No. 14793

Supreme Court of Illinois

Fash

vs.

Blake

71641

STATE OF ILLINOIS.

SUPREME COURT,

THIRD GRAND DIVISION.

No. 192

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

Pleas before the Circuit Court of Marshall County in the State of Illinois at a term thereof begun and holden at the Court House in the City of Lacon in said County of Marshall, On Monday the second day of May in the year of Our Lord One thousand Eight Hundred and sixty four. Present James St. C. Boal States attorney for the 23rd Judicial Circuit of the State of Illinois, Joseph K. Taggart Sheriff of said Marshall County & Sheldon Arnold Clerk of said Circuit Court, the Hon Samuel V. Richmond Judge of the 23rd Judicial Circuit of the State of Illinois being absent, Court stands adjourned to 9 O. Clock tomorrow Morning by force of the Statute in such case made and provided.

Tuesday May 3rd, AD 1864, Court Met pursuant to adjournment and the said Judge having arrived before 4 O. Clock in the afternoon of said day Court Opened in due form, Present the Hon Samuel V. Richmond Judge of the 23rd Judicial Circuit of the State of Illinois, presiding, James St. C. Boal States attorney for said Judicial Circuit, Joseph K. Taggart Sheriff of said Marshall County and Sheldon Arnold Clerk of said Circuit Court,

"Be it remembered that On the 23rd day of April AD 1863, Comes Enoch P. Sloan Clerk of the Circuit Court of Peoria County in the State of Illinois, and filed in the Office of the Clerk of the Circuit Court of Marshall County in said State the following papers in the Cause of Amon Blake vs. James V. Nash in Ejectment, (the same being papers on a

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Change of Venue from said Peoria County Circuit Court to the Circuit Court of said Marshall County) Among other papers the following declaration, plea, and a transcript of the proceedings in said Cause in the said Circuit Court of Peoria County,

(Plaintiffs Declaration Notice &c)

State of Illinois } In the Circuit Court for said County
County of Peoria } ss. Of the November Term A.D. 1858.

Anson Blake
vs
James V. Fash } Ejectment,

Anson Blake the Plaintiff in this suit by H. B. Hopkins his attorney Complains of James V. Fash the Defendant in this suit, of a plea Wherefore he the said Defendant with force and arms &c Entered into the following described premises, for that heretofore "to wit" On the first day of July in the year of Our Lord One thousand Eight Hundred and fifty Eight the said Plaintiff was possessed of Certain premises situated in the County of Peoria in the State of Illinois and described as follows "to wit" The South East quarter of Section One in Township Number Eight North of the Base line of Range Number seven East of the fourth principal Meridian, And being so possessed thereof the said Defendant afterwards "to wit" On the second day of July in the year of Our Lord One thousand Eight Hundred and fifty Eight, Entered into such premises and that he

unlawfully withholds from the said Plaintiff the possession thereof and the said Plaintiff avers, that he claims title to said premises in fee simple, Whereof the said Plaintiff says that he is injured, and has sustained damages to a large amount "to wit" ten thousand Dollars, and therefore he sues &c,

H. B. Hopkins
Attorney for Plaintiff

To James V. Nash
Defendant in this suit

Take Notice

1 That on the first day of the November A.D 1858, term of the Circuit Court within and for the County of Peoria aforesaid "to wit" at the Court House in Peoria in said County and State On the sixteenth day of November in the year of Our Lord One thousand Eight Hundred and fifty Eight, Or as soon thereafter as Counsel Can be heard, a declaration of which the foregoing is a Copy will be filed in said Court,

2. That upon the filing the same, a rule will be Entered requiring you such Defendant to appear and plead to such declaration, within twenty days after the Entry of such Rule,

3, That if you neglect so to appear and plead a Judgment by default, will be Entered against you and the Plaintiff will recover possession of the premises described in said declaration, Dated at Peoria this 12th day of August A.D 1858

H. B. Hopkins
Attorney for Plaintiff

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State of Illinois } ss
County of Peoria } ss

Francis W. Smith Sheriff being duly sworn upon his Oath says, that he served a declaration and Notice of which the within and foregoing are Copies upon the within named Defendant by delivering the same to him personally. On the 12th day of November Anno Domini Eighteen Hundred and fifty Eight

Subscribed and sworn to before me this 13th day of November AD Eighteen Hundred and fifty Eight, Enoch P. Sloan Clk

Francis W. Smith,

Aneon Blake
vs
James V. Fash

Circuit Court Peoria County
November Term AD 1858,

I hereby Enter myself security for Costs in this suit, and bind myself to pay or Cause to be paid all Costs that may accrue in this Cause, pursuant to the Laws of this State Either to the Opposite party or any of the Officers of this Court.

Nov. 1. 1858,

W. B. Hopkins

On the back of which said Declaration, Notice, & Bond for Costs there appears the following filing "to wit"

Filed Dec 7th. 1858
E. P. Sloan Clk

Filed April 23d. AD 1863
Sheldon Arnold Clk,

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(Defendants plea)

Amon Blake
vs
James V. Fash

In the Circuit Court of Peoria County

Ejectment

And now comes the Defendant and says, that he is not Guilty of unlawfully withholding the possession of the premises in the Plaintiffs declaration mentioned, in Manner & form as therein stated and of this he puts himself upon the Country &c,

N. H. Purple
Defts atty,

On the back of which said plea there appears the following filing "to wit" Filed Dec 7th 1858

E. P. Sloan Clk

Filed April 23rd, AD 1863,

Sheldon Arnold
Clerk,

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" Transcript of proceedings had in this Cause in the Circuit Court of Peoria County & filed in this Court on the 23rd of April AD 1863, " "to wit"

Proceedings at a term of the Circuit Court begun and held at the Court House in the City of Peoria in and for the County of Peoria in the State of Illinois on the first Monday of March in the year of Our Lord One thousand Eight Hundred and fifty Nine, it being the seventh day of said Month, Present the Hon Elisha N. Powell Judge of the 16th Judicial Circuit in the State of Illinois, John Bryner Sheriff and Enoch P. Sloan Clerk, "to wit"

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Friday March 18, AD 1859

Anson Blake
vs
James V. Nash
} Ejectment,
By agreement this Cause is Continued

And afterwards "to wit" at the June term AD 1859, of said Court and On the 18th day of said Month the following proceedings were had in said Cause "to wit"

Anson Blake
vs
James V. Nash
} Ejectment,
By agreement this Cause is Continued

Afterwards "to wit" at the November term AD 1859, of said Court and On the 25th day of said Month, the following proceedings were had "to wit"

Anson Blake
vs
James V. Nash
} Ejectment
By agreement this Cause is Continued

And afterwards "to wit" at the August Special term AD 1860 of said Court, and on the 20th day of said Month the following proceedings were had "to wit"

Anson Blake
vs
James V. Nash
} Ejectment
By agreement this Cause is Continued,

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And afterwards "to wit" at the November term AD 1860. of said Court and on the 4th day of December in said term the following proceedings were had "to wit"

Anson Blake
vs
James V. Fash } Ejectment
By agreement this Cause is Continued

And afterwards "to wit" at the November term AD 1861. of said Court and On the 13th day of said Month the following proceedings were had "to wit"

Anson Blake
vs
James V. Fash } Ejectment
This day Come Plaintiff by Hopkins his attorney and On his Motion this Cause is Continued at his Costs, therefore it is Considered by the Court, that the said James V. Fash have and recover of said Anson Blake his Costs and Charges by him about his defence in this behalf Expended at this term of Court and that he have Execution therefor

And afterwards "to wit" at the April term AD 1862, of said Court and On the 7th day of said Month the following proceedings were had "to wit"

Anson Blake
vs
James V. Fash } Ejectment,
The Court being of Counsel in this Cause it is Ordered that the Venue herein be Changed

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to the County of Marshall in this State and that the Clerk of this Court transmit to the Clerk of the Circuit Court of Marshall County the papers filed herein, and also a transcript of the proceedings of this Court appertaining thereto duly Certified

State of Illinois }
Peoria County } Ss I. Enoch P. Sloan Clerk of the Circuit Court in and for said County and State do certify that the foregoing is a full, true and complete transcript of the proceedings of said Court in the Cause Wherein Aaron Blake is Plaintiff and James C. Flash is Defendant as the same appears of Record in my Office and that the papers hereunto Enclosed Marked 1. 2. 3. 4. 5, 6, 7 are all the papers filed in said Cause,

Seal

Given under My Hand and Seal of said Court at Peoria this 21st day of July AD 1862,

Enoch P. Sloan Clerk,

upon the back of which there appears the following filing "to wit" Filed April 23rd AD 1863,

Sheldon Arnold Clerk,

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Pleas before the Circuit Court of Marshall County in the State of Illinois at a term thereof begun and holden at the Court House in the City of Lacon in the County of Marshall in said State, On Monday the fourth day of May in the year of Our Lord One thousand Eight Hundred and sixty three. Present the Hon Samuel C. Richmond Judge of the 23rd Judicial Circuit of the State of Illinois presiding James St. C. Boal States attorney for said Judicial Circuit, Joseph R. Taggart Sheriff of said Marshall County & Sheldon Arnold Clerk of said Circuit Court,

Saturday May 9th A.D. 1863,

Anson Blake
vs.
James V. Fash
} Ejectment
Venue from Putnam County
On this day it is Ordered by the Court that this Cause be Continued,

Pleas before the Circuit Court of Marshall County at a special term thereof begun and holden at the Court House in the City of Lacon in said County of Marshall in the State of Illinois, On Monday the Eighth day of June in the year of Our Lord One thousand Eight Hundred and sixty three. Present the Hon Samuel C. Richmond Judge of the 23rd Judicial Circuit of the State of Illinois presiding, James St. C. Boal States attorney for said Judicial Circuit, Joseph R. Taggart Sheriff of said Marshall County & Sheldon Arnold Clerk of said Circuit Court,

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Monday June 8th. AD 1863,

Aneu Blake | Ejectment
vs | Venue from Peoria County
James V. Nash | On this day Comes the Defendant by his Attorney and Enters a Motion to suppress the Depositions herein, and the Court having Considered said Motion and being fully advised in the premises, doth Order that said Motion be Overruled, And thereupon again Comes the Defendant by his Counsel and Enters a Motion for a Continuance of this Cause, and the Court having Considered said Motion and being fully advised in the premises doth Order that said Motion be sustained, and that this Cause be Continued, but at the Costs of Defendant, It is therefore Considered by the Court that that the Plaintiff have and recover of the said Defendant his Costs herein Occasioned by this Continuance, at that Execution issue therefor,

Pleas before the Circuit Court of Marshall County in the State of Illinois, at a term thereof begun and holden at the City of Lacon in the Court House in said Marshall County, On Monday the twenty fifth day of January in the year of Our Lord One thousand Eight Hundred and sixty four, Present the Hon Samuel C. Richmond Judge of the 23rd Judicial Circuit of the State of Illinois presiding, James St. C. Boal States Attorney for said Judicial Circuit, Joseph R. Jaggot Sheriff of said Marshall County & Sheldon Atwood Clerk of said Circuit Court,

Afterwards "to wit" On the 25th day of January A.D. 1864 the same being One of the days of the said January A.D. 1864 term of said Circuit Court an Order was Entered of Record in said Cause which is in the words and figures following "to wit"

Anson Blake } Ejectment
vs } Venue from Perry County
James V. Nash. } On this day by agreement of the parties it is Ordered by the Court that this Cause be Continued at the Costs of the Defendant, It is therefore Considered by the Court that the Plaintiff have and recover of the said Defendant his Costs and Charges Occasioned by this Continuance, and that he have Execution therefor,

And afterwards "to wit" On the 9th day of May A.D. 1864, the same being One of the days of the said May A.D. 1864 term of said Circuit Court of Marshall County, the following proceedings were had and Entered of Record in said Cause, in the words and figures following "to wit"

Anson Blake } Ejectment
vs } Venue from Perry County
James V. Nash } On this day again Comes the Plaintiff, by McClurkin & Vieland his Attorneys, and as well the said Defendant by Williamson & McCoy his Attorneys

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and issues being Joined therein, Whereupon it is Ordered by the Court, that a Jury be Called to try the issues in this Cause, and thereupon a Jury being Called, Come "to wit" Abraham Allen, Albert Barney, I. D. Tanqueary, Oscar Smithson, John Green, Marion King, Matthew Buck, Robert Sharp, Wheeler W. Heath, John C. Stinger Daniel Eicleburner, and Adam Overnies, twelve good and lawful Men who were duly Empannelled and sworn to well and truly try the issues in this Cause, and a true Verdict render according to the Evidence, and the parties proceed with the trial of this Cause, and the hour of adjournment having arrived, it is Ordered by the Court that the further trial of this Cause be adjourned until 8. O. Clock tomorrow Morning,

And afterwards "to wit" On the 10th day of May A.D. 1864, the same being One of the days of the said May A.D. 1864 term of said Circuit Court of Marshall County the following proceedings were had in said Cause and Entered of Record in the words and figures following "to wit"

Anson Blake
vs
James V. Fash

Ejectment
Venue from Pierce County,

On this day again Comes the Plaintiff by Hopkins & Beckand his attorneys, and also the said Defendant by Williamson & McCoy his attorneys, and thereupon also Come the Jury who were Empannelled and sworn on yesterday to try the issues in this Cause, and the parties proceed and Conclude the trial of this Cause, and

the Jury having heard the Evidence, the arguments of the Counsel, and the instructions of the Court, retire to Consider of their Verdict, and upon Coming into Court the Jury for a Verdict say, We find that the Plaintiff is seized in fee of the South East quarter of Section One in Township number Eight North of Range Number seven East, of the fourth principal Meridian, and that the Defendant is Guilty of unlawfully withholding from said Plaintiff the possession thereof in Manner and form as alleged in the declaration, and thereupon Comes the Defendant by his Counsel and Enters a Motion for a new trial herein, and the Court having Considered said Motion and being fully advised in the premises doth Order that said Motion be Overruled, It is therefore Considered by the Court that the said Anson Blake have and recover of and from the said James V. Fash, the possession of the said South East quarter of Section One, in Township Number Eight North of Range Number seven East of the fourth principal Meridian in the County of Peoria and State of Illinois, and that he have a Writ of possession, directed to the Sheriff of said Peoria County, Commanding him to deliver the possession of the said premises to the said Anson Blake, and it is further Considered by the Court, that the Plaintiff have and recover of said Defendant his Costs and Charges in this behalf Expended, and that Execution issue therefor, And thereupon Comes the Defendant by his Counsel, and prays an appeal to the Supreme Court of this State, which appeal is allowed upon Defendants Entering into Bond in

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the sum of Three Hundred Dollars Conditioned according to Law, to be filed in thirty days, with Washington Cockle as security,

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Afterwards to wit. On the 23rd day of May A.D 1864 Comes the said Defendant and files his Bill of Exceptions Herein, which is in the words and figures following "to wit"

State of Illinois }
Marshall County } ss

Anson Blake
vs
James Fash

In Ejectment
May Term A.D 1864

Be it remembered that on this day, this Cause coming on to be heard before the Court and a Jury empanelled in the Cause, the plaintiff, in order to sustain the issue on his part, offered in evidence the following Certificate of Entry, and acknowledgment on the back thereof

United States Land Office Springfield Illinois

Registers Office March 22nd 1862

I Wm. F. Elkin, Register of the Land Office at Springfield Illinois do hereby Certify that on the 12th day of June in the year A D 1835 Simeon Dolph purchased of the General Government at the Land Office at Quincy Illinois the West half of the South East (W½ SE¼) quarter of Section number One in Township number Eight North of Range number Seven East of the 4th Principal Meridian, Containing Eighty Acres and — — and that said land at the time of said purchase was within the district of land then subject to sale at the Land Office at Quincy now Springfield Illinois and rendered subject to sale by law— all of which appears of record in my Office

Given under my hand, the day and year first above written

Wm. F. Elkin

Register of the United States Land Office Springfield Illinois

State of Illinois }
Sangamon County } ss I Noah W Matheny Clerk County Court for said County, do Certify that on this day personally appeared before me William F Elkin whose name appears subscribed to the foregoing Certificate

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of entry as having executed the same, and who is personally known to me to be real person who executed the same and in whose name the acknowledgment is proposed to be made and acknowledged the execution thereof as his voluntary & free act and deed for the uses and purposes therein expressed

Seal

Given under my hand and Seal of Office at Springfield this 22nd day of November A D 1862

N. W. Matheny

Clerk

To the Offering of the said Certificate in evidence the defendant by his Counsel, then and there objected, which Objection was then and there sustained by the Court

The plaintiff then called H. B. Hopkins One of the attornies for the plaintiff, who, after being duly sworn, testified that he had had Correspondence with the said William F. Elkin, the receiver, and that he knew his handwriting, and that the signature to the said Certificate was the signature of William F. Elkin and that he was the acting Register of the Land Office at Springfield Illinois at date of said Certificate & that he obtained the said Certificate & acknowledgment from said Elkin

The Plaintiff again offered said Certificate in evidence, to which the defendant, by his Counsel then and there objected, but the Court overruled said objection and admitted said certificate in evidence, To the ruling of the

Court in overruling said objection and admitting said Certificate in evidence, the defendant by his Counsel then and there objected and excepted

The plaintiff then and there offered in evidence a Patent from the United States for the West half of the land described in the declaration, to Simeon Dolph, dated May 25, 1841 which Patent is as follows, viz:.

Preemption Certificate No 2095

The United States of America

To all to whom these Presents shall come — Greeting

Whereas Simeon Dolph of Knox County Illinois, has deposited in the General Land Office of the United States, a certificate of the Register of the Land Office at Quincy whereby it appears that full payment has been made by the said Simeon Dolph according to the provisions of the act of Congress of the 24th. of April 1820, entitled "An Act making further provisions for the sale of the Public Lands," for the West half of the South East quarter of Section One in Township Eight, North of Range Seven East, in the District of Lands subject to sale at Quincy Illinois containing Eighty acres, according to the Official plat of the Survey of the said Lands returned to the General Land Office by the Surveyor General which tract has been purchased by the said Simeon Dolph, Now know ye, That the United States of America in Consideration

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of the premises and in Conformity with the Several acts of Congress in such Case made and provided, have given and granted, and by these presents do give and Grant unto the said Simeon Dolph and to his heirs the said tract above described. To Have and to hold the same, together with all the rights and privileges, immunities and appurtenances of whatsoever nature thereunto belonging; unto the said Simeon Dolph and to his heirs and assigns forever

In Testimony Whereof I John Tyler President of the United States of America have Caused these letters to be made patent and the Seal of the General Land Office to be hereunto affixed

Given under my hand at the City of Washington the Twenty fifth day of May in the Year of Our Lord One Thousand Eight Hundred and Forty One, and of the independance of the United States, the Sixty fifth

Seal

By the President — John Tyler

By B. Tyler Secy.

Recorded Vol 28 page 202 I Williamson Recorder of the Genral Land Office

Which was admitted 11

The plaintiff then offered in evidence a deed from Simeon Dolph to John A Aiken for the West half of the Quarter Section of land described in the Declaration dated June 12. 1835 and the acknowledgment thereon, which is as follows viz;

For value received I Simeon Dolph of the County of Knox and State of Illinois do hereby assign, transfer and set over unto Joshua Aiken of the County of Peoria & State of Illinois all my right title Claim & demand to a tract of land purchased by me on the twelfth June instant as per Receivers Receipt No 2095 designated as the West half of the South East quarter of Section number One in Township No Eight North of Range No Seven East of the 4th Principal Meridian situated in the district of Land Subject to sale at Quincy Illinois and request that a patent may issue to the said Joshua Aiken his heirs or assigns

Witness my hand and Seal this 12th day of June A D 1835

Witness P Lott
Chas W Billington

Simeon Dolph L S

Taken and Subscribed before me Charles W Billington a Notary Public in and for the County of Adams & State of Illinois this 11th day of June A D 1835

In Testimony whereof I have hereunto set my hands and affixed my seal of Office the day and year last above written

Filed June 19, 1860

Chas W Billington N P.

To the offering of said Deed in Evidence the defendant then and there by his Counsel objected on account of the same being no deed, and also because there was no proper acknowledgment

The plaintiff then called Mark M Aiken as a Witness

To the said Aiken testifying in the Cause, the Defendant, then and there, by his Counsel, objected on the ground that said Aiken had executed a Warranty Deed to Joshua Aiken for the East half of the land described in the declaration under which Plaintiff and Defendant derive title to said East half of said land

The Plaintiff then delivered to said Mark M Aiken a written and sealed release, releasing the said Mark M. Aiken from all liabilities to the Plaintiff of every nature, kind and desciption upon his covenants in said Deed to Joshua Aiken and then offered said Mark M Aiken as a Witness to prove that the subscribing witness to said Deed from Simeon Dolph to Joshua Aiken were beyond the jurisdiction of the Court. To which the Defendant, by his Counsel, then and there objected,

but the Court overruled said objection and permitted said Mark M Aiken to testify, to all of which the defendant, by his counsel, then and there objected and excepted

The said Aiken being duly Sworn, said that he was acquainted with the subscribing witnesses to said Deed Peter Lott and Chas W. Billington, That Peter Lott went to California in 1849 or 1850. Saw him back once since, that he resided now in California. That Charles W. Billington is dead

Plaintiff in Order to further maintain the issues

on his part. read in evidence the depositions of Philemon Selby & Nathaniel Selby

Anson Blake
vs
James L Fash

Circuit Court Marshall County May Term A D 1863

To said Defendant or to Hon. N. H. Purple his attorney Dr Sir

Please take notice that I shall on the first day of April A.D. 1863 between the hours of nine O'clock A M & five O'clock P M of said day & to continue from day to day if necessary at the office of Alvin H Potter at Magnon in the County of Knox & State of Illinois and before Alvin H Potter (or some other person authorized to take depositions) a Justice of the Peace proceed to take the depositions of Nelson Selby and Philemon B Selby to be used in evidence on behalf of the Plaintiff on the trial of the above entitled cause, where & when you can appear & Cross Examine if you so desire

H B Hopkins
Plaintiffs atty

Recvd Copy of above notice March 17th 1863
N. H. Purple
Defts atty

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Depositions of Witnesses taken on the first day of April A.D 1863 between the hours of Nine O'clock A.M. and five O'clock P.M. before Alvin H. Potter a Justice of the Peace at his Office in the town of Magnan in the County of Knox and State of Illinois to be read in evidence on part of the Plantiff in a Certain Suit now pending in the County of Marshall & State of Illinois wherein Anson Blake is Plantiff and James L Fash is Defendant

Deposition of Philemon B Selby

The said Philemon B Selby being by me first duly Sworn according to law to speak the truth the whole truth and nothing but the truth, doth depose and say in answer to the several interrogatories as follows, to Wit;

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For Value Received I Simeon Dolph of the County of Knox and State of Illinois, Do hereby assign transfer, and set Over unto Joshua Aiken of the County of Peoria and State of Illinois all my right, title, claim and demand, to a tract of land purchased by me on the twelfth June instant as per Receiver's Receipt No 2095 designated as the West half of the South East quarter of Section No. One in Township No Eight North of Range No Seven East of the 4th principal Meridian, situate in the district of land
A subject to sale at Quincy, Illinois, and request that a Patent may be issued to the said Joshua Aikin his heirs or assigns

Witness my hand and Seal, this 12th day of June A D 1835

Witness, P Lott — Simeon Dolph L S

Chas W. Billington

Taken and Subscribed before me Charles W Billington a Notary Public, in and for the County of Adams, and State of Illinois this 11th day of June A D 1835

Seal

In Testimony whereof I the said Notary have hereunto set my hand and affixed my Seal of Office the day and year last above written

Chas W. Billington N. P.

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State of Illinois } Recorders Office
Peoria County } I Enoch P. Sloan Clerk of the Circuit Court in and for the County of Peoria in the State of Illinois and Ex Officio recorder of deeds in said County do hereby Certify, that the annexed Assignment was filed for record in my office on the 19th day of June A.D 1861, and has been duly recorded with the accompanying Certificate on page 339 in Book E B in said recorders office

Seal

In Witness whereof, I hereunto set my hand and affix the seal of the said Circuit Court at my Office in Peoria this 19th day of June A.D 1860

Enoch P Sloan
Clerk and Recorder

Interrogatory 1st

Please state your name age residence & occupation

Answer

My name is Philemon B Selby my age is fifty four. my occupation my residence is Magnan Knox County in the State of Illinois

Int 2nd

How long have you resided in said Magnan

Ans. I have resided here about Twenty seven or Twenty Eight years

Int 3d

State whether you were or were not acquainted with One Simeon Dolph

Ans. I was

Int 4th

State when you knew said Dolph, where he resided, how he was employed & how long he remained in the vicinity where you knew him

Ans, I knew him when he first came to Magnam about 27 or 28 years ago, He resided in or near the present site of the Vilage of Magnam, He was a farmer & worked a part of the time for my Brother in Law & myself I do not recollect just how long he lived there, but think about a year or more after I first knew him

Int 5th

State whether or not you have seen said Dolph write, have seen his hand writing, whether you are acquainted with the same & whether or not you have had his hand writing in your possession

Ans I dont Know that I have seen him write but think I have, am pretty confident that I have seen him write a good many times, I think

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I have seen his hand writing, am satisfied that I have, Think I Know his hand writing. Think I have had his hand writing in my possession for a good many years but it is now mislayed

Int 6th.

Please examine the instrument now shown you marked (A) examine the signature thereof & State in whose hand writing it is and attach the same to your deposition

Ans. I now hold an instrument marked (A) I have examined the same & the signature thereto & I believe the signature thereto to be the hand writing of said Simeon Dolph from my acqueaintance of his hand writing I would say it is the hand writing of said Dolph & I attach the said instrument to this my deposition

Philemon B Selby

Subscribed & Sworn to before me this first day of April A D 1863

Alvin H. Potter J. P. (Seal)

Deposition of Nelson Selby

The said Nelson Selby being by me first duly sworn according to law to speak the truth the whole truth & nothing but the truth, doth depose and say in answer to the several interrogatories as follows, to wit

Int 1st

Please State your name age residence & Occupation

Ans. My name is Nelson Selby. my age is fifty Seven, my residence is Maquan Knox County State of Illinois my occupation is a farmer

Int 2d

How long have you resided in said Maquan

Ans. I have so resided over Twenty Seven years

Int 3rd

State whether or not you were acquainted with One Simeon Dalph

Ans. I was well acquainted with him

Int 4th

When & where were you acquainted with him

Ans. I was acquainted with him here in Maquan from the year AD 1835 till sometime in 1838. he left here about that time & I have no personal knowledge of him since

Int 5th

State whether or not to your knowledge said

Dolph is still living

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Ans. I do not know whether he is living or not but have heard and believe him to be dead

Int. 6th

State whether or not you have seen said Dolph write & whether you are acquainted with his hand writing

Ans. I am not positive whether I have seen him write. but think I have seen him write a good many times, dont think there is any doubt of it. Think I am acquainted with his hand writing

Int 7th

Please examine the instrument of conveyance marked (A) attached to the deposition of Phileman B. Selby purporting to be signed by Simeon Dolph and State in whose hand writing the said signature is

Ans. I have the said instrument marked (A) before me & have examined the same & the signature thereto & have no doubt that the signature is that of said Simeon Dolph, from my knowledge of his hand writing I should say that it is his signature

Nelson Selby

Subscribed and Sworn to before me this

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1st day of April A D 1863

Alvin H Potter J P (Seal)

State of Illinois
Knox County ss. } I Alvin H Potter a Justice of the Peace in and for said County do hereby Certify that the said Witnesses, Nelson Selby and Philemon B. Selby was each of them prior to the taking of their said depositions and on the said first day of April A D 1863 by me duly sworn to testify the truth the whole truth and nothing but the truth in relation to the matter in Controversy in the suit mention in the Caption of these depositions so far as they might be interrogated thereto and the said depositions were each on the said first day of April at my said office in said Magnon in said County taken and reduced to writing by me and Signed and Sworn to by the said witnesses respectively in my presence and the said Defendant had notice of the time and place of taking said depositions as appears by the attached notice and did not attend

Given under my hand and Seal this first day of April A. D. 1863

U S Revenue Stamp 5 Cents Cancelled

Alvin H Potter (Seal)
Justice of the Peace

Fees Paid by Plaintiff

Amt $ 4,50

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State of Illinois } ss
Knox County }

County Clerks Office

I John S Winter. Clerk of the County Court in and for said County and State, do hereby Certify that A H Potter Esquire, whose name is subscribed to the foregoing depositions was taken and Subscribed, was, on the day and date thereof, to wit; on the first day of April A D 1863, a Justice of the Peace in and for said County, duly elected, Commissioned and Sworn, and, as such, duly authorized and empowered to administer Oaths for general purposes, to take the acknowledgment of Deeds, and all other instruments in writing and that his signature thereto is genuine

Seal

In Testimony whereof, I have hereunto Subscribed my name, and affixed the Seal of said County Court at the City of Knoxville this 21st day of April A D 1863

John S. Winter Clerk

U S Revenue Stamp 5 Cents Cancelled

To the sufficiency and Competency of said depositions the Defendant by his Counsel then and there objects and the Court having Overruled said objections, the Defendant by his Counsel then and there excepted

No Objection was made to the reading the deposition to the Court on the question of the Execution of the deed from Dolph to Aiken

35

The Plaintiff then offered in evidence a Patent from the United States to Baptist Hardy for the East half of the Quarter Section described in the Declaration dated August 4th. 1838 which is as follows

Preemption Certificate No 1130

The United States of America
To all To whom these Presents Shall Come;—
Greeting

Whereas Baptist Hardy of Adams County Illinois has deposited in the Genral Land Office of the United States a Certificate of the Register of the Land Office at Quincy, whereby it appears that full payment has been made by the said Baptist Hardy according to the provisions of the Act of Congress of the 24th. of April 1820 Entitled "An Act making further provision for the sale of the Public Lands," for the East half of the South East quarter of Section One in Township Eight North of Range Seven East in the District of Lands subject to sale at Quincy Illinois, containing Eighty Acres, according to the Official plat of the Survey of the said lands, returned to the Genral Land Office by the Surveyor Genral, and which said tract has been purchased by the said Baptist Hardy. Now Know Ye, That the United States of America in Consideration of the premises and in Conformity with the several Acts of Congress in such Case made and provided have Given and Granted and by these Presents do Give and Grant unto the said Baptist

Hardy and to his heirs the said tract above described, To have and To Hold, the same together with all the rights privileges, immunities and appurtenances of whatsoever nature, thereto belonging unto the said Baptist Hardy and to his heirs and assigns forever

In Testimony whereof I Martin Van Buren President of the United States of America, have caused these letters to be made patent and the Seal of the General Land Office to be hereunto affixed

Given under my hand at the City of Washington, the Tenth day of August in the Year of our Lord One Thousand Eight Hundred and Thirty Eight and of the Independence of the United States the Sixty Third

U S Seal Land Office

By the President — Martin Van Buren

By M Van Buren Jr Secy

Jas S Wilson acting Recorder of the General Land Office ad interim

Recorded Vol 3 Page 205

Which were read in evidence without objection

The plaintiff then Offered in evidence a deed from Baptist Hardy to Mark M Aiken dated February 19. 1834 which is as follows

37

This Indenture, made and entered into this nineteenth day of February One Thousand Eight Hundred and Thirty four between Baptist Hardy of the County of Adams of the first part and Mark M Aiken of Peoria of the second part. Witnesseth,

That the said party of the first part for and in Consideration of the sum of One Hundred and Ten Dollars to him in hand paid, the receipt whereof is hereby acknowledged hath bargained, sold enfeoffed and conveyed, and by these presents doth bargain, sell, enfeoff and Convey unto the said party of the second part a Certain tract or parcel of land, lying and being in the County of Peoria and State of Illinois, known and designated as the E half of the South East quarter of Section No 1 in Township No 8 North of the base line and Rang Seven East of the fourth Principal Meridian. To Have and To Hold the said tract of land with all the appurtenances hereunto belonging or in any wise appertaining to the said Aiken his heirs and assigns forever. And the said party of the first part for himself his heirs, executors and administrators the aforesaid tract of land with all the appurtenances thereunto belonging or in anywise appertaining to the said party of the second part his heirs and assigns doth and will forever Warrant and Defend against the Claim or Claims of all persons and every person whatsoever

In Witness Whereof the said Hardy hath hereunto

set his hand and seal the day and year first above written

Signed Sealed and delivered in presence of Charles W Billington

Baptist Hardy (Seal)

State of Illinois
Adams County ss. Be it remembered that on this 19th day of February 1835 before me Charles W Billington a Notary Public in and for said County of Adams and State of Illinois, personally appeared Baptist Hardy personally known to me to be the same person named and described in the within deed who acknowledged that he had executed the same for the uses and purposes therein mentioned

In Testimony whereof I the said Notary have hereunto affixed my private seal (having no official Seal) the day and year first above written

(Seal)

Charles W Billington
N. P.

State of Illinois
Peoria County ss } Recorders Office August 13. 1836. I Charles Kettelle Recorder of said County do hereby Certify, that the within deed and Catificate of proof was this day duly recorded in Book G. pages 85 & 86.

In Testimony whereof I have hereunto set my hand

and private Seal (no official being provided) this
39 13th day of August A.D. 1836
fees 75 Charles Kettelle (Seal)
Clk

State of Illinois }
Adams County } ss Be it remembered that on this
18th day of March in the Year of our Lord One Thou-
sand Eight Hundred and Sixty three before me Came
personally Baptist Hardy, personally known to the un-
dersigned Notary Public of said County to be the
identical person who executed and whose name is
subscribed to the foregoing Deed of Conveyance as
having executed the same and acknowledged the
same to be his voluntary act and Deed for the pur-
poses therein expressed, This acknowledgment is
made of this date upon request and presentation of the
foregoing Deed to avoid other proof of execution but the
deed was duly delivered at its date to the Grantee
In Testimony whereof I have hereunto set my
hand and affixed my official Seal at my office
at Quincy the day and year first above written
Notarial Seal
Egbert F. Hoffman
N. P.

To said deed being read in evidence the defendant then
and there objected but the Court overruled said objec-
tion and permitted said deed to be read to the Jury
to which the defendant then and there objected
and excepted

The Plaintiff then read in evidence without objection a deed from Mark M Aiken to Joshua Aiken dated May 29th 1835 which was as follows

Know all men by these presents that I Mark M. Aiken of Peoria County and State of Illinois in Consideration of the Sum of Eight Hundred Dollars to me in hand paid by Joshua Aiken of said County and State, the receipt whereof I do hereby acknowledge, do hereby give grant Sell and Convey unto the said Joshua Aiken his heirs and Assigns, all that parcel of land or tenement situate in said County of Peoria, and known and described as the East half of the South East quarter of Section number (1) in Township (8) North in Range (7) Seven East of the fourth principal Meridian; to have and to hold the above granted premises to the said Joshua Aiken his heirs and assigns, to his and their use and behoof forever, And I the said Mark M Aiken do hereby for myself and my heirs Executors and administrators Covenant with the said Joshua Aiken his heirs and assigns that I am lawfully seized in fee simple of the afore granted premises, that they are free from all incumbrances, that I have good right to sell and convey the same to the Joshua Aiken and that I and my heirs executors and administrators will Warrant and defend the same premises to the said Joshua Aiken his heirs and assigns

forever against the lawful claims and demands of all persons

In Witness whereof I the said Mark M Aiken have hereunto set my hand and Seal the Twenty ninth day of May in the year of Our Lord One Thousand Eight Hundred and Thirty five

Signed Sealed and delivered in presence of
A. Wren
Geo W Lynde

Mark M Aiken (Seal)

Personally appeared before me One of the acting Justices of the Peace for Peoria County Mark M. Aiken who acknowledged the above signature to be his for the purpose above named

Peoria May 29 1835

Stephen Stillman J. P.

State of Illinois } ss
Peoria County }

Recorders Office Peoria August 13th 1836

I Charles Kettelle Recorder of said County do hereby Certify that the within deed and Certificate of proof were duly recorded in said Office at Peoria in Book G. Page 86.

In Testimony whereof I have hereunto set my hand and private Seal (no Official being provided) this 13th day of August A D 1836

fees 75 ¢

Charles Kettelle (Seal)
R. P. C.

State of Illinois } ss
Peoria County }

I Bernard Bailey Justice of the Peace in and for said County do certify that this day personally appeared before me Mark M. Aiken whose name appears subscribed to the foregoing deed of Conveyance as having executed the same and who is personally known to me to be the real person who & in whose name the acknowledgment is proposed to be made and acknowledged the execution thereof as his voluntary act & deed for the uses and purposes therein expressed

Given under my hand and seal of Office at Peoria this 21st day of October A D 1862

Mark M Aiken

Bernard Bailey J P (Seal)

State of Illinois } Office of the Clerk of the County Court
Peoria County }

I Charles Kettelle Clerk of the County Court in and for said County do hereby Certify that Bernard Bailey whose name appears to the foregoing deed of Acknowledgment Certificate was on the day of the date thereof an acting Justice of the Peace in and for said County, duly Commissioned and qualified, as appears of record in my office, that as such full faith and Credit are due to all his official acts, and his Signature thereto is genuine

Given under my hand and Official Seal at the City of Peoria this Twenty first day of October A D 1862

(County Court Official Seal)

Charles Kettelle Clerk

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The Plaintiff then offered in evidence a Deed from Joshua Aiken to Benjamin F Lee dated November 9th 1835 & the Certificate written thereon which is as follows

This Indenture made this Ninth day of November in the year of Our Lord One Thousand Eight Hundred and Thirty five between Joshua Aiken and Jane Aiken his wife of the County of Peoria & State of Illinois of the first part and Benjamin F Lee of the City & State of New York of the Second part Witnesseth That the said parties of the first part for and in Consideration of the Sum of One Thousand Dollars lawful money of the United States of America to them in hand paid by the said party of the second part the receipt whereof is hereby is hereby acknowledged have granted, bargained, sold and conveyed and by these presents do grant, bargain, sell, alien, release, convey and confirm unto the said party of the second part and to his heirs and assigns forever, the following described tract of land situate in the tract appropriated for military bounty lands in the State of Illinois, known and described as follows, to wit:

The South East quarter of Section numbered One in Township Eight North of the base line in Range Seven East of the fourth Principal Meridian, and the South West quarter of Section numbered One in Township Eight North of the Base line, of Range Seven East of the fourth Principal Meridian, together with all and singular the tenements hereditaments, privileges

and appurtenances unto the said above mentioned premises belonging, and also all the Estate, right, title, property and possession, claim and demand whatsoever of the said parties of the first part in of and to the same and every part thereof, To Have and To Hold the above granted and described premises with the hereditaments and appurtenances unto the said party of the second part his heirs and assigns, to their sole and only use benefit and behoof forever. And the said parties of the first part for themselves their heirs and assigns, executors and administrators do Covenant and agree to and with the said party of the second part his heirs and assigns in form and manner following, that is to say, that the said parties of the first part at the sealing and delivery of these presents are lawfully seized of the above described premises in a good sure absolute and indefeasible estate of inheritance in fee simple and have good right and lawful authority to convey the same in manner and form aforesaid, that the same are now free clear and discharged of and from all former and other grants, titles, charges, judgments, incumbrances of what nature soever. And also that the said parties of the second part, his heirs and assigns shall and may at all times hereafter peaceably and quietly, have, hold, use, occupy, possess, and enjoy the above granted premises and every part and parcel thereof without any let, suit, trouble, molestation or disturbance of the said parties of the of the first part or any other person

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or persons whatever. And I the Joshua Aiken the hereby granted premises with the hereditaments and appurtenances unto the said party of the second part his heirs and assigns against the parties of the first part their heirs and assigns against all and every person or persons whomsoever lawfully claiming or to claim the same shall and will Warrant and by these presents forever defend

In Testimony whereof the parties to these presents of the first part have hereunto set their hand and seals the day and year first above written

Signed Sealed and Delivered in Presence of
Daniel Murry
Cyrus Leland

Joshua Aiken (Seal)
Jane Aiken (Seal)

State of Illinois
Peoria County } This Ninth day of November a D 1835 personally appeared before me a Justice of the Peace in and for said County Joshua Aiken and Jane Aiken wife of said Joshua who are known to me to be the identical persons whose names are subscribed to the within deed of Conveyance, and the said Jane being examined separate and apart from her said husband and the Contents of the within instrument explained and made known to her, she together with the said Joshua her husband acknowledged the same to be their free act and deed

Cyrus Leland J Peace

State of Illinois } Recorders Office November 9. 1853
Peoria County } I do hereby Certify that the within Deed and Certificate of acknowledgment was this day duly recorded in this Office at Peoria in Book E pages 405. 6. 7 & 8

Charles Kettelle
Recorder P.C.

State of Illinois } Office of the Clerk of the
Peoria County } County Court

I Charles Kettelle Clerk of the County Court in and for said County do hereby Certify that Cyrus Leland whose name appears to the foregoing certificate of Acknowledgment was on the day of the date thereof an acting Justice of the Peace in and for said County duly Commissioned and qualified as appears of record in my Office; that as such full faith and Credit are due to all his official acts; and his signature thereto is genuine

Official Seal

Given under my hand and Official Seal at the City of Peoria this first day of June A.D. 1863

Charles Kettelle Clerk

(Rec'd 10 P)

To the reading of said deed in evidence the defendant by his Counsel then and there objected but the Court Overruled said objection

and permitted said deed to be read in evidence to all of which the defendant then and there objected and excepted

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The Plaintiff then offered in evidence a deed from Benjamin F Lee to Henry W. Sergeant dated November 13th 1837 & the Certificates thereon for the whole of said lands described in the declaration, which is as follows

This Indenture made the Thirteenth day of November in the year One Thousand Eight Hundred and Thirty Seven, between Benjamin F. Lee of the City of New York, Merchant, and Jane R. his wife of the first part and Henry Winthrop Sargent of New York aforesaid of the second part Witnesseth

That the said party of the first part for and in Consideration of the Sum of Ten Thousand Dollars money of the United States to them in hand paid by the said party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part his heirs executors and administrators forever released and discharged from the same, by these presents have granted, bargained, sold, aliened, remised, released, Conveyed and Confirmed and by

these presents do grant, bargain, sell, alien, remise, release, convey and Confirm unto the said party of the second part, his heirs and assigns forever, the following tracts pieces or parcels of land, situate lying and being in the County of Peoria in the State of Illinois, that is to say, the West half of the South West quarter of Section No. One (1) in Township No Eight (8) North of the base line of Range No Seven (7) East of the Fourth Principal Meridian, Containing Eighty acres of land Also the West half of the South East quarter of Section One (1) in Township No Eight North of the base line of Range number Seven (7) East of the Fourth Principal Meridian Containing Eighty acres. Also the East half of the South East quarter of Section number One (1) in Township number Eight (8) North of the base line of Range No Seven (7) East of the fourth Principal Meridian Also, the East half of the South West quarter of Section number One (1) in Township number Eight North of the base line of Range number Seven (7) East of the fourth Principal Meridian. Containing Eighty acres, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions, remainder and remainders, rents issues and profits thereof, and all the estate, right, title, interest, dower, property, possession, claim and demand whatsoever

as well in law as in equity of the said parties of the first part of in and to the same and every part and parcel thereof, with the appurtenances. To Have and To Hold
49 the above granted, bargained and described premises with the appurtenances unto the said party of the second part, his heirs and assigns, to his and their own proper use benefit and behoof forever

And the said Benjamin F Lee for himself his heirs, executors and administrators doth hereby Covenant, grant and agree to and with the said party of the second part his heirs and assigns that the said Benjamin F Lee at the time of the ensealing and delivery of these presents is lawfully seized in his own right of a good absolute and indefeasible estate of inheritance in fee simple of and in, all and singular the above granted and described premises with the appurtenances; and hath good right, full power and lawful authority to grant, bargain, sell and Convey the same in manner aforesaid. And the said party of the second part, his heirs and assigns shall and may at all times hereafter, peacefully and quietly have, hold, use, occupy, possess and enjoy the above granted premises, and every part and parcel thereof with the appurtenances, without any let, suit trouble, molestation, eviction or disturbance of the said parties of the first part their heirs and assigns or any other person or persons lawfully Claiming or to Claim the same; and that the same are now free, clear, discharged and unincumbered of and from

all former and other grants, titles, charges, estates, judges, taxes, assessments and encumbrances of what nature or kind soever, And also that the said parties of the first part and their heirs and all and every person or persons whomsoever lawfully or equitably, deriving any estate, right, title, or interest of in or to the same herein granted premises, by from under or in trust for them shall and will at any time or times hereafter upon the reasonable request and at the proper Costs and Charges in the law of the said party of the second part his heirs or assigns make do and execute or Cause to be made done executed all and every such further and other lawful and reasonable acts conveyances and assurances in the law for the better and more effectually vesting and confirming the premises hereby granted, or so intended to be, in and to the said party of the second part his heirs and assigns forever as by the said party of the second part, his heirs or assigns or his or their Counsel learned in the law shall be reasonably advised or required

And the said Benjamin F Lee for himself his heirs the above described and hereby granted and released premises and every part and parcel thereof with the appurtenances unto the said party of the second part his heirs and assigns against all and every person or persons whomsoever, lawfully claiming or to claim the same shall and will Warrant

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5-6(b)

James L Hatch Appellant
vs
Simon Bleeke Appellee

Supreme Court
Northern District
of Illinois
April Term 1863.

The following certificates & matter from the record of the deed of Benjamin F Lee to Henry Winthrop Sargent in the above named cause are written upon the said Deed & are supplied by agreement of Counsel for viz. "State of New York

" City & County of New York ss

" Be it remembered that on the tenth day
" of February 1862 before me the Subscriber a
" Notary Public in & for the State of New York duly
" commissioned & sworn dwelling in the City of
" New York personally came Benjamin F Lee
" who is personally known to me to be the person
" described in & who executed the same & ac-
" knowledged the same to be his free act & deed
" for the purposes therein mentioned
" Given under my hand & notarial seal the day &
" year above written. Joseph B Lawrence
" Notary Public

" State of New York
" City & County of New York ss I Henry W Sedgwick Notarial Seal
" Clerk of the City & County of
" New York and also Clerk of the Supreme Court
" of the said City & County the same being a Court
" of Record do hereby certify that Joseph B Law-
" rence whose name is subscribed to the cer-
" tificate of the proof or acknowledgement of the
" annexed instrument & thereon written was at
" the time of taking such proof or acknowledgment
" a Notary Public in & for the State of New York
" dwelling in the said City commissioned & sworn
" & duly authorized to take the same
" & further that I am well acquainted
" with the handwriting of such Notary Public
" and verily believe that the signature to the

" said Certificate of Proof or acknowl-
" edgment is genuine
" I further certify that ~~the~~ said instru-
" ment is executed & acknowledged
" according to the laws of the State
" of New York
" In testimony whereof I have hereunto
" set my hand and affixed the Seal of the said
" Court & County the 24th day of February
" AD 1862

" H W Genet
Clerk "

New York Seal

Williamson & McCoy
Atty for Appellant
H B Hopkins
Atty for Appellee

and by the presents forever defend

In Witness whereof the parties to these presents have interchangeably set their hands and seals the day and year first above written

Sealed and delivered
in presence of
William M Allen

B F Lee (Seal)
Jane R Lee (Seal)

City and County
of New York SS. On this Thirteenth day of December A. D. 1837 Benjamin F Lee and Jane R his wife, to me known to be the persons described in and who executed the above Deed before me severally acknowledged they had executed the same. The said Jane R. before me further acknowledged in a private examination, separate and apart from her said husband that she executed the said deed freely and without any fear or compulsion of her said husband

William M. Allen
Commissioner of Deeds

City and County
of New York SS. On this Nineteenth day of November 1840 Benjamin F. Lee and Jane R his wife to me known to be the persons described in and who executed the within deed before me severally acknowledged that they executed the within conveyance as their act and deed for the

uses and purposes therein mentioned

And the said Jane R having been by me examined privately, separately and apart from her said husband acknowledged that she had executed the within Conveyance as her act and deed for the uses and purposes therein mentioned without any fear or compulsion of or from her husband

Danl B Tallmadge
Judge of the Superior
Court of the City of
New York

To the reading of said deed in evidence the defendant by his Counsel then and there objected, because there was no proper acknowledgment of said Deed, but the Court overruled said objection and permitted said deed to be read in evidence, to all of which the defendant then and there objected and excepted

5-3

The Plaintiff in Order to further maintain the issues on his part Offered in evidence the deposition of Henry W Sergeant and the release of the plaintiff attached thereto, which said deposition and release is as follows

The Deposition of Henry Winthrop Sargent of Fishkill in the County of Dutchess and State of New York a witness of lawful age produced Sworn & Examined on his Corporal Oath on the Sixth day of November in the year of Our Lord One Thousand Eight Hundred & Sixty at the Office of A & W S Thompson No 25 Nassau Street in the City and County of New York in the State aforesaid by me Andrew Thompson a Commissioner duly appointed by a Dedimus Protestatem or Commission issued out of the Clerks Office of the Circuit Court of Peoria County in the State of Illinois bearing Teste in the name of Enoch P Sloan Esq Clerk of the said Circuit Court with the Seal of the said Court affixed thereto and to me directed as such Commissioner for the examination of the said Henry Winthrop Sargent with others as witnesses in a certain Suit & matter in Controversy now pending and undetermined in the said Circuit Court wherein Anson Blake is plaintiff & James L Fash is defendant on behalf of the said plaintiff as well upon the Cross interrogatories of the defendant as on the interrogatories of the plaintiff which were attached to or included with the said Commission & upon none others.

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The Said Henry Winthrop Sargent being first duly sworn by me as a witness in the said Cause previous to the commencement of his examination to testify the truth as well on the part of the plaintiff as the defendant in relation to the matters in Controversy between the said plaintiff & defendant so far as he should be interrogated testified and deposed as follows

Interrogatory 1st Please State your name, age, business & residence — also whether you are acquainted with the parties to this suit & if so which and how long have you been acquainted with them?

Answer to 1st Interrogatory) Henry Winthrop Sargent. I am about 50 years of age — not in business now, am a retired Merchant — reside at Fishkill Dutchess County State of New York — I know Anson Blake, & have known him for 22 years — I am not acquainted with James L Fash —

Interrogatory 2nd What business were you engaged in about the year 1837 & where did you then reside & do business

Answer to 2nd Interrogatory. My business was that of a Merchant in the year 1837 & I then resided in the City of New York & did business there

Interrogatory 3rd State what business if any you were then engaged in for the house of Welles & Co of Paris and what

relation you are if any to any member of the firm of Welles & Co

Answer to 575 — 3rd Interrogatory, I was the General Agent of Welles & Co of Paris in granting Credits & Collecting debts due the firm; also in drawing bills of exchange on joint account. I was a Nephew of Mr Samuel Welles of the firm of Welles & Co of Paris

Interrogatory 4th State whether or not you know of any indebtedness then existing on the part of the firm of B. F Lee & Co to the firm of Welles & Co, if so to what amount and what was done by you if anything in Collecting said indebtedness, and in what Capacity did you act in relation to said matter

Answer to 4th Interrogatory, B F Lee & Co were indebted to Welles & Co in the amount of about $73.000 — as the General Agent of Welles & Co I Collected the indebtedness from B F Lee & Co which payment consisted of lands and money

Interrogatory 5th Please State whether any tract of Land in the County of Peoria and State of Illinois had any connection with such Settlement, if you say any such was made — if so state what Conveyance if any was made of said property in relation to said settlement, what was the date of said Conveyance — State how said land was described if you are able to, Otherwise State how it was commonly designated

Answer to 5th Interrogatory — To the best of my recollection a

tract of land in Peoria County in the State of Illinois was included in that settlement which was designated on our books by the name of the Peoria farm. It was conveyed by B F Lee and wife to A W Sargent (myself) by deed dated the 13th day of November 1837 and is described in the said Deed as four parcels situated in the County of Peoria & State of Illinois, The First being the West half of the South West quarter of Section No 1 in Township No 8. North of the base of Range No 7 East of the 4th Principal Meridian, Containing 80 acres of land — The Second parcel being the West half of the South East quarter of Section No 1 in Township No 8. North of the base line of Range No 7 East of the fourth principal Meridian, Containing 80 acres of land. — The Third parcel being the East half of the South East quarter of Section No 1 in Township No 8. North of base line of Range No 7 East of the 4th principal Meridian Containing 80 acres of land — And The Fourth parcel being the East half of the South West quarter of Section No 1 in Township No 8 North of the base line, of Range No 7 East of the fourth principal Meridian Containing 80 acres of land.

Interrogatory 6th Please State whether or not you have at any time received from B F Lee or B F Lee & Co any other conveyance of land in the County of Peoria & State of Illinois

Answer to 6th Interogatory

No Other to my recollection

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Interogatory 7th Please State whether a Deed marked Exhibit "A" attached to a deposition of yourself given in a

A. T. Cause pending in the Circuit Court of Peoria County

Court Illinois for the purpose of perpetuating testimony in relation to the tract of land named in said Exhibit taken upon the petition of Anson Blake against said defendant & others taken by John S Thayer & Eli H. Evans Commissioners on the 5th day of March 1858 is the deed of said tract of land Conveyed by B. F. Lee to you as aforestated, if such ~~such~~ conveyance was made

Answer to 7th Interogatory

It is

Interogatory 8th State whether you made any conveyance of said tract of land - if so to whom

Answer to 8th Interogatory. I made a Conveyance of said tract of land to Ann Davis according to the best of my recollection

Interogatory 9th If you state that you deeded said land to Ann Davis, when was said deed made, when was the same delivered and what interest did said deed convey & what interest was it intended to convey in said tract of land to said Ann Davis

Answer to 9th Interogatory, The deed to Ann Davis was made in 1839 or 1840 shortly after I was maried, I cannot say when it was delivered. I conveyed my whole interest to said Ann Davis in said tract of land and that was the interest intended to be conveyed

Interogatory 10th. State whether or not you at the date of making said deed to said Ann Davis, if you say you made it, used an heraldic device for a seal

Answer to 10th Interogatory, I think I did use an heraldic device or seal, I usually did so, and do so still

Interogatory 11th. State whether or not you ever executed a second deed to said tract of land, if so to whom, when & under what circumstances & when & to whom was it delivered & state wherein said second deed corresponded with & wherein it differed from the former & particularly whether or not is was delivered at or about the date of its acknowledgement & if you say a second deed was made what became of the former one

Answer to 11th Interogatory, I think I did and think it was to Anson Blake, this was several years after 1840. the circumstances under which this subsequent conveyance was made are as follows. Mr Anson Blake met me in Wall Street New York and said to me "I want you to do me a favor - I wish you to give me a new Deed for the land which I call the Peoria Farm" which Mr Blake Stated he had bought from Ann Davis - I

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objected and said why dont Ann Davis convey it to you, and my impression is that Mr Blake stated that she was old or infirm or sick or something of that sort and the Deed to her never having been put upon Record, he would hand it back to me – I had I think two or three interviews with Mr Blake in all of which I objected and finally I consented on condition that Mr Blake would obtain from my attorney his opinion to the ~~to the~~ effect that I could do it without impropriety and without implicating myself in any way by so doing either now or hereafter, either at my suggestion or that of my attorney it was deemed advisable to antedate the deed to Mr Blake back to the date of the deed to Ann Davis, which was given back to me before the execution of the ~~execution of the~~ deed to Anson Blake and which Deed was destroyed by me, It was delivered on or about the 6th day of October 1847 the day of its acknowledgment to Anson Blake, it Corresponded as to the description of the property & date with the former deed & differed in the name of the Grantee, it is recorded in the County of Peoria Book S Pages 531 and 532

A T
Comr

Interrogatory 12th If you say you made a deed of said land to Anson Blake. State whether you made more than one Deed to him of the same

Answer to 12th Interrogatory. I never gave Anson Blake any deed of said land but the One mentioned in the last interrogatory to the best of my recollection

Interrogatory 13th State whether you have any interest in the
60 result of this suit. State whether Anson Blake has
executed and delivered to you any release relating to
said tract of land - if so state whether said release
was executed in duplicate and if so attach one
of said duplicate releases to your deposition and
state whether the signature of said Blake to said
release is genuine and whether both of said duplic-
cate releases were executed and delivered to you prior
to the giving of this deposition

Answer to 13th Interrogatory. I have no interest in the
result of this suit - Anson Blake has executed
and delivered to me a Release in relation to the
said tract of land, executed in duplicate. One of which
duplicate Releases is attached to this deposition marked
B - I believe the signature of said Blake to said Re-
lease is genuine & said Releases were executed & delivered
to me prior to the giving of this deposition

Interrogatory 14th State any further knowledge which you have
material to the interests of either party to this suit

Answer to 14th Interrogatory. I have none

Interrogatory 15th Are you in any manner related to Anson
Blake

Answer to 15th Interrogatory. I am not

Cross Interrogatories and answers thereto by the Witness on the part of the defendants

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First Cross Interrogatory –

At what time did Anson Blake take the benefit of the Bankrupt laws of the United States

Answer to 1st Cross Interrogatory

I am entirely ingnorant

2nd Cross Interrogatory

If you Conveyed any lands to Ann Davis how many acres did you so Convey and how was the land described

Answer to 2nd Cross Interrogatory

I think I Conveyed 320 Acres of land to Ann Davis – the land was the same as conveyed to me by B. F. Lee and wife and is described in my answer to the 5th direct interrogatory

3rd Cross Interrogatory, How much did she pay you in all, or how much per acre did she pay you for the same, & how many acres did you sell her

Answer to 3rd Cross Interrogatory

I have no recollection of having received personally any Consideration from her or from any body else – I sold 320 acres but do not recollect

at how much per acre, All the Deeds taken in settling Welles & Co's business by Grace & Sargent (of which I was a member) were taken in my name; and I conveyed as directed by Mr Gracie or Mr Welles or their Attorney's who made the negotiations

4th Cross Interrogatory

What was her age and with whom did she reside and where at the time

Answer to 4th Cross Interrogatory

I am entirely ignorant

5th Cross Interrogatory. How far did she reside from your then place of residence and how often had you seen her before that time

Answer to 5th Cross Interrogatory

I do not know how far she resided from my place of residence and I dont know of ever seeing her at any time

6th Cross Interrogatory. Had you any personal acquaintance with the said Ann Davis. and if so for what period of time

Answer to 6th Cross Interrogatory

I had no personal acquaintance with the

said Ann Davis at any time

7th Cross Interrogatory. Did you deliver any Deed to the said Ann Davis at any time. If not to whom did you deliver the deed referred to in plaintiffs interrogatories and at what time. That is the deed purporting to be made by you to the said Ann Davis in the year A D 1840

Answer to 7th Cross Interrogatory

I never delivered any deed to Ann Davis at any time to the best of my recollection I delivered her Deed to Anson Blake, the time of delivery I do not recollect. I mean the deed made to Ann Davis about the year 1840

8th Cross Interrogatory. Who negotiated with you for the purchase of the land which you conveyed to Ann Davis? Was it not Anson Blake = Did he not make the Contract and pay whatever money or other Consideration was paid therefor? what was the Consideration paid for the same

Answer to 8th Cross interrogatory

I have no recollection of any negotiation with me for the purchase of the land conveyed to Ann Davis with Anson Blake or any one else. It was costomary for my uncle or partner to make sale and for me to execute the Conveyance to carry out

64

A T Cont

their Contracts — I do not know that Anson Blake made the Contract or what the Consideration was or who paid it

9th Cross Interrogatory. Did you your ever have any negotiation, Contract or Conversation with any other person about said purchase and sale, than the said Anson Blake

Answer to 9th Cross Interrogatory

I have no recollection of any negotiation contract or Conversation with Anson Blake or with any other person about said purchase & Sale — My uncle & partner attended to that business I Suppose

10th Cross Interrogatory. Did you not Suppose and believe at the time you made the Deed that the Conveyance was to said Anson Blake

Answer to 10th Cross Interrogatory

I did not

11th Cross Interrogatory. Was not said Anson Blake at the time the said deed was made largely indebted to various persons and Considered & reputed and was he not in fact insolvent

Answer to 11th Cross Interrogatory

I Cannot Say whether he was or not

12th Cross Interrogatory. After the said Anson Blake took the benefit of the Bankrupt law, did he not appear to become suddenly rich or to be in comfortable circumstances

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Answer to 12th Cross Interrogatory
I Cannot say whether he did or not

13th Cross Interrogatory. At whose request did you make the second Deed you did make for the said premises or to the said Anson Blake

Answer to 13th Cross Interrogatory
At the request of Anson Blake as I have explained & stated in the answer to the Eleventh Interrogatory

14th Cross Interrogatory. Did Ann Davis ever request you to make any such deed? State all the Conversation you had with Anson Blake upon the Subject & particularly the reasons he gave why he did not get Ann Davis to make the Deed

Answer to 14th Cross Interrogatory. Ann Davis never requested me to make any such deed. I have stated all the Conversation with Anson Blake & the reasons he gave why he did not get Ann Davis to make the Deed in my answer to the 11th direct Interrogatory as near as I recollect them

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Do you know any other matter or thing of benefit to the defendant. if so state the same fully and particularly as if you were particularly interrogated thereto

Answer I think of nothing more

Henry W Sargent

Subscribed and Sworn before me by the said Henry Winthrop Sargent at the City of New York the Sixth day of November A D 1860

A Thompson
Comr

13. This Indenture made and entered into this Twenty Third day of July A D 1860 by and between Anson Blake of the first part and Henry Winthrop Sargent of the second part. Witnesseth; that the said party of the first part does in consideration of One Dollar paid by the party of the second part the receipt of which is hereby acknowledged, hereby release and forever discharge the said party of the second part of and from any and all covenants of title made by the said party of the second in any and all deeds or conveyances heretofore made by the party of the second part conveying or purporting to convey any interest in or to the South half of Section One in Township Number Eight North

Range Seven East of the fourth Principal Meridian in the County of Peoria and State of Illinois or any part thereof.

This Release is intended to extend to and discharge the party of the second part from any and and all covenants of any nature or kind heretofore made by the party of the second part in which the party of the first part has any interest in relation to the tract of land aforesaid or any interest in any part thereof.

Witness the hand and seal of the party of the first the day and year first above written

Anson Blake (Seal)

In the reading of the said deposition and release in evidence the defendant then and there objected on account of the interest of the said witness, and in order to support said objection the defendant offered in evidence to the Court a Certified Copy of the petition in Bankruptcy of the plaintiff Anson Blake - a Certified Copy of the Order of the Court appointing an Assignee in Bankruptcy for the plaintiff - a certified copy of the application and report of said assignee for the sale of lands of said Bankrupt - together with a certified Copy of the order of Court for a sale thereon. Also a Certified copy of Rule 61 of United States District Court, Southern District of the State of New York in Bankruptcy which are as follows

Seal

The President of the United States of America
To all to whom these presents Shall Come Greeting:-

Know ye, That we, having inspected the records and files of the District Court of the United States for the Southern District of New York, do find certain paper writings there, remaining of record, in the words and figures following, to wit:-

Petition in Bankruptcy
Order of appointment General Assignee
Application & Report of General Assignee for Sale of assets
Order of Court thereon

To the District Court of the United States for the Southern District of New York

Anson Blake of Brooklyn Kings Co residing at at No 6 Court St by petition represents and States to the Court that he is owing debts which have not been created in consequence of a defalcation as a public Officer, or as executor, administrator, guardian or trustee or while acting in any other fiduciary character, and that he owes debts and is under engagements which he is unable to meet and that he accordingly applies to the Court for the benefit of the act entitled

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"An Act to establish a uniform System of Bankruptcy throughout the United States" passed August 19, 1841

And the petitioner further States to the Court that the Schedule annexed marked A and duly attested by him Contains according to the best of his knowledge and belief, a list of all his Creditors with the place of their respective residences and occupations, and the amount due to each and the Consideration or Cause of the indebtedness

And the petitioner further States to the Court that the Schedule annexed marked B contains according to the best of his knowledge, information and belief an accurate inventory of his property rights and Credits of every name kind and description and the location and Situation of each and every parcel and portion thereof

Anson Blake

The above described Anson Blake
this day appeared before me and
in my presence subscribed the foregoing
petition and by his oath duly adm-
inistered by me to him verified the same
December 21st 1842

I. Cambreling
Commissioner

I Charles D Betts Clerk of the District Court do hereby Certify that I have searched the docket of Causes in Bankruptcy in this Office and

find no petition filed by or against Anson Blake

Dated 24th. day of December 1842

Charles D Betts
Clerk

(Endorsed)

U. S. District Court Southern District of of New York. In the matter of the Petition of Anson Blake a Bankrupt. Petition &c A Thompson Atty for Petr. Filed December 24. 1842

In Bankruptcy

At a District Court of the United States of America held for the Southern Distruct of New York, at the City Hall of the City of New York on Tuesday the Fourth day of January in the year One Thousand Eight Hundred and forty two

Present. Samuel R Betts District Judge

In the Matter of
Bankrupt
} Order

Ordered that William C. A Waddell be appointed the Official or General Assignee as required by the rules this day adopted in Cases arising under the act entitled "An Act to establish a uniform system of Bankruptcy thro-

ough out the United States" passed August
71 19. 1841

United States District Court
For the Southern District of New York

In Bankruptcy

In the Matter of
Anson Blake
Bankrupt

Decree dated
Feb 4 1843

The Official or General Assignee to whom the Estate of said Bankrupt was confided by Decree aforesaid, Reports, Application has been made to him for the release or Conveyance of any interest which may be vested in him as the assignee of the above named Bankrupt by his deed; in certain lands in the State of Illinois in the County of Peoria not named in his Schedule Viz S½ Sec 1 Tp 8. 7 E. the applicant wishes to make his title good to the lands and premises, that the Bankrupt has but a shadow of a claim to it, but is willing to pay a nominal Consideration and the charges of the assignee for a conveyance thereof

And further Reports that having considered the matter thinks it advisable to make the Conveyance asked for

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The assignee aforesaid now moves ~~xxxxx xxxxxx~~ the Court for an Order, That the Assignee have authority to make the sale in manner aforesaid pursuant to the provisions of the 61st Rule

Wm Coventry H Waddell
Official or General Assignee

Dated July 3r 1854

(Endorsed) 20

In the Matter of Anson Blake a Bankrupt
Application for Sale of an Asset and Order of Sale Order

J R B

Filed July 3rd 1854

At a Stated Term of the District Court of the United States of America, for the Southern District of New York, held at the United States Court Rooms in the City of New York on the Third day of July in the year of Our Lord One Thousand Eight Hundred and Fifty four

Present, The Honorable Samuel R Betts District Judge

In Bankruptcy

In the Matter of
Anson Blake
a Bankrupt

On motion of W. C. H. Waddell Esq the General or Official assignee

and on filing his official report. It is Ordered that he convey the interest of the Bankrupt in and
73 to Certain Lands in the County of Peoria and State of Illinois in Conformity with the discription, and the terms of said Report

All of which we have caused by these presents to be exemplified, and the Seal of the said District Court to be hereunto affixed

Witness the Honorable Samuel R Betts Judge of the said Court, at the City of New York, in the Southern District of New York, this Twenty first day of December in the year of Our Lord One Thousand Eight Hundred and Sixty three and of Our Independance the Eighty Eighth

U S Revenue Stamp 5 Cts

Geo F Betts Clerk

I Samuel R Betts Judge of the said District Court, do hereby Certify, that the foregoing Exemplification is in due form of Law

Saml R Betts

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United States of America
Southern District of New York } ss

In Bank Ruptcy

seal

I George F Betts Clerk of the District Court of the United States of America for the Southern District of New York do hereby Certify that the writing annexed to this Certificate is a true Copy of Rule No (61) Sixty One in Bankruptcy adopted by said Court

In Testimony whereof, I have caused the Seal of said Court to be hereunto affixed, at the City of New York in the Southern District of New York, this Twenty Second day of December in the year of our Lord One Thousand Eight Hundred and Sixty Three, and the Independance of the said United States the Eighty Eighth

U S Revenue Stamps 5 cts

Geo F Betts
Clerk

United States District Court
Southern District of New York
In Bank Ruptcy

Rule 61

75 The Sale of the Bankrupt's estate shall be at public Auction, and for Cash unless on the report of the assignee, or with his assent, it is otherwise specially ordered by the Court

The assignee shall prior to or on the day appointed by the Court to show Cause why the Bankrupt shall not have his discharge and certificate, file with the Clerk a report, stating whether the Bankrupt has bona fide surrendered to the assignee all his property and rights of property (with the exception mentioned in the act)

Defendant in order to support said objection offered in evidence to the Court a Certified copy of a deed from Henry W Sergeant conveying the land in Controversy to the plaintiff, Anson Blake dated October first 1840 and recorded in the Peoria County records on the day of October 1847 which said Deed and the acknowledgment thereof is as follows

This Indenture made the First day of October One Thousand Eight Hundred and Forty between Henry Winthrop Sargent of the City of New York 'merchant' and Caroline his wife of the first part and Anson Blake of the City of Brooklyn of the second part Witnesseth, That the said parties of the first part for and in Consideration of the sum of Ten Thousand

lawful money of the United States to them in hand paid by the said party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged and the said party of the second part his heirs executors and administrators forever released and discharged from the same by these presents, have granted, bargained, sold, aliened, remised, released, conveyed and confirmed and by these presents do grant, bargain sell, alien, remise, release, convey and confirm unto the said party of the second part and to his heirs and assigns forever all the following tracts parcels or pieces of land situate lying and being in the County of Peoria in the State of Illinois that is to say, the West half of the South West quarter of Section No One (1) in Township No Eight (8) North of the base line of Range No Seven (7) East of the fourth principal Meridian, containing Eighty acres of Land; Also the West half of the South East quarter of Section Number One (1) in Township No Eight (8) North of the base line of Range No Seven (7) East of the fourth principal Meridian containing Eighty Acres; Also the East half of the South East quarter of Section number One (1) in Township No Eight (8) North of the base line of Range No Seven (7) East of the fourth principal Meridian Containing Eighty acres; Also the East half of the South West quarter of Section No One (1) in Township No Eight (8) North of the base line of Rang No Seven East of the fourth principal Meridian

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containing Eighty acres; Together with all and singular the tenements hereditaments and appurtenances thereunto 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 and right of dower, property, possession, claim and demand whatsoever, as well in law as in equity of the said parties of of the first part of in and to the same and every part and parcel thereof with the appurtenances.

To Have and To Hold the above granted bargained and described premises with the appurtenances unto the said party of the second part his heirs and assigns to his and their own proper use benefit and behoof forever

And the said Henry Winthrop Sargent for himself his heirs, executors and administrators doth Covenant grant, and agree to and with the said party of the second part his heirs and assigns that the said Henry Winthrop Sargent at the time of the ensealing and delivery of these presents is lawfully seized in his own right of a good absolute and indefeasible estate of inheritance in fee simple of and in all and singular the above granted and described premises with the appurtenances, and hath good right, full power, and lawful authority to grant bargain, sell and convey the same in manner and form as aforesaid; and that the said party of the second part his heirs and assigns shall and may at all times hereafter peaceably and quietly, have, hold, use, occupy, possess and enjoy the above granted premises and

every part and parcel thereof with the appurtenances without any let, suit, trouble, eviction, molestation or disturbance, of the said party of the first part, their heirs or assigns or any other person or persons lawfully claiming or to claim the same, and that the same now are free, clear discharged and unencumbered of and from all former and other grants, titles, charges, estate, judgments, taxes, assessments and encumbrances of what nature or kind soever; and also the said parties of the first part and their heirs and all and every person or persons whomsoever lawfully or equitably claiming any estate, right, title interest, of, in or to the herein before granted premises by, from or under, or in trust for them shall and will at any time or times hereafter upon the reasonable request and at the proper Costs and Charges in the law of the said party of the second part, his heirs and assigns, make, do, and execute or cause to be made done or executed all and every such further and other lawful and reasonable acts conveyances and assurances in the law for the better and more effectually vesting and confirming the premises hereby granted or so intended to be, in and to the said party of the second part his heirs and assigns forever as by said party of the second part his heirs or assigns, or his or their Counsel learned in the law shall be reasonably advised or required. And the said Henry Winthrop Sargent for himself and for his heirs the above described and hereby granted and

released premises and every part and parcel thereof with the appurtenances unto the said party of the second part his heirs and assigns against the said parties of the first part and their heirs, and against all and every person and persons whomsoever lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend

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

Sealed and delivered in presence of
Sidney C Herbert

Henry W. Sargent (Seal)
Caroline Sargent (Seal)

Kings County
City of Brooklyn ss.

On this Sixth day of October A D 1847 before me personally appeared Henry W. Sargent and Caroline his wife known to me to be the individuals described in and who executed the foregoing deed of conveyance and severally acknowledged that they executed the same, and the said Caroline in a private examination apart from her husband, acknowledged she executed the same freely and without any fear or compulsion from her said husband

Sidney C Herbert
Commissioner of Deeds

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State of New York
County of Kings ss.

I John M Hicks Clerk of the County of Kings, do hereby Certify that Sidney C Herbert whose name is subscribed to the Certificate of proof or acknowledgment of the annexed instrument and thereon written was at the time of taking such proof or acknowledgment a Commissioner of deeds in and for the City of Brooklyn in said County dwelling in said City. Commissioned and sworn and duly authorized to take the same, and further that I am well acquainted with the hand writing of said Commissioner and verily believe the Signature to said Certificate of of proof or acknowledgment is genuine. And I further certify that said instrument is acknowledged according to the laws of this state

In Testimony whereof I have hereunto set my hand and affixed the Seal of the said County this sixth day of October 1847

Seal

John M. Hicks Clerk

State of Illinois }
County of Peoria }

Recorders Office

I Charles Kettelle Recorder in and for said County of Peoria do hereby Certify the within deed is duly recorded in said Office in Book C pages 531 and 532 on this 29th day of October A.D 1847

Fees $ 1.95

Charles Kettelle R.P.C.

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State of New York
City and County of New York } ss On this Twenty Seventh day of February 1862 before me personally appeared Henry W Sargent known to me to be the same person described in and who executed the within deed and acknowledged before me that he executed the same

In witness whereof I have hereunto set my hand and affixed my Seal of Office the day and year last above written

Official Seal

M. S. Thompson
Notary Public

State of New York
City and County of New York } ss

I Henry W Genet Clerk of the City and County of New York and also Clerk of the Supreme Court of the said City and County the same being a Court of Record, do hereby Certify that M. S. Thompson whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument and thereon written was at the time of taking such proof or acknowledgment a Notary Public in and for the State of New York dwelling in said City Commissioned and Sworn and duly authorized to take the same, and further that I am well acquainted with the hand writing of such Notary Public and verily believe that the signature to the said Certificate of proof or acknowledgment is genuine I further Certify that said instrument

is executed according to the Law of the State of New York

In Testimony whereof I have hereunto set my hand and affixed the Seal of the said Court and County the 7 day of April 1862

Official Seal

H W Genet
Clerk

To the admission of which for the purpose aforesaid the plaintiff objected but same were considered by Court

The defendant in Order to support said objection also offered in Evidence to the Court a Deed from William C H Waddell assignee in Bankruptcy of the said plaintiff to John Cockle Conveying the land in Controversy and the several Certificates thereto annexed which said deed and certificates thereon are as follows

Whereas by an Order of the District Court of the United States of America for the Southern District of New York, sitting in Bankruptcy under and by virtue of an Act entitled "An Act to establish a uniform System of Bankruptcy throughout the United States" passed on the nineteenth day of August in the year One Thousand Eight Hundred Forty One, it was on the fourth day of February in the year 1843 duly, decreed and declared

in the words and figures following, to wit;

In Bankruptcy

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At a District Court of the United States of America held for the Southern District of New York at the City Hall of the City of New York on Saturday the fourth day of February in the year One Thousand Eight Hundred and forty three

Present Samuel R Betts District Judge

Anson Blake of the City of Brooklyn N.Y. having on the Twenty fourth day of December 1842 filed a petition duly verified, praying to be declared a Bankrupt and satisfactory proof being made of due publication of notice to all persons interested to appear in Court, and Show Cause against said petition; And the Court being now moved to grant the prayer of said petition and no Cause being shown to the Contrary, and the petition and proofs having been inspected and Considered by the Court, and having been found in conformity with the requirements of the Act of Congress, it is thereupon, on motion of Mr A Thompson of Counsel for the petitioner, Ordered and Decreed by the Court that the said Anson Blake be and he is hereby declared and deemed a Bankrupt pursuant to the Act of Congress, entitled "An Act to establish a Uniform System of Bankruptcy throughout the united States passed August 19, 1841

And it is furthermore ordered by the Court, that the Clerk certify and deliver this Decree to William C. H. Waddell, the Official or General Assignee in Bankruptcy

appointed and designated under the Rules and Regulations of the Court

I. Charles D Betts, Clerk of the said Court, do Certify that the above Orders and Decree were this day made by the Court, and duly entered in the docket of Bankrupt proceedings

Chas. D. Betts Clerk of the District Court of the United States, for the Southern District of New York

And Whereas, I. the said Wm. Coventry H. Waddell, had before the day of the date of the decree aforesaid, been duly appointed by the Circuit and District Courts of the United States for the Southern District of New York, Official or General Assignee in Bankruptcy, and given a bond, pursuant to the said Statute and the Rules of the said Courts respectively as appears by orders duly entered on the Minutes of the said Courts respectively in the following words and figures, to wit;

At a Stated Term of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit, held at the City Hall, in the City of New York, on Tuesday the fourth day of January, in the year of Our Lord One Thousand Eight Hundred and Forty Two

Present, The Honorable Smith Thompson, One of the Justices of the Supreme Court, of the United States of America, and Samuel R Betts District

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Judge

Ordered, That William Coventry H Waddell,

85 be appointed the Official or General Assignee as required by the Rules this day adopted, in Cases arising under the Act entitled "An Act to establish a uniform System of Bankruptcy throughout the United States" passed August 19, 1841. A Copy

J W Metcalf, Clerk (L.S.)

At a Stated Term of the District Court of the United States of America for the Southern District of New York, held at the City Hall, in the City of New York, on Tuesday the fourth day of January, in the year of our Lord one Thousand Eight Hundred and Forty Two

Present The Honorable Samuel R Betts

District Judge

Ordered that William Coventry H Waddell, be appointed the Official or General Assignee as required by the Rules this day adopted in Cases arising under the Act entitled "An Act to establish a uniform System of Bankruptcy throughout the United States". passed August 19, 1841. A Copy

Charles D Betts Clerk (L.S.)

And Whereas, On the 3rd. day of July 1854 an order was made by the District Court aforesaid authorizing the assignee aforesaid to release or convey all the interest which came into the Assignee by the aforesaid Deed in Certain lands lying in the County of Peoria & State of Illinois as hereinafter more

particularly described

Now then, Know all men by these Presents, That. I, William Coventry H. Waddell, Assignee as aforesaid in Consideration of the Sum of One Dollar lawful money of the United States of America to me in hand paid by John Cockle, the receipt whereof I hereby acknowledge, do hereby grant unto the said John Cockle of the City of New York his heirs and assigns forever, all the right, title, and interest which the said Bankrupt had, and which by virtue of the Decrees and Orders above recited, and of the Act entitled "An Act to establish a uniform System of Bankruptcy throughout the United States," as aforesaid, became vested in me, and which I have a right to Convey of, in, and to all of the South half of Section One in Township Eight North of Range Seven East in the County of Peoria State of Illinois

In Witness whereof. I have hereunto set my hand and Seal this third day of July in the year One Thousand Eight Hundred and fifty four

Sealed and Delivered
in presence of
Welson M Dutcher
Geo. C. Baker

Wm Coventry H Waddell (Seal)
Officiae as General
Assignee

United States of America
State of New York
City and County of New York } ss

Be it Remembered

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That on the Ninth day of September in the year One Thousand Eight Hundred and fifty four, before me John Hopper, a Notary Public in the said State of New York duly Commissioned under the great Seal thereof, and residing in said City of New York appeared William Coventry H Waddell Esq who is personally known to me to be the individual described in and who executed the annexed deed and acknowledged the same as his free act and deed in his official Capacity as General assignee in Bankruptcy

Official Seal

In Testimony Whereof I have hereunto subscribed my name and affixed my seal of Office

John Hopper
Notary Public

District Court of the United States
For the Southern District of New York

I George W Morton Clerk of said Court, do Certify that William C H Waddell was duly appointed Assignee in Bankruptcy as set forth in the annexed instrument. And that Anson Blake received his decree in Bankruptcy at the time therein mentioned on the fourth of February 1843

Seal

In Testimony Whereof I have affixed my name and the Seal of said Court, this July 11th 1854

Geo W Morton
Clerk for the Southern District of New York

Filed in the Recorders Office of Peoria County Illinois July 18th 1854 & Recorded in Book G. A. Jacob Gale Recorder

To the Admission of which Plff then Objected

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It was admitted by the plaintiff that the defendant went into possession of the premises in Controversy under John Cockle and held under him

The Court having inspected the proofs then offered by the defendand overruled said objection and permitted said deposition to be read to the Jury. To the Overruling of the said objection and permitting said deed to be read in evidence the defendant then and there by his Counsel objected

The Plaintiff read in evidence without objection a Deed from Ann Davis to the Plaintiff dated August 1st 1855 for the land in Controversy which said deed is as follows

January 14th 1858

This Indenture made this first day of August in the year One Thousand Eight Hundred and fifty five Between Ann Davis of the City of Brooklyn County of Kings and State New York party of the first part and Anson Blake of the same place party of the second part, Witnesseth that the said party of the first part for and in Consideration of the Sum of Ten dollars lawful money of the United States of

America to her in hand paid by the said party of the second part at or before the ensealing and delivery of these presents the receipt whereof is hereby acknowledged hath remised, released, and Quit Claimed and by these presents doth remise, release and Quit Claim unto the said party of the second part and to his heirs and assigns forever all that Certain parcel of land being the Southerly half of Section 1 (one) Township 8 North of the base line, Range 7 (Seven) East of the 4th (fourth) principal Meridian in Peoria County and State of Illinois, Containing Three Hundred and Twenty acres. Together with all and Singular the tenements hereditaments and appurtenances thereunto 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 property possession, claim and demand whatsoever as well in law as in equity of the said party 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.

In Witness Whereof the said party of the first part hath hereunto set her hand and seal the day and year first above written

Sealed and Delivered in the presence of } Ann Davis (Seal)

Cornelius D. Blake }

Charles A. Thompson }

State of New York } ss Be it remembered
County of Kings City of Brooklyn }
that on this Eleventh day of August in the year of our Lord One Thousand Eight Hundred and Fifty five in the City and County aforesaid before me Charles H Thompson a Commissioner residing in said City duly appointed a Commissioner by the Governor of the State of Illinois to take the acknowledgment of deeds &c to be used or recorded in said State of Illinois, personally appeared Ann Davis who is personally known to me to be the person whose name is subscribed to the foregoing Conveyance as having executed the same, acknowledged that she had executed the same for the uses and purposes therein expressed

In witness whereof I have hereunto set my hand and affixed my offical seal as Commissioner of the said State of Illinois at my Office in the City of Brooklyn, County of Kings and State of New York this 11th day of August 1855 Charles H. Thompson Commissioner of the State of Illinois for the City of Brooklyn

Seal

United States of America }
State of Illinois } ss I Alexander Starne Secretary of State of the said State of Illinois do hereby certify that Charles H Thompson before whom the acknowledgment of the foregoing instrument was taken is now and was at the time of taking thereof a Commissioner of said State in and for the City of

Brooklyn in the State of New York duly authorized and empowered by law to take the same, that I have compared the signature to the foregoing Certificate and the impression of his seal thereto attached with the signature of said Commissioner and the impression of his seal deposited in my Office and verily believe the same to be genuine

In Testimony whereof I have hereunto set my hand and affixed the Great Seal of the State at Springfield this fourth day of October A.D. 1856

Seal

Alexander Starne
Secretary of State

State of Illinois }
Peoria County } ss I Enoch P. Sloan Clerk of the Circuit Court & Ex Officio Recorder for the County of Peoria in the State of Illinois do hereby Certify that the foregoing is a full & Correct Copy from the Records of a deed & of the Certificate of acknowledgment thereof as the same Stand Recorded on Page 448 in Book W. A. in the Recorders Office of said County

Seal

In Witness whereof I have hereunto set my hand and affixed the seal of the said Circuit Court at my Office in Peoria this 12th day of May A.D. 1860

Enoch P. Sloan Clerk
& Recorder

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The Plaintiff then offered to read in evidence the deposition of Mary Anne Martindale to which the defendant objected; but the Court permitted that part of said deposition to go to the Jury relating to the plaintiff being the Custodian of the papers of Ann Davis, which said deposition is as follows

The Deposition of Mrs Mary M Martindale of Summit in the County of Union and State of New Jersey a witness of lawful age, produced, Sworn & examined on her Corporal Oath on the Twenty fourth day of July in the year of Our Lord One Thousand Eight Hundred and Sixty at the Office of A & M. S. Thompson No 25 Nassau Street in the City & County of New York, in the State of New York by me Andrew Thompson a Commissioner duly appointed by a Dedimus Protestatem or Commissioned out of the Clerks Office of the Circuit Court of Peoria County in the State of Illinois bearing Teste in the name of Enoch P Sloan, Clerk of the said Circuit Court with the Seal of the said Court affixed thereto and to me directed as such Commissioner for the examination of the said Mary M Martindale with others as witnesses in a certain Suit and matter in Controversy now pending and undetermined in the said Circuit Court wherein Anson Blake is plaintiff & James L. Tash is defendant in behalf of the said plaintiff as well upon the Cross Interrogatories

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of the defendant as on the Interrogatories of the plaintiff which were attached to or enclosed with the said Commission and upon none Others, The said Mary M Martindale being first duly Sworn by me as a witness in the said Cause previous to the Commencement of her examination to testify the truth as well on the part of the plaintiff as the defendant in relation to the matters in Controversy between said plaintiff & defendant so far as she should be interrogated testified and deposed as follows

Interrogatory 1st. What is your name, age & place of residence

Answer to First Interrogatory. My name is Mary M Martindale; my age is thirty four years & I reside at Summit in the County of Union & State of New Jersey

Interrogatory Second. Are you acquainted with either of the parties to this suit or related to either & if so which

Answer to Second Interrogatory. I am acquainted with the plaintiff and am his daughter but am not acquainted with the defendant

Interrogatory Third. State whether you know Mrs Ann Davis - if so was she related to you & how & how related to Anson Blake, is she deceased & if so when did she die?

Answer to Third Interrogatory. I Knew Ann Davis – She
94 was my Grand Mother and Mother in Law to Plaintiff – She is deceased and died May 30th 1858

Interrogatory Fourth. State whether you Know of said Mrs Davis having property of her Own – if so how long have you known it, and State whom she let have the said property if you know, Also State who had the keping of her papers & deeds relative to her property

Answer to Fourth Interrogatory. I do Know of Mrs Davis having property of her own – I know it as long back as I can remember, She let Father have her property when the money came from England, My Father the plaintiff had the keping of her papers & Deeds relating to her property – Subsequently in 1839. Mrs Davis bought Considerable real estate, part of it at Auction which was situated in the City of Brooklyn – this Mrs Davis afterwards sold to different persons, & part of it to the plaintiff

Interrogatory Fifth. State whether you Know of said Mrs Davis making any donation to Bishop Chase of Illinois – if so when and of what did it Consist

Answer to Fifth Interrogatory. I Know Mrs Davis made Bishop Chase a donation – it was about the year 1842 and it Consisted of land in Peoria

Interrogatory Sixth. State whether you know Cornelius D. Blake, if so state whether he was related to you & how - is he deceased and at what age & when did he die?

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Answer to Sixth Interrogatory. I Know Cornelius D Blake he was related to me, he was my brother. - he is deceased - he died at the age of 27 years or would have been 27 on the September following - he died on the first day of January 1856

Seventh Interrogatory. Do you know any other matter material to either party to this suit - if so State the same here

Answer to Seventh Interrogatory. I was present when Bishop Chase came & thanked my Grand Mother for her donation of land in Peoria - I have seen a deed from Henry Winthrop Sargent & Caroline his wife to Anson Blake the plaintiff dated the 1st. day of October 1840; recorded in the State of Illinois County of Peoria (Recorders Office) Book S pages 531 & 532. 29th day of October 1847, which I Know so far as the writing is concerned is in the handwriting of my deceased Brother Cornelius D Blake as he wrote when he was an adult - it could not have been written by him at any time near to its date. I was acquainted with my deceased brothers handwriting from his infancy to his death & have repeatedly seen him write

A T Comr

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Cross Interrogatories & the answers thereto on the part of the defendant

First Cross Interrogatory. If you know any thing about the property of Ann Davis, State fully how you have obtained your knowledge & whether you know any thing except what you heard from her and others, or if you have any personal knowledge about her owning property - State in what it consisted, whether real or personal property & how much of each & where the same is situated & how much it was worth, State fully & at large all your knowledge of these matters & how you acquired such knowledge

Answer to 1st Cross Interrogatory. I obtained my knowledge of Ann Davis' property from seeing various Deeds respecting it & being present at different conversations with her lawyer concerning the same. I know nothing about her property except what I heard from Mrs Davis her lawyer & others & from seeing the Deeds & being present when she bought personal property, part of which she gave to me & from her leaving by her will to different devisees, real & personal property at the time of her death - her property consisted of real & personal property both - the most of her property was real estate situated at Brooklyn about worthless at the time it was purchased in 1839 and very much encumbered - a large part was sold to pay off encumbrances - I could not State for a Certainty

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A T Comr

the value of her real estate at the time of her death I think Mrs Davis received from $6000. to $8000 from England about 1836 – I afterwards knew her to have household furniture and a piano (among other things) worth from $300 to $500 which she presented to me and other personal property that I cannot particularly specify – her property real and personal at the time of her death was worth about $25.000. as I believe

Second Cross Interrogatory. Do you know any thing further of benefit to the defendant – if so state the same fully & particularly

Answer to Second Cross Interrogatory. I know of nothing further than what I have stated

Mary M Martindale

Sworn & subscribed before me at said City of New York the 24th day of July 1860

A. Thompson

Comr

To the ruling of the Court in permitting any part of said deposition being read to the Jury the defendant then and there by his Counsel objected and excepted

The Plaintiff then read in evidence without objection the Deed from Henry W Sargeant to

Anson Blake dated October 1st 1840 together with the acknowledgment which is as follows

This Indenture made the First day of October One Thousand Eight Hundred and Forty between Henry Winthrop Sargent of the the City of New York, merchant, and Caroline his wife of the first part and Anson Blake of the City of Brooklyn of the Second part, Witnesseth; That the said parties of the first part for and in Consideration of the Sum of Ten Thousand lawful money of the United States to them in hand paid by the said party of the second part at or before the ensealing and delivery of these presents the receipt whereof is hereby acknowledged and the said party of the second part, his heirs executors and administrators forever released and discharged from the same by these presents, have granted, bargained, sold, aliened, remised released, conveyed and confirmed and by these presents do grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part and to his heirs and assigns forever, all the following tracts, parcels or pieces of land situate lying and being in the County of Peoria in the State of Illinois, that is to say, The West half of the South West quarter of Section

No One, (1) in Township No Eight (8) North of the base line. of Range No Seven (7) East of the fourth Principal Meridian Containing Eighty Acres of land, Also the West half of the South East quarter of Section Number One (1) in Township No Eight (8) North of the base line. of Range No Seven (7) East of the fourth Principal Meridian containing Eighty Acres, Also the East half of the South East quarter of Section number One (1) in Township No Eight (8) North of the base line of Range No Seven (7) East of the fourth Principal Meridian Containing Eighty Acres, Also the East half of the South West quarter of Section No One (1) in Township No Eight North of the base line of Range No Seven (7) East of the fourth Principal Meridian Containing Eighty acres, Together with all and Singular the tenements hereditaments and appurtenances thereunto 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 and 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 and to the same and every part and parcel thereof with the appurtenances, to have and to hold the above granted bargained and described premises with the appurtenances unto the said party of the second part his heirs and assigns to his and their own proper use benefit and behoof

forever

And the said Henry Winthrop Sargent for himself, his heirs, executors, and administrators, doth Covenant, grant and agree to and with the said party of the second part his heirs and assigns, that the said Henry Winthrop Sargent at the time of the ensealing and delivery of these presents is lawfully seized in his own right of a good absolute and indefeasible estate of inheritance in fee simple of and in all and singular the the above granted and described premises with the appurtenances, and hath good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form as aforesaid; And that the said party of the second part his heirs and assigns shall and may at all times hereafter peaceably and quietly have hold, use, occupy, possess and enjoy the above granted premises, and every part and parcel thereof with the appurtenances without any let, suit, trouble, eviction molestation or disturbance of the said party of the first part, their heirs or assigns or any other person or persons lawfully claiming or to claim the same, And that the same now are free, clear, discharged and unencumbered of and from all former and other grants, titles charges, estate, judgments taxes assessments and encumbrances of what nature or kind soever; And also that the said parties of the first part and their heirs and all and every person or persons whomsoever lawfully or equitably

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deriving any estate right title interest, of in, or to the hereby before granted premises by from or under or in trust for them shall and will at any time or times hereafter upon the reasonable request and at the proper Costs and Charges in the law of the said party of the second part, his heirs and assigns make do, and execute or cause to be made done or executed all and every such further and other lawful and reasonable acts conveyances and assurances in the law for the better and more effectual vesting and confirming the premises hereby granted or so intended to be, in and to the said party of the second part his heirs and assigns forever, as by said party of the second part his heirs or assigns or his or their Counsel learned in the law shall be reasonably advised, or required. And the said Henry Winthrop Sargent for himself and for his heirs, the above described and hereby granted and released premises and every part and parcel thereof with the appurtenances unto the said party of the second part his heirs and assigns against the said parties of the first part and their heirs, and against all and every person or persons whomsoever lawfully claiming or to claim the same shall and will Warrant and by these presents forever defend

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

Sealed and delivered in presence of
Sidney C. Herbert

Henry W. Sargent (Seal)
Caroline Sargent (Seal)

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Kings County
City of Brooklyn SS. On this Sixth day of October A D 1847 before me personally appeard Henry W. Sargent and Caroline his wife known to me to be the individuals described in and who executed the foregoing deed of Conveyance and severally acknowledged that they executed the same and the said Caroline in a private examination apart from her husband acknowledged that she executed the same freely and without any fear or compulsion from her said husband

Sidney C Herbert
Commissioner of Deeds

State of New York
County of Kings SS. I John M Hicks Clerk of the County of Kings. do hereby Certify that Sidney C Herbert whose name is subscribed to the Certificate of proof or acknowledgment of the annexed instrument and thereon written was at the time of taking such proof or acknowledgment a Commissioner of Deeds in and for the City of Brooklyn in said County. dwelling in said City and sworn and duly authorized to take the same and further commissioned and that I am well acquainted with the hand writing of such Commissioner and verily believe the signature to said Certificate of proof or acknowledgment is genuine. And I further Certify that said instrument

is acknowledged according to the law of this State
In Testimony whereof I have hereunto set my hand
103 and affixed the Seal of the said County
Seal this sixth day of October 1847
John M Hicks Clerk

State of Illinois } Recorders Office
County of Peoria } I Charles Kettelle Recorder
in and for said County of Peoria do hereby Certify that
within deed is duly recorded in said Office in
Book O pages 531 and 532 on this 29th day of Oct.
ober A D 1847
Fees $1,95
Charles Kettelle
R. P. C.

State of New York
City and County of New York } ss On this Twenty Seventh
day of February 1862 before me personally appeared
Henry W Sargent known to me to be the same per-
son described in and who executed the within deed
and acknowledged before me that he executed the same
In Witnes where of I have hereunto set my hand
official Seal and affixed my Seal of Office the day
and year last above written
N S Thompson
Notary Public

State of New York
City and County of New York } ss I Henry W Genet Clerk
of the City and County of New York and also Clerk of
the Supreme Court for the said City and County, the

same being a Court of Record do hereby Certify that M. S. Thompson whose name is subscribed to the certificate of the proof or acknowledgement of the annexed instrument, and thereon written was at the time of taking such proof or acknowledgment a Notary Public in and for the State of New York dwelling in the said City, commissioned and sworn and duly authorized to take the same, and further that I am well acquainted with the hand writing of such Notary Public and verily believe that the Signature to the said Certificate of proof or acknowledgment is genuine. I further Certify that said instrument is executed according to the law of the State of New York

In Testimony Whereof I have hereunto set my my hand and affixed the Seal of the said Court and County the 7th day of April 1862

Official Seal

H W Genet Clerk

Plaintiff then called David Fash who after being duly sworn testified that he was acquainted with the land in controversy & lived on the adjoining quarter — That the defendant took possession of said land in the Spring of 1858 & has had possession ever since — That in the

105 Month of May 1858 he saw him building fence there, Saw him nailing on boards, That in the Spring of 1858 the defendant built a house upon said land, that a Carpenter from Peoria by the name of Ryus built it, He did not know whether defendant had a tenant living in said house prior to the 12th of November 1858, or not, did not know that any body lived in it in the summer and fall of 1858, Did not know who cultivated said land in the summer and fall of 1858, think Jim Fash did,- Saw defendant frequently fixing up the fences, probably saw him 2 or 3 times a week during year 1858 upon the land, - That prior to Spring of 1858 witness had possession of said quarter for the Plaintiff but at that time Deft. took the possession away from witness by fencing the quarter & building a house on it during the summer of 1858, dont know of any other person having possession of the land or any part of it as tenant of Deft. in summer or fall of 1858 - Know of no person being Defts. tenant on the land 'till last year & year before

The Defendant has had different tenants upon said land since he took possession of it - he never lived upon the land himself, but resides in the City of Peoria

I met the defendant at one time on Kickapoo hill. he told me that he had bought the

land from Mr Washington Cockle, this was some short time before he took possession of it

The Plaintiff here rested his Case

And the defendant in order to maintain the issues on his part offered in evidence the Certified Copy of the petition in Bankruptcy of the plaintiff — the Certified Copy of the Order of the Court appointing an Assignee in Bankruptcy for the plaintiff — the Certified Copy of the Application and Report of said Assignee for Sale of lands of the said Bankrupt; together with the Certified Copy of the Order of Sale of said lands and the Certified Copy of Rule 61 of the United States District Court, Southern District of the State of New York in Bankruptcy which he had before offered and exhibited to the Court in support of his objection to the reading of the deposition of Henry W Sergeant and which are fully and properly set out in this bill of exceptions. All of which the Court permitted to be read in evidence to the jury

The Defendant then Offered in evidence the Deed from William C H Waddell Assignee in Bankruptcy of the plaintiff to John Cockle and the several Certificates attached, which he had before offered

upon the trial and exhibited to the Court in support of his Objection to the reading of the deposition of Henry W Sergeant, which said Deed was dated July 3d. 1854 and is fully and particularly set out in this record in the Connection of the offering in evidence the deposition of the said Henry W Sergeant To the reading of said deed in evidence the plaintiff then and there by his Counsel objected and the Court sustained said Objection and would not permit the defendant to read said deed in evidence, to the ruling of the Court in sustaining said objection and ruling out said Deed the defendant by his Counsel then and there objected and excepted

The Defendant then moved the Court to exclude from the consideration of the Jury the deposition of Henry W Sergeant on the grounds of his interest in the result of the Suit; being liable upon his Covenants of Warranty to the defendant

The Court Overruled said motion and permitted the Jury to pass upon said deposition; to the ruling of the Court in refusing to exclude said deposition from the Jury the defendant by his Counsel then and there objected and excepted

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The foregoing is all the evidence that was offered upon the trial of the Cause

The Plaintiff then asked the Court to give the following instructions to the Jury

2d The Court instructs the Jury that the Plaintiff by the Deeds admitted in evidence has proved that he was seized in fee of the South East quarter of Section One in Township Eight North of Range Seven East of the fourth principal Meridian at the time of the Commencement of this Suit, and that he is now so seized in fee, and the verdict of the Jury should be for the Plaintiff

Given

3 If the Jury find for the Plaintiff the form of their Verdict should be, "We the Jury find that the Plaintiff is seized in fee of the South East quarter of Section One in Township number Eight North of Range Number Seven East of the fourth principal Meridian, and that the Defendant is guilty of unlawfully withholding from said Plaintiff the possession thereof in manner and form as alleged in the Declaration

Given

109 To the giving said instructions to the Jury the defendant then and there Objected, but the Court overruled said objection and gave said instructions to the Jury, to the giving of said instructions to the Jury the defendant then and there by his Counsel Objected and excepted

The Defendant then asked the Court to give the Jury the following instructions

Blake
vs
Tash
} Ejectment

The Jury are instructed that the plaintiff Cannot recover in this Case upon the weakness of the defendants title, but if he recovers at all it must be upon the strength of his own title and before he Can recover he must prove a perfect and Complete legal title paramount to all other titles

Which instruction the Court gave to the Jury

The defendant also asked the Court to give the following instructions to the Jury

2 The Jury are instructed that the burden of proof is on the plaintiff in this Case to prove

Refused

that the defendant was in actual possession of the premises on the 12th day of November 1858, the day when the declaration was served, and if they believe from the evidence that some other person was living or residing upon the land and had actual possession thereof on that day then they will find for the defendant

Refused

If some person other than the defendant had actual possession of the premises on the 12th day of November 1858. the Jury will find for the Defendant even though they may believe from the evidence that such person was the tenant of defendant

But the Court refused to give said instructions to the Jury, and to the refusal of the Court to give said last instructions to the Jury the defendant then and there by his Counsel objected and excepted

The Jury then retired and after Consultation brought in the following Verdict

We the Jury find that the Plaintiff is seized in fee of the South East quarter of Section One in Township number Eight North of Range number Seven East of the fourth Principal Meridian and that the defendant is

guilty of unlawfully withholding from said plaintiff the possession thereof in manner and form as alleged in the Declaration

Oscar Smithson
Foreman

The Defendant then filed a motion to set aside the Verdict and for a new trial, which said motion and the reasons filed therewith are as follows

Anson Blake
vs
James L Fash

} Circuit Court Marshall County May Term 1864

And now comes the defendant by McCoy & Williamson his attorneys and moves the Court to set aside the verdict and grant a new trial in this cause for the following reasons

1st The Court admitted improper evidence asked for by plaintiff

2d The Court refused proper evidence asked for by the defendant

3 The Court gave improper instructions for plaintiff

4 The Court refused proper instructions asked by Defendant

5 The Verdict is against the law

6 The Verdict is against the Evidence

7 The Verdict should have been for the defendant

8 The Verdict is not supported by sufficient evidence

McCoy & Williamson
Attys for defendant

But the Court overruled the motion for a new trial and proceeded to render Judgment upon said Verdict for the plaintiff and against defendant to said decision of the Court in overruling said motion for a new trial and rendering the Judgment as aforesaid the defendant then and there by his Counsel again objected and excepted. And prays that this his bill of exceptions may be signed and sealed, which is accordingly done this 23d. day of May 1864

S. L. Richmond (Seal)

113 And afterwards "to wit" On the 16th day of May AD 1864, Comes the Defendant and files his appeal Bond in the Office of the Clerk of the Circuit Court of said Marshall County, which Bond is in the words and figures following "to wit"

Know all Men by these presents that We James V. Fash and Washington Cockle are held and firmly bound unto Anson S. Blake in the penal sum of Three Hundred Dollars for the payment of which well and truly to be Made we bind Ourselves our heirs Executors & administrators Jointly and severally firmly by these presents

Witness Our Hands and Seals this 11th day of May 1864

The Condition of the above Obligation is such that whereas at the May Term of Circuit Court of Marshall County Illinois Now being in session in and for the County of Marshall, Anson S. Blake recovered a certain Judgment in Ejectment in said Court for One Cent damages, and that he have restitution of the premises, and for Costs in Cause against the above bounden James V. Fash and from which said Judgment the said James V. Fash prayed and Obtained an appeal to the Supreme Court of said State, Now in Case the said Fash shall well and truly prosecute his appeal with Effect and without delay Or in Case of failure, therein shall well and truly pay all Judgments, interest, Costs, and damages in Case the Judgment shall be affirmed; Then the above Obligation to be Void Otherwise to be and remain in full force and Virtue

Ja^{s} V. Fash (Seal)

Washington Cockle (Seal)

On the back of which said appeal Bond there appears the following filing "to wit"

Filed May 16th AD 1864
Sheldon Arnold
Clerk,

State of Illinois }
Marshall County } ss. I Sheldon Arnold Clerk of the Circuit Court in and for said County of Marshall in the State of Illinois, do hereby Certify that the foregoing is a true, full and Complete Copy of the Matters and thengs therein Contained in the Cause of Anson Blake Versus James V. Fash in said Cause therein Mentioned as the same appears of Record in My Office

In testimony Whereof I have hereunto set My Hand and affixed the Seal of said Court at Lacon this 31st day of March AD 1865,

Sheldon Arnold
Clerk

State of Illinois
Supreme Court
James L. Lash, ~~in Error~~ Appellant
vs
Orrin Blake ~~Appellee~~
~~in Error~~.

Third Grand Division
April Term A.D. 1865

And now comes the said James L. Lash appellant and says in the record and proceedings aforesaid there is manifest error in this, to wit,

1st The circuit court erred in receiving improper testimony for the Plaintiff below.

2d The circuit court erred in refusing proper evidence to go to jury asked for by the defendant below

3d The court gave improper instructions for Plaintiff below

4th The court refused proper instructions asked by the defendant below,

5th The circuit court erred in overruling the motion made by defendant below for a new trial

6th The said court erred in rendering judgment for Plaintiff in the court below upon the foregoing Record.

And said Appellant for these and other manifest errors in said record and proceedings prays that this cause be reversed

Williamson & McCoy
attys for Appellant

And the said appellee for joinder in error comes and says that there is no error in any of the said proceedings or judgments

of the Said Court in the said cause as manifested by the said record and this Court will at all times aid and maintain

$6.75 Hopkins for appellee

Anson P. Blake
vs
James V. Funk
Cost Bond

Filed Sept 5, 1865
Leland
Clk

James L Tash
as
Anson Blake

This is an action of ejectment brot by plaintiff below (Blake) to recover possession of the land in Controversy in this suit

The plaintiff on the trial below read in evidence an instrument in writing from Simeon Dolph to Joshua Aikin which was objected to as not containing operative words to convey an estate of inheritance The words are "do hereby assign transfer and set over" "all my right title Claim and demand" &c

But even if the Court should be of opinion that the words "assign transfer and set over" are sufficient to convey the fee simple then as there is no pretense that the acknowledgment is sufficient, the question arises ~~as~~ whether the execution was sufficiently proven to admit the deed in evidence

There being two subscribing witnesses to the deed plaintiff Called Mark Aikin who testified that one of the subscribing witness was dead and the other in California. He then offered the depositions of Philemon Selby and Nelson Selby to prove

the execution of the deed by Dolph.

The testimony of these witnesses fall far short of legal proof of the execution of the deed by Dolph. The first one Philomen Selby testified that he knew Dolph 27 or 28 years ago - that he was a farmer and resided near Magnon a year or more after he first knew him. Now 27 or 28 years is a long time for a witness to recollect and identify the hand writing of a farmer living in the state of Illinois and who perhaps did not write his own name once in six months = This is the more remarkable as the witness in answer to the next interrogatory swears that he dont know that he ever saw him write - The witness further stated - "I think I have seen his hand writing - am satisfied that I have - think I know his hand writing."

The next witness Nelson Selby swears he was acquainted with Dolph from the year 1835 until sometime in 1838 when he left and has had no personal knowledge of him since He says "I am not positive whether I have seen him write but think I have seen him write a good many times, dont think there is any doubt of it - think I am acquainted with his hand writing"

If there is any necessity requiring the proof

of the execution of a deed to prevent fraud and forgery than the rule of law requiring full and certain proof of the execution of a deed should not be departed from. The proof of the execution of a deed should be made as satisfactory to the mind and as certain as an acknowledgment and a Court should scrutinize it as closely before admitting the deed in evidence. It should be a compliance of the law and not an evasion of it - Neither of these witnesses can testify that they ever saw him write, not satisfactorily that they ever knew his hand writing; - nor that they ever had correspondence with him or to any collateral fact to lead the mind of the Court to believe that they can detect the genuineness of Dolphs signature from a forgery = If indeed the witnesses after the grantor Dolph had been absent 27 or 28 years without any circumstance or correspondence to enable them to identify his hand writing from a forgery and without greater certainty than is shown in their testimony can nevertheless be permitted to prove the genuineness of the deed then it is but a farce or a mere matter of form devoid of substance and the Court departed from the better

It appears also from the case that one of the subscribing witnesses resides in California and the plaintiff rather than to be allowed to fritter away so salutary a rule of law should be subjected to ~~the~~ the inconvenience of taking his deposition to prove the genuineness of the deed.

The plaintiff and defendant both claim title through Henry M Sergeant by deed of Warranty dated October 1st 1840 and recorded on the 29th day of October 1847. For the purpose of making a witness of Sergeant the plaintiff executed a release to him dated July 23 1860 and then took his deposition - This he could not do - Where both parties claim through the same source of title and the person from whom they derive title has executed a deed with covenants his interest is - equally ballanced and either party can use him as a witness - but the moment he obtains a release from one party from such covenants he then becomes interested in having the title of the one who has released him succeed in order that his release may be operative. From that time he ceases to be a disinterested

witness - If the party not releasing him should succeed he is still holden upon his Covenants of Warranty while if the person releasing him should succeed he would be discharged and released - No stronger inducement could be made to a witness to induce him to swear falsely or to feel the necessity of a recovery by one party over the other - It is just the interest that disqualifies a witness and no Case so far as my investigations go ever held such a witness disinterested Had not both parties claimed through Sergeant then the Case would be quite different. His interest was no longer balanced after one party released him

The same question arose in regard to the testimony of Mark McAfee who was also a grantor by deed with full Covenants of warranty and under whom both parties claim title but the Court overruled the objection in both cases and permitted the witness to testify in which I think the Court erred

Objection was also made to the introduction of the deed from Berry

F. Lee to Henry W Sergeant on account of not being properly acknowledged - The acknowledgment as set out in the record is clearly bad but as defendants counsel think the clerk omitted a second acknowledgment of the deed we consent that they may exhibit to the court the original deed and if it appears to have been properly acknowledged at the time it was offered in evidence the objection can be overruled

The plaintiff below also offered the deposition of Henry W Sergeant to prove that in 1839 or 1840 witness then being the owner of the land in controversy made a deed of the same to Ann Davis and delivered to plaintiff and that several years afterwards plaintiff induced Sergeant to take the deed made to Ann Davis back and execute one to himself which he did and destroyed the deed first made and ante dated the deed made to Blake the plaintiff

The purpose of this testimony was to defeat the bankruptcy proceedings of the plaintiff and deed made to Cockle of the land in controversy thereunder by showing that the title was in Ann Davis at the time such proceedings were had

The deed to plaintiff Blake bears date Oct 1 1840 and the petition of the plaintiff to be declared a bankrupt was filed December 1842 and he declared a bankrupt February 4 1843 and the decree or order directing the sale of this land in controversy was filed on the 3rd day of July 1854 (See page 72 of Record) and by deed of the assignee dated July 3 1854 duly conveyed to John Cockle (see record 86) And during all which time the title as appears by his own showing was in him (Blake) And there is no pretense that the deed from Sergeant to Ann Davis was ever recorded or that Cockle had in any way notice of it - The title of Blake long before the sale to Cockle under the bankruptcy proceedings was in Blake and recorded in the proper County, being recorded on the 29th day of October 1847 -

Whatever the purpose of Blake might have been in having the land conveyed to Ann Davis and then having the deed redelivered to Sergeant and another executed to him and placed upon record and after which it was by proceedings instituted by himself sold to Cockle, the law will not allow

him to show that the title was not in himself - To do so would only enable him to practice a fraud upon an innocent man, by the record he himself has made - This a court will not suffer him to do - He is estopped by the record from showing that the land did not belong to him at the time of the sale or at any time previous thereto

When the plaintiff had rested the defendant in order to show title in himself offered in evidence the petition of plaintiff to be declared a bankrupt and the proceedings had thereon all of which were regular together with certified copy of rule 61 of the district court of the United States for the Southern district of New York where the proceedings were had. Also a deed made by the assignee under such proceedings all of which were in due form - Also a certified copy of the order or decree directing the sale by the assignee of this land in Controversy

I presume it will not be contended but that the certificates and deed were regular and in due form and

will therefore say nothing upon their sufficiency. The point made below was that the certified copy of the decree declaring Blake a bankrupt was not offered in evidence And this raises the single question of whether it is necessary that the decree declaring him a bankrupt is necessary. We contend that it is not. The law of Congress specifies what orders and decrees the deed shall contain and makes them when set out in the deed as was done in this case evidence The recitals in the deed are made evidence by Statute of the bankruptcy assignment to assignee and conveyance to the assignee. The only decree ~~and~~ or order then that is necessary to show title in the purchaser is the order or decree directing the sale by the assignee and if so the Court erred in excluding the deed from the consideration of the Jury = That such has been the construction placed upon the statute I refer the Court to ~~27~~ 26 Bar 252 & Hillaire on Bankruptcy page — In ~~27~~ 26 Bar the Court say "An assignee in bankruptcy has no power to sell and convey

the property of the bankrupt without an order of the court" "The order cannot be proved by the recitals in the deed such recitals are only evidence of the bankruptcy and appointment of the assignee and the consequent conveyance to him" If this be the proper construction of the law then the deed should have gone to the Jury and would have shown paramount title out of the plaintiff. I think also a careful consideration of the provisions of the act shows this to be the true construction, nor do I think a different construction has ever been placed upon such law by the Supreme Court of this State or any other.

The 15th section of the bankrupt law provides that a copy of any decree of bankruptcy, and the appointment of assignees as directed by the third section of the act shall be recited in every deed of land sold by the assignee This we say contemplates that the decree of bankruptcy and appointment of assignees is but one order or decree and the law provides that the recital of such order or decree shall be sufficient evidence thereof and that the title was vested in

the assignee - But section three further provides that the ~~same~~ property shall be vested in the assignee by virtue of the same decree, not decrees in ~~the~~ bankruptcy = The same section (3) then provides that the assignee shall be vested with all the rights &c to sell &c subject to the orders and directions of the ~~said~~ court = Now by this law the deed is not made evidence of the order for the sale of the property but is for the decree of bankruptcy which in and of itself includes the appointment of the assignee. When the Statute empowers a person to sell land subject to the order of a court that order will not be presumed but must be proven and the Statute having made the recital of the first decree evidence and not the second the second must be proven = If this be not so then the decree of bankruptcy & appointment of assignee which is in fact but one decree must both be proven and makes the recitals of the deed prove nothing and the order of sale ~~not~~ would not then be required at all to sustain the deed - for there is by the terms of the Statute but ~~one~~ proof of decree

required. If I am correct in this then the instructions verdict and Judment were wrong and should be reversed

M. Williamson

192

James L Tash
vs
Amos Blake

Argument of
Plaintiff

Filed April 13 1865
Leland
Clk

IN THE SUPREME COURT OF THE STATE OF ILLINOIS.

APRIL TERM, A. D. 1865.

JAMES L. FASH.
vs.
ANSON BLAKE.
} *APPEAL FROM MARSHALL.*

The first point made by Appellant is that the written instrument from Dolph to Aiken, is not a deed which conveys the interest of Dolph in the land to Aiken, and it is also said that the execution of the paper by Dolph is not proved.

The appellant objected to the introduction of this "deed." 1st, because it was no "deed." 2d, because there was no proper acknowledgement.

This is rather an argumentative objection against the admission because the execution was not proved; but as it was treated below as placed on that ground perhaps it may do.

We are unable to percieve a distinction between a "conveyance" and "transfer" of real-estate. We consider the two words as synonymous, and this view is sustained by the authortiies. Webster defines "transfer" as "a conveyance of right title or property, either real or personal from one person to another, either by sale, by gift, or otherwise," and such is the well established definition of the word.

In the case of Jackson ex dem., &c *vs.* Fish et al., 10 John 456, the words "release" and "assign" were held sufficient. A transfer for a valuable consideration is a bargain and sale, and it cannot mean any thing else. If there be a consideration, a grantor and grantee, a clearly expressed intention that the land shall cease to belong to the grantor, and become the property of the grantee, and a seal, it is enough. The words heirs and assigns are of course now unnecessary.

Purple's Statutes page 156, sec. 13.

Chiles et al. *vs.* Conley's heirs, 20 Dana 22.

4 Kents Com., pages 460, 461, 462 and 465.

Was the fact that Dolph executed the deed proved *prima facie*?

As the abstract does not show what the evidence of execution was, we here print the substance of it. The foundation for evidence of the hand-writing was laid by the testimony of Mark M. Aiken. One of the subscribing witnesses was dead, the other in California, and evidence of the hand-writing of the grantor was proper.

Newsom *vs.* Luster, 13 Ill. 175.

Philemon Selby, whose deposition was taken, April 1st, 1863, in Knox County, states that he is 54 years of age; that he knew Dolph when he first came to Knox County, 27 or 28 years ago, that Dolph lived in the neighborhood of witness, a year or more; that he worked for the brother-inlaw of witness and for witness.

Witness does not know that he has seen Dolph write; thinks he has, is pretty confident that he has seen him write a great many times; is satisfied that he has seen his hand-writing; thinks he knows his hand-writing, has had his handwriting in his possession for a great many years, but it is now mislaid, has examined the signature to the deed; believes it to be the handwriting of Dolph; from his acquaintance with the handwriting would say it is his.

Nelson Selby, whose deposition was taken at the same time and place, and whose age was 57, says he was well acquainted with Dolph from 1835 till 1838 when he left there; is not positive whether he has seen Dolph write, but thinks he has a good many times. Don't think there is any doubt of it; thinks he is acquainted with his handwriting; examines the signature to the deed, and says he has no doubt that the signature is that of Simeon Dolph, has heard that Dolph is dead.

Can this court say that this evidence does not make a *prima facie* case of the execution of the deed, and that in the absence of all evidence to the contrary, the verdict should be disturbed because it is against the weight of evidence?

This deed was either executed by Dolph or it is a forgery. Could not the defendants have shown that the signatures of the subscribing witnessess were not genuine? Billington has attempted to certify to the acknowledgment as a notary public. He was a man whose handwriting could have been proved by the defendants; the forgery of his signature could have been shown readily, if the signature was not his. Is it probable that Dolph and his representatves would have abondoned the land if he had not sold it, and if he had sold it to any one else, would not we have had some evidence on the part of the defendants on this subject.

Under all the circumstances, the evidence of handwriting instead of being very weak is pretty strong, enough so at any rate to make the weight of probability sufficiently strong for a civil case.

The 2d. point is that Mark M. Aiken and Henry W. Sargeant have been released into incompetency by the plaintiffs below.

Aiken did not testify in relation to the execution of a deed of land which he ever conveyed. Aiken was a grantor of the East half of the quarter, the Dolph deed was of the West half. He could not possibly be interest in the question whether the plaintiff or defendant owned the West half.

If Sargeant was not a competent witness because interested, the question should not have been raised for the first time on the trial. It should have been disposed of, on a motion to suppress his deposition before the trial commenced.

Mosher *vs.* Knox College, 32 of Ill. 155.

But the idea that the release of Sargeant, by us has rendered him incompetent, is an amusing fallacy of our ingenious opponents.

In the first place, it does not appear that the plaintiff and defendant both derive title through the deed from Sargeant to Blake. The defendant did not prove any title at all, and when no title is proven, except on the part of the plaintiff, it might be proper to release a grantor with covenants in the plaintiff's chain; but where it appears that both plaintiff and defendant derive title through the same

deed, the grantor in that deed has no interest in the question whether the plaintiff or defendant has the better title.

If B. is a common source of title, and the question is, whether a conveyance by him to C. or one to D, is the older paramount one, and C has executed a warranty deed to the plaintiff and D. to the defendant, C. and D. may each be interested in the question whether the title of the pltff. or defendant is the paramount one, but A., who may have given a warranty deed to B., has no interest at all in the controversy, because it is conceded by both parties that the title passed by the deed from A. to B.; and consequently no liability of A. to either plaintiff or defendant is shown to exist, because no breach of the covenants is shown. Indeed the contrary appears, both parties claiming that the title did pass by the deed from A. to B., it is a concession that there was no breach of the covenants.

The question in this case is whether Blake has parted with his title to the defendant's landlord, or has retained it, and it makes no difference to Sargeant whether Blake has parted with the title or not.

There was no interest to release, no balance of interest to be disturbed, and the release was entirely unnecessary and a nullity, if it was made to appear that plaintiff and defendant's landlord did both derive title through the Sargeant deed. The covenants in the Sargeant deed, if broken, must have been broken because there was an older and paramount title to his. The breach in his covenants, in the deed to Blake must have originated out of some act of his, or of some one else committed anterior to the time of his grant to Blake. Nothing of that kind appears and both parties concede by claiming through him alone that such was not the case.

To repeat the same in other language. The vitality of appellant's objection depends wholly upon the admission that the title past according to the tenor of Sargeant's deed to Blake, in other words, that there is no breach of Sargeant's covenants, consequently no liability on them to either party, hence a release by either party releases nothing, and cannot effect his interest, for it makes no difference to Sargeant whether covenants upon which there is no liability, are owned by one who has released them or one who has not. There is nothing in the point made, though at first blush it is a little puzzling.

The point made about the estoppel is not well taken, for this reason which is all that is necessary now.

Until the defendant proves that he has a conveyance from Blake or his assignee, the conduct of Blake in recording a deed which bore date as of a time before the real estate, which Blake owned, passed by the decree in bankruptcy to the assignee does not injuriously affect the defendants in this suit. No authority is needed to show that he who claims to be injuired by the act of another must show that he had some interest, which the act claimed as an estoppel would effect. If the landlord of the defendant claims a title to the land because of the estoppel, when he would not have had it, were it not for the estoppel, he must show some title which has been benefitted by the estoppel. And if he has no interest at all he cannot have been affected at all by it. The question therefore is not now in the record, but if the bankrupt deed shall hereafter get into the case it might become a question.

Actual, and not future, probable or possible, questions are prehaps all the court is diposed to decide, and we do not propose to discuss what ought to be decided hereafter. The assignee professed to be selling, very cheap, a shadow of title (71), and it is reasonable to suppose that the purchaser knew that he was purchasing a shadow, and the date of the acknowledgment of the Sargeant deed was well calculated to apprize purchasers that the deed was not delivered to Blake till long after its date. At any rate a prudent man ought to have enquired into the matter before he spent his "dollar" in the purchase of the land.

The deed of Waddell, commissioner in bankruptcy, to John Cockle was properly excluded because it was not accompanied by a certified copy of the order declaring Blake a bankrupt. We think beyond doubt that the Commissioner's deed must be accompanied and supported by this decree, properly authenticated, before it can be read in evidence.

The 15th section of the bankrupt act, which is set out pretty fully in the opinion of the Court in Holbrook *vs.* Coney, bottom of page 550, 25th Ill., provides "that a copy of the decree in bankruptcy and the appointment of the assignee, as directed by the third section of the act, shall be recited in every deed for land belonging to the bankrupt sold and conveyed by the assignee by virtue of the act. And that such recitals, *together with* a certified copy of such order, shall be full and complete evidence of the bankruptcy and assignment to validate the deed, and that all deeds containing such recitals and supported by such proof, shall be effectual to pass the title of the bankrupt," &c.

The act requires that the deed shall contain certain specified recitals, and be "supported" by "a certified copy of such order." And the purpose of the certified order is declared to be to "validate the deed." What is meant by the term "such order?" Appellant contends that it means the order of the bankrupt court directing the sale of the estate. This we think is not the case, but claim that it refers to the same writing required by the former part of the section to be recited in the deed, and which the act there terms "the decree in bankruptcy." The act provides that a deed containing the proper recitals, "and supported by such proof, shall be effectual," &c. What proof is here referred to as a necessary support to the deed? Very clearly the certified copy of the decree in bankruptcy alluded to in the former part of the act. The Court three times in the subsequent portion of the opinion in the same case, page 551, in speaking of the said certified order, term it "a certified copy of the decree."

And in the case of Joy et. al. *vs.* Berdell, 25 Ill, page 542, the Court recite that part of the act providing that "all deeds containing such recitals, and supported by such proof, shall be effectual," &c., and expressly say, "the proof here referred to is declared by this section to be a certified copy of the order declaring the applicant a bankrupt."

In Holbrook *vs.* Brenner et. al., 31 Ill., 512, the Court held that the deed of a commissioner in bankruptcy, with the required recitals and accompanied by a certified copy of the decree in bankruptcy, is a compliance with the requirements of the act. We regard it settled by the Court that the certified order required to accompany the deed is not the order of sale but the decree in bankruptcy.

There is manifest propriety, and in the judgment of Congress, a necessity, that in order to make the deed of a commissioner in bankruptcy a foundation of title, it should be supported by proof, *ali unde*. It must come accompanied with some evidence of authenticity *de hors* itself; something which an unscrupulous commissioner or a fraudulent claimant could not readily manufacture. And the act therefore requires that the claimant under such deed shall not only produce the deed itself, which shall evidence all that the law requires the commissioner to do, but also, under the seal of the Court and the hand of its authenticating officer, evidence that the Court, by its decree, has divested the title from the bankrupt & vested it in the commissioner, and authorized the steps which the deed recites. And in our judgment the Courts will be slow to dispense with a safeguard so proper and so clearly required by the statute. There are two links in the chain of title from the bankrupt to the grantee of the assignee. The decree of bankruptcy is by the act of Congress a conveyance of the title from the bankrupt to his assignee. Congress properly required that both links in the chain should be proved, and never could have meant to dispense with the primary evidence of the first link by a substitution of a mere declaration of the assignee as sufficient.

In the case cited on the other side (27 Bar. 252), Judge Strong seems to have been very indignant agrinst a prowling assignee (see the same case in the 23 of Bar. 501), who had purchased for $2,50 an equity of redemption from an assignee in bankruptcy, who had become such pending a bill to forclose against the bankrupt. His just indignation against the prowler undoubtedly disturbed somewhat the balance of his judgment, and he has in the opinion delivered by him, said some things and made some decisions which it would perhaps have been better to have omitted. He decided that the assignee's deed conveyed no title unless it affirmatively appeared that there was an order of Court for him to sell, and that if the sssignee did not make the sale till after the expiration of two years from the date of the bankrupt decree, the sale was void.

Our court seems to consider these views of Judge Strong as not entirely sound. After reading the opinion of Justice Walker in Holbrook *vs.* Brenner, 31 Ill. 513, the opinion of Judge Strong really seems weak in relation to the sale after two years. And if the decree in bankruptcy and deed are alone sufficient, our court does not coincide with Judge Strong in relation to affirmative evidence of an order of sale. Among other eccentricities, there is a dictum, not a decision "that the recitals of the assignee's deed are only evidence of the bankruptcy and appointment of the assignee, and the consequent conveyance to him." In striving to show that the recital of the assignee's deed was not evidence of an order of sale, he incautiously said that the decree in bankruptcy could be proved by recital in the assignee's deed. If the prowling assignee had not had a certified copy of the decree in bankruptcy, and this objection had been made, we fear there would have been some serious difficulty in convincing his Honor that the recital in the assignee's deed would have been sufficient.

The omitted certificate of acknowledgement of Benjamin F. Lee will be found supplied in an agreement attached, between pages 50 and 51 of the record.

JOHNSON & HOPKINS
LELAND & BLANCHARD,
For Appellee.

James L Clark
192 vs
Anson Blake
appellees Brief
and
Argument

25

Filed May 3. 1865
L Lawrence Clk

Record and Deeds A Acknowledgement of deed from B Free to H W Sargent which is to be substituted by agreement before trial

IN THE SUPREME COURT OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1865.

JAMES L. FASH, APPELLANT,
vs.
ANSON BLAKE, APPELLEE.

This was an action of ejectment brought by Blake, the appellee, against Fash, the appellant, to recover possession of the S. E. 1, 8 N., 7 East, in Peoria county, commenced at November term, 1858, and taken by change of venue to Marshall county, and tried at the May term, 1864, of the Marshall Circuit Court.

Record page 11 At the June term, 1863, defendant Fash entered his motion to suppress the plaintiff's depositions taken in said cause, which was overruled.

Record page 18 The plaintiff below, upon the trial, offered in evidence a register's certificate, dated March 22, 1862, showing that on the 12th day of June, 1835, Simeon Dolph purchased the W. ½ S. E. quarter of said land, of the United States. H. B. Hopkins was sworn to prove the signature of the register, and testified that he had had correspondence with Elkin, the receiver, and knew his hand writing, and that the signature was genuine, and that at the date thereof said Elkin was acting register.

Record page 20 Defendant below objected to receive said receiver's certificate in evidence, but the objection was overruled and exception taken.

Plaintiff then gave in evidence the patent for the W. ½ of S. E. quarter of the land in said controversy to Simeon Dolph, dated May 25, 1841.

Record page 21 Plaintiff then offered in evidence a deed from Simeon Dolph to the W. ½ S. E. 1, 8 N., 7 E., in the following words;

Witness my hand and seal this 12th day of June, A. D. 1835.

SIMEON DOLPH [seal].

Witness, P. Lott,

Chas. W. Billington.

Taken and subscribed before me, Charles W. Billington, a notary public in and for the county of Adams, and State of Illinois, this eleventh day of June, 1835. In testimony whereof I have hereunto set my hand and affixed my seal of office the day and year above written.

CHAS. W. BILLINGTON, N. P.

This is not under seal. Defendant objected to the same going in evidence 1. Because it was not a deed. 2. Because there was no proper acknowledgement.

Record page 23 Plaintiff then called Mark M. Aiken as a witness, who was objected to on the ground that he had executed a warranty deed to Joshua Aiken for the E. ½ of the land in controversy. Plaintiff then delivered a release to witness, releasing him from his covenants in the deed so executed by him, and again offered him as a witness, which was objected to by defendant below. Objection overruled and defendant excepted.

Aiken then testified that Peter Lott, one of the subscribing witnesses, went to California in 1849 or 1850. Had seen him back once since, and that he resides now in California. That Billington is dead.

Record page 27 Plaintiff then offered the depositions of Philemon Selby and Nelson Selby, to prove the signature of the grantor of the pretended deed, both of which depositions were objected to on the ground that the witnesses could not show that they were sufficiently acquainted with the hand writing of the grantor, and that they did not prove the same to be his signature. Also that the hand writing of the attesting witnesses should have been proven.

Record page 33 But the Court overruled the objections and allowed the deed to be read in evidence, and defendant excepted.

Record page 35 Plaintiff then gave in evidence a patent to the E. ½ of said land, issued to Baptist Hardy, August 10, 1838.

Record page 37 He then offered in evidence a deed from Baptist Hardy to Mark M. Aiken, dated February 19, 1834. To the giving in evidence of which deed defendant objected and excepted.

Record page 40 Plaintiff then gave in evidence against the objection of defendant a warranty deed from Mark M. Aiken to Joshua Aiken, dated May 29, 1835.

Record page 43 Plaintiff then offered and read in evidence against the objection of defendant a deed from Joshua Aiken and wife to Benj. F. Lee, dated Nov. 9, 1835.

This deed was not properly acknowledged or proven, and defendant excepted to the same being read in evidence. The certificate does not show that Joshua Aiken ever acknowledged the deed.

Record page 47 Plaintiff then gave in evidence deed from Benj. F. Lee to H. W. Sergeant, dated Nov. 13, 1837.

Record page 54 Plaintiff then, against the objection and exception of the defendant, read in evidence the deposition of Henry W. Sergeant, one of the grantors by warranty deed. The objection of interest in witness was made, that plaintiff could not release him from the covenants in his deed to make him competent. Release on page 66 of record.

Record page 67 The defendant, in order to show that witness was interested, that plaintiff could not release him, showed and introduced in evidence the certified copy of proceedings in Bankruptcy against said plaintiff, Anson Blake, had in the U. S. Court for the southern District of Illinois, which proceedings were commenced and petition

Record pages 69-83 of plaintiff filed Dec. 1842, and on Saturday, the 4th day of February, 1843, said plaintiff was duly declared a bankrupt, and the premises in dispute in this

Record page 86 case sold under said bankruptcy proceedings, to John Cockle, and that defendant held under said Cockle.

Record page 75 The deed from Sergant to Blake, and the covenants of which were attempted to be released, was dated Oct. 1, 1840, and the deed to Cockle, under the bank-

Record page 86 rupt proceedings, was dated July 3, 1854.

Record page 66 The release of plaintiff to witness bears date July 23, 1860.

The Court overruled the objection, and allowed the deposition to be read to the jury.

The deposition shows that the Witness, Sergeant, to whom the release was ex-

Record page 56 ecuted by plaintiff, was in 1837 the agent of a Paris firm, to whom B. F. Lee & Co., were indebted, in the sum of $73,000, that he settled with them, and took in

Record page 58 payment, deed from them for lands, among which was this in controversy in this suit, and that in 1839 or 1840, witness conveyed the land, by deed, to Ann Davis, and that several years after, Blake, the plaintiff in this suit, came to him and represented that the deed made to Ann Davis, had never been recorded, and wanted to surrender it up, and have another made to himself, which, after several interviews, and referring to and getting opinion of a lawyer, was done. That he never saw Ann Davis, and never delivered deed to her, but to Anson Blake. That when the deed was made to Blake, the one made to Ann Davis was given up to witness, and destroyed.

Record page 89 Plaintiff then read in evidence a deed from Ann Davis to plaintiff, dated Aug. 1, 1858.

Record page 92 The plaintiff then, against the objection of the defendant, read in evidence a deposition of Mary Ann Martindale, to prove that plaintiff was the custodian of Ann Davis' papers.

Record page 98 Plaintiff then read in evidence deed from H. W. Sergeant to plaintiff.

Record page 104 Plaintiff then called Daniel Fash, who proved that defendant had possession in the spring of 1858.

Here the plaintiff rested his case.

Record page 106 Defendant then offered in evidence proceedings in bankruptcy against plaintiff, as above set forth, together with deed of assignee to John Cockle.

The court permitted the proceedings in bankruptcy to be read to the jury, but excluded the deed made thereunder to said Cockle, to which the defendant excepted.

Record page 107 Defendant then moved to exclude the deposition of Sergeant from the jury on the ground of interest, but the court overruled the motion, and defendant excepted.

Record page 108 The court then, against the objection of defendant, instructed the jury as follows:

"The court instructs the jury that the plaintiff, by the deeds admitted in evidence, has proved that he was seized in fee of the south east quarter of section one, in township eight north of range seven east, of the fourth principal meridian, at the time of the commencement of this suit, and that he is now so seized in fee, and the verdict of the jury should be for the plaintiff."

Record page 111 The jury returned a verdict for the plaintiff, and defendant moved for a new trial, for the following reasons:

1. The court admitted improper evidence asked for by plaintiff.
2. The court refused proper evidence asked for by defendant.
3. The court gave improper instructions for plaintiff.
4. The court refused proper instructions asked by defendant.
5. The verdict is against the law.
6. The verdict is against the evidence.
7. The verdict should have been for defendant.
8. The verdict is not supported by sufficient evidence.

Record page 112 The court overruled the motion for a new trial, and defendant excepted, and prayed an appeal.

McCOY & WILLIAMSON,
Attorneys for Plaintiff.

James Le. Hall 192 25

vs

Susan Black

Eject.

Abstract.

Filed Mch 5. 1868

L Leland Clk

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1867.

JAMES L. FASH,
vs.
ANSON BLAKE,
} *In Ejectment.* *APPEAL FROM MARSHALL.*

Reply to Defendant's Argument.

The first point urged by defendant Blake in his argument is that parol proof of the contents of the deed of Sargent to Ann Davis was properly admitted, and in support of this proposition he quotes a great deal of the evidence, none of which shows any reason for admitting parol proof of the contents of the destroyed deed. The statement in the argument of plaintiff that Blake, in pursuance of the advice of his attorney, "dated it (the deed,) back to October 1st, 1840, the date of the deed to Mrs. Davis, and that this deed was at the time intended and believed to pass the entire title," is not supported by the evidence, and never existed except in the fruitful imagination of Blake and his attorneys.

The attorney never advised the ante-dating of the deed, and Blake must take the consequences of it without shifting it upon his attorney. So also of the statement in the argument that John Cockle procured the sale. The application does not show that John Cockle made application for the sale of the premises as stated in the argument. An attorney should not state facts as sworn to or proven unless it is supported by the evidence.

There is nothing whatever in the facts and evidence detailed by the defendant in his argument to show that parol proof of the contents of the destroyed deed was properly admitted.

II. On the second proposition, page 4 of the defendant's argument in reply to the rule of law that if a party wilfully destroys a deed he cannot give parol evidence of the contents, the defendant, although admitting the correctness of the rule, begs the question. He says: "Where A is in treaty with B for a tract of land, and B holds an unrecorded deed from C, and by mutual agreement B's deed is given up to C and C deeds to A under the belief that the title is thereby divested from B and vested in C, we submit that the transaction is free from all taint of fraud or suspicion." We fully agree with this proposition, and that it would not show fraud. In it all three mutually agree to the return of the deed, and the execution of a second deed to a third party, who consents to receive it.

But how stands the case of Blake. A deed is executed to Mrs. Davis, so far as we can learn from the testimony, whithout her knowledge or consent at the time of its execution, and at a time Blake is about to take the benefit of the bankrupt law. This deed is ever after kept in Blake's office, which is said to also contain her title-papers, which are not shown to be any other than this one. When the old lady becomes old, sick and infirm, the grantor and Blake (he, Blake, undoubtedly thinking she was about to die,) get together and destroy the deed executed to her without her knowledge, and after considerable persuasion by Blake, the grantor, whom we must suppose then had no interest in the land, executes to Blake a new deed for no better consideration than the age and sickness of the grantee of the original deed, and then the deed is destroyed. The two cases are not parallel, and we submit that such conduct, unexplained by the party receiving the second deed, is strong evidence of fraud, instead of rebutting the presumption of fraud the law itself raises by the destruction of the deed.

There is only one reasonable hypothesis for Blake to avoid this circumstance going to prove a gross fraud in him to cheat and swindle Mrs. Davis, and that is, that the land, although conveyed to her when he was about to take the benefit of the bankrupt law, was in fact his land, and paid for by his money; and if so, then it should have been inventoried by him, and passed over to the assignee. However old, or sick, or infirm the old lady was when Blake obtained the deed to himself, she might have given her assent to the arrangement by means of a note sent in some way to Sargeant, which would have made the transaction mutual, as in the case supposed in the argument. We have no doubt but this land was conveyed to old Mrs. Davis, Blake's mother-in-law, in anticipation of his taking the benefit of the bankrupt law, instead of being conveyed to him direct. That she was afterwards made acquainted with the fact, and made some conveyances under the direction of Blake, may be true, and also that Blake paid the taxes in her name until reconveyed to him, is natural. The fact that he desired to have the deed ante-dated to the date of the deed executed to Ann Davis, is a further reason for believing he all that time claimed an interest in the land, and that the conveyance to her was to cover it from his creditors, and that it was not recorded lest it might lead to investigation of the truth by creditors.

The next proposition of defendant is equally unfounded, and does not meet the facts in this case. He says: "A believing B to be the owner of a tract of land,

takes a deed from him and puts it on record. The creditors of A, believing the same thing, sells A's interest on execution, or at bankrupt's sale. Years afterwards A discovers that his grantor had no title to the land, and purchases it of the real owner. Is A estopped from setting up his title against the purchaser at the sheriff's or bankrupt's sale?"

This proposition does not go far enough to raise the real point in the case, and we will reply to it by supposing the facts proven in the case.

Suppose the proper records show the title of the S. E. ¼ Sec. 1, 8 N. 7 E., in Peoria county, to stand of record in Henry W. Sargeant in 1840, and in 1847 Anson Blake takes a deed to himself, and has it dated back to 1840 and recorded, and a creditor, not knowing anything except that contained in and by the record, levies an execution upon the property and sells it as the property of Blake, can Blake defeat the execution sale by showing he put a falsehood on the record, and thus deceived the execution creditor? And can Blake, after thus procuring the land to be sold to an innocent purchaser, who purchased by the record, turn round and buy in the *same title*, but from a person whose deed was never recorded, and defeat the execution sale? If he were to purchase another title—an *adverse* title—he would not be estopped, but he cannot set up and assert the same title which he caused the record to represent as in him, concealing the fact all this time that it rested in Ann Davis, and then turn around and defeat this same title, in the hands of the purchaser at execution sale, by purchasing it from Ann Davis. A sheriff's deed does not estop the defendant in execution from afterwards purchasing a paramount title and evicting the purchaser at such sale because it contains no covenant, but notwithstanding this it does estop him from setting up the same identical title that was sold as his at the execution sale. It does not require covenants of warranty or of title to estop a grantor or execution defendant from asserting and again claiming the same title he has once sold, or that has been sold as his under execution. If he has once sold the title, he received the consideration, and it would be unjust and inequitable to allow him to set up the same title, derived from the same source, to defeat it. He would in all courts be estopped from doing it. To illustrate—Suppose G claims title from the United States to himself—whether he knew what his title was or not—and suppose the deeds or conveyances from the United States to A B C and D to be duly recorded, and the deed from E not recorded, showing a break in the title, then the deed from F to G to be recorded. G sells to H, by quit claim deed, or it is sold as his under execution. Now can G, after selling and conveying by quit claim deed, or after it is sold at execution sale as his, go back to D and obtain a deed from his own source of title and evict H? Certainly not. He only perfects the same title in H that he conveyed, or attempted to convey to him. If he brings an action of ejectment against H he must fail, for his supplying title from the same source of title only perfects it in his grantee, and he would forever be estopped from asserting the same title as against his grantee, and if his deed contained proper covenants he would then be estopped from asserting after acquired paramount title from any source. The law is that a quit claim deed estops forever a man from setting up title derived from the same source—a deed with covenants estops him from asserting tittle derived from any source whatever. Suppose, then, Blake had conveyed to John Cockle by quit claim deed, under a deed made to him from Sargeant,

duly recorded, and after he had conveyed to Cockle he should ascertain that Sargeant had no title, having conveyed the same to Ann Davis years before his purchase, could he then procure a conveyance from Ann Davis, and defeat his conveyance to John Cockle? Such an idea is too preposterous to deserve a moment's attention. And yet such is the claim of Blake in this case; that he can set up and claim through the same source of title and defeat the title sold as his. This, as we have seen, he cannot do. He can neither go back in search of a defect in the title to defeat it, nor can he go forward on the same claim of title to defeat it. Having once conveyed that title, he is forever estopped from defeating his conveyance by means of the same thing he conveyed, but might be allowed to show after acquired paramount title and evict his grantee.

Again. Suppose A holds a bond for a deed, having paid part of the purchase money, and having an equity in the premises, conveys, by quit claim deed, to B, and after he conveys, perfects his legal title in himself, the equitable title of which he has conveyed to B, would not his perfecting the title, or rather taking the bare legal title to himself, enure to his grantee under his quit claim deed? Would he not be estopped from setting up his bare legal title to defeat the equitable title which he had conveyed to his grantee; for the quit claim deed would convey all his equity in the premises and right to a deed upon the performance of the covenants in the bond by B. A might well refuse to go on and perfect the title, and could not be compelled to do so, but if he voluntarily does so, then it must inure to the benefit of his grantee, and he be estopped from setting up the same title, the equitable title of which he has conveyed, and the legal so far as he could do.

In the case of the lessee of Edward Jackson, *et. al.*, *vs.* Charles Williams, 10 Ohio, R 69, the premises in dispute was held by Massie, by entry and survey only. Massie conveyed by warranty deed to Craig, Craig to Niblack in 1805, Niblack to McMahon in 1806, all by deeds of warranty. The premises were then levied upon by execution against McMahon and sold to one Hull. In 1814, after the death of Massie, a patent was issued to Massie's heirs, and in 1818 McMahon and wife, to whom the equitable title was conveyed, conveyed to Collett and Evans, who brought a bill in chancery and obtained a decree against the Massie heirs for the title, and brought ejectment against the purchaser at sheriff's sale. The court held that the legal title enured to the benefit of the purchaser at execution sale, and that he could not be evicted by the title of McMahon and the Massie heirs.

This decision must be held to be the law, and if so, Blake cannot set up the same identical title that was sold as his to defeat his grantee at bankrupt's sale. The holder of a bare legal title, acquired after he conveyed the equitable title, holds the legal title as trustee for the benefit of his grantee, and cannot evict the beneficiary or recover against him in an action of ejectment. The bare legal title is only an incident to the equitable, and follows it in equity, as the mortgage follows the debt. A devise of land only tranfers the interest of the devisor in some States at the time of the devise, in the same manner of a quit claim or sheriff's deed. In Marston vs. Roe, 8 Ad. and Ell. 14, the testator had contracted for the purchase of land, but no conveyance was executed, but possession was given. The purchaser then died intestate, leaving the testator his sole heir and next of kin. The testator then made his will, and afterwards the land was conveyed to him. The court held *that the estate was not after-acquired property*, but was included in the devise.

So also in lessee of Gist's heirs *vs.* Robinett, 3 Bibb 2. It was held that a right to land under the proclamation of 1763, which was neither located or surveyed, could

be devised, and although the devisor, after making his will, procured a warrant, caused a survey of the lands to be made, obtained a grant therefor, and died without republishing his will, it was decided that the devisee should hold the lands, the court at the same time recognizing the principle that lands acquired after the making of the devise could not pass thereby. In this case, although the warrant, entry, survey and grant were all after the devise, yet they were all in execution of, and had reference to the proclamation of 1763. By the issuing of the warrant to the devisor subsequent to the making of the will, he did not acquire a new estate. It was not, in the language of the books, lands acquired after making the devise, or they would not have passed by the will, but would have descended to the heir.

The devises by will not containing covenants, could not passafter acquired title any more than a release or quit claim deed, and the cases above cited establish the doctrine that perfecting the title attempted to be conveyed is not within the meaning of the authorities acquiring an outstanding title. These authorities also establish the doctrine that when the title, or apparent title, derived from the same source as the one attempted to be conveyed by deed or devise, though without sufficient covenants to pass after acquiring adverse title, yet when the legal title becomes vested in the grantor, by quit claim or without covenants, it enures to the benefit ot the grantee and his assigns. The rule is well established that the execution debtor whose land is sold under execution, cannot, after such sale acquire subsequently from the same source of title, any interest, claim or title sold as his. In Ferguson *vs.* Miles, 3 Gillman, 438, the sheriff had levied an execution upon land which defendant in execution had purchased at tax sale, and the time of redemption had expired, but no deed had been made. The court there held that when afterwards the defendant in execution procured the tax deed to be made, it enured to the benefit of the grantee in the execution sale.

It is ordinarily true that the date or consideration of a deed may be explained, but this rule has its exceptions, and this case presents one of these exceptions. Where the rights of third parties have intervened, and injury to such third parties would result from the same, no explanation can be allowed. Cockle purchased and made improvements upon the faith of the correctness of the date of this deed, and having done so, he cannot be prejudiced by permitting the party who purposely put a false date in his deed and that upon record, show its falsity. A person justified by purchasing from the record or date of a deed, must be protected in such purchase. Had this deed contained the true date, no one would ever have thought of purchasing it at the bankrupt's sale. The date was the only motive to bid at the sale, and the only inducement to buy, and therefore after such sale which it induced it cannot be explained or contradicted.

In the case of Hepp *vs.* Parker, 8 La. N. S. 473, 4 Martin, condensed Rep. 588, the court go much further as to a record or authentic act. The case was to recover the consideration paid for a slave alleged to have been diseased at the time of the sale, and the question was asked, "How many days was it before the plaintiff signed the bill of sale that he came and perused the bill of sale as written in the records of G. R. Stringer, Esq., Notary Public?" The question was put for the purpose of showing the time of actual sale different from the date in the record before the notary. The court say "the evidence offered was to contradict the date of an authentic act. The date made a part of the instrument, and by the positive provisions of our law in relation to public acts, they make full proof against the parties signing

them, their heirs and assigns, unless declared and proved a forgery." If a notary's record of the transfer of a slave is an authentic act, then is also the record of deeds transferring land, and if the date made a part of that instrument as held by the court, then it does in deeds of land also. The record of a deed does not in any manner tend to prove that the deed was not delivered long before the date of record. It does raise a presumption that it had been delivered, or it would not have been recorded, but does not negative the fact that it was delivered long previous. So seeing a deed in the possession of the grantee is *prima facia* evidence that it was delivered, but not as to the time when. Now does the fact that it was not acknowledged for many years after it bears date overcome the presumption that it was delivered at the time of its date? The acknowledgment is mere proof of its prior execution, and which may be made otherwise and never acknowledged at all.

The case of Genter *vs.* Morris, 31 Bar. 155, does not in any manner militate against the rule of law that a deed is presumed to be delivered at the time it bears date. The statute of New York requires that every grant in fee, if not duly acknowledged previous to delivery, to be attested by at least one witness. The deed was neither acknowledged nor attested, and under their statute the court held that such presumption of delivery at the date could not arise, yet they acknowledge such to be the rule independent of their statute—so also in 16 Barb., quoted by defendants. So far is it from being an authority against the rule that it is an authority in favor of it, independent of the statute.

The authority in 43 Maine, we have not access to, but it cannot overcome all authorities against it and a rule of law so long and well established.

An estoppel by reason of a recital or fact mentioned in a deed is not strictly an estoppel *in pais*, but is an estoppel by deed, and when placed upon record becomes an authentic public act, and every one has the right to rely upon its contents if properly recorded, as true. The date when it affects the title, or may affect the title in any manner, of a purchaser from the same as properly recorded, cannot be impeached, contradicted, nor explained, but must be held conclusive after the fact of the date has been acted upon by a third person, and when to allow it to be contradicted would deprive the grantee of his title acquired on the faith of the correctness of the date, cause a loss of his outlay for improvements, and render him liable for the occupation of the land. In order to constitute an estoppel of this class it is not necessary that the act alleged as an estoppel should have been done wilfully or with intent to defraud the person to be effected thereby. "Every one who claims or justifies under a conveyance made or command, given by another, will be in privity with him, and bound by every estoppel which relates directly to the interest conveyed or right on which the command is founded." 2 Smith, L. C. 684, 5 American edition.

But admitting that the act of ante-dating the deed had to be willfully done, then the willfulness is abundantly proven against Blake. A willful act does not imply that it must be with intent to wrong, injure or defraud any one. It merely means that the act was done with a knowledge of the facts surrounding, and their consequences. Now Blake must have known that Ann Davis was the owner of the land, and not himself at the time he caused the deed to be made and ante-dated. He knew the deed was ante-dated when he put it upon record, and knew and was bound to know the consequences of his act.

In the case of McAfferty vs. Conover's lessee, 7 Ohio State R. 99, (erroneously

quoted by defendants as 7 Ohio) the court says "Estoppels by deed or by matter of record sometimes conclude the party without reference to the moral qualities of his conduct." * * * "And in general the act or declaration of the party must be wilful that is with knowledge of the facts upon which any right he may have must depend, or with an intention to deceive the other party. Copeland *vs.* Copeland, 28 Maine 525, 8 Iredell R. 183." If, then, Blake ante-dated the deeds with knowledge of the facts, he did it willfully, and is estopped by his willful act.

Lord Denman, in delivering the opinion of the court in Pickard *vs.* Sears, 6 Ad., and E. 469, says "The rule of law is clear that where one, by his words or conduct, willfully causes another to believe the existence of a certain state of things, and induces him to act on that belief so as to alter his own previous position, the former is concluded from averring against the latter a differeut state of things existing at the same time." There can be no doubt but that the willful act of Blake—that is the act of ante-dating and recording the deed with full knowledge of all the facts—caused Cockle to purchase the land and make the improvements, and thus change his former position, and under the rule as laid down by Lord Denman he is estopped from averring a different state of facts as existing than those he caused to apparently exist at the time. Under this rule it is not necessary that Blake should have been guilty of fraud, nor that he should have intended to defraud Cockle at the time, but having caused the title to appear in him at the time, and thereby misled Cockle, he cannot afterwards show the truth to wrong and defraud Cockle. Unless the title was in Blake in 1840, it was wrong in him to place on record a deed showing it to have been in him then, when such record is notice for all the world to rely and act upon. And he would then also be prevented from disputing the truth of the records after Cockle had purchased under the maxim that "No man shall take advantage of his own wrong." But if it were necessary to show an intent in Blake to defraud Cockle, then that is sufficiently shown. The act always indicates the intention, and where a party does a wrongful act, (and every act is wrongful that misrepresents the truth) and another acts upon it and is misled, the party doing such acts shall be charged with all the consequences, as though he had originally designed and intended the consequences that followed. Every presumption is made againgt a wrong doer. After Cockle had acted on the belief that the date of the deed was the true date, it would be allowing Blake to perpetrate a fraud upon him to deprive him of the land and improvements by showing his own wrong. But even if Blake acted honestly in motive and intent, still, if another is caused a loss, and both are innocent, then the loss must fall on Blake, who has caused it. He cannot be heard to contend that although he is innocent, yet where he has caused loss or injury to another, that he shall throw that loss on such other person—having caused it he must bear it—not another.

In the case of lessee of Simeon Jennings *vs.* Robert Wood, 20 Ohio, on page 266, the court says "It may be a hardship on Jennings—no doubt is, but here one of two innocent persons must suffer, and whenever this is the case, the rule is that the misfortune must lie where it has fallen—it must rest on the person in whose business and under whose control it happened."

We do not deem it necessary to examine further the authorities cited by defendant's attornies, as none of them are in conflict with the principles or authorities quoted in this argument. There is no doubt that to estop a person from asserting the truth on account of his previous falsehood he must have been guilty of fraud and deceit, unless some innocent person has acted upon and been misled thereby, but when that is the case the authorities cited by them have no application.

WILLIAMSON, McCOY & CO.,
For Plaintiff.

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JAMES L. FASH,
vs.
ANSON BLAKE,
} *In Ejectment.*

SUPREME COURT.

April Term, A. D. 1862.

Reply to Defendant's Argument.

HENRY B. H[illegible], PRINTER, PEORIA.

1473

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1867.

JAMES L. FASH,
vs.
ANSON BLAKE,
} *In Ejectment.* *APPEAL FROM MARSHALL.*

ABSTRACT.

PAGE OF RECORD.

1 This was an action of ejectment brought in Peoria by Blake *vs.* Fash for the S.E. ¼, 1, 8 N., 7 E. Suit commenced in December, 1858, and taken by change of venue to Marshall county.

The case was tried, the second time under the statute, at the October Term of the Marshall County Circuit Court, A.D. 1866, before Judge 7 Richmond and a jury.

BILL OF EXCEPTIONS.

The plaintiff offered in evidence and read to the jury a patent from the United States for the east half of the said south-east quarter of section one to Baptist Hardy, dated August 10, 1838.

A deed from Baptist Hardy to Mark M. Aiken for the same premises, 15 dated February 19, 1834.

A deed from Mark M. Aiken to Joshua Aiken for the same eighty 18 acres of land, dated May 29, 1835.

To the reading of this deed in evidence defendant objected, because

it was made prior to the date of patent to Baptist Hardy from Government, and because the title would not inure to the second grantee, but the court permitted the deed to be read in evidence against the objection of defendant.

21 Plaintiff then offered in evidence a certificate of the registry of lands at Springfield, Ill., dated March 22, 1862, certifying that the west half of said south-east quarter of section one, was entered by Simeon Dolph on 12th of June, 1835. Defendant objected to the reading of said certificate for want of proof of execution. Plaintiff then called H. B. Hop-
23 kins, who testified that he knew the signature of William F. Elkin, whose name was signed to the certificate. That the signature to the certificate was that of William F. Elkin. That said Elkin was acting Register of U. S. Land Office at Springfield at date of certificate. That he knew his signature *only* by correspondence with him and by seeing his signature to other certificates, that he had never seen him write. That he had received said certificate from him through the mail.

Plaintiff also called E. S. Leland, who testified that the signature to the certificate in his opinion was the signature of William F. Elkin—that he knew it only from correspondence. That he had become quite familiar with the signature of Elkin from correspondence. That he knew he was acting Register of Land Office at Springfield at date of said certificate. The court then permitted the certificate to be read in evidence.

24 Plaintiff then offered in evidence a deed from Simeon Dolph to Joshua Aiken for said W. ½ of S.E. (1), dated June 12, 1835, the certificate of acknowledgment to which was defective, and is as follows:

"Taken and subscribed before me, Charles W. Billington, a Notary Public in and for the county of Adams and state of Illinois, this 11 day of June, A. D. 1835. In testimony whereof I have hereunto set my hand and affixed my seal of office the day and year last above written. CHARLES W. BILLINGTON, N. P."

and called M. M. Aiken, who testified that he knew the signatures of the two witnesses, P. Scott and Chas. W. Billington, that the signatures of said witnesses to said deed were genuine—that one of them was dead—that the other had long since gone to California.

Plaintiff also offered in connection with said deed depositions of Philemon B. Selby and Nelson Selby.

Philemon B. Selby testified that he had resided in Maquon, Knox county, Ill., for about 27 or 28 years. That he knew Simeon Dolph about 27 or 28 years ago at the village of Maquon—he was a farmer, had worked for him and his brother—thinks he lived there about one year. That he did not know that he had ever seen said Dolph write—but thinks he has—is pretty confident that he saw him write a good many times. Thinks he has seen his handwriting. Is satisfied that he has. Thinks he has had his handwriting in his possession a good many years, but is now mislaid.

I now hold an instrument in my hand (being the original deed from Dolph to Joshua Aiken offered in evidence), I have examined the same and the signature thereto and believe the same to be the handwriting of said Simeon Dolph, from my acquiantance of his handwriting. I should say it is the handwriting of said Dolph, and I attach the same to this my deposition.

Nelson Selby testified that he was a farmer, that he had resided at Maquon, Knox county, for over 27 years. That he knew Simeon Dolph at Maquon from 1835 till 1838—when he left. Does not know whether he is living or not, but heard and believes him dead. Is not positive whether he has seen him write—but thinks he has seen him write a good many times. Thinks he is acquainted with his handwriting. He further states: I have the said instrument, marked (A), (being the deed offered in evidence) before me, and examined the same and the signature thereto and have no doubt but that the signature is that of Simeon Dolph. From my knowledge of his handwriting I should say that it is his signature. These depositions were taken April 1st, 1863.

The deed was then read to the jury against the objection of the defendant. The defendant excepted.

The plaintiff then offered to read to the jury a deed from Joshua
29 Aiken and wife to Benjamin F. Lee, for the whole of S.E. ¼ of sec. (1), 8 N., 7 E., dated November 9th, 1835.

Defendant objected to said deed on account of insufficiency of certificate of acknowledgement. The following is a copy of certificate:

STATE OF ILLINOIS, }
Peoria County. } This ninth day of November, A. D. 1835, personally appeared before me, a justice of the peace in and for said county, Joshua Aiken and Jane Aiken, wife of said Joshua, who are known to me to be the identical persons whose names are subscribed to the within deed of conveyance, and the said Jane being examined separate and

apart from her said husband, and the contents of the within instrument explained and made known to her, she together with the said Joshua her husband acknowledged the same to be their free act and deed.

CYRUS LELAND, J. P.

32 The court over-ruled the objection and permitted the deed to be read to the jury. Defendant excepted.

33 The plaintiff then read to the jury a deed from Benjamin F. Lee for the south-east quarter of section one, 8 N., 7 E., to Henry W. Sergeant, dated Nov. 30, 1837.

Plaintiff then offered to read to the court the deposition of Henry W. Sergeant to show the existence and destruction of a deed from said witness to one Ann Davis, dated about 1840, to lay foundation for proving contents of said deed by parol.

The deposition was dated Nov. 6, 1860. Sergeant testified that he
40 was 50 years old, was a merchant, lived at Fishkill, Dutchess county, New York. That he knew the plaintiff for 22 years. That he was a
41 merchant in 1837 in New York city. That he was general agent for Welles & Co., of Paris. That B. F. Lee & Co. were indebted to Welles & Co. to about $73,000. That he collected said indebtedness from B. F. Lee & Co. for Welles & Co., which collection was made in lands and money. That it was his best recollection that he received as a part of said collection a deed from B. F. Lee and wife, dated 13th Nov., 1837. That there were four pieces of land described in said deed. The third
42 parcel was the E. half of S.E. quarter of 1, 8 N., 7 E., and the second was the W. half of S.E. quarter of 1, 8 N., 7 E., in Peoria county. That he received no other deed from said parties. That afterwards, according to the best of his recollection, he made a conveyance of said tracts of land to Ann Davis, dated in 1839 or 1840—could not say when it
43 was delivered. That he used an *heraldic device* for a seal on said deed.

That several years after 1840 he executed a second deed for said land.
44 That Anson Blake met him on Wall street, New York, and said to him, I want you to do me a favor. I wish you to give me a new deed for
44 land called "Peoria Farm." Blake stated that he had bought it from Ann Davis. Witness objected, and said, Why don't Ann Davis convey it to you? Witness states that it is his impression that Blake replied that she was old or infirm, sick or something of that sort, that the deed to her never having been put on record he would hand it back to him. That he had two or three interviews with Blake, in all of which

he objected, but finally consented on condition that Blake would procure the opinion of witness' attorney that he, witness, would be safe in making said deed. That the deed was anti-dated to the date of the deed given by him to Ann Davis—that the deed given by him to Ann
45 Davis was given back to him and destroyed. The deed made by him to Blake was delivered Oct. 6, 1847. That he never gave but the one deed for said land to Blake. That he has no interest in the result of this suit. That Blake has executed and delivered to him a release in
46 relation to said land, which is attached to his deposition. That the signature of Blake to it is genuine. That he had no recollection of per-
47 sonally receiving any consideration for said land from Ann Davis or any one else. That he was entirely ignorant of the age of Ann Davis and of her residence. That he did not know how far she resided from him, and
48 did not know of ever seeing her, and had no personal acquaintance with her at any time. That he never delivered any deed to Ann Davis. That he delivered the deed he made to her in 1840 to Anson Blake.
49 That he does not recollect with whom he negotiated about execution of the deed to Ann Davis. That Ann Davis never requested him to make
50 the second deed, the one made to Blake; that he made it at the request of Blake, as before stated. The release attached to said deposition is signed by Blake, and releases H. W. Sergeant, the witness, from any
51 and all covenants of title, and of every kind and description, given by him to Blake concerning the land in controversy.

Defendant objected to the reading of said deposition, but court overruled objection and permitted same to be read.

54 Plaintiff, for the same purpose, offered to read the answer to the 5th interrogatory in deposition of Mary M. Martindale, which is as follows:
63 I knew Mrs. Davis made Bishop Chase a donation; it was about the year 1842, and it consisted of land in Peoria.

Defendant objected, but court permitted it to be read. Defendant excepted.

54 Plaintiff then, for same purpose, called Anson Blake, jr., who testified
55 that he lived on Staten Island, N. Y. Son of plaintiff. Knew Ann Davis. She was his grandmother. She is dead—died May, 1858. Plaintiff had control of her title papers. Saw deed from Henry W. Sergeant to Ann Davis. Saw it October, 1840, at the office of Ann Davis. Thinks he saw it previous at office of Sergeant. Plaintiff was agent for Ann Davis. The deed described the land. It was the only deed he ever saw with such a private seal. He then took a memorandum of names of parties, dates and description in the deed. Took it because the description in it was different from any thing had ever before seen in a deed. Had always before seen land described in deeds by

being bounded on other lands, by water courses and metes and bounds. That he was struck with the description in it. Was the only deed he
56 ever saw sealed with an heraldic seal, and the first describing lands by numbers. Curiosity about the description and seal lead him to copy it. Had no personal knowledge what became of original deed to Ann Davis. Heard her speak of deeding lands to Bishop Chase in Illinois. That he was 44 years of age. That at the time he saw the deed to Ann Davis he was about 18 years of age. That he went to Sergeant's office for the deed from Sergeant to Ann Davis about the time it was made, but
56 did not get it. That plaintiff was the controlling man—that he managed everything for Ann Davis.

Plaintiff then read in evidence tax receipts for taxes of 1843, 1844, 1845, and 1846, showing that the taxes were paid those years for Ann Davis.

57 Anson Blake, jr., further testified that Ann Davis lived in Brooklyn, the office was in New York. That the memorandum he took of said deed only took him a few minutes to make. When he took the copy he meant to keep it, but it lay about a few days, and that he did not see it again until word came that Mr. Cockle was making a title, when the title papers were resurrected and his memorandum found among papers. That Mrs. Davis' office was her office for transaction of her
58 affairs and not for Mr. Blake's business under cover of her name. She owned vacant lots for sale and some houses for rent—that the office was kept for this purpose.

58 Plaintiff then offered to give evidence to the jury of the contents of deed from Henry W. Sergeant to Ann Davis. Defendant objected, but court permitted parol evidence to be given of contents of said deed.

Plaintiff then read in evidence against objection of defendant the deposition of Henry W. Sergeant, which has been set forth herein.

Plaintiff then read in evidence, and against the objection of defendant,
61 the deposition of Mary M. Martindale, who testified, That she was 34
62 years old and lived at Summit, Union county, N. J. That the plaintiff was her father. That Ann Davis was her grandmother and died May 30th, 1858. That she knew of Ann Davis having property of her own as long back as she could remember. That she let the plaintiff have her property when it came from England. That after 1839 plaintiff had the keeping of the title papers of Ann Davis, and subsequent to that time Mrs. Davis bought real estate at auction in Brooklyn, and afterwards sold it to different persons, and some of it to plaintiff. That she knew of Mrs. Davis making donation of land in Peoria to Bishop Chase. That Cornelius D. Blake, her brother, died 1st January, 1856, in the 27th year of his age, was present when Bishop Chase thanked her grandmother for land in Peoria donated to him by her. That she saw deed
64 from H. W. Sergeant to plaintiff, dated October 1st, 1840, which was

recorded at Peoria, Ill., October 29th, 1847. That the handwriting in said deed was that of her brother, Cornelius D. Blake, as he wrote when an adult. That it could have been written by him at its date. That she knew of Ann Davis having property and real estate in 1839. That
65 she had received from $6,000 to $8,000 from England. That her real and personal property amounted to about $25,000.

69 The plaintiff then offered in evidence a deed from Ann Davis to Anson Blake, the plaintiff, which was read to the jury.

Plaintiff then called Daniel Fash, who testified that he lived near the property in controversy. That in Spring of 1858 James L. Fash took
73 possession of the land in controversy, and that he was in possession of it in August, 1858.

Plaintiff here closed his case.

Defendant then read in evidence, to sustain the issues on his part, a deed from Henry W. Sergeant to Anson Blake for the land in controversy, dated October 1st, 1840, which deed was obtained from plaintiff, and was recorded in Peoria county October 29th, 1847.

Defendant then read in evidence certified copy of the petition of An-
81 son Blake, the plaintiff, in Bankruptcy to District Court of United States for Southern District of New York—filed 24 Dec., 1842.

83 Also, order of said court appointing William C. H. Waddell general assignee, as required by the rules.

84 Also rule 61 of said court.

86 Also, a certified copy of the decree of said court declaring said Anson Blake, plaintiff, a bankrupt, dated February 4, 1843.

88 Also, report of said assignee and application to court to sell the land in controversy under the rule.

89 Also, order of said court to said assignee to sell the title of plaintiff to said land, dated July 3d, 1854.

90 Also, deed from Wm. C. H. Waddell, assignee of plaintiff, conveying the land in controversy to John Cockle, dated July 3d, 1854.

Defendant then moved the court to exclude the deposition of H. W.
96 Sergeant, because said witness was interested upon the covenants in his deed to plaintiff as against defendant—having been released upon his covenants to plaintiff by plaintiff, and being still liable upon said covenants to defendant, but the court over-ruled said motion.

Defendant gave in evidence a contract of sale of undivided half of

320 acres, or the premises in controversy, from John Cockle to Washington Cockle, dated April 9th, 1856. Also an agreement to said Washington Cockle.

98 Also a contract of sale from Washington Cockle to the defendant, James L. Fash.

102 The plaintiff then called Anson Blake, jr., again, who testified that in 1845-6 Washington Cockle lived in French Grove, Ill., and paid taxes for people. That he saw letters from him from French Grove. That he commenced to pay taxes for Ann Davis after 1840, and continued to act for her to 1847. That he commenced to pay for plaintiff about 1848, and continued till about 1854. That he knew Washington Cockle in 1837, in New York. John Cockle was his brother, and was called a speculator. That he here presented letters written by Washington Cockle. The signature to the letters are that of Washington Cockle. The first, without date, addressed to Anson Blake, and is substantially as follows:

Above please find a receipt for the taxes of 1842 on Mrs. Davis' land. I mentioned in my former letter amount required to redeem. (Here follows an account.) As soon as I can possibly do it I will make such an examination as request. Yours truly, WASHINGTON COCKLE.

The second was dated May 12, 1848. Addressed to Anson Blake, acknowledges receipt of $22. That he brought out with him deeds from Lee to Sergeant, and Sergeant to you (Blake). That he caused them to be recorded.

The third dated July 11, 1850. Addressed to Anson Blake. It encloses tax receipt for 1849, and an account. Gives a description of the land, then speaks of selling the land, and want of authority to do so.

The fourth is simply an account showing taxes paid to the amount of $20.45.

The fifth dated February 23, 1852. Asks for amount of taxes for years 1850 and 1851. The assessed value of the land, describing the land and that it ought to be surveyed. States want of authority to survey the land, and that he will endeavor to sell the land.

The sixth, addressed to plaintiff, dated June 12, 1852. It incloses tax receipts for 1850 and 1851, and acknowledging the receipt of a check for $32.

105 The plaintiff offered to read said letters to the jury, but defendant objected. Court over-ruled the objection and permitted them to be read.

106 Anson Blake, jr., further testified, That the defendant told him in 1857 that he had bought the land from Washington Cockle for $6,000, to be paid in six years, and that he had tried to buy it of plaintiff.

That he had sent to Brooklyn to buy it, but could not, and that it was Blake's own fault he bought of Cockle. That in September, 1866, he had told him the same thing. That Cornelius Blake, his brother, wrote the deed from H. W. Sergeant to Anson Blake. That he knows his handwriting. That at the date of the deed Cornelius was eleven years old. The deed is in the handwriting of Cornelius D. Blake as he wrote when an adult, and not as he wrote when eleven years old.

107 The plaintiff offered to read the deposition of Mary Martindale, heretofore set out, to the jury, but defendant objected. Court over-ruled said objection and permitted said deposition to be read.

Plaintiff then read in evidence certain tax receipts since 1857.

The foregoing was all the evidence in the cause.

110 Thereupon the court, on motion of the plaintiff, gave the following instructions for the plaintiff:

The jury are instructed that the following named title papers have been admitted in evidence:

1. Patent from the United States to Baptist Hardy for the east half of the land in suit.

2. Deed from Baptist Hardy to Mark M. Aiken to same, February 19, 1834.

3. Certificate of entry by Simeon Dolph of the west half of the land in suit.

4. Deed of Simeon Dolph to Joshua Aiken for the same, dated June 12, 1835.

5. Deed from Mark M. Aiken to Joshua Aiken for the east half, dated May 29, 1835.

6. Joshua Aiken to B. F. Lee for whole tract, dated Nov. 9, 1835.

7. B. F. Lee to H. W. Sergeant for whole tract, dated November 13, 1847.

8. And if the jury believe that the evidence allowed to be introduced by the plaintiff tending to show that Henry W. Sergeant on or about the first day of October, 1840, conveyed the land in controversy to
111 Ann Davis by a deed now lost or destroyed, is sufficient to establish such conveyance to Ann Davis, then the title passed to said Ann Davis notwithstanding the destruction of said deed.

9. And the plaintiff also gave in evidence a deed of Ann Davis to himself for whole tract, dated August 1, 1855.

This shows a connected title from the government to the plaintiff. And the plaintiff is entitled to recovery unless the defendant has shown a paramount title derived under the bankrupt proceedings.

2d. The jury are instructed that if they believe from the evidence that at the time the plaintiff made his assignment in bankruptcy, and received his discharge, the title of the premises in controversy was in Mrs. Ann Davis, then he had perfect right at any time thereafter to sell and convey the premises to the plaintiff, and he would take a good title by such conveyance.

3d. The jury are instructed that a deed takes effect as a conveyance at the time of its delivery, and does not vest title until its delivery, whatever may be its date.

112 4th. The jury are instructed that though a presumption would arise that the deed was delivered and took effect on the day of its date, if there was nothing offered in evidence to control this, it is always competent to show that the date inserted was not the true date of its delivery.

5th, The jury are instructed that, although the deed of H. W. Sargent to Anson Blake bears date on the 1st day of October, 1840, yet if the jury believe from the evidence that the said deed was, with no dishonest purpose, ante-dated, but was not in fact made and delivered until October, 1847, and the defendant, if such are the facts, could acquire no title conveyed by said deed, by procuring a deed from Waddell, assignee in bankruptcy, through the bankrupt decree of 1843.

6th. If the jury believe from the evidence that there was no title in Anson Blake when he was declared a bankrupt, none passed to his assignee in bankruptcy, and by the latter to John Cockle by his deed from said assignee, and if such are the facts, and if the plaintiff has shown a connected chain of title from the government to himself, and that the defendant was in possession when this suit was brought, the verdict
113 should be for the plaintiff.

7th. If the jury find for the plaintiff the form of their verdict should be: We, the jury, find that the defendant is guilty of unlawfully withholding from the plaintiff the premises in the declaration mentioned, to-wit, the southeast quarter of section one, in township No. eight of range No. seven, east of the fourth P. M., in Peoria county, Illinois, in manner and form as alleged in said declaration, and that the plaintiff is seized of a title thereto in fee simple.

8th. The jury are instructed that if they believe from the evidence that there was no title of the land in controversy in Anson Blake until long after his discharge in bankruptcy, which took place in 1843, then the defendant took no title by conveyance from Waddell, his assignee.

9th. The jury are instructed that if they believe from the evidence that H. W. Sargent made, executed and delivered to the plaintiff a deed of the premises in controversy in the month of October, A. D. 1847, but which deed was dated October 1, 1840, such deed vested no title in the plaintiff until the time of its delivery, notwithstanding it bore an earlier date.

114 To the giving of said instructions defendant objected, but the court over-ruled said objection and said instructions were given to the jury.

Upon the defendant's motion the court gave the following instructions to the jury, viz.:

The burden of proof is upon the plaintiff to prove that he has a paramount title to the land before he can recover, and even if the defendant Fash has no title, yet if he has shown a paramount title in John Cockle, your verdict must be for the defendant.

The jury cannot presume that John Cockle acted fraudulently or imposed false representations to the court or assignee in bankruptcy, but such facts must be proven by clear and competent testimony. Fraud can never be presumed.

The jury cannot presume fraud or unfairness from the mere fact that he was the purchaser at the bankrupt sale.

115 Even if Fash, the defendant, and Washington Cockle, both or either of them, acted fraudulently in respect to attempting to procure the title to the land in controversy, yet that would not of itself invalidate the title to John Cockle.

The defendant also asked the court to give the jury the following instructions, which the court refused, viz.:

The deed made under the proceedings in bankruptcy together with the proceedings and decrees of the United States court, given in evidence, show a permanent legal title in John Cockle as against the defendant. Refused.

Even if the jury believe from the evidence that the deed from Sergeant to Anson Blake, the plaintiff, was executed in 1847, and dated back to October 1st, 1840, and recorded October 29, 1847, yet the proceedings in bankruptcy as given in evidence would divest the title of the plaintiff and vest the same in John Cockle. Refused.

If Anson Blake, the plaintiff, caused a deed from Sergeant to Ann Davis to be given up to Sergeant and destroyed, and in lieu thereof caused another to be executed to himself, dated back to 1840, and caused the same to be recorded in Peoria county, Illinois, the same being where the land is situate, and if after the recording of such deed to
116 the plaintiff the sale under the proceedings in bankruptcy were had whereby John Cockle became the purchaser, then the plaintiff is estopped Refused.

by the record from contradicting such record and date of such deed by proof showing the time of its true execution.

Refused. There is not sufficient evidence showing bad faith in the purchaser of the title in question by John Cockle to invalidate the bankrupt deed to him.

Refused. The fact that John Cockle or Washington Cockle knew that Ann Davis claimed the land, and that afterwards the plaintiff claimed the land and paid taxes upon it through Washington Cockle, yet these facts, if proven, would not alone invalidate the proceedings in bankruptcy or the deed to John Cockle made thereunder, and no act of Washington Cockle done before or after the bankrupt sale would invalidate such sale.

Refused. Even if the title of the land was in Ann Davis at the time the plaintiff took the benefit of the bankrupt act, and afterwards deeds were placed on record by the date of which deed plaintiff would appear to have been the owner at the time of filing his petition in bankruptcy on the 24th day of December, 1842, then John Cockle would take the le-
117 gal title under such bankrupt sale, unless it has been proven that he knew at the time of his purchase that plaintiff was not the owner on said 24th day of December, 1842.

Refused. If the jury believe from the evidence that John Cockle at the time he purchased at the sale of Waddell, the assignee of Anson Blake, had no notice or knowledge of the deed from Henry W. Sargent to Ann Davis, and that the deed from Henry W. Sergeant to the plaintiff, Anson Blake, dated October 1st, 1840, was upon record, then the presumption is that said Cockle was an innocent purchaser at said assignee's sale, and the deed given to said Cockle carries the title to the land in controversy as against the plaintiff Blake.

Refused. If the jury believe from the evidence that the plaintiff, Anson Blake, procured a deed from Henry W. Sergeant in 1847, and had the deed ante-dated to October 1st, 1840, and caused the same to be recorded in the county where the land lies shortly after, this is sufficient to show of record that Anson Blake was the owner of the land in 1842 when the proceedings of bankruptcy was had, and that a purchaser had a right to rely upon such record and buy the land of Anson Blake or his assignee, and will be protected in such purchase.

121 But the court refused to give said instructions, and the defendant excepted.

Jury brought in verdict for plaintiff, when defendant made his motion for a new trial with the following reasons, viz:

1st. Because the verdict is against the evidence.

2d. The verdict is against the law and the evidence.

3d. The court admitted improper evidence upon the trial on the part of the plaintiff to the jury.

4th. The court refused evidence on the part of the defendant which should have been given to the jury.

4th. The court gave improper instructions to the jury on the part of the plaintiff.

6th. The court refused instructions on the part of the defendant which should have been given to the jury.

122 But the court over-ruled said motion and denied the defendant a new trial. Defendant excepted.

126 Appeal bond.

ERRORS ASSIGNED.

1st. Said verdict is manifestly contrary to the evidence.

2d. The court erred in refusing to set aside said verdict and allowing a new trial.

3d. Said circuit court erred in permitting the plaintiff below to give to the jury improper and illegal testimony.

4th. Said circuit court erred in refusing the defendant to give to the jury proper evidence.

5th. Said court erred in over-ruling the motion made by defendant to exclude the deposition of Henry W. Sergeant and other testimony proving by parol the contents of deed from Henry W. Sergeant to Ann Davis from the jury.

6th. Said court erred in giving the instructions asked for by plaintiff below.

7th. Said court erred in refusing to give instructions asked for by defendant below.

8th. Upon the whole case as presented the verdict and judgment ought to have been for the defendant and not for the plaintiff.

WILLIAMSON & McCOY,

Attorneys for Appellee.

279

JAMES L. FASH,
vs.
ANSON BLAKE,
} *In Ejectment.*

Appeal from Marshall.

SUPREME COURT.

April Term, A. D. 1867.

ABSTRACT OF RECORD.

HENRY S. HILL, PRINTER, PEORIA.

Filed April 29, 1867
L Sebastian Clk