be perfect, sure and indefeasible, that

Defts

Exhibit "E"

Legal proceedings may at the option of said party of the second part be instituted in his own name or the names of said party of the first part, at the cost and charges of said party of the first part, against said T. Canda, or Charles Canda, or such other person or persons as may appear to be properly liable, to convey title as aforesaid to said premises, or for payment of damages in default thereof, and appropriate to the proceeds of such judgment as may be obtained against them or any of them to his said party of the second part own use and benefit without liability over and that in any event said party of the first part upon failure of said Canda to convey a good title for said premises to said party of the second part as aforesaid. said party of the second part shall be entitled to receive and recover of the said party of the first part, as Stipulated Damages without defalcation or discount whatever the sum of Nine Hundred —

Dollars — which shall become due as soon as the payments now remaining of the purchase money to T. Canda in the certificate or contract of sale so described as aforesaid, shall be paid up to said Canda by said party of the second part. and the said Canda fails or refuses, to upon demand made to convey said premises so described

as aforesaid to said party of the second part
and make the same a perfect sure and indisputable
title in the Law in fee simple free of all
defect of record and of all charge or incumbrance
whatsoever—

In Witness Whereof said party of
the first part has hereunto set his hand and
seal, this second day of August A.D. 1850.

In presence of
The said fragment

E. B. Sutherland

Struck out & also word "due"

Struck out on last page—

F. H. Sutherland

before signing on 3rd page word second
altered to First

J. I. Lowe—

State of Illinois

Cook County

vs. J. Samuel I. Lowe, as Justice
of the Peace, in and for said County in the State of
said de hereby certify that Elias B. Sutherland
and Frances H. Sutherland, who are personally
known to me to be the same persons, whose names
are subscribed to the annexed Deed, appeared before
me this day in person, and acknowledged that
they had signed, sealed, and delivered the said
instrument of writing as their free act and

deed for the uses and purposes therein expressed
 And the said Francis H. ^{wife of the said Eliza D. Ireland} Ireland, having been
 by me examined separately and apart and out
 of the hearing of her said husband, and the con-
 tents and meaning of said instrument of writing
 having been by me made known and fully explain-
 ed to her, ~~she~~ acknowledged that she had free
 and voluntarily executed the same without
^{compulsion} of her husband, and relinquished her
 claim to the lands and tenements therein men-
 tioned, and that she does not wish to retract
 the same.

Given under my hand and official seal, this
 3rd day of August A.D. 1830.

J. J. Love (L.S.)

Deft's Exhibit "E"

Justice of the Peace

"off"

This Indenture made this 1st day of August
 A.D. 1830. Between Almonde Canada of Chicago
 Cook County Illinois, and Charles Canada of the
 County of State of New York, parties of the first part,
 and Freeman Whitcomb of Chicago, Illinois,
 of the second part.

Witnesseth that whereas the above
 named Almonde Canada became the grantee
 of Lot No. 78 of the Canal Trustees Subdi-
 vision of Section 7 Township 39. N. R. 10 East of

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at a sale of of Canal Lands, and Lots; made by said Trustee in the year AD 1878. And whereas also the said F. Canda, did on the sixth day of September AD 1878, bargain and sell to one William Jacks, three acres of said Out Lot 1878 above described, for a consideration of Three hundred and eighty nine & $\frac{70}{100}$ Dollars, of which there was paid down the sum of One hundred and fifty two & $\frac{70}{100}$ Dollars, being one quarter of said purchase money, and also twenty five & $\frac{25}{100}$ Dollars one year's interest in advance on the residue of said purchase money, and the three several promissory Notes of said William Jacks and payable for one hundred and fifty two $\frac{70}{100}$ Dollars more; two and three years from the date of said purchase, respectively executed and delivered by him to said Flimond Canda, for the residue of said purchase money. In consideration whereof, the said Flimond Canda executed and delivered his certain certificate of purchase dated the 6th day of September AD 1878, and wherein and thereby covenanted and agreed that upon payment of said Notes according to their tenor and effect, that the said F. Candas would make to said Purchaser, William Jacks, a good and sufficient Deed of said three acres of land - so sold as aforesaid.

And whereas afterwards the

Exhibit
of
"A"

said William Jack assigned the said certificate
 a Contract of Purchase to one Elias B. Sutherland and,
 for a valuable consideration in writing on the back
 hereof - And the said Elias B. Sutherland
 has assigned all his interest therein to the said
 party of the second part - Truman Whitcomb - and
 authorized him to demand, have, and receive the
 said Covenanted and agreed to be made by said
 F. Canada to said party of the second part of Land
 upon the payment of the residue of the purchase
 money now due thereon, according to the true in-
 tent and meaning of said Contract, bargain and
 Sale above described and made with William Jack

On therefore this agreement and
 Indenture Witnesseth that upon payment of
 said party of the second part, his heirs, executors,
 Administrators assigns to said party of the first
 part, their heirs, executors, Administrators or as-
 signs of the two several promissory Notes, now
 remaining unpaid, executed by said William Jack
 to said F. Canada. Dated 6th day of September 1878.
 1878. each payable in one hundred & fifty two \$100
 Dollars. And due in two and three years from
 the date thereof respectively together with such
 interest as shall be legally due thereon, the said
 parties of the first part for themselves, their heirs,
 executors, Administrators and assigns hereby agree
 and bind themselves to said party of the second

In consideration of one dollar to me in hand paid,
I assign, transfer and convey all my right,
title, claim and interest in and to the within
contract to Jason Guley and I hereby make
said Guley, my true and lawful Attorney, and
in my name and stead to ~~execute~~^{perform} said con-
tract according to the true intent and mean-
ing thereof.

Chicago Feb 21st 1852

Thuman Whitcomb

State of Illinois

Cook County 3rd Feb J. Edward S. Kimberly,

Clerk of the County of Cook of Cook
County, do hereby certify that on the 14th day of
February AD 1853. Personally appeared before me
Thuman Whitcomb, who is personally known to
me to be the same person who signed the fore-
going assignment, and acknowledged that
he signed, sealed and delivered the same as
his free act and deed for the uses and
purposes therein set forth.

Witness my hand and seal
Official, the day and year
aforesaid.

E. S. Kimberly Clerk



Defts Exhibit 'A'

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This Indenture, made the Twenty first day of February, in the year of one thousand eight hundred and fifty three - Between Charles Canda of the City, County, and State of New York, and Adelle his Wife, by Malhon D. Ogden their Attorney in fact - of the first part, and Jason Gurn of the City of Chicago, County of Cook, and State of Illinois - of the second part,

Defts
Exhibit "G"

Witnesseth, that the said party of the first part, for, and in consideration of the sum of one hundred and fifty Dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have aliened, remised, released, conveyed and confirmed, and by these presents do alien, remise, release, convey and confirm, unto the said party of the second part, and to his heirs and assigns forever, all that certain lot and parcel of land situate in the County of Cook, and State of Illinois, known and distinguished as that part of Lot No. (number forty eight - 48) in the Canal Trusts Subdivision of Section Seven (7) in Township thirty nine (39) North of Range Twelve (12) East of the Third Principal Meridian bounded as follows. Beginning at the South East corner of said Block on the North line of Lake Street and running thence West along said North line

of said Street, one hundred and thirty two (132) feet, thence Northwardly to a point on the North line of said Block distant one hundred and thirty two (132) feet, from the North East Corner thereof, thence East one hundred and thirty two feet (132) to said North East Corner of said Block, and thence South, on the East line of said Block to the place of beginning—

Together with all and singular the tenements, hereditaments, and appurtenances thereto belonging, or in any wise appertaining, and the reversion and reversions, remainders and remainders, rents, issues and profits thereof, and also, all the estate, right, title, interest, Power right of Dower—property, possessions, claims, and demands whatsoever, as well in law as in equity, of the said premises of the first part of, in and to the above described premises, and every part and parcel thereof with the appurtenances: To have and to hold, all and singular, the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever—

And the said Charles Canda, for himself, and for his heirs, executors and administrators, does hereby, covenant, promise, and agree, to and with the said party of the second part, his heirs and assigns that he has not made, done, com-

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mitted, executed or suffered any act or acts, thing or things, whatsoever, whereby, or by means whereof, the above mentioned and described premises, or any part or parts thereof, now are, or at any time hereafter shall or may be impeached, charged, or incumbered, in any manner or way whatsoever, subject nevertheless to all taxes and assessments levied or assessed on or against said premises since the seventh day of September A.D. 1878.

"Deeds Exhibit C"

In Witness Whereof, the said parties of the first part, have hereunto set their hands and seal, the day and year first above written.

Sealed and Delivered)

In presence of }
Edwin Barnard }

Charles Canda, cor.
by Mahlon D. Ogden
his Attorney in Fact
Adelle Canda, (S.D.)
B. Mahlon D. Ogden
her Attorney in Fact

State of Illinois)

Cook County. J. A. I. Brown, a Notary Public in and for said County in said State, do hereby certify that this day, personally appeared before me, Mahlon D. Ogden, as Attorney in Fact, who is to me personally known, to be the real person described in, and who executed the foregoing Deed as Attorney

and a knowledge that he fully and voluntarily executed said deed, as the free act and deed of Charles Canda and Adele Canda, and hereby relinquished the right of dower of the said Adele Canda, in and to the lands in said deed described, for the uses and purposes therein set forth —

In testimony whereof, I have hereunto set my hand and Notarial seal this first day of March A.D. 1858.

Andrew J. Brown
Notary Public —



This Indenture, made this twenty first day of December, in the year of our Lord one thousand Eight hundred and fifty two —

Between Truman Whitcomb of the City of Chicago, in the County of Cook, and State of Illinois, Party of the first part, and Jason Gurley, of the same place, Party of the second part —

Witnesseth that the said party of the first part, for and in consideration of Two thousand Five Hundred Dollars, in hand paid to the said party of the second part, ^{the receipt whereof is hereby acknowledged on the said part of the said party of the second part,} forever released, and discharged therefrom, hath remised, released, conveyed and quit claimed, and by these

Exhibits "H"

presents, doth remise, release, sell, convey and give
claim unto the said party of the second part,
his heirs and assigns forever, all the right, title,
interest, claim and demand, which the
said party of the first part hath in and to
the following described lot, piece or parcel of
land to wit— Part of out Lot (number forty
eight (48) of the Canal Trustees Subdivision
of Section seven (7) in Township thirty nine (39) Range
fourteen (14) East of the third principal Meridian
bounded as follows—beginning at the South East
Corner of said Out Lot, (number forty eight (48) run-
ning West one Hundred and thirty two (132) feet
thence North, five hundred and twenty eight
(528) feet to the North line of said Block, thence
East one Hundred and thirty two (132) feet to the
East line of said Out Lot, thence South to the
place of beginning—

Depts

Exhibit "H"

Exhibit "H"

To have and to hold the same, together
with all and singular the appurtenances
thereunto belonging, or in anywise
thereunto appertaining, and all the estate, right,
title, interest and claim whatever, of the said party
of the first part, either in law or equity, to the only
proper use, benefit and behoof of the said party
of the second part, his heirs and assigns forever—
In Witness Whereof, the said party of the

Just part herunto set his hand and seal the
day Just above written—

(Signed, Sealed and Delivered)

In Presence of

Thuman Whitcomb (D.)

State of Illinois,

Cook County } ss. I, Edward S. Kimbuck, Clerk
of the County Court in and for said County,

the State aforesaid, do hereby certify, That

Thuman Whitcomb, personally known
to me as the same person whose

name is subscribed to the foregoing
instrument of writing, appeared

before me this day in person, and
acknowledged that he signed, sealed and

delivered the said instrument of writing, as
his free and voluntary act, for the uses and

purposes therein set forth—

Given under my hand and seal this
twelfth day of February, A.D. 1833.

E. S. Kimbuck,

Clerk

This Indenture, made this Third day of May,
in the year of our Lord one Thousand Eight Hundred
And Fifty Three, Between Jason Grady and John
his wife, of Chicago, Cook County, and State of Illi-

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of the first part, and James W. Barden of Cincinnati Hamilton County, and State of Ohio, of the second part - Witnesseth, that the said party of the first part, for and in consideration of Four thousand (\$4000) Dollars in hand paid by the said party of the second part, (the receipt is hereby acknowledged, and the said party of the second part forever be released and discharged therefrom) have granted, bargained, sold, remised, released, aliened and confirmed, and by these presents, do give, bargain, sell, remise, release, alien and confirm, and the said party of the second part, and to his heirs and assigns forever, all the following described lot, piece or parcel of land, situate in the County of Hamilton and State of Illinois, to wit:

That part of lot No Forty Eight (48) in the Canal Trustees Subdivisions of Section seven (7) in Township thirty nine (39) North, of Range Eastern, East of the Third Principal Meridian. Bounded as follows - Beginning at the South East corner of said Block on the North line of Lake Street, and running thence Westward, along said North line of said street, one hundred and thirty two feet (132) - Thence Northward, to a point on the North line of said Block - distant one hundred and thirty two (132) feet from the North East corner thereof, thence East, one hundred and thirty two (132) feet towards North East corner of said Block, and thence South

on the East line of said Block to the place of
beginning - Together with all and singular the
hereditaments and appurtenances thereto be-
longing, or in any wise appertaining, and the
reversion and reversions, remainders and remainder
rents, issues and profits thereof, and all the so-
lute, right, title, interest, claim and demand
whatsoever of the said party of the First part, in
law or equity, of, in and to the above bargain
premises, with the hereditaments and appurtenances.
To have and to hold, the said premises bargain and
described, with the appurtenances unto the said
party of the Second part, his heirs and assigns
forever. - And the said Jason G. Wesley, party
of the First part, for himself and his heirs, executors
and administrators, does covenant, grant, bargain
and agree, to and with the said party of the se-
cond part, his heirs and assigns, that at the time
of the enrolling and delivery of these presents, he is
well seized of the premises above conveyed so of a good
sure, perfect, absolute and indefeasible estate of
inheritance in the law in fee simple, and hath
good right, full power and lawful authority to
grant, bargain, sell and convey the same in man-
ner and form aforesaid, and that the same are
free and clear from all former and other grants,
bargains, sales, fines, taxes, appurtenances and in-
cumbrances, of what kind or nature soever; and

Deft Exhibit.

"J"

The above bargained premises in the quiet and
 peaceable possession of the said party of the second part,
 his heirs and assigns, against all and every person
 or persons lawfully claiming or to claim the whole
 or any part thereof, the said party of the first part
 shall and will warrant, and forever defend—

In Witness Whereof, the said party of the
 first part hereunto set their hands and seals
 the day and year first above written—

Signed Sealed And Delivered
 in presence of

Jason Garley Esq.
 Salina Garley Esq.

State of Illinois)
 Cook County } ss. I, Edward S. Himelby, Clerk of
 the County Court, in and for said County, in the State
 aforesaid, do hereby certify, that Jason Garley, who
 is personally known to me, as the real person whose
 name is subscribed to the above Deed, appeared
 before me this day in person, and acknowledged
 that he executed and delivered the said Deed, as
 his free and voluntary act, for the uses and purposes
 therein set forth. And the said Salina Garley,
 wife of the said Jason Garley, having been by me exam-
 ined separate and apart, and out of the hearing
 of her husband, and the contents and meaning of
 the said Deed having been by me made known, and

fully explained to her, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, without compulsion of her said husband, and that she does not wish to retract the same.



Given under my hand and seal of the Court, this fourth day of May, in the year one thousand, eight hundred and fifty three.

E. L. Stinson)
Clerk.

"Defts Exhibit I"

Complainant's "Exhibit C"

For value received, I hereby sell, assign, transfer & set over unto William Wheeler, all my right, title & interest to the attached contract, as assigned to me by William Jack, for two acres of land, described in said assignment. Interest in all respects according to the conditions and provisions of a deed of trust executed by me to said Wheeler May 29. 1850 in regard to said two acres, for the use and benefit of Francis Helen Sutherland - May 29 1850

Attest

Henry W. Clark.

Elias B. Sutherland (Sd.)

This writing admitted in evidence as duly known. March 11th 1856

John C. Miller
Defts Attorneys

Compliments "Exhibit D"
"Copy"

\$300.00.

August 31st 1850.

Thirty days after date, for value recd, I promise to pay to Truman Whitcomb, or Order Three Hundred Dollars, with interest.

E. B. Sutherland.

Know all men by these presents, that I, Elias B. Sutherland of Chicago, am justly indebted unto Truman Whitcomb, upon a certain Promissory Note, bearing even date herewith, for the sum of Three Hundred Dollars, and due thirty days after date. Now therefore, in consideration of the premises, I do hereby make, constitute, and appoint Thomas Hoynes, or any Attorney of any Court of Record, to be my true and lawful Attorney, irrevocable, for me, and in my name, place and stead, to appear in any Court of Record, in term time, in any of the States or Territories of the United States, at any time after the said Note becomes due, to waive service of process, and confess a judgment in favor of said Truman Whitcomb, or his assigns, upon the said Note, for the above sum, or for as much as appears to be due, according to the tenor and effect of said Note, and interest thereon to the day of the entry of said judgment, together with costs and Attorney fees ten Dollars, and to file a cognovit for the amount

that may be so due, with~~in~~ an agreement there
in, that no writ of error or appeal shall be prosecuted
upon the judgment entered by virtue hereof
nor any bill in equity filed, to interfere in any
manner with the operation of said judgment, and
to release all errors that may intervene in the
entering upon of the said judgment, or issuing
execution thereon. Fully ratifying and confirming
all that my said Attorney may do by virtue hereof.
Witness my hand and seal this 31st day of August A.D. 1850.

In presence of
E. L. Knott

E. B. Sutherland (S.)

State of Illinois)
Cook County } ss. E. L. Knott, being by me duly
sworn, deposes and saith that he is the said
subscribing witness to the within Power of Attorney
and saw Elias B. Sutherland sign, seal and
deliver the same, freely and voluntarily, for the
uses and purposes therein expressed.

E. L. Knott

Subscribed and sworn to }
Before me this 7th day of }
August A.D. 1850. }
J. A. Howe, J.P.

This exhibit is admitted in evidence as a
part of the record of Cook County Court of Common

Pleas, being the note on which judgment was entered Oct 12th 1830. in case Thuman Whitcomb vs Elias B. Sutherland —

March 11th 1836.

Thos. C. Miller

Deft's Attorney

Complam^t. "Exhibit C"

Cook County Court of Com Pleas
Thuman Whitcomb }
vs } Confession
Elias B. Sutherland }

Judgment entered October 12th 1830.
1830. in Vacation, for Damages \$ 10.11
Plaintiff's Cost 3.65.
Defendant's Cost 1.33.
\$ 15.09

Execution issued 12th October 1830. to the
Sherriff of Cook County —
October 14th 1830 — Spent upon "a lot of Brick
on the North side of the River near Kinzie's Street,
all the right, title and interest of the within
named defendant to said Brick — two Kilns
of said Brick — J. Cook Sherriff
By O. McCarthy Deft's

Return of Sale on Execution.

"By Virtue of the within Execution and this
 Levy thereon, I did on the eight day of November
 1850. after advertising according to law, proceed to
 sell at public vendue, all the right, title and
 interest of the within named defendant to
 said Bricks, and Truman Whitcomb bid the
 sum of three hundred and forty five dollars,
 which being the highest and best bid thereon
 and the interest of the defendant to said
 bricks has been sold to the said Whitcomb, this
 I do return this execution satisfied in full
 as the Plaintiff's receipt, shows on this Execu-
 tion and costs this 11th day of November A.D.
 1850.

Shff. Fees paid	\$5.50
Watchman for Do paid	20 00
	\$28.50.

Isaac Cook Sheriff

By Owen McCarthy Depty

"Received on the within Execution the damages
 and Clerk's costs and interest on the same,
 from Owen McCarthy Deputy Sheriff, by sale of
 said Bricks, which has been levied upon. Nov. 9. 1850
 T. Whitcomb"

This exhibit is admitted to be a true copy
 from the records of the Circuit Court, of

Cook County, And received in evidence as filed
March 11th 1854.

Hoyne & Miller
Defts Attorneys

Defts "Exhibit I"

I hereby agree to convey, by assignment of this
contract, to Jason Gruley, the premises described
in the accompanying contract, for the sum of Two
thousand, Five Hundred Dollars, payable $\frac{1}{4}$ in
four months — the balance in one, two and three
years — equal payment —

Chicago Dec 21. 1882.

J. Whitcomb —

Complainant's "Exhibit K"

\$120.00.

Chicago June 25. 1880.

One day from date for value received, I
promise to pay, Frances E. Sutherland, a bearer,
One ~~thousand~~ ^{hundred} and Twenty dollars with interest
J. Whitcomb —

Complainant's "Exhibit L"

Truman Whitcomb Jr.

Elias B. Sutherland —

Articles of Agreement made this third day of August, A.D. 1850. Between Truman Whitcomb, of the City of Chicago, County of Cook, and State of Illinois, party of the first part, and Elias B. Southland of the same place, party of the second part—

Witnesseth that the party of the first part, at the request of the party of the second part, and in consideration of the sum of money hereinafter recd. to be first paid at and within the time stipulated, and the performance of the covenants herein expressed to be first performed by said party of the second part, agrees hereby to sell and assign to said party of the second part, by good and sufficient deed of Gt. Claims, all of the right, title and interest which said party of the first part has or may hereafter acquire of me, and to the following described piece, parcel and tract of Land, to wit:—

All that part and portion of Lot Lot. No 48. in the Illinois & Michigan Trustees Subdivisions of Section 7. Township 33. Range 17 East and bounded as follows—Commencing at the South East Corner of said Lot 48. and running thence West upon Lake Street Twelve Rods, thence North, forty (40) Rods, thence East, (Nine (9) Rods to the East—line of said Lot 48) thence South upon said street East line of said Lot 48 to the place of beginning—With the Privileges

and appurtenances, Buildings, rents, issues & profits
 Accounts belonging - and the said party of the
 second part in consideration of the Premises, here-
 by agrees to pay to said party of the first part, or
 to his Attorney, Executors Administrators or as-
 signs, the sum of Six hundred and twenty five
 Dollars - on or before the third day of August
 next, A.D. 1831. with legal interest, and also
 that he will faithfully, and in due season, pay
 or cause to be paid, all taxes and assessments,
 ordinary or extraordinary, that may be levied,
 assessed, or imposed upon the said Premises
 or appurtenances, and it is mutually covenanted
 and agreed by and between the parties herunto,
 that in case the said party of the second part
 shall make default or fail to make the payment
 above mentioned, at and within the time
 limited above (the said time of payment being
 hereby declared to be an essential part of the
 contract) then and in that case, this agreement
 and all the covenants and agreements on
 the part of the party of the first part, ^{herein contained} shall at the option of said party of the first part, his rep-
 resentatives and assigns, be and are hereby declared
 to be null and void and no longer binding, and
 all the right and interest either in law or equi-
 ty, of said party of the second part, shall cease
 and be determined; or at the election of said
 parties of the said party of the first part, the

Covenants and liability of said party of the second part, shall continue, and remain obligatory upon said party of the second part, and may be enforced, and the said consideration money, and every part thereof, may be collected of proceedings, in Law or Equity, from the said party of the second part, ^{his} heirs, Executors, administrators and assigns

In Witness Whereof, the parties to these presents have hereunto set their hands and seals the day and year first above written.

Truman Whitcomb Seal

The Bond "First Part" the intended above in 2nd page before signing in presence of Thomas Hynes.

E. B. Sutherland to Benj. Bennett.
(assignment)

For a valuable consideration, I, Elias B. Sutherland, of Chicago, do hereby assign, transfer, sell and let over to Benjamin Bennett of Otsego County N. York, all of my right, title interest and claim and property of, in and to the mill in contract or agreement of purchase - he paying all money due or to become due thereon, and upon payment thereof, he is hereby authorized, and I hereby direct that the within named Truman Whitcomb shall make the deed the

is specified to be made, to said Benjamin Bennett, or his assigns, I being justly indebted unto him, in the sum of two hundred and fourteen dollars, which is the full consideration of this assignment—

Witness my hand and seal, this 21st day of October A.D. 1850.

In presence of E. B. Sutherland (Seal)

No 99.115 Filed for Record Jan. 18th 1853.
Recorded in Book 32. of Deeds Page 394.

State of Illinois)

Cook County ss. I, Lewis D. Board, Clerk of the Circuit Court and Ex. office Recorder of Cook County, do hereby certify that the above is a true copy of an instrument of writing filed for Record in my Office on the 13th day of May A.D. 1853. and duly recorded in Book No 32. of Deeds Page 394.



Certified under my hand,
and the seal of said Court at Chicago
this 16th day of May 1853.

L. D. Board.
Clerk—

For a valuable consideration, I, Benjamin Bennett of Otsego County N.Y., do hereby assign and transfer unto Frances H. Sutherland, wife of Chas B. Sutherland of Chicago, all my right, title and interest of, in, and to the contract of which the foregoing is a copy, by virtue of the assignment of which the foregoing is a copy, and authorize her as the assignee and owner thereof to take all proceedings which I could before have done, holding me at all times harmless and indemnified from all damages or costs, and this assignment is to be without any liability on my part in any event, Dated June 20. 1853.

Benjamin Bennett Esq.

State of New York }
County of Otsego } ss. On this 20th day of June, 1853. came before me, Benjamin Bennett, by me known to be the person described in, and who executed the foregoing assignment, and duly acknowledged that he executed the same.

Wm. S. Balch
Justice of the Peace

State of New York }
Otsego County Clerk's Office } I, William C. Field, Clerk
of the county of Otsego, do hereby
certify, that Wm. S. Balch

Seal

whose name is subscribed to the certificate of proof or acknowledgment of the annexed instrument, was at the time of taking such proof or acknowledgment, a Justice of the Peace, of the County of Otsego, dwelling in said County, duly authorized to take such proof or acknowledgment and that I am well acquainted with the handwriting of the said Justice, and verily believe that his signature to the said certificate of proof or acknowledgment is genuine, and the said instrument is executed and acknowledged according to the Laws of the State of New York. In testimony whereof, I have hereunto set my name, and affixed the seal of said County, this 25th day of June A.D. 1833.

William C. Fields
Clerk

The writing hereto attached purporting to be a copy of agreement between Truman Whitcomb and Elias B. Sutherland is admitted in evidence and proof of the execution of the original and its loss dispensed with
March 11th 1858
Hoyne & Miller
Defts. Attys.

State of Illinois
County of Cook

I William S Church Clerk
of the Circuit Court in and for
said County in the State afore-
said do hereby certify that the
above and foregoing is a full &
complete copy as well of the papers filed as the
proceedings had and entered of record in said Circuit
Court in a certain cause lately pending there
on the Chancery side thereof wherein Frances
H Southland who sues by her next friend as
Complainant and Jason Gurly, Truman White
James H. Brown, William Wheel & Eliza B
Southland were defendants so far as the same
appear from the records & files of said Court,
Witness my hand & the seal of said Court
at Chicago in said County this 21st day
April A.D. 1839

Wm S Church
Clerk of said Court

State of Illinois

Supreme Court - April Term A.D. 1857

Jason Gurley Mann

Whitcomb - Pet. James St.

Brown. William Menden

Elias B. Sutherland

Appellants

U.S.
Thomas H. Sutherland who
was by his 2d friend B.
W. Raymond

Afterwards to
with on the 21st day of April A.D. 1857 at
this same term of the Court before the
Justices thereof, came the said Jason
Gurley Mann Whitcomb & James
St. Brown - by Hays & Miller their
Solicitors and say that in the record and
proceedings of said term is manifest
even in this writ that by the record afore
said it appears that a final decree was ren.
and in the cause questioned whereby it was

adjudged and decreed that the said
James H. Hutchinson was possessed of an
equity of redemption in the premises described
in said decree, and the defendants, in said
cause, the above named appellants were
thoroughly advised and decreed upon pay-
ment into the hands of L. C. P. from the
Masters in Chancery within four months
from the date of said decree of the sum
of Eight hundred fifty two ⁵⁰ ~~and~~ Dollars
to come to said James H. Hutchinson
all of their respective interests in said
premises, whereas the bill of complaint of the
said should have been dismissed with
their costs awarded to said appellants
and a decree entered in said cause
in favor of said appellants
and the said James Henry James W. Bon-
an and Herman Winterb. pray that
the judgments and decrees granted for
the wrongs and wrongs and other errors
apparent in the record and proceedings
of record may be reversed annulled
and forgotten held for nothing and that
they may be restored to all things which
they have lost by occasion of said judgments
and decrees —

Hazen & Munster
for appellants

185

Jason Gurley & Co
vs

Francis S. Sutherland & Co

Filed April 23 1857

L. Leland
Clerk

State of Illinois
Supreme Court April Term 1857

Francis H. Sutherland by his
next friend, Gen. W. Raymond
appellee

vs
Oren Gurley
Truman W. Hancock &
James W. Gordon appellants

And hereupon after waite to wite on the
twenty third day of April in April Term in the
year of our Lord 1857 the said Francis H. Suther-
land by his next friend Gen. W. Raymond
by S. S. Hager, Matthew & Tapt Attorneys for
appellee fully comes before Court and
says that there is no error either in the record
or proceedings aforesaid or in making the
decree aforesaid and the appellee
prays that the said Supreme Court of India-
cator before the aforesaid Justices there
may proceed to examine as well the record &
proceedings aforesaid as the matter aforesaid
above assigned for error and that the Decree
aforesaid in form aforesaid made & granted
may be in all things affirmed

S. S. Hager, Matthew & Tapt
Attorneys for appellee

Supreme Court

H. H. Sutherland

By B. W. Raymond

His next friend
appellee

vs
Aaron Linley

Human Whitcomb

vs
James W. Briden

appellants

Finden in Error

Chs. Bager

Notter & Day

Attys

Filed April 23, 1859

L. L. Latham
Clerk

Supreme Court
Westcomb et al

vs } Application
Sutherland } for rehearing -

J. L. Dickey being duly sworn
says - that he has carefully
read the affidavit of Mr. Matter
in this matter - and deems
it proper to state more particularly
the facts touching the presentation
of this case to the Court in May
1857 - Before the case was
called - affiant had on different
occasions talked with Mr. Matter
and had told him that he was
not prepared to argue the case
& proposed to let it be continued
unless affiant became prepared
Mr. Matter objected to the con-
tinuance - and proposed that I
should file my argument
after it was submitted - I
told him that I feared I could
not prepare my argument during the
term & the matter was of too much
importance for us to run any hazards

on that subject - At length as we
approached the Cause - finding I
was unprepared - I told Mr
Mather expressly that I would
be compelled to dismiss the appeal
and that would enable me to bring
errors & prepare thoroughly -
This led to an agreement between
us that I should have what
time I wanted to prepare my
written argument - in vacation
~~and we were to apply to the Court for
leave to submit it in that special
manner -~~

~~When the case was called~~
and that Miller should open the case
& Mr Mather should make his
argument & then leave the case
open as I have already stated -
upon condition that the Court
would allow us to do so -

When the case was called
I rose in open Court and ex-
plained the condition of the
case and what we proposed
and asked leave of the Court
to do so - The Chief Justice in-
timated that the Judges would wish

After some Conversation on the subject the arrangement stated in my former affidavit was made - and thereupon the argument proceeded -

I know that this was done before the argument was begun - ~~that~~ I know I would not have permitted the argument to have begun if this arrangement had not been made and approved by the Court After Mr Mather closed his argument & while all parties were present I simply rose and instead of proceeding with the argument asked & obtained leave to withdraw the record -

Affiant has no recollection of any time being limited for his argument - Affiant does remember that ^{some time} after the Court had adjourned - affiant met Mr Mather at his office & Chicago & the subject of this case being talked of Mr Mather said to me that the time which I took for my argument had expired and urged me to prepare it immediately

Affiant said the time was not limited
as he understood it - Mr Mather said
a time was limited - I ^{very} ~~told~~ ^{said} him
~~I thought~~ I had told him that
"I thought I could prepare my
" argument by some given time
" and this had led him to think
" the time was limited" - I

however promised him to attend
to it as soon as I could get
leisure - Out of abundance of
caution on this subject shortly
after this conversation I was
at Ottawa and examined in
the Clerk's Office of this Court &
found no limitation as to time

Affiant is quite confident that
no such condition was imposed
upon him at the time the arrange-
ment was made - and states
positively that he ~~was not aware~~
~~of any such limitation~~ - has ever
acted in this matter under the
supposition ^{and belief} that ~~this was the~~
there was no ^{such} limitation

According to Affiant's memory
at the time the arrangement
was made - Some one of the
Judges remarked that if they decide
the case before they separated - the
argument would have to be filed
soon, as they ~~would~~ close the
term as soon ^{as practicable} after the argument
of Causes was closed -

To which I replied that I did
not believe that my engagements
would allow me to prepare
my argument before Court
adjourned - but as we all desired
an early decision I would do so
if I could - and if not file the case
which says to stand over
Affiant further states that
during the last year & especially
during the summer & fall - Affiant
has been borne down with ~~an~~
an amount of care & labor
chiefly professional - which has
rendered it very difficult to find
leisure to prepare such an argu-
ment - That affiant has acted
in this matter in good faith
& always intended to prepare said
argument - and always supposed

that he would soon be able
to finish up that argument
and was really desirous to
have an early decision -

Affiant further states that
~~at the time when Mr Mather~~
~~states that he was~~

long after the 1st of July Mr Mather
was aware that I had not finished
my argument - That I proposed
to do so - and furnish him a
copy of it - and never intimated
that he had any thought of having
the case decided without my
argument - I remember well
that Mr Mather & I discussed the
question as to ^{which of the Judges} ~~who~~ had the case
in special charge - & at Mr Mather's
suggestion I asked Judge Caton who
had the case & he said he thought
Judge Scates had it - This I
reported to Mr Mather - He after
this told me that Judge Scates
had told him that Judge Skinner
had the case - This was with a
view of sending the record &
abstract to the proper Judge as

I as soon as my argument should be ready
I understood, and I never
understood Mr Clatter as waiving
my promise to furnish him an
~~answer~~ a copy of my argument
and affiant states that at the
time when affiant first learned
of the decision of the case
affiant was then preparing his
argument.

Affiant further states that
he talked with Mr Clatter
immediately on hearing of this
decision - and told him
expressly that he would apply
for a rehearing -

After this and about the 1st
of January - affiant applied to
Mr Clatter & requested him to
consent to the presentation of
a petition for rehearing to this
Court while holding Court at
Springfield last winter - which
he declined to do - Affiant went
to Springfield during that term with
a view of presenting the petition
there - but found on enquiry
that by the rules it would not be
there entertained

On returning from Springfield
I urged upon Mr Mather to consent
to let the matter be heard at
Springfield - but he declined
I then told him I would apply
to this Court at this term to set
the decree aside. Affiant has
no hesitation in saying - that
Mr Mather whatever has been
done by Complainant or her
Counsel for the purpose of convey-
ing or encumbering the property
since that decision has been done
in bad faith - and with a view
- for Mr Mather has certainly
known ever since the 1st of
January last that I intended
to make this application -
& I never heard of this matter
of conveying title hinted in
Mr Mather's affidavit -

Subscribed & sworn to
before me this 10th day of
May A.D. 1858. -

J. Lyle Dickey

Seal and test of Court
by J. B. Rice Deputy

Ganley et al
vs 317

Sutherland

Affidavit
of G. L. Dietter
Application for
rehearing

Filed May 10, 1854
G. L. Sutherland
Clk

Supreme Court of the State of
Illinois, April Term 1858 - at
Ottawa -

Human Whitcomb et al appellants
vs { decided in vacation
Frances H. Sutherland & appellee

And now Come the said Human
Whitcomb, Jason Gurley - & James
W. Borden by T. L. Duboy their
attorney - and present that their
petition for a rehearing -
and hereby show to the Court
that at the Calling of this cause
at the last term of this Court -
the attorneys of petitioners were
not prepared to argue the cause
and were about to dismiss the
cause in order that they might
have a full hearing of the matter
upon a writ of error - ~~when it~~
~~was~~ At that time Hiram F. Mattes
as the attorney for Frances Sutherland
was present & ready to argue the case
- and both parties avowed a desire
to have a decision at as early a
day as might be without sacrifice

to their ultimate rights - In ~~this~~
this State of case to avoid a years
delay ^{on or about the 12th of May 1857} it was suggested and
agreed in open Court - by the
attorneys of both parties -

That Mr Miller one of the
attorneys for your petitioners
should ~~present to the Court his~~
~~views~~ open the argument - that
Mr Matter should argue the
Cause for the Defendant Mrs
Sutherland - and at that
point the Cause should be
~~in form~~ submitted & taken
under advisement ^{in form} -
and that ^{in that condition} the case should
~~not be taken~~ ^{be heard}
until J. L. Dickey as attorney for
your petitioners should prepare
and submit a printed or written
argument in the Cause - in vaca-
tion - ~~and then there~~ - It was further
agreed that J. L. Dickey should, before
presenting his argument to the Judges
, present the same to Mr Matter
that he might reply in writing
to any new matter which might
be suggested in the argument of
said Dickey -

Your petitioners further show
that in pursuance of that agree-
ment, Mr Miller did open the
argument of the Cause for them
& Mr Maithus agreed the Cause
for the defendants & Sutherland
and there the proceeding was
suspended - and to enable said
T. L. Dickey to prepare his argument
the Court gave leave to him to
take the record from the files -
and the Cause was entered as under
advisement ~~at the~~

~~that at the~~ ^{Petitioners further show}
~~the law office~~

The petitioners further show that
said Dickey did immediately
withdraw the record - and during
vacation was when ever it was
practicable preparing a written
argument - that he frequently
saw Mr Maithus - and advised
him that the argument was
not finished - that he would
finish it as his first leisure
& before sending it to the Judges
would furnish him a copy of
it -

Your petitioners further show
that ~~as is supposed~~ - by some misappre-
hension - ~~as is supposed~~, and
without the knowledge of the attorneys
of petitioners - the judges of this Court
decided said Cause against your
petitioners about the 20th of September
1857 - and about that time caused
the opinion of the Court to be filed
- which decision & opinion is
reported in XVIII - Ill Reports
page 578 - Your petitioners
insist that injustice is done them
by that decision and ask that
this Court will grant a rehearing
of said Cause and permit them
by their attorney to be heard on
the merits of this Cause -

J. L. Dickey sol
for petitioners

State of Illinois, SS.

J. L. Dickey being duly
sworn says on oath that the
statements of fact contained in
the above petition are true to the
best of his knowledge & belief
- That he was present in Court
and made the agreement spoken

of in the petition - that he did
withdraw the record by leave of
the Court - ^{and the appointment of jurors & jurors} and has had it in
his custody ever since - that
the fact that he had the record was
known to Mr. Mather - and that
as from the nature of the case
his clients were the only persons
who could be prejudiced by delay
(inasmuch as the Sutherlands
have the possession of the prop-
erty in controversy - & of the
money which they owe on it)
- he felt at liberty to wait for
a brief time to prepare said
argument - and relying that
no action in the matter would
be taken without notice - he
was lulled by the circumstances
to great security and was taken
wholly by surprise when he was
informed shortly after the opinion
was filed that the case was decided.
Affiant supposed that if the judges
should for public convenience
decide to proceed with the case
that he would be called on for
the record - as a memorandum

on the judges docket showed that
he had the record withdrawn

Lyle Dickey

If deemed in order on this petition
I can show that important facts
are misconceived & overlooked,
by the Court in the opinion delivered
but I suppose ^{that} that can more
properly be presented when we
are allowed to argue the case

L. L. Dickey
for petitioners

If however before ordering the
judgment to be opened - the
Court desire to look at the merits
I ask that I may be so advised
& I will immediately point
out the errors in to which
the Court fell in giving the judg-
ment -

T. L. Dickey

³¹⁷
Whitcomb et al
vs

Sutherland

Petition for rehearing
& affidavit —

~~Filed May 3rd 1858~~

Filed May 7, 1858

L. Leland
clerk

Supreme Court of the State of Illinois

Francis W. Litchman by his
next Friend

...
Kerman Whitcomb Laron
Gurley & James W. Borden

To Rufus Mott & Japt
attys for F. W. Litchman

Genl^l

You will please to
advise me that we shall at the next

April Term of said Court. file a petition for
a rehearing of said case in said Court
Chicago March 25. 1858

Yours Truly

Hayden Miller Lewis
attys for Whitcomb Gurley &
Borden

We will give you a copy of the petition before it is
presented

Hayden Miller Lewis

Left by Mrs Miller for T. L. D. at 5 P.M. April
28 / 58 - Cyrus

317
Dep. Com. to Mr
" "

A. D. Sutherland

Human Motions
11.45

Filed May 2^d 1858

Motion of filing Pet
ition for release of

~~Filed May 2^d 1858~~
~~Sutherland~~
etc.

Under of copy of the
written Motion admitted
this 25th of March 1858

Attest
This for
future use

Papers taken by H. H. Nathan

- 1 Points in which decision was wrong
by J. L. Whiting
- 2 Brief for appellant
- 3 Abstract of Brief by Nathan
- 4 Brief for appellee by Nathan
- 5 Abstract of Brief by H. H.

Trueman Whitecomb et al

vs

Francis H. Sutherland

} Petition for the hearing

A rehearing having been ordered in this cause, therefore let a supersedeas issue restraining the execution of the judgment herein till the further order of the Supreme Court

July 10, 1858

J D Carter ch f

Freeman Whitcomb

67

Francis E. Sutherland

Order Supersedes

Filed July 17, 1838
A. Leland
CLK

Supreme Court of the State of Illinois
April Term 1858 at Ottawa

Truman Whitecomb et al. appellants
vs
Francis H. Sutherland appellee

Cook County. Is. William F. Mather being duly sworn says
that he has no recollection whatever of the matter of
T. L. Dickey's privilege of submitting to the Court a
written argument in the above case, being canvassed
before the Court until after this deponent had
closed his argument on the 12th of May last.

Then, on deponents closing, he well remembers
said T. L. Dickey suggested that he was not ready
to reply & asked of the Court time & the privilege of
submitting a written argument.

Deponent made no objection thereto
& fearing from intimations of said Dickey made to
deponent out of Court & now referred to that the
appellants might be induced to withdraw their
appeal & resort to a writ of error, this deponent
joined in the request that the Court would allow
said Dickey a time sufficient to prepare &
send in a written argument.

The Court then ordered, that said Dickey
should be allowed till the first day of July then
next to send in & submit a written argument.

This limitation of time, deponent is con-
fident was well understood by all the parties
concerned; deponent made a note of it he thinks at
the time & finds on examination the same entered on

his Law Register at Chicago, which was done immediately on his return from Ottawa within one or two days after the argument.

Deponent further says, that he left in possession of the Judges at the close of the argument three copies of his brief - also a full copy of all the testimony in the case which was prepared & got up under deponent's care & direction & was accurately & fairly transcribed & which was important to the understanding of references in deponent's brief, (the figures therein referring to the pages in deponent's copy of testimony) and besides this deponent considered the same the more necessary because on examination and comparison he found the printed abstract of the testimony made by the clerk entirely inaccurate & deficient in many points & those which he considered most material to his client's case.

This copy of the proofs taken in the case was also ^{accompanied by} a copy of the entire Record including as well the pleadings in the case as the proofs.

Deponent also left with the judges at the same time an abstract which he prepared for his own use with great care, i.e. an abstract of all the pleadings & of those parts of the proofs which he considered material also a schedule of instruments given in evidence with dates to facilitate examination of the order of the occurrences proved.

Said Dickey at the same time requested of said clerk to have one of the copies of depo-

onents brief which he had submitted but deponent
refused. But to make good the feelings of said
Dickey in the premises deponent volunteered
to make out for said Dickey a fourth copy
of his brief tho it was over 8 sheets long and
actually did so & handed said 4th copy
to said Dickey before leaving Ottawa.

This deponent observes in the petition
of T. L. Dickey for rehearing in this case it
is stated that it was agreed in open court that "the
cause should be submitted & taken under advise-
ment in form & that in that condition the case
should rest until T. L. Dickey as attorney for
petitioners should prepare & submit a printed
or written argument in the cause in vacation"

In the ineptness of this statement as
regards time & made of leaving the matter open
this deponent is very confident in his remembrance
& thinks said Dickey entirely mistaken and mistaken
thereof deponent fully understood that said Dickey
was allowed only till the first of July to send
in his argument, and deponent well remembers
the statement of the judges or some of them that
they should & would speedily succeed to the
exam ination & decision of the cause & was
& very reluctantly allowed so long a time.

In another respect deponents remembrance
is quite at variance with the statements of the
petition inasmuch as the conversation touching
the time granted for said Dickey to send in
his argument & the whole arrangement on that
subject did not occur according to deponent's memory.

until after deponent ~~had~~ closed his argument.
Deponent well remembers said Dickey applying
to him out of Court passing down from Chicago
on the car & again at Ottawa declaring his
lack of preparation & desire to postpone the
argument. On the latter occasion as well as the first
said Dickey was also present & deponent then
stated to them he was anxious to have the case
argued as it was one of great interest & importance
to Mr. Sutherland & that he should get a speedy
decision as to his rights & on both of those occa-
sions deponent answered said Dickey that he would
make no objection to his requesting time to send in a
written argument & would join him in the request
as he finally did when it seemed to become quite
necessary.

Deponent further says that on his return
to Chicago & between that time & July 1st next there-
after he frequently called on said J. L. Dickey
to see if his argument was prepared, but deponent
does not remember of said Dickey ever calling
on him on that business. Deponent uniformly
received for answer that it was not ready.

Deponent also called after 1st July & recd.
the same answer - At last deponent despairing
of ever getting an argument from said Dickey
in the case & not in the least however doubting
his perfect readiness to exhibit it when prepared
applied to Judge Scale, at Chicago &
from him learned that his honor Judge
Skinner had taken the papers to write out
the opinion of the Court & thereupon deponent

abandoning his original intention & wish to send
in a written reply to said Cliekey's argument
again called upon said Cliekey & informed
him that Judge Skinner as he learned had
taken the papers & requesting him to send
in his argument to Judge Skinner if
he chose so to do.

Deponent further says that after July
was passed he used as he conceives great diligence
to ascertain when the case should be decided
for the reason that deponent wished to apprise
his client of the necessity of immediately raising
the amount of money required of her by the
decree, Mr. Miller the complainant's
Solicitor having always previously declined
to receive if the deponent had requested by
applied to him expressly for the purpose &
on those occasions was prepared to pay it
and offered to pay it. With this view
deponent several times after July last wrote
to the Clerk at Ottawa to inquire & he informed
as soon as the case was decided & also
last wrote with same view to his Hon.
Judge Skinner (directing to Quincy & Co.)
requesting to be informed by him or his Clerk
at what time the case should be decided.
Still deponent rec'd no intimation & had
no knowledge whatever of the decision until
the 27th day of December last when he casually
learned it by an application made by Mr. Peck
the Reporter of the Court proposing to deponent
the privilege of making up from the papers a

Condensed statement of the case for the Reports

Deponent immediately informed the appellant of the same & she carried the money required to be paid by her by the terms of the decree with Interest & Costs to be paid to L.C. P. Freer Master in Chancery of Cook County on 29th Jan'y 1858 as follows

Principal amount required by decree	\$862.80
Interest to 29th Jan'y 1858	93.45
Taxed Costs	63.20

Which latter sum deponent is informed by said Master he has paid out to the persons entitled And deponent is well informed as Counsel & Attorney for Mrs Sutherland the appellee (tho' not in a formal manner to enable him to give all the details in particular) that she the appellant reposing in good faith on the finality of the Supreme Courts decision in the premises & on the credit of a copy of their aforesaid Decree in this cause which deponent furnished her for that purpose has been enabled to & has actually conveyed or incumbered the lands mentioned in the decree, in which respect the Court will see that new & innocent parties rights have intervened & may be affected by this decision on this motion or petition for a rehearing.

Deponent has also had intimations from the opposing Counsel that they intend to set up that the money was not seasonably paid on the decree unless they can get a rehearing all which deponent believes unconscionable & unjust

With regard to said T.L. Dickey's withdrawing and taking with him to Chicago for such a time &

his argument to the entire record deponent is also quite confident in his opinion that the arrangement made openly at the close of deponent's argument embraced no express leave or licence so to do nor was there so far as deponent believes any understanding openly given out to that effect or recognized & deponent well remembers his surprise when he first learned from said Whitley that he had withdrawn those papers; deponent understood or at least was fully impressed in his own mind that the court would fully canvass the case for decision before separating at or immediately after the close of the term & would only suspend their opinion so as to hear what said D. P. Whitley had to say till the 1st day of July then next giving it then all the weight to which it should seem entitled

And further deponent

Saith not

Subscribed and sworn to before me this 6 May 1858

J. F. Mather

Wm. L. Church
Clerk of
Court of Cass Co.
with Seal of Court
Annexed

311
Supreme Court

Truman Whitecomb
& others
Appellants
vs

Francis H. Southland
& others
appellees

2 Affidavit

to recist petition for
re hearing

Filed May 10 1888
L. L. L.

Attorney & Capt. attys
for appellee

10 201
23 mid 578
Baker 246
8 page 255
Circuit
APPEAL FROM COOK COUNTY COURT OF COMMON
PLEAS. ABSTRACT OF RECORD.

Supreme Court
Hoyland
2020 6
Court do 45
18 page 435
Hoyland
17 2300
34
38
19
18
2
18
489

{ JAMES W. BORDEN,
JASON GURLEY,
TRUMAN WHITCOMB,
Appellants.

{ FRANCIS H SUTHERLAND,
WHO SUES BY HIS NEXT FRIEND, &c.
Appellee.

This suit was commenced on the Chancery side of the Cook County
Circuit Court, by the said Francis H. Sutherland against the said James W.
Borden, Jason Gurley, Truman Whitcomb, William Wheeler and Elias B.
Sutherland, to redeem a mortgage alleged to have been executed by said Elias

18 Aug 12-335-
 12 do 78
 9 do 275-288
 2 Aug 1528

B. Sutherland, husband of complainant, to Truman Whitcomb, one of the defendants.

18 Aug 56 200

19 Jan Ch
 588-5
 6 Jan R 24
 7 July
 244
 9 mo 201

The bill of complaint alleges that on the 21st of Oct. A. D., 1848, the said Elias B. Sutherland made an antenuptial agreement with the complainant, whereby the said Elias, in consideration of a contemplated marriage with the complainant agreed that she should retain and have the exclusive control of the sum of seven hundred dollars, being the money she had received from the estate of her former husband, then deceased, and that Elias should invest it in real estate, and secure it for the use and benefit of complainant. That afterwards, and while this agreement was subsisting, the complainant intermarried with the said Elias. It is further alleged that on the 6th of September, A. D., 1848, one Florinda Canda purchased out lot 48, of the canal trustee's subdivision of sec. 7, town 39, range 14, east, and sold three acres of said out lot 48, septending on Lake street twelve rods, or thereabouts, to one William Jacks, and gave to Jacks a bond for the conveyance of the same, upon payment of the purchase money therefor. That afterwards, in the month of June, 1849, Elias, for the purpose of investing the funds of complainant in real estate purchased the interest of Jacks in the east two acres of said three acres, for \$800, payable \$200 Sept. 6, '49; \$160 June 1, 1850; \$100 Sept. 6, 1850; \$200 Sept. 6, 1851; \$200 Dec. 1, 1852, in his own name, but in fact, for the use and benefit of complainant, and that he made all the payments which he made on said lot, out of funds belonging to complainant, and that he took an assignment from Jacks, of the obligation executed to him by Canda; the obligation and assignment, being marked as Exhibit "A." That on the 15th of September, 1849, Elias paid \$200 thereon.

7 Borbor
 100 700
 11 Nov 341
 4 Nov 15289
 13 Jan 28106
 5 Pitt 2450
 6 Aug 2
 26 June 484
 179

3d and Chy 176 5 Dec 193
 6 Page 323
 8 Wm
 137
 1 Morgan
 407-410

That on the 21st of May, 1850, Elias executed a deed of trust of said property, to one William Wheeler, for the use of complainant, a copy of which is filed with the bill, and marked "Exhibit B," and that he, at the same time, upon a separate paper, attached to the obligation of Canda, assigned said obligation to Wheeler, which said deed of trust, obligation and assignment so attached, was delivered to complainant.

The bill further alleges that on or about the 3d day of August, 1850, the said Elias having received, at divers times, during the thirty days next preceding, of defendant, Whitcomb, various sums of money, amounting in all to \$600; which money was to be used in the business of brick making, for the joint account of Elias & Whitcomb, and Whitcomb wishing to withdraw from said partnership, it was agreed between them that Whitcomb should have this money, and Elias should pay him interest at the rate of five per cent per month, and Whitcomb, at the same time, induced Elias to give him a note for \$300, as interest upon this sum, with a power of attorney to confess judgment; and that on the 10th of Oct. 1850, judgment was entered upon this note for \$300, and execution issued and levied upon a quantity of bricks, belonging to Elias, which were sold Nov. 7, 1850, for \$345; that said bricks were purchased at the sheriff's sale, by Whitcomb, and subsequently sold by him to one Morgan, the assignee of Sutherland, for \$345, and \$60 in addition, which Whitcomb claimed was interest, accidentally omitted in the calculation, when the note was given. A copy of the record of the proceedings in the note, is attached, marked Exhibit "E."

That on the third day of August Elias executed a deed of conveyance of the premises purchased by him as aforesaid, to said Whitcomb, which deed of

conveyance was signed and acknowledged by complainant, though she was not a party named therein, and a copy of which is attached, marked Exhibit "F." That at the same time the assignment to Wheeler of the obligation made by Canda was detached therefrom, and the obligation assigned by Sutherland to Whitcomb. That this deed, though absolute on its face, was intended as a security for the payment of the \$600 due from Sutherland to Whitcomb, and that, at or about the same time, a writing of defeasance was executed by Whitcomb to Elias, a copy of which is attached, marked Exhibit "G;" and it is alleged that the sum mentioned in Exhibit "G," \$624, was the \$600 loaned by Whitcomb to Elias, and \$24 which Whitcomb pretended to have paid for arranging the papers; that at the time of the execution of said last mentioned, deed, then was due for said premises to Jacks—

September 6th, 1850, \$100

" " 1851, 200

December 1st, 1852, 200

and to F. Canda, for the three acres purchased by Jacks, an acre of which had been sold to one Warner—

September 6th, 1850, \$142 42

" " 1851, 142 42

which, if paid by Sutherland, was to be deducted from his payments to Jacks, and that at the time of executing the deed, Elias transferred to Whitcomb a promissory note given by George H. Pratt, as the maker, to Elias, being in fact the property of complainant, and given for money loaned by her to Pratt, which note amounted to the sum of \$255 94, due Sept. 1, 1850, and that on the 8th of Sept. 1850, Elias paid to Whitcomb \$50, as per receipt attached, marked Exhibit "H." That on the 15th of Sept. 1851, Elias delivered to Whitcomb a note of Warner & Smith for \$66 66, as per receipt attached,

marked Exhibit "I." That on the 21st of June, 1851, complainant made a further payment to Whitcomb of \$20, as by Whitcomb's note marked Exhibit "K," a copy of which is attached, and it is charged that this is a payment, and not a loan, and should have been a receipt for that sum, but that Whitcomb, for some dishonest purpose, executed the note. And it is alleged that Elias paid to Whitcomb the further sums of \$17 44 and \$33—in all, making \$50 44. It is further stated and alleged that on the 20th of Oct. 1850, Elias assigned the defeasance, executed by Whitcomb to him, as aforesaid, to one Benjamin Bennet, and that Bennet, on the 20th of June, 1853, assigned the same to complainant, as appears from Exhibit "L," which is attached as a copy thereof. That in the spring of 1840, Elias, as agent of complainant, took possession of the premises, and that complainant and Elias have, since that time, continued to reside upon them. That on or about the 14th day of November, 1848, Florinda Canda, conveyed, by deed of quit claim, all his interest in out lot 48, to his brother, Charles Canda, and that subsequently, Florinda and Charles, by articles of agreement, made between them and Whitcomb, without consideration, acknowledged and confirmed the sale of Florinda to Jacks, and the assignment of Jacks to Canda, and covenanted with Whitcomb, as assignee of Whitcomb, that upon payment of the amount due to F. Canda, they would convey the three acres to Whitcomb, a copy of which agreement is attached, marked Exhibit "M." That on the 27th of March' 1852, the trustees of the Illinois and Michigan canal, conveyed said out lot 48, to Charles Canda. It is further alleged, that subsequently, Whitcomb assigned the contract marked Exhibit "M," to the defendant, Jason Gurley, who obtained a deed of conveyance of two acres of said premises, from Charles Canda, and that subsequently Gurley conveyed to the defendant, James W. Borden. It is alleged that these conveyances to Gurley, and by Gurley to Borden, were without consideration, and were made fraudulently. And it is alleged that the defeasance, before

*See Whitcomb
Answer page*

mentioned, from Whitcomb to Sutherland, was filed for record in Cook County in the proper office, on the 18th day of January, 1853, before any deed or assignment from Whitcomb had been made or recorded. The defendants are each required to answer, and there is no waiver of their answers under oath.

The defendants file their several answers under oath :

The defendant, Jason Gurley, in his answer, disclaims all knowledge of the antenuptial agreement between the complainant and the defendant, Elias B. Sutherland, or that the complainant had any funds at the time of her marriage with Elias. But he admits, upon information and belief, the sale by the trustees of the Illinois and Michigan canal, to F. Canda, and the sale, by Canda to Jacks, the purchase by Elias, in June, 1849, from Jacks, of what was then supposed to be the east 2 acres of the 3 acres, and the assignment to Elias, of the obligation from Canda to Jacks, but has no knowledge, nor has he received any information, until the filing of the bill of complaint, that this purchase was made with the funds of complainant, or on her account, or of the execution of the trust deed by Elias to Wheeler, but alleges that if any such deed was executed, it was executed for the purpose of defrauding the defendant and the subsequent purchasers of said premises. That he has no knowledge of the advances charged to have been made in the bill of complaint, by Whitcomb, to said Elias. He admits, upon information and belief, the execution of the deed by Elias and complainant, to Whitcomb, and insists that whatever interest the complainant then had in the premises, she thereby conveyed it to Whitcomb and his grantees. That at the time of the purchase by him from Whitcomb as thereafter mentioned, he had no knowledge of the execution of the writing charged in the bill of complaint, to have been executed by Whitcomb to Suth-

erland, on the 3d of August, 1850; nor of any of the circumstances alleged in the bill of complaint, to have attended or affected the execution thereof.— Nor has he any knowledge of the assignment of said writing, by said Sutherland, to Benjamin Bennet, of New York; nor was he aware that complainants had, or claimed to have, any interest in the premises therein described, and insists that the possession of said premises, since the spring of '49, has been in the possession of Elias Sutherland, and not of complainant, and he says he has no knowledge of the several payments, alleged in the bill of complaint, to have been made by Elias to Whitcomb.

He admits, upon information and belief, that F. Canda, on, or about the 14th of November, 1848, conveyed by deed of quit claim, all his right, title and interest in said out lot 48, to his brother, Charles Canda and, that Whitcomb executed the contract, bearing date August 1st, A. D., 1850, with Charles and Florinda Canda, referred to in the bill of complaint, and the conveyance by the trustees of the Illinois and Michigan canal to Charles Canda. The defendant, further answering, says that on or about the 21st day of December, A. D., 1852, he, the defendant, supposing that Whitcomb and his grantees were entitled to a deed of the premises described in the contract made by Charles and F. Canda, with him, as aforesaid, and being informed by Whitcomb that the amount due thereon had been fully paid, and that a deed, conveying a clear and unencumbered title thereto, would, upon application being made, be given by the said Charles Canda, and it not being intimated to him that the complainant or said Elias had, or claimed to have, any right, title or interest in or to said premises, or in any part thereof, the defendant did, on that day, purchase of Whitcomb, all his right, title and interest in and to said premises, for the sum of \$2500, payable 1-4 in four months, and the

balance in one, two and three years, from the said 21st of December aforesaid, and he then executed and delivered to Whitcomb his four several promissory notes for that amount, and that Whitcomb, at the same time, delivered said agreement with Charles and F. Canda, to him, and also, at the same time, executed and delivered to him the following memorandum in writing :

"In consideration of one dollar I hereby agree to convey, by assignment of this contract, the premises described in the accompanying contract, for the sum of two thousand, five hundred dollars, payable 1-4 in four months, the balance in one, two and three years equal payments.

(Signed)

T. WHITCOMB.

and that the contract and memorandum were then left with Mr. Judd & Wilson; that necessary papers might be prepared for a more formal execution of said assignment and conveyance, and that subsequently and during the first part of the month of January, a more formal assignment of said contract was endorsed on the back thereof, which was then executed by said Whitcomb; and that at the same time Whitcomb executed and delivered to the defendants his deed of conveyance, whereby, for the consideration aforesaid, he conveyed, remised, and released to the defendants all his right, title, interest, claim and demand in and to said premises; and that the assignment was subsequently, on the the 12th day of February, 1853, and the deed on the 14th day of February, same year, duly acknowledged by said Whitcomb; that this purchase was made by him from Whitcomb in good faith without any intention or design on his part of defeating or defrauding the complainants as charged in the bill; and that he has paid to Whitcomb the full sum of \$625, on account of said purchase, and has secured the payment of the balance of said purchase money. He further says that subsequently and on

the 21st of February, 1853, Charles Canda and wife, under and in pursuance of the contract between Charles and F. Canda and S. Whitcomb, conveyed to the defendants by deed bearing date on that day, that part of said premises purchased by said Elias, and described in said last mentioned deed as, Beginning at the south-east corner of said block, 48, on the north line of Lake street and running thence westerly on the north line of Lake street one hundred and thirty-two feet, thence northwardly to a point on the north line of said block, to a point distant one hundred and thirty-two feet from the north-east corner thereof, thence east one hundred and thirty-two feet to the said north-east corner of said block, and thence south on the east line of said block to the place of beginning, which said deed was duly acknowledged and recorded March 6, 1853.

He further says that on or about the third day of May, A. D. 1853, he, in consideration of the sum of four thousand dollars, then paid and secured to be paid to him by the defendant, James W. Borden, he sold, and by his deed bearing date on that day, conveyed said premises to said Borden, which said deed was duly acknowledged by defendant and his wife and recorded in the office of the recorder of Cook county, on the 4th day of May aforesaid; and he says that this sale and conveyance was made to Borden in good faith and for the consideration expressed in said deed, and without any intention or design on the part of the defendant to defraud the complainant or to assist the said Whitcomb in so doing; nor was he aware at the time he made said sale and conveyance that the complainant, or any one for him, had or claimed to have any right, title, or interest, in law or equity, in or to said premises or any part thereof.

The defendant, James W. Borden, in his answer, admits upon information and belief, the purchase of the trustees of the Illinois and Michigan Canal; the sale by him of three acres to William Jacks; the purchase from Jacks by Elias Sutherland in June, 1846, of what was then supposed to be the east two acres of said three acres, and the execution of the deed, a copy of which is annexed to the bill of complaint and marked Exhibit "F," by Elias and complainant to said Whitcomb; that on the 14th of November, 1848, F. Canda, conveyed all his right, title and interest in said block 48, to Charles Canda; and that on or about the first day of August, 1850, Charles and F. Canda and S. Whitcomb executed the contract or agreement annexed to the bill of complaint and marked Exhibit —; and that subsequently and on the 27th day of March, A. D. 1852, the trustees of the Illinois and Michigan Canal conveyed out lot 48 to said Charles Canda; that Gurley purchased all the right, title and interest of said Whitcomb in and to his contract or agreement with Charles and F. Canda, and that Whitcomb thereupon assigned said contract or agreement to said Gurley, and by his deed bearing date the 21st day of December, 1852, conveyed said premises and all his right, title and interest therein to said Gurley, his heirs and assigns; but the defendant knows nothing of the time when said assignment and deed were executed, except that the same bear date December 21, 1852; and he admits that on the 11th day of March, A. D. 1853, Charles Canda and his wife, by Mahlon D. Ogden, his attorney in fact, conveyed said premises to Jason Gurley; and further answering, he says that on the 3d day of May, 1853, he duly and in good faith purchased of said Gurley the premises described in said last mentioned deed of Charles Canda and wife, and being as he is informed and believes, the same premises purchased by said Gurley from said Whitcomb and referred to in said bill of complaint; that said purchase was made in good faith by him, and for the sum of four thousand dollars then actually paid and secured to be paid by him to said Gurley; and that said Gurley and his

wife, Sobrina, then executed their certain deed of conveyance, whereby they bargained, sold, conveyed, and confirmed said premises to said defendant, his heirs and assigns forever; and that the defendant not being aware, and it not having been intimated to him that any other person or persons had any right, title or interest in or to said premises or any part thereof, purchased said premises as aforesaid, and paid and secured to be paid to said Gurley the just and full sum of four thousand dollars, the consideration expressed in said deed; and he expressly denies that at the time of the conveyance to him as aforesaid, he had any notice, knowledge or intimation that the said complainant or any other person for him had any right, title or interest, either in law or equity, in or to said premises or any part thereof, or that there was any outstanding equity of redemption on said premises, as charged in said bill of complaint; and he expressly denies that said conveyance was made to him without consideration or with any design on the part of the defendant to defraud or injure the complainant, or to assist the complainant or any other person in so doing.

The defendant in his answer disclaims all knowledge of any other of the averments or allegations contained in said bill of complaint.

The defendant, Whitcomb, in his answer, disclaims all knowledge or information as to whether the complainant was on the 21st of Oct. 1848, possessed in his own right of the sum of seven hundred dollars, and also as to the ante-nuptial agreement alleged to have been made by and between said Elias and said complainant. But he admits that on the day of A. D. 1848 F. Canda purchased of the Illinois & Michigan canal, out-lot 3^d, sec. 7, Town 39, South of Range 14 East, and that he subsequently gave to William Jacks an obligation in writing for the conveyance of three acres thereof

to said Jacks, as stated and charged in said bill of complaint. He admits that some time during the year 1849, Elias B. Sutherland purchased of said Jacks his interest in what was then supposed to be two acres, from the East side of said three acres, for the sum stated in said bill of complaint, and to be paid for as therein stated, that the obligation from said F. Canda was therefore assigned by said Jacks to said Sutherland; and he says that one acre from the West side of said three acres was expressly excepted and reserved in said assignment, as having been previously sold to one Joel Wiant, and that the remaining portion thereof, or that part of said three acres included in said assignment, would not exceed one and one-half acres by accurate measurement; and he charges, upon information and belief, that said purchase was made for the benefit and solely on account of said Elias B., to whom said assignment was made; and he says that the assignment by Jacks to Sutherland was an absolute and unconditional assignment, and that the amount due said Jacks therefor was treated by the defendants and Sutherland, at the time of the purchase of said premises thereafter mentioned, as the individual debt of said Sutherland. He denies all knowledge or information with regard to the conveyance charged in the bill of complaint to have been made by said Elias B. Sutherland to one William Wheeler, in trust for the use and benefit of said complainant, or of the assignment by said Wheeler of the contracts therein referred to. He admits that prior to the 2d day of August 1850, the said Elias had been sometime engaged in the business of brick-making in the city of Chicago, and that the defendants had, from time to time, advanced to said Elias various sums of money, amounting in all to the sum of three hundred dollars, and the defendant says that prior to such advances, Elias represented to him that the business of brick-making was a very profitable business, and that large profits could be made therefrom, and that he entered into a verbal arrangement with said Elias, by which the defendant in consideration of the

advances thereafter to be made by him, was to have and receive one-half of all the profits which might accrue from said business, with the privilege of withdrawing from said arrangement whenever he should desire to do so, and that the advances were made by him to Sutherland under this verbal arrangement, and that on the 2d day of August, desiring to discontinue said arrangement, he with Sutherland, effected a settlement and adjustment of their respective interests in said business, and that it was mutually agreed between them that the said defendant should be allowed the sum of three hundred dollars as his share of the proceeds and profits of said business, exclusive of said advances; and that said Elias, to secure the payment thereof, executed his promissory note for that amount, payable in thirty days from the date thereof, and executed his power of attorney authorizing the confession of judgment therefor; and he denies that said note was given for interest, or that there was any agreement between him and the said Elias by which he was to receive the usurious interest of five per cent. per month, for moneys advanced by him to said Elias. He admits that said note not being paid, judgment by confession was entered for the amount of said note; that execution issued, and that a quantity of brick belonging to said Elias was sold for \$345; that defendant purchased the brick and subsequently sold them to Morgan for \$345, that being the amount of the judgment and costs; but he denies that he received from Morgan the sum of six hundred dollars, or any other sum in addition thereto. He further says that on or about the second day of August, 1850, the said Sutherland, and complainant his wife, in consideration of the sum of six hundred dollars, sold and conveyed to the defendant, and his heirs and assigns forever, the following described premises, to wit: that part or portion of out-lot forty-eight, in section seven, described as follows: commencing at the south-east corner of said out-lot 48, running thence west upon Lake street 12 rods, thence north 40 rods, thence east 12 rods, thence south.

to the place of beginning; it having been the intention of the said parties to convey the premises purchased by Sutherland from said Jacks; that said Elias had no interest in a portion of the premises included in said description, and that the true length of the east and west line of the premises in which said Elias then had any interest was but $31\frac{1}{2}$ rods, and that there was but about $1\frac{1}{2}$ acres conveyed by said deed to defendant. He admits that the three hundred dollars advanced by him to said Elias formed a portion of the consideration money for said premises, but that the remaining portion thereof, to wit: the sum of three hundred dollars was paid by the defendant to said Elias during the month of August aforesaid, and he says that said conveyance to him was made in pursuance of a purchase of said premises from said Elias in good faith made by him, and he denies that said conveyance was ever intended by the parties thereto, or by either of them, as a mortgage, or as a security for the re-payment of any sum of money then due from the said Sutherland to said defendants; and he says that all indebtedness thencefore due from said Sutherland to the defendant, except the said sum of \$300. for which judgment was afterwards entered and execution issued was thereby cancelled, and the said Sutherland forever released and discharged therefrom; and he says that the full value of the premises so conveyed to him as aforesaid, would not exceed the sum of \$650, or \$700,—and he admits that Wheeler was not a party to said deed, for the reason that the defendant was not aware that the said Wheeler, either in his own right or as trustee for complainant, had any interest in said premises so conveyed to him by said Sutherland, or that any other person had any interest therein, except said Canda, the said Elias and the said complainant, who might have had a dower interest therein; and he says that Sutherland, in and by said deed of conveyance, assigned and transferred to defendant the obligation made by Canda to Jacks, and the said Sutherland therein and thereby covenanted that there had been paid thereon the sum of

\$284.85, and that there was then due thereon \$284.85 to be paid, one-half thereof Sept. 6th, 1850, and one-half thereof Sept. 6, 1852; and the said Elias then and thereby further covenanted to and with said defendant, that upon payment of the said sums so due to said F. Canda, the said Canda would well and truly convey and assign to the defendant, his heirs and assigns, a perfect, absolute and indefeasible estate of inheritance in law, in fee simple, by a good and sufficient deed of conveyance, and that said premises were then free and clear of all former and other grants, sales, liens, leases and incumbrances of what kind and nature soever, and that the defendant was not then aware that there were any other liens or incumbrances than there mentioned in said deed, and that he relied in making such purchase upon the statements and covenants of said Sutherland contained in said deed. He admits that on the third day of August he executed to said Sutherland the contract or agreement mentioned in said bill of complaint, and therein designated as exhibit "G."

But he denies that said contract was intended by defendant or said Elias to operate as a defeasance or in any manner to interfere with or defeat the conveyance executed by complainant and said Elias to defendant, but says that the same was intended as an agreement on the part of the defendant to sell said premises to said Sutherland, and to have no other or different effect than is indicated and expressed in and by said agreement; and he denies that the sum of \$624 was the \$600 advanced by defendant to Sutherland, and \$24 which he pretended he had paid for expenses in drawing papers, as stated in said bill of complaint.

He admits that at the time of said conveyance to him said several sums of money were due said Jacks, as stated in said bill of complaint, but that Sutherland then expressly agreed that he would pay and satisfy the same, but

not doing so he, the defendant, on or about the 13th day of October, 1852 paid to said Jacks on account thereof, \$150, in consideration whereof said Jacks, by his attorneys, agreed to release all his right, title and interest in and to said premises; and he says that of the sums of \$284 84 due to F. Canda, \$116 was to be paid by one Herman Warner, who then owned one acre of the premises included in said contract, being on the west side of said premises, and being the one acre referred to in the assignment of said Jacks to said Sutherland, as having been sold to Joel Wiant.

He admits that he received the note of Geo. H. Pratt, referred to in the bill of complaint, but says that the same had been hypothecated by Sutherland to one Stephen Bronson, to secure the payment of \$53, and that at the request of Sutherland defendant paid said \$53 to Bronson, and received from him said note, and retained the same as collateral security for the re-payment thereof; that on the 21st of August, 1850, he advanced to Sutherland on account of said note the further sum of \$50, the said Sutherland desiring him to retain said note as a collateral security for the re-payment thereof; and that he also made the following payments for and on account of said Sutherland and at his request:

Aug. 18, 1850, cash to R. P. Sanders,.....	\$8 00
Dec. 21, 1850, " " "	25 00
April 10, 1851, bal. of ac't, "	18 00
July 21, 1851, note to Neeley,.....	24 25
Sept. 13, 1851, his ac't due Quinn,.....	21 00

Amounting in all to,.....\$95 25.

Which said sums were paid by said defendant on account of said Sutherland

and at his instance and request, the said Sutherland desiring said defendant to hold and retain said Pratt note until the same was repaid to him; that neither of said sums has been repaid to him by said Sutherland or any part thereof; and that he has applied the proceeds of said Pratt note as he lawfully might do, on account thereof; and he denies that said Pratt note was given to him to provide him with funds for the payment of the amount due to F. Canda, as stated in the bill of account, or that it had anything to do with his purchase from Sutherland.

He further says that the maker of said note refused to pay the full amount thereof, on the ground that said note and another note of equal amount was given to secure the payment of but \$400, and that \$50 of said two notes was included therein for usurious interest, and the defendant was compelled to deduct and did deduct from the amount thereof the sum of \$50, and only realized the sum of \$175 thereupon; and he denies that said note was the property of complainant, but says upon information and belief, that the same was given for land purchased of said Sutherland by said Pratt.

He admits that in September, 1850, he received from Sutherland fifty dollars, but says that the same was handed to him by Sutherland for and on account of Herman Warner, as appears by the receipt then given therefor.

He admits that September 1, 1851, he received the promissory note of said Warner and J. C. Smith for \$66 ⁰⁰/₁₀₀, but says that it was handed to him as a payment of balance of sums due from Warner to F. Canda.

He admits that Sutherland paid so him \$120 June 1, 1851, and says that at the time he received this sum he desired to have it endorsed upon his

contract for the sale of the premises given by him to Sutherland, that Sutherland expressly declined having the same endorsed, alledging as a reason that the contract had been assigned by him to Benjamin Bennett, of N. Y., to secure the payment of a sum then due from him to Bennett, and it was uncertain whether the contract would be returned to him, and that if it was returned and he should be able to pay the balance it might be considered as a part payment thereon, and if not it should be treated as a loan from Sutherland to defendant; and states as a further reason why it should not be endorsed, that in case the balance was not paid then the sum so paid would be forfeited, according to the provision of the contract, and he therefore desired that a note should be given therefor, and the defendant did thereupon, at the request of Sutherland, make and execute the promissory note referred to in the bill of complaint, and at his request made it payable to complainant.

That when the amount to be paid on said contract became due and payable, the defendant applied to Sutherland and desired him to pay said sum, but that Sutherland expressly declined paying him the same, saying that he was unable to do so, and that said premises might be considered as forfeited, under and in pursuance of the provisions in said contract contained; and that the defendant has since regarded said contract as forfeited and has frequently so stated to said Sutherland and said complainant, but that neither of them until the filing of this bill of complaint made any objection thereto, but fully acquiesced therein; and he denies that Sutherland paid to defendant \$17 ¹¹/₁₀₀, in brick, or \$33 in money, as charged in the bill of complaint.

He admits that Sutherland entered into possession of the premises in 1849, and has since continued to occupy them, but denies that he occupied as the agent of complainant. Admits that in 1848, F. Canda assigned all

his interest in block 48 to C. Canda, his brother. Admits the execution of the contract between the defendant and Charles and F. Canda, referred to in the bill of complaint; and that the trustees of Illinois and Michigan Canal in 1852 consigned said lot 48 to Charles Canda; states the contract for the sale of the premises to Gurley substantially as stated in Gurley's answer; and that defendant was not then aware nor had he received any intimation, nor does he believe that Gurley was aware or had received any intimation that the complainant had or claimed to have any right, title or interest, in law or equity, in or to said premises or any part thereof; and that the sale to Gurley was made in good faith, and was not made with the intention or design of defeating or defrauding the complainant; that said sale was for \$2500, \$625 of which has been paid to defendant by Gurley, and that Gurley has secured the payment of the balance of said sum.

A general replication was filed to the answers, and afterwards, on the 9th day of April, A. D. 1856, at the March vacation term of said court, the default of Elias B. Sutherland and William Wheeler, was taken in said court, and the defendants, Truman Whitcomb, Jason Gurley and James W. Borden, by their solicitors, file in writing their objection to certain interrogatories and answers thereto contained in the complainants' depositions, and it is therefore ordered by the court that the first and eleventh objection of said defendants, viz.: to the third interrogatory to Reuben Taylor and the answer thereto, and to the several direct interrogatories to Henry W. Clark and the answers thereto, be overruled, and that all the other of said objections, to wit: to the eighth and ninth in the re-examination of Reuben Taylor and the answers thereto; to the third, fourth and fifth direct interrogatories to C. D. Fitz and his answers thereto; to the second direct interrogatory to Thomas B. Dwyer and his answer thereto; to the testimony of S. S. Hays with regard to the contents of letters; to the answers given by H. Warner,

to the eighth and ninth interrogatories in his examination resumed; to the fourth interrogatory of Stephen Brunson and his answer thereto; to the whole of the testimony of Elias B. Sutherland; to complainant's exhibits, lettered from B. to 2, being bills for merchandize; to the ninth interrogatory to J. Dwyer and the answer thereto, and to the tenth interrogatory to H. Warner and the answer thereto be sustained, and that said last mentioned portions of said depositions and the whole of the testimony of E. B. Sutherland be struck out, and the same shall not be read as testimony in the cause.

And afterwards, to wit: on the day and year aforesaid, the cause coming in to be heard upon the bill and answers given said court to the replication thereto, and upon depositions taken in said cause, and upon depositions of witnesses examined in open court, to wit: the deposition of James G. Braddy, who testified that he was surveyor, and had surveyed the premises described in the deed from Whitcomb to Gurley, and being part of lot 58, and being the premises hereinbefore described, and found the same to contain one acre and $\frac{542}{1000}$ of an acre, and that he did not include any portion of Lake street in this survey, and that he should think, from a rough calculation, that $\frac{1}{10}$ of an acre had been taken from this portion of said lot 48, for said street.

And thereupon counsel for the complainant as well as for the defendants, Whitcomb, Gurley and Buden, having been heard, it was ordered adjudged and decreed by said court as follows:

1st. That the deed of Elias B. Sutherland and Francis H. Sutherland dated in the beginning thereof, August 1st, 1850, and at the end August the 2d, 1850, and acknowledged the fifth day of August, 1850, by which was con-

veyed to Truman Whitcomb, the interest of the said grantors in all that part or portion of out lot No. forty-eight, (48,) in the Illinois and Michigan canal trustees' sub-division of section seven, (7,) in township thirty-nine, (39,) north of range fourteen, (14,) east, described as follows, to wit: Commencing at the south-east corner of said out lot forty-eight, (48,) running thence west upon Lake street twelve (12) rods, thence north forty (40) rods, thence east twelve (12) rods to the east line of said out lot forty-eight (48), thence south upon said east line of said out lot forty-eight (48), to the place of beginning, and the assignment to said Truman Whitcomb of the contract then held by said Elias B. Sutherland, for the conveyance of the same premises to him as assignee of William Jacks, together with the articles of agreement of said Truman Whitcomb with said Elias B. Sutherland, bearing date the third day of August, 1850, for the reconveyance to said Sutherland of the same premises, upon the payment by him, said Elias B. Sutherland, to the said Truman Whitcomb, his attorney, executor, administrator or assigns, of the sum of six hundred and twenty four dollars, on or before the third day of August, A. D. 1851, with legal interest, and the performance of other covenants constituted a mortgage by the said Elias B. Sutherland and Frances H. Sutherland, to secure the payment to the said Truman Whitcomb of a debt before that time existing.

2nd. That the complainant, Frances H. Sutherland, has succeeded to all the rights of the said Elias B. Sutherland in the said premises, and the equity of redemption of that portion of the said premises described as follows, to wit: That part of out lot number forty-eight (48) in the Canal Trustees' sub-division of section seven (7), in township thirty-nine (39) north, of range fourteen (14) east meridian, bounded as follows: Beginning at the south-east corner of said out lot forty-eight, on the north line of Lake street, and running

thence westerly along said north line of Lake street one hundred and thirty-two (132) feet, thence northwardly to a point in the north line of said out lot distant one hundred and thirty-two (132) feet from the north-east corner of said out lot, and thence south on the east line of said out lot to the place of beginning, is her separate property and estate by virtue of an assignment to her of said contract, for reference as executed by and between said Whitcomb and Sutherland, as aforesaid.

3rd. That the defendants, Jason Gurley and James W. Borden, are purchasers with notice of the rights of the complainant, Frances H. Sutherland; and thereupon the defendant, James W. Borden, further proved the payments by him on said land, of State, county and city taxes for the years 1853, 1854 and 1855, as also certain assessments made by the city of Chicago, in all amounting to the sum of three hundred and thirty-nine dollars and twenty-nine cents (\$339 29).

It is ordered, adjudged and decreed that the complainant, Frances H. Sutherland, do pay into the hands of the master in chancery, S. C. Paine Freer, within four months of the date of this decree, the amount of said mortgage debt, which is hereby adjudged to be the sum of \$ with interest thereon to be computed from the date of this decree, at the rate of six per cent. per annum, together with the costs of the said defendants of this suit, the said payment to be held by the said master subject to the further order of this court, and to be paid to such or one of the said defendants, who may appear to be entitled thereto, and that upon payment of said sum and interest into the hands of the said master within the time aforesaid, then the said defendants, Elias B. Sutherland, William Wheeler, Truman Whit-

comb, Jason Gurley and James W. Borden, shall convey to the said complainant, Frances H. Sutherland, or to her heirs or assigns forever, all of their respective interests in the last described portion of the said mortgaged premises, free and clear of all incumbrances done by them or any person claiming by, from or under them respectively, and in the event of their failure so to do within ten days after the time of the payment of the said mortgage debt and interest as aforesaid, then the said master in chancery shall execute and deliver to the said Frances H. Sutherland, her heirs and assigns, a deed conveying to her, her heirs and assigns forever, the said last described portion of said premises, to wit: That part of out lot number forty-eight (48), of the Canal Trustees' sub-division of section seven (7) in township thirty nine (39) north, of range fourteen (14) east of the third principal meridian, bounded as follows: Beginning at the south-east corner of said out lot forty-eight (48), on the north line of Lake street, and running thence westerly along said north line of Lake street one hundred and thirty-two (132) feet, thence northward to a point on the north line of said out lot, distant one hundred and thirty-two (132) feet from the north-east corner of said out lot, and thence south on the east line of the said out lot to the place of beginning, and all the right, title and interest of each of the said defendants in the same. But in default of the said complainants paying into the hands of the said master in chancery the said sum of money, with said interests and costs, at such time as aforesaid, it is ordered that the said complainant's bill as against the said defendants, do from thenceforth stand dismissed out of this court, with costs, and that the said defendants have execution therefor.

To which decree and every part thereof, the said defendants, Truman Whitecomb, Jason Gurley and James W. Borden, except and pray that their exception may be entered of record, which is done.

The following are the depositions taken in 1854, which were read upon the hearing of said cause:

On the part of complainant the deposition of Reuben Taylor, who said he was acquainted with complainants but not with the defendants; had been in Chicago since 1839; had followed teaming most of the time; that he was acquainted with the east two acres of out lot 48, and lived on the opposite side of the street adjoining since 1841, and that the two acres with the improvements, in August, 1850, was not worth less than \$2,000; that he did not include the streets in this estimate, and was not aware that the streets was attached to this lot since the sub-division by the Canal Trustees, and that E. B. Sutherland has been in possession of these premises since 1850. He further states that he is at present a land agent. In his cross examination he states that he commenced the land agency business about two years ago. He says he has no correct knowledge of any land being sold there prior to May 1, 1850; that he purchased one-half acre of Mr. Doyle about a year ago; that in 1842 and 1843, lands were sold in the vicinity of this lot, and he judges of its value by what he would have taken for his own similarly situated.

JOHN ROGERS,

Who states that he had a conversation with Whitcomb in June or July of 1850. Whitcomb spoke about making brick with Sutherland; he said he was about going into the business with Sutherland; I had a conversation

with Whitcomb in his office; I desired him to endorse a note for Sutherland, which I held for a cargo of wood; he refused to endorse, saying he had advanced all the money to Sutherland he was going to; I asked him if he was a partner with Sutherland; he said he was not; I don't think there was anything said in either of the conversations about Whitcomb's having loaned Sutherland money, except when I called upon Whitcomb to endorse Sutherland's note; then I asked him if he was in partnership with Sutherland, and he said he was not but had loaned or advanced him money; I cannot tell exactly when the conversation was; it must have been in September or October of 1850; I don't think he stated the amount he had advanced to him; I cannot state the words he used except that he had loaned and advanced him money and was anxious to get it back.

J. J. McGILVRA.

I was present at a conversation at Mr. Hayes' office between Mr. Hayes and Mr. Gurley, in relation to the piece of ground on which Mr. Sutherland was then residing; Mr. Gurley was talking about commencing an action of ejectment, or had commenced one, I am not certain which, against Mr. Sutherland; in the course of that conversation I think Mr. Gurley remarked that he would like to settle the matter as he thought Mr. Sutherland had better, or he, Gurley, wished he would, give up the premises; I think he stated in that conversation that he, Gurley, thought he had a good title to the land

as a purchaser from Mr. Whitcomb; Mr. Hayes, in reply to these statements, said that he, Mr. Gurley, was aware of the fact that Mr. Sutherland held a bond for a deed to these premises from Whitcomb, at the time of Gurley's purchase from Whitcomb; Mr. Gurley said he did know the fact; I think he remarked then or shortly after that he did not consider said bond of any binding obligation; that he considered it forfeited; I think he said for non-payment; there was a conversation then followed between Mr. Gurley and Mr. Hayes in relation to the validity of the bond at the time of Gurley's purchase; I don't recollect definitely what that conversation was, except that it was upon that question; Mr. Hays again remarked to Mr. Gurley that he considered Mr. Gurley standing in the same position with Mr. Whitcomb, for the reason that he knew of the existence of this bond; the fact was mentioned, either at this time or prior to that, that Mr. Sutherland was occupying the premises at the time of his, Gurley's, purchase; Mr. Gurley replied that he did not know of the existence of this bond at the time of his purchase; Mr. Hayes then remarked that previously, and in the same conversation, he had admitted that he knew of its existence; Mr. Gurley then denied that he had made such an admission; Mr. Hayes then appealed to me to know whether Mr. Gurley had made such statements; I told him what my understanding of the matter was and there it ended. In his cross-examination witness says Mr. Gurley insisted that he had not stated to me, Hayes, that he knew of the existence of the bond at the time of his purchase from Whitcomb.

MRS. ANN M. BRADT.

I am acquainted with complainant; was acquainted with her circumstances before her marriage with Sutherland; I knew very near the amount of property she owned at that time; it was, I believe, between six and seven hundred dollars; I don't know the date when it was paid to her; she had a payment in July, 1849 of \$200; she had one payment of \$130, about 2 years ago; I think I have paid the balance in receipts from time to time, but can't say when; I am her sister.

C. D. FITZ.

I am acquainted with complainant; she married the defendant, Sutherland in the fall of 1841.

HENRY WARNER.

I had a conversation with Whitcomb; can't tell the year; in '48 or '50; don't recollect anything about the conversation; I think I had a conversation

with him in 1851, in relation to his business with Sutherland; Whitcomb said that he and Sutherland talked of going into the brick business, but that he did not like Mr. S's way of doing business, and I understood him to say that he had let him have a certain amount of money; after he changed his views about the brick he let him have it as a loan, as I understood; he then talked about the property; he said he did not want the property, but he said he should not see Mrs. Sutherland suffer; it is my impression he said he had loaned \$600.

SAMUEL M. WARNER.

I can't say that it was in 1853; it may have been two years ago; I bought a note held by Mr. Whitcomb; I think the note was made by George H. Pratt; I can't say by whom it was endorsed, or to whom it was made payable; it was for \$225 or \$250, or thereabouts; I don't recollect distinctly what Whitcomb said; I know he told me how he got the note; that he had loaned Mr. Sutherland some money, but don't recollect what the conversation was; I satisfied the note.

On his cross-examination he says :

I think Mr. Whitcomb said the note had been hypothecated to Mr. Bronson, and that he had paid the amount for which it had been hypothe-

cated; I have been told, by Sutherland and Pratt that the note was given on account of land purchased of Sutherland by Pratt; I can't say how much I gave Whitcomb for the note, but I think \$50 or \$60 less than the full; it was stated that there were two notes given for \$400, and the balance, \$50, was for usury, and these were the grounds of my objecting to pay the full amount.

SIMON DOYLE.

I have been acquainted with Mr. and Mrs. Sutherland since 1849.

Question. Do you recollect of having a conversation with Mr. Whitcomb, one of the defendants, some time in the year 1853, at Mr. Ogden's office, relative to his dealings with the complainant and Mr. Sutherland? If yea, state what the conversation was and time that it occurred.

Answer. I think it was in April, 1853. The conversation came up between Mr. Whitcomb and myself in relation to the property he was about obtaining a deed for. I observed at the time that he ought to do what was right by the woman; the conversation came up in regard to an interview he had had with Mrs. Sutherland, and from what I gathered from the conversation, he took some exception to what she had said at their meeting; at that time I observed that he ought to do what was right with the woman; that was about all upon that subject I think; Mr. Whitcomb was then about obtain-

He replied that he had always intended previous to that time to do what was right with the woman

ing a deed for the land that Sutherland now lives on, about two acres off the east side of lot forty-eight, in the Canal Trustees' sub-division of section seven; I suppose I was acquainted with its value; I owned one-half an acre immediately west of this on the same lot; I should think the land was worth \$2,000 in August, 1850.

J. BRUNSON.

I had one or more notes made by Mr. Pratt, for \$225, left with me by Mr. Sutherland, as securities for loaned money; the amount loaned upon one note was paid and the note taken out of my possession by Mr. Anderson; it was delivered by me to Mr. Anderson at the request of Mr. Sutherland; I think it was in the spring of 1852; the date and maturity of the note I have forgotten; it was secured by a mortgage as well as by some other notes in my possession; I have forgotten what disposition I made of them; I think Mr. Whitcomb asked me if I held such a mortgage; I answered I did; he requested me to retain it for the benefit of all notes which it was given to secure or for his own particular note; I think it was a note for \$225; I don't know that I saw it; Mr. Whitcomb told me it was given by Mr. Pratt to Mr. Sutherland for the same amount as the one which I had, which was \$225.

CROSS EXAMINATION.

Question. Did you not have the note referred to in your answer to the last interrogatory, in your possession in 1850, in previous to the year 1852, and had it not been hypothecated to secure the payment of money loaned by you, and did not Mr. Whitcomb pay the amount or some portion of the amount for which it was hypothecated?

Ans. It might have been in my possession; I do not remember; I shall have to make the same answer to the balance of the interrogatory, I don't remember.

HENRY W. CLARK.

I am acquainted with the complainant, and with all the defendants, except defendant Borden.

Int. 2. Do you remember of hearing a conversation between Mr. and Mrs. Sutherland, in reference to an agreement or understanding that existed between them prior to their marriage? If yea, state what that conversation was, and whether or not you drew a deed to carry into effect that contract?

Ans. Some time in the month of May, 1850, Mr. and Mrs. Sutherland called together at my office and stated that when Mr. Sutherland married Mrs. Sutherland, she had money of her own which she had received from the estate of her former husband, and that since her marriage with Mr. Sutherland he had used that money, with her consent, to make a purchase of some real estate on the west side of Chicago river, and that there was and had been an understanding between them that she should be secured so that no contingency of business on the part of Mr. Sutherland would affect her interest, and advised with me what course it was necessary to take to carry out that arrangement. Mr. Sutherland having taken the title to said real estate in his name, I advised them that Mr. Sutherland should convey said real estate to some responsible person, for the use of Mrs. Sutherland and her heirs; and about that time or soon after, I drew a deed of trust of said land, which was executed and acknowledged before me. The paper now shown to me, marked Exhibit "C," is the deed of trust then executed.

The part of witness' answer to the last interrogatory giving conversation between Mr. and Mrs. Sutherland and witness, objected to. Objection overruled by the court, and the same was read in evidence on the hearing, on the part of the defendants.

MAHLON D. OGDEN was called.

I am one of the grantors named in the power of attorney now shown to

me; defendants offer in evidence and have attached to deposition exhibits "D," "E," "F," "G," "H" and "I;" I am and was in 1850, acquainted with the premises described in defendant's exhibit "E;" I was acquainted with their value in August, 1850; should think they were worth \$200 per acre; my means of becoming acquainted with their value were—I was agent of Mr. Canda and had care of his property, a part of which was block 48; I had occasion to know the value of property as I was selling some in that vicinity; I had then resided in Chicago fourteen years; the market value of these premises for two years previous to August 1, 1850, had not advanced more than \$50 per acre; there is 1 and $\frac{540}{1000}$ of an acre in the premises described in defendant's exhibit "G."

FELIX F. CANDA.

I am the son of Florimond Canda; I have been acquainted with the premises in question from the time my father bought them to January 1, 1851; I am acquainted with E. B. Sutherland; I do not know that he resided on said premises during the winter of 1851; I saw Mr. Sutherland at our house in Chicago, in the spring of 1851; Mr. Sutherland then told me and my father that he had sold to Mr. Whitcomb this land, and wanted my father to get a deed from my uncle to convey this land to Mr. Whitcomb; during the spring of 1851 Mr. Sutherland came to my father's house twice and made the same request.

H. R. STEBBINS.

The paper now shown to me marked defendant's exhibit "2," is in my hand writing; it was executed in my presence; according to the best of my recollection it was executed at its date; I have no means of recollecting when it was executed but from the paper itself; I think Mr. Gurley was present, Mr. Whitcomb, Mr. Ritchie, a clerk in our office and myself; the contract referred to in defendant's exhibit "I," was left with me at the time of the execution of the memorandum, and I feel very positive that the contract marked defendant's exhibit "F," is the contract referred to in his defendant's exhibit "J;" I drew the deed marked defendant's exhibit "H," but at what time I only know from its date.

WILLIAM B. EGAN.

I was acquainted with the value of real estate in Chicago and vicinity in the year 1850; was tolerably well acquainted with the value of land in the east part of section 7, town 39; I should say that the east part of lot 48, in section 7, was worth \$200 per acre in 1850; my means of knowledge was I was a frequent purchaser and watcher of the land sales, and examined the relative value of every block in that section.

WILLIAM WHITNEY.

I was acquainted with the value of real estate in Chicago and vicinity in 1850; my means of knowledge were by attending sales by the canal trustees, and from private sales by individuals; was acquainted with the value of lands in the east part of block 48, section 7, town 39; should think land in that block was then worth from \$150 to \$175 per acre.

—O—

V. C. TURNER.

I was, to some extent, acquainted with the value of real estate in Chicago, and vicinity, during the year 1850; I was then purchasing on my own and others account; I have a general impression of what lands were then worth in the east part of section 7; my impression is that land in block 48, section 7, was then worth from \$150 to \$200 per acre.

JAMES H. REES.

I am engaged in the real estate business in Chicago, and have been so engaged, more or less, for the last 20 years; I was acquainted with the value of real estate in said city during the year 1850; my means of knowledge were in being engaged in the business at that time, and attending public sales; I was acquainted with the value of lands in the east part of section 7, town 39; land was worth by the acre, in the east part of block 48, section 7, at that time, \$250 per acre; my judgment is principally formed by a sale of block 11, section 17, about half a mile nearer the center of the city than block 48; it sold at \$300 per acre; this sale was made eight months earlier than August 1, 1850; the rate of increase during these eight months, of land in that vicinity, was about 25 per cent.

BY COMPLAINANTS.

PETER PAIGE.

I have a general knowledge of the value of real estate in the east part of block 48, sec. 7, town 39, in August, 1850; I should say it was worth from \$700 to \$1000 per acre, at that time.

E. H. CASTLE.

I knew something of the value of the east part of block 48, sec. 7. in August, 1850; my opinion is that it was worth \$1000 per acre.

A. C. WOOD.

I think I was acquainted with the value of lands in the east of block 48, sec. 7, in August, 1850; my means of knowledge was in having ground in the immediate neighborhood, and selling; I should think the east part of block 48 was worth, at that time, with the improvements, from \$700 to \$800; my judgment is based on its value on canal terms.

BY DEFENDANTS.

—O—

JAMES H. REES, Re-called.

The difference between the cash value of real estate in Chicago, in 1850, and its value on canal time, was from twenty to twenty-five per cent, in my opinion.

—O—

E. S. PRESCOTT.

I have an opinion about the value of property in the east part of block 48, section 7, in August' 1850; judging from the canal sales made in the neighborhood of that block in the spring of 1850, and the annual rise of property during that season, I should regard the property named worth \$250 per acre.

The following Exhibts were attached to said deposition, and read in evidence, by agreement.

COMPLAINANT'S EXHIBIT "A."

FLORIMOND CANDA TO WILLIAM JACKS.

Agreement.

CHICAGO, Sept. 6th, 1848.

This certifies that William Jacks has this day purchased of F. Canda, three acres of land, in lot No. 48, sec. 7, town 39, n range 14 east, as laid out by canal trustees, septending on Lake street twelve rods or thereabouts, for the sum of five hundred, sixty-nine and $\frac{7}{100}$ dollars, and that he has paid toward the same the sum of one hundred and forty-two $\frac{42}{100}$ dollars, being one quarter of said purchase money. And also twenty-five $\frac{25}{100}$, being one year's interest in advance, on the residue of said purchase money. The said Canda has also received from said purchaser his three several promissory notes for four hundred, twenty-seven and $\frac{27}{100}$ dollars, equally divided, and becoming due in one, two and three years from date, with interest at six per cent per annum, payable annually in advance. And that upon the full payment of said promissory notes and the interest thereon, promptly, according to their tenor and effect, the said purchaser will be entitled to receive from said Canda a good and sufficient deed of said three acres, but in case of a failure on the part of said purchaser to pay such interest, or the residue of such principal, within twenty days after the same, or any instalment thereof, becomes due, he shall forfeit said land and all claim thereto, and all payments made on account thereof.

F. CANDA.



Witness,

H. R. PEARSON.

COMPLAINANT'S EXHIBIT "B."

WILLIAM JACKS TO ELIAS B. SUTHERLAND.

Assignment.

For a valuable consideration to me paid by Elias B. Sutherland, his heirs and assigns, I do hereby assign to him the within contract executed by F. Canda, and all my right and interest in and to the land therein described, with the exception of one acre of the west side of the same sold to Joel Nians, in consideration whereof the said Sutherland hereby agrees to pay to me the sum of eight hundred dollars, as follows: Two hundred on the 6th (6) Sept. 1849, one hundred (100) dollars on the first June, 1850, and one hundred dollars on the 6th Sept., 1850, two hundred dollars 6th Sept., 1851, and two hundred dollars the first December, 1852, with interest on each payment as the same becomes due and payable, the said Sutherland hereby reserving the right of making the payments on the within contract to F. Canda, and deducting the amount thereof from the payments herein to be made to me.

WILLIAM JACK.

{ L. S. }

In presence of }
GEO. MANNIERRE. }

No. 23,620. Filed June 26, 1849. Recorded in Book No. 30,
page 412.

COMPLAINANT'S EXHIBIT "C."

This indenture made and entered into this twenty-ninth day of May, in the year of our Lord one thousand eight hundred and fifty, between Elias B. Sutherland, of Chicago, Cook county and State of Illinois, of the first part and William Wheeler of the same place, of the second part, witnesseth, that the said party of the first part, in consideration of the sum of seven hundred dollars to him duly paid at and before the ensealing and delivery of these presents, and in further consideration of the trust hereinafter mentioned, has granted, bargained and sold, and by these presents does grant, bargain and sell and convey to the said party of the second part, and assign all right, title interest, claim or demand whatsoever of the party of the first part, of, in and to a certain contract for deed executed by F. Canda to William Jack, dated December 9th, 1848, and assigned by William Jack to said party of the first part, for two acres of land in lot No. 48, section 7, town 39 north, range 14 east, as laid out by the Canal Trustees, which contract and assignment are recorded in the recorder's office of Cook county, Illinois, June 26, 1849, in book No. 30, page 412, and also all buildings and improvements situated on said two acres, which may hereafter be made by said Canda, his heirs or assigns, said deed, when made, to be made to said party of the second part, subject in its operation in all respects to the provisions of trust herein recited. The said two acres being the same that said party of the first part now resides on to have and to hold the same with the appurtenances, to the said party of the second part, and his assigns forever, in trust for the following purposes, to wit: For the use and benefit of Frances Helen Sutherland, wife of Elias B. Sutherland, to pay the rents, issues and profits of the said premises to the said Frances Helen Sutherland, or to such person or persons as she in writing shall

To Wheeler

direct, for her sole and separate use, and at the death of the said Frances Helen Sutherland, then to the use of such person or persons, and for such estate, estates or charges, as the said Frances Helen Sutherland, by her last will and testament in writing, or any writing purporting to be her last will and testament, shall give and devise said premises. The said Frances Helen Sutherland to have the sole power to give and devise the said premises to whomsoever she may direct and choose. But reserving and conferring power of said party of the second part to sell and convey said premises by good and sufficient deed, in case said Frances Helen Sutherland, her heirs or assigns, should so order to be expressed in writing.

In witness whereof I have hereunto set my hand and seal, the day and year above written.

ELIAS B. SUTHERLAND, { L. S. }

In the presence of
HENRY W. CLARK. }

—O—

STATE OF ILLINOIS, }
Cook County, } ss.

I, Henry W. Clark, a Notary Public in and for said county, in the State aforesaid, do hereby certify that Elias B. Sutherland, who is personally known to me to be the same person whose name is subscribed to the annexed trust

deed, appeared before me this day in person, and acknowledged that he had signed and sealed and delivered the said instrument of writing, as his free act and deed for the uses and purposes therein expressed.

Given under my hand and official seal, this first day of June, A. D. 1850.

{ L. S. }

HENRY W. CLARK,

Notary Public.

—O—

COMPLAINANT'S EXHIBIT "O."

For value received I hereby sell, assign, transfer and set over unto William Wheeler all my right, title and interest to the attached contract, as assigned to me by William Jacks, for two acres of land described in said assignment, in trust in all respects according to the conditions and provisions of a deed of trust executed by me to said Wheeler, May 29, 1850, in regard to said two acres for the use and benefit of Frances Helen Sutherland.

ELIAS B. SUTHERLAND,

{ L. S. }

Attest: HENRY W. CLARK.

May 29, 1850.

COMPLAINANT'S EXHIBIT "D."

August 3, 1850.

Thirty days after date, for value received, I promise to pay to Truman Whitcomb, or order, three hundred dollars, with interest.

E B. SUTHERLAND.

Know all men by these presents, That I, Elias B. Sutherland, of Chicago, am justly indebted unto Truman Whitcomb upon a certain note bearing even date herewith, for the sum of three hundred dollars, and due thirty days after date.

Now, therefore, in consideration of the premises, I do hereby make, constitute and appoint Thos. Hoyne, or any attorney of any court of Record, to be my true and lawful attorney, irrevocable for me and in my name, place and stead to appear in any court of Record, in term time or in vacation, in any of the states or territories of the United States, at any time after the said note becomes due, to waive service of process and confess a judgment in favor of said Truman Whitcomb, his assigns, upon the said note for the above sum, or for as much as appears to be due according to the tenor and effect of said note, and interest thereon to the day of the entry of said judgment together with costs and attorneys fees, ten dollars, and to file a cognovit for the amount that may be so due, with an agreement therein that no writ of error or appeal shall be prosecuted upon the judgment entered by virtue hereof, nor any bill in equity filed to interfere in any manner with the operation of said judgment, and to release all errors that may intervene in the

entering up of the said judgment or issuing execution thereof; hereby ratifying and confirming all that my said attorney may do by virtue hereof.

Witness my hand and seal, this third day of August, A. D. 1850.

E. B. SUTHERLAND, { L. S. }

In presence of
E. L. KNOTT. }

COMPLAINANT'S EXHIBIT "E."

TRUMAN WHITCOMB, }
vs. } Cook County Court of Common Pleas.
ELIAS B. SUTHERLAND, }

CONFESSION.

Judgment entered 12th October, A. D. 1850, in vacation

for damages,.....	\$310 00
Plaintiff's cost,.....	3 65
Defendant's cost,.....	1 65

\$315 00

Execution issued 12th October, 1850, to Sheriff of Cook county. October 14th, 1850, levied upon a lot of brick on the north side of the river, near Kinzie street, all the right, title and interest of the within named defendant to said brick—two kilns of said brick.

I. COOK, Sheriff,

By O. MCARTHY, Deputy.

—O—

RETURN OF SALE ON EXECUTION.

By virtue of the within execution and this levy thereon, I did on the 8th day of November, 1850, after advertising according to law, proceed to sell at public vendue all the right, title and interest of the within named defendant to said brick, and Truman Whitcomb bid the sum of three hundred and forty-five dollars, which being the highest and best bid therefor, and the debt of the defendant to said brick has been sold to the said Whitcomb; therefore return this execution satisfied in full, as the plaintiff's receipt shows on this execution and costs, this 11th day of November, A. D. 1850.

Sheriff's fees paid,	\$ 8 59
Watchman for do paid,	20 00
	\$28 59

ISAAC COOK, Sheriff,

By OWEN MCARTHY, Deputy.

Received on the within execution, the damages and clerk's costs and interest on the same, from Owen McCarthy, Deputy Sheriff, by sale of said brick, which has been levied upon November 9, 1850.

T. WHITCOMB.

COMPLAINANTS EXHIBIT "F."

ELIAS B. SUTHERLAND TO T. WHITCOMB.

This Indenture, made this first day of August, A. D. 1850, between Elias B. Sutherland, of Chicago, Cook county, Illinois, party of the first part, and Truman Whitcomb, of the same place, party of the second part. Witnesseth, that for and in consideration of the sum of six hundred dollars, paid by said party of the second part to said party of the first part, the receipt whereof is hereby acknowledged. the said party of the first part hath bargained, sold, assigned, aliened, released, remised, conveyed and confirmed, and by these presents, doth grant, bargain, sell, alien, assign, release and convey unto the said party of the second part, and unto his heirs, and assigns forever, all of that part and portion of out lot No. forty-eight, (48,) in the Illinois and Michigan canal trustees' subdivision of section 7, township 39, range fourteen (14,) east, described as follows, to wit ; commencing at the southeast corner of said out lot 48, running thence west upon Lake street 12 rods, thence north forty (40) rods, thence east twelve (12) rods, to the east line of said out lot 48, thence south upon said east line of said out lot 48, to the place of beginning, and further, the said party of the first part, doth hereby assign to said party of the second part, that certain contract of sale, a certificate of purchase, executed by one Florimond Canda to one William Jacks, dated the 6th day of September, A. D., 1848, for three acres of said out lot 48, of said canal trustees' subdivision of section 7, above mentioned, upon which there had been paid the sum of two hundred and eighty-four $\frac{85}{100}$ dollars principal, besides interest, leaving one equal moiety or balance of two hundred and eighty-four $\frac{85}{100}$ dollars to be still paid thereon,

without interest, to said F. Canda, one half of the last named sum. One half of the last named sum falls due on the 6th day of September, 1850, and one-half of same on 6th day of September, A. D. 1852, which said sums last above named, said party of the second part agrees to pay, and subject to which this conveyance is made, the said party of the first part hereby authorizing said party of the second part to receive, have and demand of said Florimond Canda, the deed covenanted and agreed to be made by said F. Canda, in and by said contract of sale or certificate so executed by him as aforesaid, to William Jacks, to have and to hold the said premises above bargained and described, with the appurtenances and buildings thereon, unto the said party of the second part, and his heirs and assigns forever, and the said party of the first part, for himself, his heirs, executors, administrators and assigns, doth hereby covenant, bargain and agree to and with the said party of the second part, his heirs and assigns, that upon payment of the said sum and sums of money so due to F. Canda, as aforesaid, upon said certificate of purchase above described and assigned, and that said F. Canda will well and truly assure and convey a perfect, absolute and indefensible estate or inheritance in law, in fee simple, by good and sufficient deeds of conveyance to said party of the second part of said premises so described and bargained as aforesaid, and hereby conveyed by said party of the first part to said party of the second part, his heirs and assigns, and that said premises are free and clear of all former and other grants, sales, levies, leases and incumbrances of what kind or nature soever, and the above bargained premises in the quiet and peaceable possession of said party of the second part, his heirs and assigns against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part shall and will warrant and forever defend, subject to the payment of such sum or sums as are due to F. Canda aforesaid, and that in case of failure on the part of said F. Canda to

convey such title as aforesaid to said party of the second part, as shall be perfect, sure and indefeasible, that legal proceedings may, at the option of said party of the second part be instituted in his own name or the name of said party of the first part, at the cost and charges of said party of the first part against F. Canda or Charles Canda, or such other person or persons as may appear to be properly liable to convey title as aforesaid to said premises, or for payment of damages in default thereof, and appropriate the proceeds of such judgment as may be obtained against them or any of them, to his said party of the second part's own use and benefit without liability on, and that in any event, said party of the first part, upon failure of said Canda to convey a good title for said premises to said party of the second part as aforesaid, said party of the second part shall be entitled to receive and recover of the said party of the first part, as stipulated damages, without defalcation or discount whatsoever, the sum of nine hundred dollars, which shall become and fall due as soon as the payments now remaining of the purchase money to F. Canda, on the certificate or contract of sale so described as aforesaid shall be paid up to said Canda by said party of the second part, and the said Canda fails or refuses upon demand made to convey said premises so described as aforesaid to said party of the second part, and make thereto a perfect, sure and indefeasible title in the law in fee simple, free of all defect of record and all charge or incumbrance whatsoever. In witness whereof said party of the first part has hereunto set his hand and seal, this second day of August, A. D. 1850.

In presence of

E. B. SUTHERLAND. { L. S. }

F. H. SUTHERLAND. { L. S. }

The word "payment struck out, and also the word "due" struck out on last page signing, and on second page, and second altered to first.

L. G. LOWE.

STATE OF ILLINOIS, }
Cook County, }

I, Samuel J. Lowe, a justice of the peace in and for said county, and the State aforesaid, do hereby certify that Elias B. Sutherland and Frances H. Sutherland, who are personally known to me to be the same persons whose names are subscribed to the annexed deeds, appeared before me this day in person, and acknowledged that they had signed, sealed and delivered the said instrument of writing as their free act and deed for the uses and purposes therein expressed, and the said Frances H. Sutherland, wife of the Elias B. Sutherland, having been by me examined separate and apart and out of the hearing of her said husband, and the contents and meaning of said instrument of writing having been by me made known and fully explained to her, she acknowledged that she had freely and voluntarily executed the same, without any compulsion of her husband, and relinquished her dower to the lands and tenements therein mentioned, and that she does not wish to retract the same.

Given under my hand and official seal, this 5th day of August, A. D 1850.

(Signed)

S. J. LOWE, { L. S. }

Justice of the Peace.

No 24,292. Filed for record 4th
of Aug 1850. Recorder book 37
page 46

COMPLAINANT'S EXHIBIT "G."

No. 26,892. Filed for record 6th August, 1850. Recorder's book 37,
page 46.

Articles of agreement made this third day of August, A. D. 1850, between Truman Whitecomb, of the city of Chicago, county of Cook, and State of Illinois, party of the first part, and Elias B. Sutherland, of the same place, party of the second part, witnesseth, that the party of the first part, at the request of the party of the second part, and in consideration of the sum of money hereinafter named to be first paid at and within the time stipulated, and the performance of the covenants herein expressed to be first performed by said party of the second part, hereby agrees to sell and assure to the said party of the second part, by good and sufficient deed of quit claim, all of the right, title and interest which said party of the first part now has or may hereafter acquire, of, in and to the following described piece, parcel and tract of land, to wit: all of that part and portion of out lot No. 48, in the Illinois and Michigan Canal Trustees' sub-division of section 7, township 39, range 14 east, and bounded as follows: Commencing at the south-east corner of said out lot No. 48, and running thence west upon Lake street twelve rods, thence north forty (40) rods, thence east twelve (12) rods to the east line of said out lot 48, thence south upon said east line of said out lot 48 to the place of beginning, with the privileges and appurtenances, buildings, rents, issues and profits thereunto belonging.

And the said party of the second part, in consideration of the premises, hereby agrees to pay to the said party of the second part, or to his attorney executor, administrator or assigns, the sum of six hundred and twenty-five

dollars, on or before the third day of August next, A. D. 1851, with legal interest, and also that he will faithfully and in due season, pay or cause to be paid, all taxes and assessments ordinary and extraordinary, that may be levied, assessed or imposed upon the said premises or appurtenances.

And it is mutually covenanted and agreed, by and between the parties hereunto, that in case the said party of the second part shall make default, or fail to make the payments above mentioned, at and within the time limited above, (the said time of payment being hereby declared to be an essential part of this contract,) then and in that case this agreement and all the covenants and agreements on the part of the party of the first part herein contained, shall, at the option of the said party of the first part, his representatives and assigns, be and are hereby declared to be null and void, and no longer binding, and all the right and interest, either in law or equity, of the said party of the second part shall cease and be determined, or at the election of said party of the first part, the covenants and liabilities of said party of the second part shall continue and remain obligatory upon said party of the second part, and may be enforced, and the said consideration money and any part thereof may be collected by proceeding in law or equity, from said party of the second part, his heirs, executors, administrators and assigns.

In witness whereof the parties to these presents have hereunto set their hands and seals, the day and year first above written.

TRUMAN WHITCOMB. { L. S. }

In Presence of
Thos. Hoogen

COMPLAINANTS EXHIBIT "H."

ENDORSED UPON THE FOREGOING INSTRUMENT.

For a valuable consideration, I, Elias B. Sutherland, of Chicago, do hereby assign, transfer and set over to Benjamin Bennett, of Oswego county, New York, all my right title, interest and claim and property, of in and to the written contract or agreement of purchase, he paying all money due or to become due thereon; and upon payment thereof he is hereby authorized, and I hereby direct, that the within named Truman Whitcomb shall make the deed therein specified to be made to said Benjamin Bennett, or his assigns, I being justly indebted unto him in the sum of two hundred and fourteen dollars, which is the full consideration of this assignment.

Witness my hand and seal, this 20th day of October, A. D. 1850.

E. B. SUTHERLAND. { L. S. }

In presence of }
Th. H. }

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

I, Louis D. Hoard, clerk of the circuit court and ex-officio recorder of Cook county, do hereby certify that the above is a true copy of an instrument

of writing filed for record in my office on the 18th day of January, A. D. 1853, and duly recorded in book No. 52 of deeds, page 594.

{ L. S. } Certified under my hand and the seal of said court, at
Chicago, this 16th day of January, 1853. (Signed,)

L. D. HOARD, Clerk.

Also the following endorsement thereon:

For a valuable consideration, I, Benjamin Bennett, of Oswego county, New York, do hereby assign and transfer unto Frances H. Sutherland, wife of Elias B. Sutherland, of Chicago, all my right, title and interest of, in, or to the contract of which the foregoing is a copy, (by virtue of the assignment of which the foregoing is a copy,) and authorize her as the assignee and owner thereof to take all proceedings which I could before have done, holding me at all times harmless and indemnified from all damages or costs, and this assignment is to be without any liability on my part in any event.

Dated, June 20th, 1853.

(Signed,) BENJAMIN BENNETT. { L. S. }

STATE OF NEW YORK, }
COUNTY OF OSWEGO. } ss.

On this 20th day of June, 1853, came before me Benjamin Bennett, by me known to be the person described in and who executed the foregoing assignment and duly acknowledged that he executed the same.

(Signed,) HIRAM J. BABCOCK,
Justice of Peace.
?

STATE OF NEW YORK, }
OSWEGO COUNTY CLERK'S OFFICE. }

I, William C. Fields, clerk of the county of Oswego, do hereby certify that Hiram J. Babcock, whose name is subscribed to the certificate of proof or acknowledgement of the annexed instrument, was, at the time of taking such proof or acknowledgement, a Justice of the Peace of the county of Oswego, dwelling in said county, duly authorized to take such proof or acknowledgement; and that I am well acquainted with the handwriting of said Justice and verily believe that his signature to the said certificate of proof or acknowledgement is genuine; that said instrument is executed and acknowledged according to the laws of the state of New York.

In testimony whereof I have hereunto set my name and
L. S. affixed the seal of said county, the 20th day of June, A. D.

1855 ~~1856~~

(Signed,)

WM. C. FIELDS, Clerk.

—O—

COMPLAINANT'S EXHIBIT "I."

Received, Chicago, September 16th, 1850, from E. B. Sutherland, fifty dollars, it being Warner's payment, due to F. Canda, on lot No. 48.

\$50 00.

(Signed,)

T. WHITCOMB.

DEFENDANT'S EXHIBIT "A."

F. & C. CANDA TO T. WHITCOMB.

This indenture, made this first day of August, A. D. 1850, between Florimond Canda, of Chicago, Cook county, Illinois, and Charles Canda, of the city, county, and State of New York, parties of the first part, and Truman Whitcomb, of Chicago, Illinois, of the second part, Witnesseth, that whereas the above named Florimond Canda, became the purchaser of out lot No. 48, of the canal trustees' subdivision of section 7, township 39, n r, 14 east, at a sale of canal lands and lots, made by said trustees, in the year A. D. 1848. And whereas, also, the said F. Canda, did, on the sixth day of September, A. D. 1848, bargain and sell to one William Jacks, three acres of said out lot No. 48, above described, for a consideration of five hundred and sixty nine and $\frac{70}{100}$ dollars, of which there was paid down, the sum of one hundred and forty-two and $\frac{40}{100}$ dollars, being one quarter of said purchase money; and also, twenty-five and $\frac{60}{100}$ dollars, one year's interest in advance, on the residue of said purchase money, and the three several promissory notes of the said William Jacks, each payable for one hundred and fifty-two $\frac{40}{100}$ dollars, in one two and three years, from the date of said purchase, respectively executed and delivered by him to said Florimond Canda, for the residue of said purchase money. In consideration whereof, the said Florimond Canda, executed and delivered his certain certificate of purchase, dated the sixth day of September A. D. 1848, and therein and thereby covenanted and agreed that upon payment of said notes, according to their tenor and effect, that he, the said F. Canda, would make to said purchaser, William Jacks, a good and sufficient deed of said three acres of land, so sold, as aforesaid. And whereas, afterwards, the said William Jacks assigned the said certificate or contract of pur-

chase to one Elias B. Sutherland for a valuable consideration in writing, on the back thereof, and the said Elias B. Sutherland has assigned all his interest therein to the said party of the second part, Truman Whitcomb, and authorized him to demand, have and receive the deed, covenanted and agreed to be made by the said F. Canda, to said premises, or three acres of land, upon the payment of the residue of the purchase money, now due thereon, according to the true intent and meaning of said contract, bargain and sale, above described, and made with William Jacks.

Now, therefore, this agreement and indenture witnesseth, that upon the payment, by said party of the second part, his heirs, executors, administrators or assigns, to said party of the first part, their heirs, executors, administrators or assigns of the two several promissory notes now remaining unpaid, executed by said William Jacks to said F. Canda, dated 6th day of September, A. D. 1848, each payable for one hundred and forty-two ¹⁰/₁₀₀ dollars, and due in two and three years from the date thereof, respectively, together with such interest as shall be legally due thereon, the said party of the first part, for themselves, their heirs, executors, administrators and assigns, hereby agree and bind themselves to said party of the second part, well and truly to convey by good and sufficient deed or deeds with covenants of warranty against any act done or suffered by them to said party of the second part, his heirs or assigns the above bargained and sold three acres of land, more particularly known and described as follows, to wit: being part of out lot No. 48 of the sub-division of the Trustees of the Illinois and Michigan Canal, of section 7, town 39, range 14 east, and bounded as follows: commencing at the south-east corner of said out lot No. 48, and running thence west upon Lake street twelve (12) rods, thence north forty (40) rods, thence east twelve (12) rods to the east line of said out lot 48, thence south on the said east line of said out lot 48, to the place of beginning, and containing three (3) acres of land.

But it is expressly agreed and understood that upon a failure by said party of the second part to pay said notes, or any part thereof, within twenty days after the same shall become due, that in that case he shall forfeit said land and all claim thereto acquired, and all payments made on account thereof.

In witness whereof, the parties hereto have hereunto set their hands and seals the day and year above written.

F. CANDA, { L. S. }

CHARLES CANDA, { L. S. }

In presence of
T. HATHAWAY as to F. CANDA, } T. WHITCOMB. { L. S. }
THATCHER T. PAYNE, as to C. CANDA. }

In consideration of one dollar to me in hand paid, I assign, transfer and convey all my right, title, claim and interest in and to the within contract, to Jason Gurley, and I hereby make said Gurley my true and lawful attorney, and in my name and stead to enforce said contract according to the true intent and meaning thereof.

Chicago, December 21, 1852.

TRUMAN WHITCOMB. { L. S. }

STATE OF ILLINOIS, }
 Cook County, } ss.

I, Edward S. Kimberly, clerk of the county court of Cook county do hereby certify that on this 14th day of February, A. D. 1853, personally appeared before me, Truman Whitcomb, who is personally known to me to be the same person who signed the foregoing assignment, and acknowledged that he signed, sealed and delivered the same as his free act and deed for the uses and purposes therein set forth.

Witness my hand and seal of office, the day and year aforesaid.



E. S. KIMBERLY,

Clerk.

No. 40,011. Filed for record February 15, 1853. Recorded in book 56, page 424.

DEFENDANTS EXHIBIT "B."

This Indenture, made the twenty-first day of February, in the year one thousand eight hundred and fifty-three, between Charles Canda, of the city, county, and state of New York, and Addie, his wife, by Mahlon D. Ogden, their attorney in fact, of the first part, and Jason Gurley, of the city of Chicago, county of Cook, and state of Illinois, of the second part.

Witnesseth, that the said party of the first part, for and in consideration of the sum of three hundred and fifty dollars, lawful money of the United States of America, to them in hand paid, by the said party of the second part, at or before the enrolling and delivery of these presents, the receipt whereof is hereby acknowledged, have aliened, remised, released, conveyed and confirmed, and by these presents do alien, remise, release, convey and confirm, unto the said party of the second part, and to his heirs and assigns forever, all that certain lot and parcel of land situate in the county of Cook, and state of Illinois, known and distinguished as that part of Out-Lot number forty-eight (48), in the Canal Trustees Subdivision of section seven (7), in township thirty-nine (39), north of range fourteen (14), east of the third principal meridian, bounded as follows: beginning at the south-east corner of said block, on the north line of Lake street, and running thence westerly along said north line of said street one hundred and thirty-two (132) feet, thence northwardly to a point on the north line of said block, distant one hundred and thirty-two (132) feet from the north-east corner thereof, thence east one hundred and thirty-two (132) feet to said north-east corner of said block, and thence south on the east line of said block to the place of beginning.

Together with all and singular the tenements, hereditaments and appurtenances therunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also, all the estate, right, title, interest, dower, right of dower, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in or to the above described premises, and every part and parcel thereof, with the appurtenances; *To have and to hold*, all and singular, the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

And the said Charles Canda, for himself, and for his heirs, executors and administrators, does hereby covenant, promise and agree to and with the said party of the second part, his heirs and assigns, that he has not made, done, committed, executed or suffered any act or acts, thing or things, whatsoever, whereby or by means whereof the above mentioned and described premises, or any part or parcel thereof, now, are, or at any time hereafter, shall or may be impeached, charged or incumbered, in any manner or way whatsoever, subject, nevertheless, to all taxes and assessments levied or assessed on or against said premises since the seventh day of September, A. D. 1848.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

CHARLES CANDIA, { L. S. } By Mahlon D. Ogden, his attorney in fact.	ADDIE CANDIA, { L. S. } By Mahlon D. Ogden, her attorney in fact.	{ in presence of Edwin R. Larned. } Sealed and delivered
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Together with all and singular the tenements, hereditaments and appurtenances therunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also, all the estate, right, title, interest, dower, right of dower, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in or to the above described premises, and every part and parcel thereof, with the appurtenances; *To have and to hold*, all and singular, the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

And the said Charles Canda, for himself, and for his heirs, executors and administrators, does hereby covenant, promise and agree to and with the said party of the second part, his heirs and assigns, that he has not made, done, committed, executed or suffered any act or acts, thing or things, whatsoever, whereby or by means whereof the above mentioned and described premises, or any part or parcel thereof, now, are, or at any time hereafter, shall or may be impeached, charged or incumbered, in any manner or way whatsoever, subject, nevertheless, to all taxes and assessments levied or assessed on or against said premises since the seventh day of September, A. D. 1848.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

CHARLES CAND A, { L. S. }

Sealed and delivered
in presence of
Edwin R. LARNED. }

By Mahlon D. Ogden, his attorney in fact,
ADDIE CAND A, { L. S. }

By Mahlon D. Ogden, her attorney in fact.

STATE OF ILLINOIS, } ss.
COOK COUNTY.

I, A. J. Brown, a Notary Public, in and for said county in said state, do hereby certify that this day personally appeared before me Mahlon D. Ogden, as attorney in fact, who is to me personally known to be the real person described in and who executed the foregoing deed, as attorney, and acknowledged that he freely and voluntarily executed said deed, as the free act and deed of Charles Canda and Addie Canda, and hereby relinquished the right of dower of the said Addie Canda, in and to the lands in said deed described, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and notarial seal this first day of March, A. D., 1853.

{ L. S. }

ANDREW J. BROWN.
Notary Public.

—O—

DEFENDANT'S EXHIBIT "C."

This Indenture, made this twenty-first day of December, in the year of our Lord, one thousand, eight hundred and fifty-two, between Truman Whitcomb, of the city of Chicago, in the county of Cook, and State of Illinois, party of the first part, and Jason Gurley, of the same place, party of the second part—Witnesseth, that the said party of the first part, for and in consideration of two thousand five hundred dollars, in hand paid, by the said party of

the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, hath remised, released, sold, conveyed and quit-claimed, and by these presents doth remise, release, sell, convey, and quit-claim unto the said party of the second part, his heirs and assigns forever, all the right, title, interest, claim and demand which the said party of the first part hath in and to the following described lot, piece or parcel of land, to-wit: Part of Out-Lot number forty-eight (48), of the Canal Trustees' Subdivision of section seven (7), in township thirty-nine (39), range fourteen (14), east of the third principal meridian bounded as follows: Beginning at the south-east corner of said Out-Lot number forty-eight (48), running west one hundred and thirty-two (132) feet, thence north five hundred and twenty-eight (528) feet, to the north line of said Block, thence east one hundred and thirty-two (132) feet, to the east line of said Out-Lot, thence south to the place of beginning.

To have and to hold the same, together with all and singular, the appurtenances and privileges thereunto belonging, or in any wise thereunto appertaining, and all the estate, right, title, interest and claim whatever, of the said party of the first part, either in law or equity, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever.

In witness whereof, the said party of the first part hereunto set his hand and seal, the day first above written.

Signed, sealed and delivered }
in presence of }

TRUMAN WHITCOMB. :L.S.:

STATE OF ILLINOIS, }
Cook County, } ss.

I, Edward S. Kimberly, clerk of the county court in and for said county

in the State aforesaid, do hereby certify that Truman Whitcomb, personally known to me as the same person whose name is subscribed to the foregoing instrument of writing, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and seal this twelfth day of February, A. D. 1853.

E. S. KIMBERLY,

Clerk.

DEFENDANT'S EXHIBIT "D."

This indenture, made this third day of May, in the year of our Lord one thousand eight hundred and fifty-three, between Jason Gurley and Salina his wife, of Chicago, Cook county, and State of Illinois, of the first part, and James W. Borden, of Cincinnati, Hamilton county and State of Ohio, of the second part, witnesseth, that the said party of the first part, for and in consideration of four thousand (\$4,000) dollars, in hand paid by the said party of the second part, (the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom,) have granted, bargained, sold, remised, released, aliened and confirmed, and by these presents do grant, bargain, sell, remise, release, alien and confirm unto the said party of the second part, and to his heirs and assigns forever, all the following described lot, piece or parcel of land situate in the county of Cook, and State of Illinois, to wit:

That part of Out Lot No. forty-eight [48] in the Canal Trustees' Subdivision of section seven, (7) in township thirty-nine (39), North of Range fourteen, East of the third principal meridian—bounded as follows: Beginning at the South East corner of said block on the North line of Lake street, and running thence Westerly along said North line of said street, one hundred and thirty-two (132) feet; thence Northwardly to a point on the North line of said block, distant one hundred and thirty-two [132] feet from the North-East corner thereof, thence East one hundred and thirty-two [132] feet towards North-East corner of said block, and thence South on the East line of said block to the place of beginning—together with all and singular, the hereditaments and appurtenances therunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever, of the said party of the first part, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances. To have and to hold the said premises bargained and described, with the appurtenances unto the said party of the second part, his heirs and assigns forever. And the said Jason Gurley, party of the first part, for himself and his heirs, executors, and administrators, does covenant, grant, bargain and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents, he is well seized of the premises above conveyed as of a good, sure, perfect, absolute and indefeasible estate of inheritance in the law in fee simple, and hath good right, full power, and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments and incumbrances, of what kind or nature soever, and the above bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or person

lawfully claiming or to claim the whole or any part thereof, the said party of the first part shall and will warrant and forever defend.

In witness whereof, the said party of the first part, hereunto set their hands and seals the day and year first above written.

Sealed, signed and delivered in presence of

JASON GURLEY, { L. S. }

SALINA GURLEY, { L. S. }

STATE OF ILLINOIS, } ss.
COOK COUNTY.

I, Edward S. Kimberly, clerk of the county court in and for said county, in the State aforesaid, do hereby certify that Jason Gurley, who is personally known to me, as the real person whose name is subscribed to the above deed, appeared before me this day in person, and acknowledged that he executed and delivered the said deed, as his free and voluntary act, for the uses and purposes therein set forth, and the said Salina Gurley, wife of the said Jason Gurley, having been by me examined, separate and apart, and out of the hearing of her husband, and the contents and meaning of the said deed having been by me made known, and fully explained to her, acknowledged that she

had fully and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, without compulsion of her said husband, and that she does not wish to retract the same.

{ L. S. }

Given under my hand and seal of the Court
this fourth day of May, in the year one
thousand, eight hundred and fifty-three.

E. S. KIMBERLY, *Clerk.*

*Fortherland vs Gundry &c
Abstract to & scraps by
De Koe*