

No. 13613

Supreme Court of Illinois

Dodge

vs.

Deal

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 139

13613

Dodge
vs
Deuel

1362
13613
Prepared

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of McLean - Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Circuit Courts of McLean County, before the Judge thereof, between

Henry J. Deal & Samuel C. Deal

plaintiffs, and

Willis Dodge & Absalom T. Endicott

defendants, it is said manifest error hath intervened, to the injury of the aforesaid

Dodge & Endicott

as we are informed by them complainants and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgments thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the pleas aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 27th day of March in the Year of Our Lord One Thousand Eight Hundred and Sixty Two.

L. Seland

Clerk of the Supreme Court.

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139

Miller Dodge et al

No. 107

vs.

Deal & Deal

WRIT OF ERROR.

~~This Writ of Error is made a
Supersedeas and as such is to be
obeyed by all concerned.~~

Gleek.

FILED

March 29, A. D. 1862

L. Nelson

Gleek.

STATE OF ILLINOIS,
SUPREME COURT.

} ss. The People of the State of Illinois,

To the Sheriff of *McLean* County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the *Circuit* Court of *McLean* County, before the Judge thereof, between

Henry J. Deal & Samuel C. Deal

plaintiffs, and

Willis Dodge & Absalom T. Endicott

defendants, it is said that manifest error hath intervened, to the injury of the said

Dodge & Endicott

as we are informed by *their* complaints the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said

Henry J. Deal & Samuel C. Deal

that *they* be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if *they* shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said

Henry J. Deal & Samuel C. Deal

notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *29th* day of *March* in the year of our Lord One Thousand Eight Hundred and Sixty-two.

S. Selous

Clerk of the Supreme Court.

William Dodge Clerk.

No 109 vs.

Henry J. Deane
Samuel C. Deane

SCIRE FACIAS.

Filed..... A. D. 1865

Clerk.

Executed this writ on this 10th day of April 1865
by Reading the same with witness named
Henry D Deane and Samuel C Deane -

Geo S. Deane 1.10
Murray 95

John L. Route Sheriff of McLean County \$2.00
By E. Platter Deputy J. L. W.

Read my fees of Williams atty for plaintiffs
John L. Rousey in error
J. Hubb

days before the ~~term~~^{term}, to compel a trial at the term. No notice of any kind was given, only by filing with the clerk, less than ten days before the court, the mandate and opinion of this court. Our Legislature, by statute, has required in original suits ten days' notice before the term; and courts, in a case where the statute is not directly applicable, follow its analogy in like cases. It is not pretended that any notice was given. Defendants below were appellees in this court, and after the reversal they should have had ten days' notice before the term, at least by the filing of the mandate and opinion with the clerk below; and this without actual notice, might be deemed sufficient, and is all we are contending for in this case. But suppose the successful party in the Supreme Court chooses to get his record, and keep it in his pocket, without any notice until the last day of the term of the court, and in the absence of the defendant, files it, and takes a default and final judgment, he may say that the party, by fiction of law, is in court, and should take notice and who can gain-say it, if the rule be not, as I have above stated; because if no time before court be required, he may select his own day in court to do it. But if any time before court be required, by all the analogies of the law, it should be full ten days. We admit that the filing of the record, and having the cause docketed, places the opposite party in court, but no more so than by service, at the same time if it were the commencement of a new suit; and if a party is not served ten days before court, although served in fact before court, he is in court, but cannot be compelled to go to trial. He may even enter his appearance voluntarily within this time, and in that case neither party can compel the other to move. (Hooper & Hay, *vs.* Smith, 19th Ill., 53; Hoes *vs.* Van Alstine, 16th Ill., 584; Abrams *vs.* Pomeroy et al., 13th Ill., 298; Hager *vs.* Phillips, *ibid.*, 292.)

We might make other references upon this point, but it is too familiar to require it. All that was done in this case was the defendant's in error, within ten days before the meeting of the court, filed the record from this court with the clerk below—had him docket the case out of court, and then compel the party to go to trial, against his motion and protest. The whole record shows that we had not proper time to prepare for the trial at that term: in consequence of which we were beaten on the trial, because we were rushed into the trial without proper notice and without time to prepare for it. The court should have sustained the motion of defendants below for a continuance; and for this error the cause should be reversed and remanded.

POINT II. 1ST ASSIGNMENT.

The court erred in refusing the second motion for continuance, based upon affidavit of defendant Dodge. (For affidavit, see record, page 16, 17; Abstract, page 1.)

The notes, the foundation of this suit, were given for land. The title to the land failed; plaintiffs below obtained the notes after maturity. Before suit, and while the title to the same was wholly out of defendant Dodge, he went to plaintiffs below, or one of them,

and offered to make a deed to him, or in any way he might direct, and pay him \$100, if plaintiff would give up to defendant his notes. The offer was refused—the affidavit set up these facts—the absence of the witnesses to prove them, and want of time to get the evidence. The motion was overruled on the ground that the evidence was immaterial. (There was no pretence of want of diligence.) This presents the point.

A promissory note is given, the consideration fails, the maker is not in fault, offers to the payee, to surrender all he got, and more, for the notes. The payee refused to accept the surrender and give up the notes. The maker may consider the contract at an end, and refuse to pay. Plaintiffs below, by purchasing the notes after maturity, placed themselves in the position of the payee. This proposition is too familiar to need authorities to support it.

The notes being given for land conveyed by a deed with covenants of general warranty, and against all incumbrances, the title to the land is the consideration of the notes, and the title failing, the consideration fails. (See *Deal & Deal vs. Dodge and Endicott*, decided last term.)

That the title had failed, at the time of this offer of Dodge, is not contested. (See above case, and record in this.) It is familiar law that where a contract fails, the party desiring to take advantage of the failure must place the opposite party in *statu quo*. by surrendering or offering to surrender what he may have received by virtue of the contract. This Dodge offered to do. All he had received for the notes, and an additional \$100, paid by him, was the deed to the land. This he offered to surrender, by conveying it in any way Deal might direct or wish it done. He even went further, and offered to pay another \$100. This offer to pay \$100 perhaps gave him no better legal right to rescind the contract, but simply shows that he was acting honestly in the whole transaction. Deal had by his own voluntary act placed himself in the position of the payee of the notes, and vendor of the land. Dodge offered to do all he could. The offer was refused; an offer, coupled with the ability to perform, refused, excuses a tender. (Bacon's Abridgment, vol. 9, page 14.)

It seems to me that the statement of the proposition is all that is required to show its soundness. If sound the evidence was material, and it was error to overrule the motion for a continuance, and for this error, the cause should be reversed.

II. ASSIGNMENT.

The court erred in refusing the instruction asked by defendants below. See abstract, p. 6 for instruction. For evidence on which it was based, see evidence of Endicott, abstract p. 3, 4. Dodge bought the land of Brewer, and was to have had a deed from him. By the persuasion of Brewer, and the assurance that a deed from Hobson would have the same effect as a deed from Brewer, and upon the representation that the land was free from all incumbrances, Dodge took the deed and gave \$100 in money and the notes sued on. The title failed without fault on the part of Dodge. About the time the

notes became due, Dodge went with the money and offered to pay the notes if he could get a title to the land. Brewer told Dodge that neither he nor Hobson could make the title good. Dodge then told Brewer he would abandon the land, and offered to convey his title to Brewer by a quit claim deed if Brewer would pay back to Dodge the \$100 Dodge had paid him on the land. The instruction raises the point. This was an offer on the part of Dodge to place the parties in *statu quo.*, and he was not bound to convey the land until he was paid back his \$100. The defendants in error may suggest that this point was decided on the former hearing of this cause. We insist that it was not, and now most respectfully ask leave of the court to argue this point as an open question. We respectfully ask a hearing upon it, for the reason that the main point to which our attention was directed in the argument before, was as to what was the true consideration of the notes, the title or the covenants in the deed, to which our main argument was directed; and this point may have escaped the attention of the court. And we now desire, and respectfully ask leave, to present our argument upon it, being strongly impressed with the soundness of the law presented by the instruction.

A contract is made; money is paid upon it, and a note given by the purchaser. The thing purchased is delivered to the purchaser. The title to the thing purchased fails. Is the purchaser bound to deliver it back to his vendor upon giving him notice of abandonment of the contract, until the vendor has paid back the purchase money paid? And has not the vendee a lien on the thing purchased, even after cancellation of the contract, for his money advanced upon it? (See Blackburn, Heirs *vs.* Pennington, 8th Ben. Monroe, 217.)

Land belonging to a femme covert had been sold by her husband, but the conveyance was defective—the acknowledgment not fulfilling the statutory requirement; after the death of the husband, the woman told the purchaser from her vendee (who still owed one payment upon the land) that she would not take advantage of the defective conveyance, and thereupon he paid the last payment to his vendor. After the death of the woman, her heirs brought ejectment for the land. The court decreed the amount of this last payment to be a lien on the land. In 2d Story's equity, sec. 1217, note 4, the doctrine is broadly laid down that where the money is paid prematurely on land, the money would be considered as a lien on the estate of the vendor, for the personal representative of the purchaser, which would leave things in *statu quo.* Several cases are cited to sustain the proposition; and the annotator seems to think the doctrine sound. If so, it is clear in this case that Brewer could not have compelled Dodge to convey to him without first paying him his \$100. The contract was cancelled by Dodge giving notice to Brewer that he would have no more to do with it, and by abandoning the land. Brewer could, at any time after this, by tendering to Dodge his \$100 and interest, and notes, have filed his bill in equity, and compelled a conveyance. He (Brewer) was alone in fault. Dodge did not get what he bargained for—the title to the land; not getting that, he chose not to pay the money. The title was out of

him, and so remained for a long time. If it was under the control of Brewer or Hobson, they might have had the deed from Hodge made to Brewer just as easily as to Hobson. If they had done so, will any one contend that equity would not have raised a lien in favor of Dodge upon the land in the hands of Brewer, to the extent of the money Dodge had paid to Brewer upon it? If Dodge had held possession, and used the land without complaint, and without notice of rescission of the contract, until the title by a new purchase was placed in him, he might well be estopped from complaining; or if he had paid no money on it he should have reconveyed, or released the covenants of warranty at the time of giving notice of the rescission. But by the fraudulent representations of both Hobson and Brewer, at the time the deed was made, that the title was perfect and the land free from all incumbrances, (which representations were false, and therefore in law fraudulent,) Dodge was induced to give the notes, and pay money. When he found he was deceived and defrauded, was it incumbent upon him to reconvey the land, or release his covenants of warranty before reimbursed for the money paid upon the land? Might he not well say, I will have nothing more to do with the land, but I will not reconvey or release my covenants until you pay me back the money I have paid you? The consideration of the notes had then failed. He then gave notice that he would not pay; that he was ready and willing to place the parties in *statu quo*, and offered to do so, which was refused, or at least, not accepted. He had bought the land from Brewer, paid him the money, and given him the notes, and it was to him alone he looked. Hobson at most was but the agent, or attorney in fact, of Brewer; the hand used in making the deed, Brewer at this time had the notes. To what other person could Dodge have gone to give notice of a rescission of the contract, but to the party with whom he made it, and who had received the consideration? and to whom could he offer to place the parties in *statu quo*, but to Brewer? The general principle certainly is well settled, that the party rescinding must be without fault, and must be able and willing to place the opposite party in *statu quo*. This Dodge was able, willing, and offered to do; for certainly they were not in *statu quo*, until Dodge had got back his \$100. Hobson was no more bound by his deed to Dodge than he was by his deed to Brewer that had been given up; for they both contained the same covenants; and a deed from Dodge to Brewer would have placed Brewer in the same position he was before the sale to Dodge. A fraud had been practiced by Brewer. This entitled Dodge to rescind. (Chitty, contracts, 640.) He did all he was required to do. From the authority above cited, in Story's equity, Dodge had a lien on the land for the money advanced, even after he gave notice of a rescission, and abandoned the land. The offer to reconvey upon the payment to him of his money advanced, made the rescission complete so far as he was concerned; it was then for the other party to act—even after the title had been placed back in Hobson by the conveyance from Hodge. A trust at once resulted in the land in favor of Brewer, upon his paying to Dodge the \$100; and upon a payment or tender of this with the notes sued on by Brewer to Dodge, equity would have compelled Dodge to convey to Brewer, but not until the money was paid back. Upon the

general doctrine of disaffirmance of contracts, and the rights of vendee where a fraud has been practiced by the vendor. (See *Judson vs. Wass*, 11 Johnson, page 525.) A contract to convey was made upon payment of money at a future day. There was a mortgage; the vendee chose to rescind before the time, and before the mortgage was foreclosed. The court held he could not, but if the time had elapsed, and the mortgage had been foreclosed, he might have rescinded and recovered back his money; and according to the decision in *Story* above, would have had a lien for the money advanced. (See also *Caswell vs. the Black River Cotton and Woolen, M. C.*, 14 Johnson, 452.) Now, if *Dodge* held the lien, of course he was not compelled, in order to rescind, either to reconvey or release his covenants, until his lien was satisfied. The instruction presented this law and was fully sustained by the evidence, and should have been given; and for this error the judgment should be reversed.

III. ASSIGNMENT OF ERROR.

The court erred in overruling motion to vacate the judgment, and grant a new trial.

When it appears to the court that justice has not been done on the trial—that justice may be done on a new trial, and that it is not owing to any want of diligence on the part of the party seeking a new trial—the court should grant a new trial. This proposition fully expresses the law upon the subject of new trials, for newly discovered evidence. (*Schlinker et. al. vs. Risley*, 3d Scammon, 483; *Guyott vs. Burns*, 4th Scammon, 549. *Crozier vs. Cooper*, 14th Ill., 141. The first two points of the above proposition, are, I think, established beyond controversy, by the affidavits. Plaintiffs below, contented under the opinion of this court in this case at last term, that unless we had reconveyed to *Hobson*, or released the covenants of warranty in his deed before the date of the deed from *Dodge* to *Hobson*, we had no defence. A deed of quit claim was in fact tendered by *Dodge* to *Hobson*, long before that time; but the witness had forgotten it at the trial. The affidavits show this abundantly,

These affidavits also show the necessity of the rule insisted for in point 1st, under 1st assignment. We were pressed into this trial, at the early part of the term, without notice and without time to prepare; and would refer to the affidavits, on the abstract, on this point. The only question remaining on the point now under consideration is, were the defendants below in fault in not proving the tender? I think not. The witness was present, but his memory failed. The case is peculiar. The witness at the trial forgets; and afterwards comes to his recollection. Is this not in fact and principle newly discovered evidence? We think, upon these affidavits a new trial should have been granted. The affidavits bring the defendants clearly within the principle, if not within the express rule. Defendants may say we cannot impeach *Hobson*; we certainly can, for we would not offer him on a new trial. If offered by them, we could certainly impeach him. We submit upon this point the court erred in overruling the motion for a new trial, and for this error the judgment should be reversed.

The 4th and 5th assignments will be considered together, and really do not differ from the 3d; and by referring to that we submit them.

VI. ASSIGNMENT.

The court erred in admitting improper evidence for plaintiffs below.

If we are right in the point made under the second assignment, that we had in fact placed the parties in *statu quo*, so far as we could, by offering to convey to Brewer upon his paying us back the \$100, then the contract was by us rescinded; and it could not be renewed by them by afterwards procuring the title to be placed in us. I have failed to discover any case where the consideration of a note has failed, the maker being in no fault—the whole fault resting with the payee. The maker, as he has a right to do, notifies the payee that he will not pay, and places or offers to place him in *statu quo*; that the payee, by an act of his own, without the consent of the maker, can afterwards restore the consideration and enforce the payment of the note. If we are right in this, the deed from Hodge to Hobson should not have been admitted, and for this error the judgment should be reversed.

We think all the points are well taken, the errors all well assigned, and that the judgement should be reversed, and the cause remanded.

R. E. WILLIAMS,
For Plaintiffs in Error.

Dodge + Endicott
vs
Deal + Deal
~~~~~  
Error to Wilson  
~~~~~  
Date for
Pfe in Error
~~~~~

Filed April 29<sup>th</sup> 1862  
L. Leland  
Clerk

~~~~~  
R. O. Williams
~~~~~

STATE OF ILLINOIS,  
Supreme Court, Third Grand Division.

OTTAWA, APRIL TERM, 1862.

Willis Dodge and Absalom T. Endicott }  
-VS- Plaintiffs in Error. } ERROR TO McLEAN.  
Henry I. Deal and Samuel C. Deal, }  
Defendants in Error.

Page of Record.

ABSTRACT OF THE RECORD,

- 1 2 3 4 5 Declaration in assumpsit, on two notes of hand with common counts.
- 5 6 Copy of notes.
- 6 7 Writ with return.
- 8 Rule to plead.
- 8 9 Plea general issue, with an agreement signed by Attorneys for both parties that the defence relied on is a failure of consideration of the notes, and that any matter may be given in evidence under the plea of the general issue, that could be given under any special plea, well pleaded.
- 9 10 Order continuance, &c.
- 10 11 Trial, and verdict for defendants. Motion for new trial, &c.
- 12 Judgment, and order allowing appeal.
- 13 Cause remanded by Supreme Court for new trial.
- 13 Motion for continuance.
- 14 1st bill of exceptions commences. The first day of the term this case was called, and defendants moved the court to continue the case, because neither the mandate nor opinion of the Supreme Court had been filed in this Court ten days before the commencement of the term. Motion overruled, and ruling excepted to.
- 14 On the 3d day of the term, defendants again moved the court to continue the case, and based the motion upon the affidavit of defendant, Dodge.
- 15 Affidavit sets up the facts that the mandate and opinion of the Supreme Court were not filed in this court until within ten days before the commencement of the term, and that affiant did not know the contents of said mandate and opinion until they were filed in this Court. Further sets up that before the 3d day of December, 1853, defendant, Dodge, offered to plaintiff, Henry I. Deal, to convey to plaintiff whatever title he had in the land, and to give \$100 if he would give up the notes. To which offer plaintiff replied that he would not accept a deed to the land, but that he could collect the notes, and would do so.
- 16

- 16 That the only persons present at said time of said offer, were the two defendants and the plaintiff, Henry I. Deal, and one Andrew Durbin, in whose store the offer was made; and affiant knows of no other witness but said Andrew Durbin, by whom said offer can be proved. Affiant further says that on the 8th of September, 1859, affiant again offered to said plaintiff to make a quit claim deed to said land, in any way said plaintiff might direct, and to give plaintiff \$100 in satisfaction of the claim sued on. That affiant knows
- 17 of no witness by whom he can so fully prove this last offer, as one James W. Hanger, who lives, or did within a very short time, in the county of Clinton, and State of Missouri; and as affiant believes, said Durbin lives in the city of St. Louis, and State of Missouri; that since the filing of the mandate and opinion of the Supreme Court, in this court, affiant has not had time to procure the evidence of either of said witnesses, but that he expects to procure the testimony of both of them by the next term of this Court; that the application is not made for delay, but for the purpose of justice.
- 18 Motion overruled, and exception taken.
- 18 19 Trial and verdict.
- 19 20 Final judgment for plaintiff below for \$854.42, and costs.
- 20 21 Motion to vacate the judgment, and motion stricken from files.
- 22 Second bill of exceptions commences.
- 22 Plaintiffs gave in evidence two notes, without objection, and rest.
- 22 It is admitted by plaintiff below that they obtained the notes by assignment, after they had become due, and that the notes were given for the SE $\frac{1}{4}$  NE $\frac{1}{4}$  section 31, township 24, N. R. 1 west, in McLean county, Illinois.
- 23 Deposition of James W. Hanger: Says deed attached to deposition, (which is a deed with covenants of general warranty, and against all incumbrances from Iris Hobson and wife to Willis Dodge, for above described land, duly acknowledged, dated December 2, 1857, filed for record February 6, 1858,) was written by witness. At the time of the execution of the deed, Joseph Brewer, Iris Hobson and wife, and Willis Dodge, were present. Brewer spoke to me about making the deed—said that he had bought the piece of land from Hobson, and had a deed for it, and had sold the land to Willis Dodge, and wanted a deed made from Hobson to Dodge, and to give up the deed he had from Hobson. Brewer said to Dodge, it would save the expense of recording the deed from Hobson to him. Brewer said a deed from Hobson to Dodge would be just as good, and save that expense Brewer paid for making the deed herewith attached. Brewer and Hobson were talking, before the deed was signed, to Dodge, and they both said that the land was free from incumbrances. The deed from Hobson to Brewer was then given up, and this one delivered up to Dodge. Brewer came after me to

Page of Record.

- make the deed. I told him, when we were alone, that I thought it could be done as above stated. At the delivery of the deed, Dodge paid some money to Brewer; don't exactly recollect the amount; think it was fifty dollars; the money paid was not to be due until Christmas, and the interest was deducted. Dodge cannot read nor write. I was at the time an acting justice of the peace.
- 24 Defendants gave in evidence a judgment in the Circuit Court of McLean county, Illinois, in favor of B. S. Prettyman, conservator of Drain, against Iris Hobson, for \$104 and costs—date of judgment, September 8th, 1856.
- 25 Adjourning order of Court at which this judgment was obtained, Court adjourned September 19th, 1856.
- 25 An execution to the sheriff of McLean county, on above judgment, dated September 30th, 1856, come to hand, October 1, 1856, \$23, made on this, and returned.
- Alias execution on above judgment, dated March 21, 1857, with return showing levy by the sheriff on above land, and sale of the same on the 17th of June, 1857, to plaintiff, on execution.
- 25 26 27 Transcript of judgment of W. A. Willard vs. Iris Hobson, before a justice of the peace, for \$32.06, and costs.
- 28 Transcript filed in Circuit Court September 16, 1858.
- 28 Record of same, from records of Court, under the statute.
- 28 Defendants proved that the original certificate of purchase in Prettyman vs. Hobson was here at the last term in court, and that it has been lost; and then read the certificate of purchase in Prettyman vs. Hobson, from the record.
- 29 30 Execution on the transcript in the case of Willard vs. Hobson, dated September 17, 1858; return came to hand September 16, 1858, levy on the above land.
- 31 32 Certificate of redemption in Willard vs. Hobson, filed October 25, 1858, and recorded.
- 33 Balance of return on the execution of Willard vs. Hobson, showing a sale of the above land, for redemption money and interest, on the 20th of October, 1858, to W. A. Willard, and deed made to him forthwith by the sheriff.
- 33 34 35 Sheriff's deed to Willard on above sale.
- 35 36 Certificate to above deed.
- 36 Court permitted sheriff to amend return on above execution.
- 36 Testimony of James Endicott commences.
- 36 James Endicott testified: Knows J. H. Brewer, to whom notes sued on were given; knows defendant Dodge; was present at an interview between Brewer and Dodge, at Brewer's house; went there with Dodge; it was on the 8th or 9th of October, 1858; Dodge asked Brewer if he still had them notes; Brewer said he had; Brewer said the notes were given for a piece of land he (Brewer) had bought of Iris Hobson; Dodge told Brewer he had the money

Page of Record.

and was ready to pay the notes, if he (Brewer) would make him a good title to the land, free from all incumbrances—that the deed he had, proved to be no account; Brewer told him it was out of his power to make a good deed; he said to Dodge, “you know I cannot make a good deed; Dodge then said to him, that if he or Hobson would make him a good deed, he was willing to pay for the land; Brewer said that neither he nor Hobson could make a good deed to the land; Dodge then said he would have nothing more to do with the land; that he wanted him to give him up his notes, and pay him back his \$100, and he (Dodge) would give him a deed to the land; Brewer asked what kind of a deed; Dodge said a quit claim deed, of course; Brewer said that was as fair as he could ask any man to do, but that he did not have the money to pay; Dodge then told him he would wait a year for the \$100, without interest; Brewer asked Dodge if he would take Hobson’s note for the \$100; Dodge said he would, if he would give it well secured; Brewer said he would go and see Hobson, and fix it up with Hobson, or try and fix it up, witness was not positive which expression was used; Dodge asked Brewer to relate to witness a previous conversation between the parties; Brewer said he had never got his deed from Hobson recorded, that it would save some expense to have his (Brewer’s) deed torn up, and for Dodge to take one directly from Hobson; Dodge said he would do it, if he could get a good warranty deed, free from all incumbrances—if it was not, he would have nothing to do with it; Brewer said it should be a good warranty deed, free from all incumbrances. [The above conversation is one that took place before the deed was made to Dodge.] Dodge had money with him; I saw some gold and some silver, and quite a bunch of paper money; looked as if there might be several hundred dollars; he got it at home, in his house; saw him get it there; he had it in a pocket-book, in a side pocket; it stuck out of his pocket four or five inches; Brewer said the previous conversation, above detailed by him, was before the \$50 note became due, a little before the deed was made; Brewer said Dodge had paid, when the trade was made, \$50, and gave a note due on Christmas for \$50, and Brewer gave Dodge a bond for a deed, when the fifty dollar note was paid; Brewer said that Dodge had paid him \$100 on the land; cannot tell the relation I am to defendant; I suppose I am some little relation; defendant is uncle to my grandfather; I went to Brewer’s with Dodge, at Dodge’s request, I suppose to be a witness; Dodge never done anything with the land after this conversation with Brewer: he had previously had about ten acres of it in corn; that summer Dodge went away from the land; the corn was all cut up, and part taken away, before Dodge moved; I am not certain it was that summer; think it was the same; don’t think Dodge moved all the corn; can’t tell why he left any for rent or otherwise.

Joseph B. Ayres: I know the land in controversy; have seen Dodge on the land; cannot recollect the time; think it was soon after the purchase; he was working; never saw him there but once; the land is about one and a half miles from where I live, in full sight from my house; I have been by the land several times; it seems to be abandoned; don't know of any one being in possession of the land since fall of 1857; have been on the land several times in fall of 1859; land was never fenced.

Mr. Cooper testified: Know the land in controversy; my house is within half a mile of it; have lived there eleven years; Dodge was on the land in 1857; I think he had in a little piece of corn, 12 acres; Dodge gathered some of it—Mr. Taylor's cattle gathered some of it; don't know how much Dodge got; Dodge moved out of the settlement in October, 1857; never saw Dodge on the land afterwards; land is in sight of my house; Mr. Swindle raised a crop on part of it this year; Dodge gathered the corn, or part of it; saw him gather one load about a week before he moved; he moved late in October; I saw him gather one load to feed with; he now lives about a mile distant from the land.

Joseph E. Springer was sworn, and a deed was handed to him by attorney for defendant—a quit-claim deed to the land in controversy, from Dodge and wife to Iris Hobson, dated December 3d, 1858, and duly acknowledged before John Haybarger, a justice of the peace of McLean county, Illinois, on the 6th of December, 1858.

Springer's testimony: Am acquainted with Dodge and Hobson; my recollection about that deed is about this: I saw it in Mr. Williams' office; and in Bloomington I was walking along, Mr. Dodge, Hobson, and myself met, and passed the time of day, but what conversation passed between Dodge and Hobson I cannot remember; there was something said about some paper, but what it was I don't know; it was about three years ago; there was something said about a deed, but I don't remember what; can't say whether or not Dodge produced the deed; somewhere about Concord I met the same parties; can't say what took place there.

Iris Hobson sworn: The defendant never tendered me a deed to this land; never told me he had a deed ready; never heard of such a thing as his having a deed, until within twelve months; the deed was never spoken of in my presence.

James Endicott, again: I have no recollection of seeing deed tendered; I was present when they had some conversation, but do not recollect about a tender; can't say I ever heard the parties say anything about the deed, after thinking awhile; don't remember anything more.

Plaintiff then read in evidence a deed from W. A. Willard to U. S. Hodge, a quit claim deed to land in controversy, dated October 28th, 1858, with acknowledgments.

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47 48 49 Plaintiff then offered in evidence a quit-claim deed from U. S. Hodge to Iris Hobson, to the land in controversy, dated April 17, 1859, with acknowledgments, to which defendants objected, because defendants, from the evidence, had before that time done all they could to place the parties in *statu quo*.

50 Plaintiffs then called U. S. Hodge, who testified that he delivered the last deed to Hobson the same day it was executed; plaintiffs again offered said deed; defendants again objected, for reasons above stated; which objection was overruled by the court, to which ruling of the court defendants then and there excepted, and the deed was read in evidence without objection, as to the manner of its execution.

50 51 52 Defendants then handed the court in writing the following instruction, and asked the court to give the same to the jury, as follows:

If the jury believe from the evidence that the defendant Dodge purchased of Joseph H. Brewer the SE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of section 31, town 24, N. R. 1 W 3d P. M., in McLean county, Illinois, and gave the notes sued on in this case for part of the purchase money for said land; and if they further believe from the evidence that the defendant Dodge had paid to Brewer \$100 in cash, on said land; and if they further believe from the evidence that Dodge, (after he found the land had been sold on Prettyman judgment, and had not been redeemed from said sale) at or about the time the notes sued on became due, went to Brewer with the money, and then offered to pay the amount due on the notes, if he (Brewer) would then procure for him (Dodge) a good title for said land, or if he (Brewer or Hobson) would procure for him (Dodge) a good title to said land, and that Brewer then told Dodge that neither he (Brewer) nor Hobson could make to Dodge a good title to said land, and that Dodge then told Brewer that he (Dodge) would give up and abandon the land, and have nothing more to do with it, and that Dodge then further offered to make to Brewer a quit-claim deed to said land, if he (Brewer) would pay back to him (Dodge) the \$100 that Dodge had paid to Brewer on said land, and that Brewer declined to receive said deed and pay back said money, that was an offer on the part of Dodge to place the parties in *statu quo*; and if they further believe from the evidence that Dodge did, within a few days, abandon the land, they shall find for the defendants.

52 Which was refused by the court, to which defendants then and there excepted.

52 Verdict, and motion to set aside verdict and for a new trial, because the Court erred in excluding proper evidence offered by defendants, and erred in admitting improper evidence for plaintiffs, and erred in refusing instructions for defendants; motion overruled, and ruling excepted to.

53 Defendants move the court to vacate the judgment, and grant a new trial, and base the motion upon the following affidavits:

54 Affidavit of R. E. Williams, in substance, that there was a suit pending in 1858, between the same parties, about the same subject matter; that affiant and M. W. Packard, Esq., at the time his partner, were employed to defend said cause, and that on the day of

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55 the date of the deed from Dodge to Hobson, spoken of in Springer's testimony, affiant prepared said deed, and gave it to Dodge, with instructions to have it executed by Dodge and wife, and properly acknowledged, and then to deliver it to Hobson, and if he refused to receive it, to tender it, and be prepared to prove the tender; that Dodge took the deed, and left the office; some time afterwards, feels confident it was during the same month, Dodge returned, thinks in company with J. E. Springer; whether they came together or not, is certain they were in the office together; Dodge then handed back the deed, saying he had offered it to Hobson three times, and Hobson would not take it, saying that he had just offered it to Hobson on the street in Bloomington, in presence of Springer; and Springer, as affiant recollects, said yes, he had seen Dodge offer it; affiant then said to Springer, I can prove a tender of the deed by you, if necessary; and Springer said yes; Dodge then gave the deed to affiant, and said affiant could give it to Hobson, if he would accept it; affiant handed this deed to Springer on the witness-stand, but he could not recollect the tender; affiant was surprised by witness having forgot the tender; the reason the deed was not offered on the former trial was, that by the ruling of the Court it was not necessary; affiant believes that on a new trial the tender can be proved; this is the affidavit in substance.

56 57 Affidavit of M. W. Packard, about preparing the above deed, and giving it to Dodge, with instructions what to do with it; instructions set out in affidavit fully as above; and that Dodge took the deed, and left the office with it; and affiant, according to his recollection, had not seen it again until the trial.

58 Affidavit of Joseph E. Springer, in substance as follows: On the trial affiant was called as a witness, and shown the above deed, and asked about an interview in Bloomington between Dodge and Hobson, in December, 1858; that affiant at the trial recollected the interview, and gave his recollection of the time and place of the meeting; but at the trial affiant had forgotten what passed at said interview; the transaction had taken place about three years before the trial, and affiant had only been subpoenaed as a witness on the trial the day before the trial commenced, and his attention had not been called to the fact of the interview, and what took place at the same, until very shortly before the trial, and at the trial affiant could not recollect what took place at the interview, but since the trial affiant has been thinking over the matter, and now recollects as follows:

59 Affiant recollects that he was at the office of R. E. Williams on the day said deed was written out by said Williams, which affiant believes was the day said deed bears date; that Dodge was present; that said Williams made out said deed, and gave it to Dodge, and instructed Dodge to have said deed by him and wife properly acknowledged, and then in presence of a witness to deliver it to

Page of Record.

60 Hobson, and if Hobson refused it, to have a witness to prove the tender; that Dodge took away the deed from the office; that affiant now recollects that during said month of December, 1858, the exact time in the month affiant cannot tell, but feels confident it was in said month, as affiant was attending the December term of the Circuit Court of said McLean county, at the time in session, on business of affiant's; that affiant was walking along the south side of the court house square in Bloomington, and saw said Dodge and Hobson meet, and stop and commence conversation; I was at the time going to the office of said Williams, and supposed said Dodge was also going there; I came up to Dodge just about that time, and met Hobson coming towards us in the opposite direction; Dodge and myself both spoke to Hobson, we all being very well acquainted; at that moment Dodge placed his hand in the breast pocket of his coat, and commenced pulling out a paper, and said to Hobson here is that deed for this piece of land; at that moment I think I took a step back, and was standing rather at the side and sort of behind Dodge, and he and Hobson were facing; Hobson immediately replied to Dodge, "I have nothing to do with it—I have sold the land to Brewer, and have nothing more to do with it;" Hobson immediately walked on, and myself and Dodge went on in the direction we were before going, and went to the office of Williams; and Dodge then handed said deed to said Williams, and told Williams that he had offered the deed to Hobson several times, and he would not take it; and that he (Dodge) could not do anything more with it, and that he would then leave it with said Williams; I took the deed in my hand, and looked it over, and recognized it to be the same deed I have first before spoken of, and the same deed that was handed to me on the trial at this term of the court; I also recollect of then telling said Williams that I could prove the tender of said deed, if necessary, as said Dodge had immediately before that time tendered said deed to Hobson, in my presence.

61 Affidavit of Nathaniel Perry: says he is well acquainted with Iris Hobson; has known him over twenty years; and lived in the same neighborhood with him for that length of time; knows said Hobson's reputation for truth and veracity in the neighborhood in which Hobson lives; that Hobson's reputation for truth and veracity among his neighbors is bad; and that from said Hobson's reputation for truth and veracity among his neighbors, affiant would not believe Hobson on oath, where he had any feelings or prejudices in a case.

62 Affidavit of Thomas Garris, Jacob Cooper, William Garris, and Nathan Hinshaw: swear that they and each of them are well acquainted with Iris Hobson; have known him and lived in his neighborhood for over eight years; that they are well acquainted with the reputation of said Hobson for truth and veracity among his neighbors; that the reputation of said Hobson for truth and veraci-

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ty in the neighborhood in which he lives is very bad ; that from the reputation of said Hobson for truth and veracity among his neighbors they would not believe him (said Hobson) on oath, where he had any feeling or prejudice in a case.

63 Affidavit of John Webber to the same effect as the above two.

64 Affidavit of Defendant Dodge. (This affidavit should have been the first numerically in this list of affidavits, but by an omission of the clerk is put last.)

64 Defendant Dodge swears, that on the trial of this cause at this term of the court, as he was advised by his counsel, R. E. Williams, it was material for defendant to prove a tender of a deed from affiant to one Iris Hobson.

64 Affiant says that on the 3d day of December, 1858, said Williams made out the deed hereto attached and made part of this affidavit, and gave it to affiant, and instructed affiant to have said deed duly executed and acknowledged by affiant and wife, and for affiant then to deliver said deed to said Hobson, and if Hobson refused to accept the same to have a witness by whom affiant could prove a tender ; that affiant took said deed and had it executed and acknowledged as directed, and shortly afterwards and during the same month of December, 1858, affiant did tender said deed to said Hobson three different times, once in the presence of James Endicott, and twice in the presence of Joseph E. Springer.

65 The tender in presence of Endicott, and once in presence of Springer, was in Bloomington, McLean county, Illinois, the other tender in presence of Springer was in the town of Concord, in said county ; that this case has been in this court three times, the first time a non-suit was taken ; that after the trial before the case went to the supreme court, and as affiant was informed by the rulings of the court and by his counsel it was not necessary to prove said tender, and the witnesses, although present were not called to prove

65 said tender ; that said trial was a year ago ; the case then went to the supreme court, and was not sent back for a new trial until a few days before this term of the court ; affiant was advised by his counsel that he thought the case would not be tried at this term of the court, as his counsel thought the mandate of the supreme court had not been in this court long enough to compel a trial at this term of the court ; that this cause was among the first on the docket, and affiant was only informed a few days before the trial, that the case would be tried at this term, and what was necessary to prove upon the trial ; that affiant immediately after receiving said notice went to work to prepare for the trial.

66 That affiant had both said Endicott and said Springer subpoenaed and present at the trial, and affiant expected confidently to prove said tender by both of said witnesses ; affiant had the greatest confidence that said Springer would recollect said tender, as the same was made in his presence in Bloomington and his attention was called to it ; and immediately after said last tender affiant and said

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66

Springer went together to the office of R. E. Williams, affiant's attorney, and there the matter was talked over, and said Springer then and there told said Williams that he (Springer) had just seen affiant tender said deed to said Hobson, and if necessary he said Springer could prove said tender ; that affiant now knows that if he can obtain a new trial he can prove said tender by said Springer ; that it is owing to no want of diligence on the part of affiant that he did not prove it on the trial, as he verily believes ; and he verily believes, and had good reason to believe, that at court said Springer would prove said tender. Affiant further says, that he believes on

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another trial he can prove that the deed from U. S. Hodge to Hobson was not delivered to Hobson ; affiant further says, that he fully and confidently believes on a new trial he can so successfully impeach the credit of Iris Hobson for truth and veracity by his neighbors, men of respectability, as totally to destroy the weight of any evidence said Hobson might give in this cause. The deed referred to in his affidavit is the same deed referred in Springer's affidavit on pages 41 and 42 of the record, which motion was overruled by the court, to which ruling of the court defendants then and there excepted. Conclusion and signature of bill of exceptions ; clerk's certificate to the record.

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#### ASSIGNMENT OF ERRORS.

1st. The court erred to the prejudice of plaintiffs in overruling the 1st and 2nd motions for continuance.

2nd. The court erred to the prejudice of plaintiffs in error, in refusing the instructions asked by defendants below.

3d. The court erred to the prejudice of plaintiffs in error, in overruling the motion to set aside and vacate the judgment and grant a new trial.

4th. The court erred to the prejudice of plaintiffs in error, in not setting aside the verdict and granting a new trial.

5th. The court erred to the prejudice of plaintiffs in error, in entering judgment upon verdict.

6th. The court erred to the prejudice of plaintiffs in error, in admitting improper evidence for plaintiffs below.

R. E. WILLIAMS.

*For Plaintiffs in Error.*

Dodge & Endicott

vs

Deal & Deal

Error to McLean

Abstract of the  
Record

Filed April 25<sup>th</sup> 1861  
L. Loomis  
clerk

R. E. Williams

State of Illinois

Supreme Court 3<sup>rd</sup> Grand division

Ottawa April term 1862

Willis Dodge & Absalom B. Endicott, plaintiffs in Error

vs

Henry J. Deal & Samuel C. Deed, Defendants in Error  
Error to McLean

The plaintiffs in Error make the following assignments of Error

1<sup>st</sup> The Court Erred to the prejudice of plaintiffs in Error, in overruling the 1<sup>st</sup> & 2<sup>nd</sup> motions for continuance

2<sup>nd</sup> The Court Erred to the prejudice of plaintiffs in Error, in refusing the instruction asked by defendants below.

3<sup>rd</sup> The Court Erred to the prejudice of plaintiffs in Error in overruling the motion to set aside and vacate the judgment and grant a new trial.

4<sup>th</sup> The Court Erred to the prejudice of plaintiffs in Error in not setting aside the verdict and granting a new trial.

5<sup>th</sup> The Court Erred to the prejudice of plaintiffs in Error, in entering judgment upon the verdict. For all of the above, and for other Errors, to the prejudice of plaintiffs in Error that will be apparent upon inspection of the record, the judgment should be reversed, and the cause remanded.

R. G. Williams  
Counsel for  
Pls in Error

Judge & indicant,

as } by consent  
Deaf & Deaf }

6<sup>th</sup> assignment of error

The court erred to the prejudice of P<sup>ts</sup>  
in error in admitting improper evidence  
for P<sup>ts</sup> below.

Dodge vs Deal

Deal vs Deal  
6th Assignment of  
Error of Counsel

The clerk will attach  
this to the assignment  
of Error of Counsel  
of Porter, Perkins  
& Co vs R. E. Williams  
for \$45 in  
Error

Hanna Scott

Filed April 29, 1862

Deal  
C.R.

Dodge vs Deal  
vs

Deal vs Deal

Assignment  
of Errors

Williams

And the said Defendants come  
and say that there are no  
errors in said Record as the  
said Plaintiffs have above  
assigned or any other errors  
and they pray may be  
imposed of by the Court -  
April 22<sup>nd</sup> 1862 -

Hanna Scott  
for Defendants in  
Error

pleas continued and held at the Court house  
in Bloomington in and for the County of McLean  
and State of Illinois, before the Hon. Circuit  
Court of the Eighth Judicial Circuit of said State  
in a certain action wherein Henry S. Deal & Sam-  
uel C. Deal were plaintiffs and Willis Dodge  
& Abalom S. Endicott were Defendants.

State of Illinois }  
McLean County. } ss.

to wit: on the 25<sup>th</sup> day of February A. D. 1860,  
came Henry S. Deal & Samuel C. Deal by  
Hanna & Scott their Attorneys, and filed in the  
office of the Clerk of the Circuit Court of said  
County, a Declaration, and two notes sued on, which  
said Declaration & notes were in words and figures  
as follows to wit:

State of Illinois }  
McLean County. } ss. In the Circuit Court of  
County, April Term A. D. 1860.

Henry S. Deal and Samuel C. Deal, plain-  
tiffs in the suit, complain of Willis Dodge and  
Abalom S. Endicott defendants, in a plea of assump-  
sit. For that whereas the said defendants heretofore,  
to wit: on the tenth day of September, in the year  
of our Lord one thousand eight hundred and fifty

on the same day and year, and at the place  
aforesaid, undertook and then and there faith-  
fully promised the said plaintiffs well and truly  
to pay unto the said plaintiffs the said sums of  
money in the said notes specified, according to the  
tenor and effect of the said notes. And whereas,  
also, the said defendants afterwards, to wit: on  
the first day of February in the year of our Lord  
one thousand eight hundred and sixty at the  
place aforesaid, were indebted to the said plain-  
tiffs in the sum of one thousand dollars lawful  
money of the United States of America, for money  
before that time lent and advanced by the  
said plaintiffs to said defendants and at the  
special instance and request of the said defen-  
dants. And in a like sum for other money  
by the said plaintiffs before that time paid,  
laid out, and expended for the said defendants  
and at the like request of the said defendants.  
And in a like sum for other money by the said  
defendants before that time had and received to  
and for the use of the said plaintiffs. And in  
a like sum for other money for the price and value  
of goods, wares and merchandise by the said plain-  
tiffs sold and delivered to the said defendants  
and at the special instance and request of the said

defendants. And being so indebted, the said defendants in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the sums of money in this count mentioned, when the said defendants should be thereunto afterwards requested. And whereas, also the said defendants afterwards, to wit: on the same day and year last aforesaid, and at the place aforesaid, accounted together with the said plaintiffs of and concerning divers other sums of money before that time due and owing from the said defendants to the said plaintiffs and then and there being in arrear, and unpaid, and upon such accounting the said defendants then and there were found to be in arrear and indebted to the said plaintiffs in the further sum of One Thousand dollars, all the lawful money as aforesaid. And being so found in arrear and indebted to the said plaintiffs the said defendants in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook

5. and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last mentioned, when the said defendants should be thereunto afterwards requested.

Nevertheless, the said defendants (although often requested, &c. to wit, on the day when the said notes became due and payable, according to the tenor and effect thereof, and often times since, to wit: at the place aforesaid,) have not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiffs but to pay the same, or any part thereof, to the said plaintiff the said defendants have hitherto altogether refused, and still do refuse, to the damage of the said plaintiffs of One Thousand dollars, and therefore the said plaintiffs brings suit &c.

Hanna & Scott

Plaintiff's Attorney,

\$ 385.<sup>00</sup>. September the 10. A. D. 1851.

Twelve months after date we or either of us do promise to Pay Joseph H. Brewer or order the Sum of Three hundred and Eighty five dollars for Value received.

R. M. Dunsett.

Willis <sup>his</sup> Dodge  
made by  
Isaiah T. Endecott.



7 day in the month of April next, to answer unto Henry S. Deal & Samuel C. Deal in a plea of assumpsit to their damage one Thousand Dollars, as they say.

And have you then and there this writ, and make return thereon in what manner you see fit the same.

Witness, W<sup>m</sup> McCullough Clerk of said Circuit Court, and the seal thereof hereto affixed, at Bloomington, this 25<sup>th</sup> day of Feby A.D. 1860.

{ L. S. }  
W<sup>m</sup> McCullough, Clerk  
By L. Purdy, Deputy.

Which said Summons was by the Sheriff of said County returned into said Clerk's office endorsed as follows, to wit:

= Served the within Summons by reading to the within named Willis Dodge this 22<sup>nd</sup> day of March 1860. A. J. Endicott not found in my County.

Servg. Fund 60. Travel 75 = \$ 1.35.

W<sup>m</sup> P. Withers Shff

W<sup>m</sup> Cromwell Deputy.

And thereupon, afterwards, at the regular April Term of said Circuit Court, to wit: on the 2<sup>d</sup> day of April A. D. 1860 the following order

was made by said Court in this cause, as appears of record, to wit:

Henry J. & Samuel C Deal

vs

Willis Dodge & Absalom T. Endicott.

} In Assumpsit.

This day, on motion of said plaintiffs by their Attorneys, said Defendant Willis Dodge is by the Court ruled to plead to the Declaration filed herein against him by the first day of the next term of this Court. And this cause is continued.

And afterwards, to wit: on the 15<sup>th</sup> day of May A.D. 1860, came the said Defendants by Robert E. Williams their attorney and filed in this cause a plea, and an agreement, which said plea and agreement were in words and figures as follows, to wit:

State of Illinois, McLean Circuit Court  
Henry J. Deal  
& Samuel C Deal

vs

Willis Dodge & Abraham T. Endicott.

} September Term 1860.  
} In Assumpsit.

And now came

9. the said Defendants and defend the wrong  
and injury when &c. and say that they did  
not undertake and promise in manner and form  
as the said plaintiffs have above complained  
against them, on of this the defendants put their  
selves upon the country.

Williams & Williams.

Attys. for Defendants.

And the plaintiffs doth the like.

Hanna & Scott

Attys. for Plffs.

The defence relied upon is a failure of the con-  
sideration for which the notes sued on were given.  
And it is hereby agreed between the parties, that  
anything may be given in evidence in defence  
upon the trial, that would be proper evidence  
under any special plea well pleaded, that no  
technical objection shall be taken to the intro-  
duction of the notes filed for a variance of  
description in the Declaration.

Williams & Williams Attys. for  
Defts.

Hanna & Scott, Attys. for Plaintiffs

And thereupon, at the regular September term of  
said Circuit Court, this cause was continued to

the December term, and at said December term, to wit: on the 2<sup>d</sup> day of January A. D. 1861, the following order was made herein as appears of rec<sup>d</sup>. Cord, to wit:

Henry J. Deal + Samuel C. Deal } In Assumpsit  
vs  
Dodge + Endicott.

And now at this day come the parties hereto by their attorneys, and upon their agreement the trial of this cause is set for the 14<sup>th</sup> of this month.

And thereupon at said December term, to wit: on the 14<sup>th</sup> day of January A. D. 1861, this cause came on to be heard, before said Court.

Present Hon. David Davis, Presiding Judge  
W<sup>m</sup> McCullough, Clerk.  
Jno. L. Routh, Sheriff,

and the following proceedings were had as appears of record, to wit:

Henry J. Deal + Samuel C. Deal }  
vs  
Willis Dodge + Abner T. Endicott. } In Assumpsit  
- And now

at this day come the parties hereto by their Attorneys, and this cause coming on for trial, there upon comes a Jury, twelve good and lawful men, to wit: Samuel P. Cooper, William Gillespie, Lewis Burr, P. C. W. Lyman, Milton Taffe, Wm. G. Thompson, J. B. Graham, John C. Vinton, Henry C. Bishop, Allen Hendrix, Thomas Tarmant & E. C. Dawson, who being duly empaneled and sworn to try the issue herein joined, and having heard the evidence produced before them and the arguments of Counsel, upon their oaths do say, that they find the issue for the Defendants. And now come the said plaintiffs by their Attorneys and move the Court to set aside the verdict of the Jury aforesaid, and to grant a new trial in this cause.

And afterwards, at said December term of said Circuit Court, to wit: on the 30<sup>th</sup> day of January A. D. 1861, final Judgment was rendered in this cause by said Court, in word and figures as follows, to wit:

|                                    |              |
|------------------------------------|--------------|
| Henry J. Deal & Samuel C. Deal     | } Plaintiffs |
| vs                                 |              |
| Willis Dodge & Absalom S. Endicott | } Defendants |

= And now at

this day again come the parties hereto by their  
 Attorneys and this cause now coming on to be  
 heard on the motion for a new trial herein - before  
 entered by said Plaintiffs, is argued by Counsel,  
 and the Court having heard said motion, and  
 being now fully advised in the premises, doth con-  
 sider that said motion be overruled. It is there-  
 fore considered by the Court that the said De-  
 fendants be hereof discharged and go hence with-  
 out day, and that they recover of and from  
 the said plaintiffs their costs herein expended, and  
 that they have execution therefor. And now come  
 the said plaintiffs, and pray an appeal to the  
 Supreme Court of this State, and the same is  
 granted, and with the consent of the parties here-  
 to, leave is granted said plaintiffs to file their  
 appeal Bond in this cause within thirty days,  
 which said Bond shall be in the penal sum of  
 Three Hundred Dollars conditioned as the law di-  
 rects, and to be signed by William H. S. as  
 security.

And afterwards at the Regular December term  
 of the Circuit Court begun & held in and for  
 said County of McLean on the 2<sup>d</sup> day of December

A. D. 1861,

Present, Hon. Charles Emerson, Judge of the  
17<sup>th</sup> Judicial Circuit of the State  
of Illinois - Presiding in the absence  
of the Hon. David Davis, Judge  
of the 8<sup>th</sup> Judicial Circuit.

W<sup>m</sup> McCullough, Clerk  
Geo. L. Routh, Sheriff

This cause having been heard in the Supreme  
Court of this State and having been remanded  
back for further proceedings - thereupon on the 11<sup>th</sup>  
day of December A. D. 1861, the following order  
was made herein as appears of Record, to wit:

H. J. + S. C. Deal

vs

Willis Dodge + Abalom  
T. Endicott.

In Assumpsit

And now at this day  
the parties hereto by their attorneys. And this cause  
having been re-docketed by order of the Supreme  
Court, for further proceedings herein: said De-  
fendants now move the Court to continue this  
cause, and present to the Court an affidavit  
in support of said motion. And the Court having  
heard said affidavit, and being fully advised in

defendant did not know the contents of said  
 opinion until the same was so filed, and under  
 said opinion it becomes material for this Defendant  
 - prove that he offered to convey the land for  
 which the notes were given to the plaintiffs, before  
 the title was perfected in this defendant. Defen-  
 dant says that before the 3<sup>d</sup> day of December  
 1858, this defendant in town of Concord in said  
 County and in the Store of the said Durkin who  
 was at that time keeping a store in said town  
 of Concord, this defendant offered to the plaintiff  
 Henry J. Deal to convey to plaintiff whatever  
 title Defendant had to said Land, and to give  
 plaintiffs one hundred dollars, if said plain-  
 tiffs would give up said notes, or not sue on  
 the same, to which offer said plaintiff then  
 and there replied that he would not accept  
 a Deed to the Land, but that he could col-  
 lect the notes and would do so; Affiant can  
 not recollect of any person who was present or  
 heard said Conversation except the plaintiff H.  
 J. Deal; this defendant and his co defendant  
 Endicott, and said Andrew Durkin, affiant  
 expects to prove said offer by said Durkin who  
 was present at the time and affiant knows of

17.

of no other witness by whom he can prove the same; affiant further says that on the 8<sup>th</sup> day of September 1859, in the office of Hanna & Scott in the City of Bloomington in McLean County, Illinois, this defendant again offered to said Plaintiff a Deed to said Land, which would make a Quiet Claim Deed to said Land in any way plaintiff might direct, and to give plaintiff \$100. in satisfaction of the claims sued on; affiant expects to prove this last offer by one James W. Hanger, affiant knows of no witness by whom he can so fully prove said offer last mentioned, as said James W. Hanger, who now lives or did within a very short time since in the County of Clinton and State of Missouri, and affiant does not know of said Hanger's removal therefrom and said Durkin, as affiant believes lives in the City of St. Louis and State of Missouri, affiant has not had time to procure the evidence of either of said witnesses since said opinion and mandate were filed in this Court; last affiant expects to be able to procure the Depositions of both of said witnesses by the next term of this Court, and affiant further says that this application is not made for delay but for the purpose of Justice.

his  
 J. H. Dudge

Subscribed & sworn to before me Dec. 4<sup>th</sup> 1861.  
 Wm. M. Cullough, Clk.  
 By L. Burr, Depy

And upon said affidavit again moved the Court to continue this cause which motion was overruled by the Court, to which ruling of the Court the Defendants then and there accepted and tender this the bill of exceptions and pray that the same be signed, sealed and made a part of the record which is done by the Court. Cha<sup>s</sup> Emerson, Judge (Seal)

And thereupon, at said December term of said Court, to-wit: on the 10<sup>th</sup> day of December A. D. 1861 this cause again came on for hearing and the following proceedings were had herein as appears of record, to-wit:

|                                           |                |
|-------------------------------------------|----------------|
| Henry S. Deal + Samuel C. Deal            | } In Assumpsit |
| vs<br>Willis Dodge, + Abalom T. Endicott. |                |

And now at this day again come the parties hereto by their attorneys, and this cause now coming on for trial, thereupon comes a Jury, twelve good and

10.  
lawful men to wit: B. Everole, William Cron,  
wells, William Witt, Clark Vandewort, N. P. B.  
McColm. M. H. Hawks, Nelson M. Daniel,  
A. Hazelbaker, Thomas F. Mitchell, Peter  
Folsom, Thomas Twining & Michael Hartman,  
who being duly empannelled and sworn, to well  
and truly try the issue herein joined, and having  
heard the evidence produced, and the arguments  
of Counsel, upon their oaths do say, that they  
find the issue for the plaintiffs, and assess  
their damages at Eight Hundred and fifty  
four Dollars and forty two Cents. And now come  
said Defendants by their attorney, and move  
the Court to set aside the verdict of the Jury  
aforesaid, and to grant a new trial of this cause.

And afterwards at said December Term of  
said Court, to wit: on the 19<sup>th</sup> day of Dec-  
ember A. D. 1861 final Judgment was ren-  
dered herein in words and figures as follows, to wit:

Henry J. Deal & Samuel C. Deal } Attorneys  
vs  
Willis Dodge & Abalom T. Endicott. }

And now at  
this day come again the parties hereto by their

attorneys and the Court having heard the motion for a new trial herein - before entered by said Defendants, and being now fully advised in the premises doth consider that said motion be overruled. It is therefore considered by the Court, that said plaintiffs recover of and from said Willis Dodge + Absalom T. Endicott the sum of Eight Hundred and Fifty four Dollars and Forty two Cents, their damages so assessed as aforesaid, and also their costs by them in this behalf expended, and that they have execution therefor.

And afterwards at said term of said Court, to wit: on the 7<sup>th</sup> day of January A. D. 1862, came the said Defendants by their attorney and filed in this cause a motion to vacate the judgment + to grant a new trial in this cause.

And thereupon on said 7<sup>th</sup> day of January A. D. 1862 further order was made by said Court in this cause, as appears of record here.

Henry S. + Samuel C. Deal

Willis Dodge + Absalom T. Endicott

} In Absumpit  
And now

at this day come again the said Defendants by their attorney, and file their motion to vacate the Judgment, and set aside the verdict and to grant a new trial in this cause, which motion is based upon affidavits therewith filed: And now come said plaintiffs by their attorneys and move the Court to strike said motion from the files of this cause, and after hearing the arguments of Counsel, and the Court being now fully advised in the premises, doth consider that said motion of said plaintiffs be sustained, and doth order that said motion of said Defendants be stricken from the files of this cause.

And thereupon, afterwards at said December Term of said Court to wit: on the 9<sup>th</sup> day of January A. D. 1862, came the said Defendants by their attorney and filed in this cause their Bill of exceptions, which was signed and sealed by the Court and ordered to be made a part of the record of this cause, and said Bill of Exceptions was in words and figures as follows, to wit:

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Henry L. & Samuel C. Deal

vs

Willis Dodge & Absalom J. Endicott

In McLean Circuit Court.

Upon the trial of this cause the Plaintiffs read in evidence without objection two notes, as follows:

\$385<sup>00</sup>/<sub>100</sub>

September the 10. A. D. 1857

Twelve months after date we or either of us do promise to pay Joseph H. Brewer or order the sum of Three Hundred and Eighty five Dollars for value received

R. M. Dunseth.

Willis <sup>his</sup> & Dodge

mark  
Absalom J. Endicott

\$330<sup>00</sup>

September the 10. A. D. 1857

Twelve months after date, we or either of us promise to pay Joseph H. Brewer or ord. the sum of Three Hundred and thirty Dollars for value received.

R. M. Dunseth

Willis <sup>his</sup> & Dodge

mark  
Absalom J. Endicott

Each of which notes were endorsed as follows.

"Pay H. L. & S. C. Deal, Joseph H. Brewer"

Plaintiffs here rested their case.

It was admitted by plaintiffs, that plaintiffs purchased the notes after the same became due and that the notes were given for the S<sup>1</sup>/<sub>4</sub> N<sup>1</sup>/<sub>4</sub> Sec. 31. Town 24. N. R. 1. West. in McLean County Illinois.

The Deposition of J. W. Banger was read in evidence as follows.

James W. Banger being duly sworn, doth depose

and say, that the Deed herunto attached and made a part of this Deposition was written by myself. At the time of the execution of the Deed, Joseph Brewer, Iris Hobson, his wife & Willis Dodge were present. Brewer spoke to me about making the Deed, said that he had bought the price of Iris Hobson, and had a Deed for it, and had sold the land to Willis Dodge, and wanted a Deed made from Hobson to Dodge and give up the Deed he had from Hobson. He said in the presence of Dodge and to Dodge, it would save the expense of recording the Deed from Hobson to him. Brewer said that a Deed from Hobson to Dodge would be just as good and save that expense. Brewer paid for making the Deed herunto attached. (objected to by plaintiff) Brewer & Hobson were talking before this deed was signed to Dodge. And they both said, that it (the land) was free from incumbrance. The Deed from Hobson to Brewer was then given up, and this one delivered up to Dodge. Brewer came often to me to make the Deed. I told him while we were alone that I thought it could be done as above stated. At the delivery of the Deed, Dodge paid some money to Brewer, dont exactly recollect the amount - think it was Fifty Dollars, and the money then paid was not to be due until the Christmas following - and the interest was deducted. Dodge cannot read nor write. I was at that time an acting Justice of the peace

Attached to said Deposition was a Deed <sup>with covenants</sup> of General <sup>against all incumbrances</sup> warranty from Iris Hobson & wife to Willis Dodge, conveying the S<sup>1</sup>/<sub>4</sub> N<sup>1</sup>/<sub>4</sub> Sec. 31. Town 24. R. 1. west in McLean County Ill.

which Deed was dated Decem<sup>r</sup> 2<sup>d</sup>. 1857. & Filed for Record  
Feb<sup>y</sup> 16<sup>th</sup>. 1858.

The Defendants recd in evidence a Judgment of B. S. Prettyman  
vs Iris Hobson. for \$104. & costs of suit as follows.

In M<sup>c</sup>Lean Circuit Court Monday Septem<sup>r</sup> 8<sup>th</sup>. 1858

Benjamin S. Prettyman  
Conservator of John D<sup>r</sup>ain

vs

Iris Hobson.

In Assumpsit

This day comes said Plaintiff by  
his attorney. and said Defendant being three times solemnly  
called. came not. but herein made default. and it appe-  
aring to the satisfaction of the Court that said Defendant has  
been duly served with process herein at least ten days prior to  
the first day of the present term of this Court. It is therefore  
considered by the Court that said plaintiff hath sustained damages  
by reason of the premises. but because the amount thereof is  
unknown to the Court. therefore the Clerk is ordered to assess  
the same. and the Clerk having assessed the damages of  
said reports the same in writing to the Court here. which report is  
by the Court approved and ordered to be filed. It is therefore con-  
sidered by the Court. that said plaintiff recover of said  
Defendant the sum of One Hundred and four Dollars  
\$104. his damages aforesaid in form aforesaid assessed. and  
likewise his costs in this behalf expended. and that he do

execution therefor -

25.

Defendants then gave in evidence the adjourning order of the term of court at which the Prettyman judgment was obtained, as follows.

Friday September 19<sup>th</sup> 1856.

"Ordered that Court adjourn until Court in course."

also an Execution on said Judgment issued on the 30<sup>th</sup> day of September A.D. 1856. - and return thereon, as follows.

"Come to hand this Oct. 1<sup>st</sup> A.D. 1856 at 1 o'clock P.M."

J. J. Price. Shff. McLean Co. Ill.

Rec'd Jan 12/57 on the within 23<sup>d</sup>. J. B. M.

Returned to be reissued March 16<sup>th</sup> 1857.

J. B. Moore. Shff.

The Defendants then read in evidence an alias Execution issued on said Judgment, dated 21<sup>st</sup> day of March A.D. 1857, with Sheriff's return thereon, that he levied the said Execution on the SE<sup>1/4</sup> of the NE<sup>1/4</sup> of Section 31, Township 24, North Range one west, in the property of Iris Hobson - that on the 17<sup>th</sup> day of June 1857 he sold said tract of land on said Execution to the plaintiff in execution.

Defendants read in evidence transcript record in a case wherein W. A. Willard is plaintiff and Iris Hobson is defendant:

W. A. Willard

vs

Iris Hobson.

Suit brought on note of hand on file  
Demand \$ 32.00 - Peria January 26<sup>th</sup> 1857.  
Four Months after date I promise to pay

20

J.P. fees W. A. Williard, or order Twenty nine Dollars seven,  
 Cents. Suit 12 1/2 Cents, for Paule Recy.

Summons 18 3/4

Eris Hobson

Judgment 25. Summons issued this 30<sup>th</sup> day of June 1858,  
 Execution 25. and handed to Constable Rhodcaff to serve, made  
 Transcript 1.00. returnable on the 7<sup>th</sup> day of July 1858 at 10 o'clock  
 1.81 1/4 P.M.

State of Illinois } The People of the State of Illinois  
 Constable fees }  
 Execution 60. }  
 To any Constable of said County greeting

You are hereby commanded to Summon Eris  
 Hobson to appear before me at my office in Concord  
 on the 7<sup>th</sup> day of July 1858 at 10 o'clock P. M.  
 to answer the Complaint of W. A. Williard for a  
 failure to pay him a certain demand not exceeding  
 one hundred Dollars and hereof make due return  
 as the law directs. Given under my hand and  
 seal this 30<sup>th</sup> day of June 1858.

Henry S. Deal, J.P.

Summons Endorsed W. A. Williard vs. Eris Hobson

Demand \$ 32.00. J. P. 31 1/4 Cents.

The defendant came forward without process being  
 served and confessed Judgment for Thirty two two  
 Dollars debt and the costs of suit taxed at 50 1/4  
 Cents this 30<sup>th</sup> day of June A. D. 1858.

Execution issued this 20<sup>th</sup> day of July 1858 and  
 handed to Constable Rhodcaff.

State of Illinois }  
 McLean County. } The People of the State of Illinois  
 To any Constable of said County Greeting:  
 We command you that of the goods and Chattels  
 of Iris Hobson in your County you make the sum  
 of Thirty Two Dollars and Six Cents debt, and  
 81 Cents cost, which W. A. Willard lately recovered  
 before me in a certain plea against the said  
 Iris Hobson and hereof make due return to me with,  
 in seventy days from this date. Given under my  
 hand and seal this 20<sup>th</sup> day of July 1858.

Henry J. Deal J. P. (Seal)

Execution returned endorsed I can find no property  
 to make the within debt and costs this 16<sup>th</sup> day  
 of September A. D. 1858 my fees 60<sup>¢</sup> signed  
 P. W. Rhodcap Constable.

State of Illinois }  
 McLean County. } I, Henry J. Deal one of the  
 Justices of the Peace within and for said County,  
 do hereby certify that the foregoing transcript and  
 judgement of W. A. Willard vs. Iris Hobson  
 is truly copied from files and books of my office.  
 Given under my hand and seal this 16<sup>th</sup> day  
 of September A. D. 1858.

Henry J. Deal J. P. (Seal)

Filed September 16<sup>th</sup> 1858 and Recorded in Book 2, page 22.

W<sup>m</sup> McLoughlin, Clk.

By Geo W Shepherd, Depty.

Also read the same where it was recorded in the Records of Court, by L. Burr, Depty, Clerk of Court. Defendants proved that the original certificate of purchase in Prettyman vs. Hobson was here at the last term in Court & that it has been lost & the defence then read the certificate of purchase in Prettyman vs. Hobson, from the records where it had been recorded as follows:

State of Illinois }  
McLean County. }

I, Joseph H. Moore, Sheriff of said County, do hereby certify that on the 17<sup>th</sup> day of June 1857 I did expose to Sale at public Vendue, at the Court House in the City of Bloomington, in said County and State aforesaid, and did then sell to Benjamin S. Prettyman, Comptroller of John Drain, who was the highest and best bidder therefor, the following tract or lot of land, situate in the County, and State aforesaid, known and designated as follows, to wit:

Forty Acres the South East quarter of the North East quarter of Section thirty one Township

Twenty four North, of Range one West of the third principal Meridian;

For the sum of One hundred and five Dollars and fifty seven Cents which said tract or lot of land was by me levied and sold as the property of Iris Hobson by virtue of an execution issued out of the McLean Circuit Court, upon a judgment of Record, in said Court, obtained at the September Term thereof, 1856 in favor of Benj. S. Prettyman, Conservator of John Drain for the sum of one hundred & four Dollars and - Cents and costs of suit, and against Iris Hobson which execution was issued on the 21<sup>st</sup> day of March 1857, And I further certify that Benj. S. Prettyman, Conservator the purchaser will be entitled to a conveyance in fee of the land sold as aforesaid, at the expiration of fifteen months from the day of sale, if said land be not then redeemed.

Witness my hand and seal this 17<sup>th</sup> day of June in the year of our Lord one thousand eight Hundred and fifty seven.

Filed June 25. 1857 } J. H. Moore, Sheriff  
Recorded June 30. 1857. } McLean County, Illinois.

Defendants Read in evidence the execution issued on the Willard transcript, and first part of the return thereon, as follows

State of Illinois } The People of the State of  
McLean County } Illinois:

To the Sheriff of said County, Greeting:  
We Command you that of the Goods and Chattels, Lands and Tenements of Iris Hobson in your County, you cause to be made the sum of Thirty two <sup>4</sup>/<sub>100</sub> Dollars being the amount of a Judgment recovered by W. A. Williard against the said Iris Hobson on the 30<sup>th</sup> day of June A. D. 1858, before Henry S. Deal Esq., a Justice of the Peace, in and for said County, a transcript of which Judgment and accompanying proceedings was filed and recorded in the office of the Clerk of the Circuit Court of said County on the sixteenth day of September A. D. 1858 agreeably to the Statute in such cases made and provided, and likewise Six <sup>4</sup>/<sub>100</sub> Dollars, being costs by said Plaintiff in that behalf expended, as also appears of record. And have you those Monies ready as soon as may be, to render to the said W. A. Williard or his legal representative, as by law required, and make return of this writ within ninety days from the date hereof endorsed in

what manner you execute the same.

Witness, William M. Cullough, Clerk of the Circuit Court of said County, and the seal thereof hereto affixed this sixteenth day of September A. D. 1858.

L. S.

W<sup>m</sup> M. Cullough, Clerk  
By Geo. W. Shepherd, Dpty.

Came to hand Sept. 16<sup>th</sup> 1858 at 1 o'clock P.M.

J. H. Moore Sheriff

By H. Dixon, Dpty.

By virtue of this Execution I did on the 17<sup>th</sup> day of September 1858, Levy upon the South East quarter of the North East quarter of Section Thirty one in Township Twenty four, North of Range One West of the 3<sup>rd</sup> P.M.

J. H. Moore, Sheriff

By Geo. Parke, Dpty.

Defendants then read in evidence the certificate of redemption in Willard vs Hobson as follows:

State of Illinois }  
McLean County. }

I, Joseph H. Moore, Sheriff of said County do hereby certify that W. A. Willard has this day paid to me the sum of

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One hundred and Eighteen  $\frac{16}{100}$  Dollars, which is in full of the redemption of the following described Real Estate, to wit: The South East quarter of the North East quarter of section thirty one Township Twenty four North, of Range one West of the third P.M. said Land was sold to Benjamin S. Prettyman Conservator of John Drain by virtue of an execution issued out of the Circuit Court of McLean County, upon a judgment of Record in said Court obtained at the September Term 1856, in favor of Benjamin S. Prettyman Conservator of John Drain and against Aris Holson for the sum of one hundred and four - and costs of suit which Execution was issued on the 21<sup>st</sup> day of March A.D. 1857, and said Land sold on the 17<sup>th</sup> day of June A.D. 1857.

Witness my hand & seal this 16<sup>th</sup> day of September A.D. 1858.

J. H. Moore, Sheriff (Seal.)  
By Geo. Parke, Deputy.

State of Illinois }  
McLean County. } Filed Oct. 25<sup>th</sup> 1858 and Re-  
corded in Deed Book No. 36 page 15.  
Wm. McCullough Clk.  
By L. Peave, Deputy.

And the balance of the return on execution in Willard vs. Hobson, as follows:

The Plaintiff redeemed the within described Land from a Sale made upon an Execution, wherein Benjamin Prittyman was Plaintiff & Iris Hobson was defendant sale made 17 June 1857 for \$105.57. redeeming on the 17. Sept. 1858, making \$118.69 1/2 Cents and after advertising, according to law did sell on the 21<sup>st</sup> day of October 1858 to W. A. Willard for the sum of the redemption money & took deed forthwith for the same.

Fees forq. & return 60 advertising 3.50. certificate 50 \$ 4.60.

Reading same 50. Commission 3.50, 4.00.

Paid Clerk \$601 in full of Cost of Court - \$8.60.

Retained my fees on this writ.

J. H. Moore Shff.

Defendants then read in evidence the Sheriff's Deed to Willard as follows:

Whereas W. A. Willard did on the 30<sup>th</sup> day of June A. D. 1858 before Henry S. Deal, Esq. a Justice of the Peace in and for the County of McLean and State of Illinois, recover a judgment against Iris Hobson for the sum of Thirty Two Dollars and

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six Cents and Costs of suit, upon which a Transcript was filed in the office of the Circuit Clerk of said County on the 16<sup>th</sup> day of September A. D. 1858, and upon which judgment and Execution was issued, dated on the 16<sup>th</sup> day of September A. D. 1858, directed to the Sheriff of McLean County, to execute, and by virtue of said execution the said Sheriff levied upon the lands hereinafter described, and the same was struck off and sold to W. H. Willard being the highest and best bidder therefor, and the time and place thereof having been duly advertised according to law.

Now know all by this Deed, That I, Joseph H. Moore Sheriff of said County of McLean, in consideration of the premises, have granted, bargained, and sold, and do hereby convey to the said W. H. Willard heirs and assigns, the following described tract or lot of land, to wit:

The South East quarter of the North East quarter of Section thirty one in Township Twenty four North of Range One West of the 3<sup>d</sup> P.M., in the County of McLean and State of Illinois, to have and to hold the said described premises, with all the appurtenances, to the said W. H.

Willard, - heirs and assigns, forever.

Witness my Hand and Seal, this 25<sup>th</sup> day of October in the year of our Lord one thousand eight hundred and fifty Eight.

J. H. Moore, Sheriff (S.S.)

State of Illinois }  
McLean County } Ss.

Be it Remembered, That on this day, before the undersigned, Clerk of the Circuit Court, in and for the County and State aforesaid, personally appeared Joseph H. Moore, Sheriff of said County of McLean, by whom and in whose name the foregoing Deed of Conveyance was executed, who is known to me to be the real person who executed said conveyance, and by whom and in whose name the same is proposed to be acknowledged, and acknowledged that he executed the same, freely and voluntarily, for the purposes and considerations therein expressed;

In Testimony Whereof, I have hereunto set my hand, and affixed the Seal of said Court, at Bloomington this 25<sup>th</sup> day of October 1858.

L. S.

Wm. McCullough, Clerk,  
per. H. Burr, Deputy.

State of Illinois, McLean County, } Filed, Dec. 16

1858, and recorded in Deed Book N: 35 page  
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W<sup>m</sup> McCullough, Ck.

By Geo. W. Shepherd, Deft.

The Court allowed Sheriff to amend his return in Willard vs Hobson. By the original return the sale was Oct. 5 & by amended return was Oct. 20. Plaintiff offered to prove that sale was made within twenty days of advertisement; defendant objected to its introduction. Objection sustained by Court.

James Edcott sworn for Defts. testified as follows:

Know Jos. H. Brewer, to whom these Notes were given, know Mr. Dodge Deft. was present at an interview between Brewer & Dodge at Brewers House went with Dodge. It was on the 8 or 9 of Oct. 1858, Dodge asked Brewer if he still had them notes. Brewer said he did. Brewer said the notes were given for a certain piece of land he bought of Iris Hobson. Dodge told Brewer that he had the money and was ready to pay the notes off provided he would make him a good warrantee deed for the land free from all incumbrances, the deed he had made had proved no account. Brewer told him that it was out of his power

57  
to make a good deed "you know I cannot  
make a good deed" he said. Dodge then told  
him that if he or Hobson would make him a  
deed he was willing to pay for the land.  
Brewer said he could make a good deed for  
the land neither he or Hobson. Dodge then  
told him he would have nothing more to do  
with the land that he wanted him to give him  
up his notes & pay him back a \$100 = & he  
(Dodge) would give him back a deed.  
Brewer asked him what kind of a deed he  
would give. Dodge said a quit-claim of course.  
Brewer said that was as fair as he could ask  
any man to do, but that he did not have  
the money to pay the \$100. with & then Dodge  
told him he would wait a year for the \$100  
without interest. Brewer asked Dodge if he  
would take Hobson's note for the \$100. Dodge  
said he would if he would give it well  
secured. Brewer said he would go & see Hobson  
& fix it up with Hobson - or try and fix  
it up. I am not certain which expression was  
used - these is about last words. In this same  
conversation Dodge asked Brewer to state a  
previous conversation in a corn field. Brewer said

that he had never got his deed recorded, that it would save some expense to have his Deed torn up & take one from J. Hobson. Dodge replied that he would do it if he could get a good warrantee deed free from all incumbrance if it wasn't he wouldn't have any thing to do with it. Brewer said that it should be a good warrantee deed free from all incumbrance. Don't recollect any thing more. Dodge had some money, saw some gold & some silver & quite a bunch of paper money, looked as if there might be several hundreds of dollars. He got it at home in his house, saw it there he had it in a pocket book in a side pocket & it stuck out four or five inches. The conversation in the Corn field was before the \$50 note became due & a little before the deed was made. Brewer said it was before the \$50 note became due. Brewer said Dodge had paid \$50 when trade was first made & gave a \$50 note due Christmas & got from Brewer a bond for a deed, when the \$50 note was paid he was to give Dodge a deed. This conversation in the Corn field was a few days before the \$50. was due. Brewer said that Dodge had paid him \$100. on the Land.

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Can't tell relation to Endicott Defendant I  
suppose I am some little relation. Deft. is  
Uncle to my grandfather. I went with Dodge  
to Brewer at Dodge's request. I suppose I went  
so as to be a witness.

Re Ex. -

Dodge never done anything with the land  
after this conversation with Brewer, he had  
previously had about ten acres in corn that  
summer - Dodge went away from the land.

Defence -

The corn was all cut up and part taken  
away, before Dodge moved, I am not cer-  
tain that it was that year; I think it  
was the same. Don't think Dodge removed  
all the corn. Can't tell why he left any  
whether for rent or otherwise.

Joseph B. Ayers - sworn testified as follows:

I have known Iris Hobson 10 or 12 years,  
live about four miles from, in Fall of 1858  
only about 2 miles. I know the land -  
Controversy - I have seen Dodge on the land  
can't recollect the time think it soon after he  
purchased he was working, never saw him there  
but once. The land is about 1/2 mile from

where I live, - it is in full sight from my house. I have been by the land several times it seems to be abandoned. Don't know of any one being in possession of land since fall of 1857. Have been on the land several times in F. of 1859 three or four times. Land was never fenced.

Mr. Cooper sworn testified as follows: Know the land in controversy. My house is within half a mile. Have lived there 11 years. Dodge was on the land in 57. I think he had in a little piece in corn 12 acres. Dodge gathered some of it. Mr. Taylors Cattle gathered some of it. Don't know how much Dodge got. Dodge moved out of that settlement in Oct. 1857, he went some six or seven miles, he stayed there one year. Never saw Dodge on the land since he moved. The land is in sight of my house. Mr Swilling raised a crop on part of that land this year. Dodge gathered by him in 1857 the corn raised, just before he left. He took it to the place where he lived. He removed from the place late in Oct. He gathered the corn about a week before he moved. I never saw him gather only one load of it to feed. Dodge has moved back in to our settlement a

year or two afterwards; he lives about a mile distant from this land.

Jo: E. Springer, sworn, Defendant showed him the following Deed:

This Indenture, Made this third day of December in the year of our Lord Eighteen Hundred and Fifty Eight between Willis Dodge and Nancy E. Dodge his wife of the County of McLean and State of Illinois of the first part, and Iris Hobson of the County of McLean and State of Illinois of the second part, Witnesseth: That the said party of the first part, for and in consideration of the sum of Seven Hundred Dollars to them paid, by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever release and discharge therefrom, has remised, released, sold, conveyed, and Quit-Claimed, and by these presents do remise, release, sell, convey, and Quit-Claim unto the said party of the second part, his heirs, and assigns, forever, all the right, title, interest, claim, and demand which the said party of the first part have in and to the following described Lot, Piece or parcel

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of Land, with the appurtenances, lying and being in the County of McLean and State of Illinois described as follows, to wit:

The South East quarter of the North East quarter of section thirty one (31) in Township twenty four (24) North of Range One (1) West of the third Principal Meridian, containing forty (40) acres more or less.

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

In Witness whereof, The said parties of the first party, hereunto set their hands and seals on the day and year first above written.

Signed, Sealed and Delivered, } <sup>his</sup> Willis K. Dodge }  
in presence of } Nancy E. Dodge }  
mark } mark }

State of Illinois }  
McLean County }  
} J. John C. Hayburger a  
Justice of the peace in and for

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said County, do hereby certify that the above  
named Willis Dodge and Nancy E. Dodge his  
wife (who is personally known to me to be the per-  
son whose name is subscribed to the foregoing Deed  
as having executed the same) this day in their  
proper persons came before me, and acknowledged  
that they signed, sealed and delivered the said  
Deed, as their free and voluntary act for the  
uses and purposes therein mentioned. And the said  
Nancy E. Dodge wife of the said Willis Dodge ha-  
ving been made fully acquainted with the contents  
of said Deed, and by me examined, separate and  
apart from her said husband, declared that she  
signed and acknowledged said Deed, and relin-  
quished her dower in and to the Lands thereby  
conveyed, freely, voluntarily, and without com-  
pulsion of her said husband, and that she  
does not wish to retract.

In Testimony Whereof I have hereunto set my  
hand and seal, this sixth day of December 1861.  
(Sd.) John C. Haybarger  
Am acquainted with Dodge & Hobson. My  
recollection about that deed is about this: I  
saw it in Mr. Williams office and in Bloomington.  
I was walking along Mr. Dodge, Hobson

& myself met or passed the time of day but what conversation occurred between Dodge & Hobson I cannot remember, there was something said about some paper but what it was I don't know, it was about 3 years ago at the - There was something said about a deed but I don't remember what. Can't say whether or not Dodge produced the deed. Somewhere about Concord I met the same parties. Can't say what took place there.

Oris Hobson =

The defendant never tendered me a deed to this land. Never told me he had a deed ready. Never heard of such a thing as his having a deed until within 12 months. The deed was never spoken of in my presence.

James Endicott.

I have no recollection of seeing deed tendered. I was present at a time when they had some conversation, but do not recollect about a tender. Can't say I ever heard the parties say anything about the deed. After thinking a while don't remember anything more.

Plffs. Resume.

Plaintiff's then Read in evidence deed from Hil. land to U. S. Dodge:

This Indenture, made this

Twenty eighth day of October in the year of our  
 Lord one thousand eight hundred and fifty eight  
 Between William A. Willard and Theresa C. his  
 wife of the City and County of Peoria and State of  
 Illinois, party of the first part, and Uriah S.  
 Hodge of the town of Bloomington County of McLean  
 and State aforesaid, party of the second part,  
 Witness, That the said party of the first part,  
 for and in consideration of the sum of Thirty two  
 Dollars, lawful money of the United States of America,  
 to him in hand paid by the said party of the  
 second part, at or before the ensuing and delivery  
 of these presents, the receipt whereof is hereby ac-  
 knowledged, have remise, released, sold, and forever  
 quit claimed, and by these presents do remise,  
 releas, sell and forever quit claim, unto the said  
 party of the second part, and to his heirs and  
 assigns forever, all that certain tract or parcel  
 of Land, situate, lying and being in the County  
 of McLean and State of Illinois, known and de-  
 signated as the South East quarter of the  
 East quarter of Section numbered Thirty one (31)  
 in Township Twenty four North of Range One (1)  
 West of the third principal Meridian.

To Have and to Hold the above described

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premises, with all the privileges and appurtenances thereunto belonging, to him the party of the second part; his heirs and assigns Forever.

In Witness whereof, The said party of the first part have hereunto set their hands and seals this \_\_\_\_\_ day and year first above written.

Signed, sealed and delivered } Wm A. Willard  
in presence of } Theresa C. Willard. S.S.

State of Illinois }  
City and County of Peoria } I, John A. McCoy,  
Justice of the Peace in and for said County, do  
certify, that on this day personally appeared be-  
fore me William A. Willard & Theresa C. Willard  
whose names appear subscribed to the foregoing  
Deed of conveyance as having executed the same, and  
who are personally known to me to be the real per-  
son who and in whose name the acknowledgment  
is proposed to be made, and acknowledged the  
execution thereof as voluntary act and deed for  
the uses and purposes therein expressed. And the  
said Theresa C. Willard wife of the said William  
A. Willard having been by me made acquainted  
with the contents of the said Deed, and by  
my examined separate and apart from her said  
husband whether she had executed the same and

relinquished her dower to the lands and tenements therein mentioned, acknowledged that she had done so, voluntarily and freely, and without compulsion of her said husband, and do not wish to retract.

Given under my hand and seal of office at the City of Peoria, this 25<sup>th</sup> day of October A.D. 1858.

J. A. McCoy, J. P. (L.S.)

January 3, 1860. Filed in the Recorder's Office of McLean County, Illinois A.D. 1859, and recorded in book 38 of Deeds, page 118 + 119. Jan'y 10/60.

Wm. McCullough, Recorder

By R. Ames, Depty.

Plaintiff then offered in evidence the following Deed from Hodge to Hobson:

This Indenture, made this Twelfth day of April in the year of our Lord Eighteen Hundred and Fifty Nine bet. w<sup>th</sup> U. S. Hodge and Mary C. Hodge his wife of the County of McLean and State of Illinois of the first part, and Iris Hobson of County of McLean and State of Illinois of the second part, Witnesseth: That the said party of the first part, for and in consideration of the sum

of One hundred and fifty Dollars, to them paid, by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever release and discharge therefrom, have remised, released, sold, conveyed and Quit-Claimed, and by these presents do remise, release, sell, convey, and Quit-Claim unto the said party of the second part, his heirs, and assigns, forever, all the right, title, interest, claim, and demand which the said party of the first part has in and to the following described Lot, Piece or Parcel of Land, with the appurtenances, lying and being in the County of McLean and State of Illinois described as follows, to wit:

The South East Quarter of the North East Quarter of Section Thirty One (31) Township Twenty Four (24) North of Range one (1) West of the third Principal Meridian.

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

forever.

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

Signed, Sealed and Delivered, } Uriah S. Hodge  
 in presence of } Mary C. Hodge. W.

State of Illinois

McLean County.

I, John C. Lockrott a Justice of the Peace in and for said County, do hereby certify that the above named U. S. Hodge and Mary C. Hodge his wife (who are personally known to me to be the persons whose names appear subscribed to the foregoing Deed, as having executed the same) this day in their proper persons came before me, and acknowledged that they signed, sealed and delivered the said Deed, as their free and voluntary act, for the use and purposes therein mentioned. And the said Mary C. Hodge wife of the said U. S. Hodge having been made fully acquainted with the contents of said Deed and by me examined, separate and apart from her said husband, declared that she signed and acknowledged said Deed, and relinquished her dower in and to the Lands thereby conveyed, freely, voluntarily, and without compulsion of her

50 said husband, and that she does not wish to retract.

In Testimony Whereof, I have hereunto set my hand and official seal, this 12<sup>th</sup> day of April 1859.

John C. Lockrott J. P. (Seal)

State of Illinois }  
 McLean County. } Filed for record Dec. 27. 1859  
 Recorded Dec 29. 1859 in Book 38 of Deeds, page 87.

Wm. McCullough, Ck.

By R. Ames, Depty.

To which Defendant objected because Defendant from the evidence had done all he could do before that time to place the parties in statu quo.

Plaintiff then recalled U.S. Hodge, who swore, I made the deed to Holson & delivered it to him the same day I think, at the time it was executed.

Plaintiff again offered said Deed, and Defendant again objected, for the above reasons, which objection was overruled by the Court to which ruling of the Court Defendant then and there excepted, and Deed read in evidence without any objection to the manner of the execution.

The above was all the evidence in the cause, Defendant therefore <sup>upon</sup> presented to the Court in writing the following instruction, and asked the Court

to give the same to the Jury as follows:

If the Jury believe from the evidence that the Defendant Dodge purchased of Joseph H. Brewer the S. E.  $\frac{1}{4}$  of the N. E.  $\frac{1}{4}$  of section thirty one in town 24 N. R. 1 W. 3<sup>d</sup> p. M. in McLean County, Illinois and gave the notes paid on in this case for part of the purchase money for said land, and if they further believe from the evidence, that Deft. Dodge had paid to Brewer \$100. in cash on said Land and if they further believe from the evidence that Dodge (after he found the Land had been sold on the Prettyman judgment, and had not been redeemed from said sale,) at or about the time the notes paid on became due, went to Brewer with the money, and then offered to pay Brewer the amt. due on the notes if he Brewer would then procure for him Dodge a good title to said land, or if he Brewer or Hobson would procure for him Dodge a good title to said land, and that Brewer then told Dodge, that neither he Brewer nor Hobson could make to Dodge a good title to said Lands, and that Dodge then told Brewer that Dodge would give up and abandon the Land and have nothing more to do with it, and that Dodge then further offered to make to Brewer

a quit claim Deed to said land if he Brewer would pay back to him Dodge the \$100. that Dodge had payed to Brewer on said land, and that Brewer declined to receive said Deed. and pay back said money, that was an offer on the part of Dodge to place the parties in statu quo, and if they further believe from the evidence, that Dodge did within a prior days abandon the land, they should find for the Defendants.

Which was refused by the Court, to which Defendant then and there excepted.

And thereupon the Jury found for the plaintiff in the sum of \$844 <sup>42</sup>/<sub>100</sub>, and thereupon the Defendants moved the Court to set aside the verdict and grant them a new trial, because the Court erred in excluding proper evidence offered by Defendants, and because the Court erred in admitting improper evidence for plaintiff, and because the Court in refusing Defendants instructions, and because the verdict is against the law and the evidence, which motion the Court overruled, and entered Judgment on the verdict to which ruling of the Court the Defendant then and there excepted.

And afterwards, to wit: on the 7<sup>th</sup> day of January 1862, plaintiffs defendants

made the other motion as follows:

State of Illinois.

McLean Circuit Court December term 1861.

Henry J. Samuel & Deal

vs.

Willis Dodge & Endicott.

The defendants move the Court to vacate and set aside the Judgment and grant them a new trial, because they have discovered since the trial, and since the previous motion for a new trial, that they can prove the tender of a Deed to the premises in controversy from Defendant Dodge to Iris Holson, before the title was got back into Holson by the Deed from Dodge to Holson, that it was not owing to any want of diligence, that the evidence was not given on the trial, Defendants ask a new trial, because

- 1<sup>st</sup> Justice was not done on the trial.
  - 2<sup>d</sup> Because Justice can be done on a new trial.
  - 3<sup>d</sup> Because it was owing to no want of diligence, on the part of Defendants that Justice was not done upon the trial, for these reasons, and based upon the affidavits herein, they move the Court for a new trial.
- Williams for Defendants.

And in support of same, filed and read the following affidavits:

State of Illinois

No. 1000 Circuit Court, December Term 1861.

Henry J. + Samuel C. Deal

vs

Willis Dodge + Absalom T. Endicott.

Robert E. Hill,

claims being duly sworn on his oath says, that he is the Attorney for the Defendant, in said cause, that a suit was pending on the same subject matter between the said parties in 1858, that he in connection with H. W. Packard Esqr. at that time the Law partner of affiant was employed to defend said cause, that that suit resulted in a new suit by plffs, that affiant on the day of the Deed of the Deed attached to the affidavit of the Defendant Willis Dodge for a new trial in this cause, this affiant wrote said Deed, that is filled up the blanks in the written form, and gave the same to Defendant Dodge, with instructions to have the same duly executed by him Dodge his wife, and duly acknowledged, and then deliver said Deed to Hobson the grantee or to offer to give it him and if Hobson refused to receive the Deed for him Dodge to be proposed, to prove the tender, Dodge

took the Deed and left the office, some time afterwards. I think and feel confident it was in the same month of the date of the Deed. Dodge again came to the office, I think in company with Joseph E. Springer, whether they came in together or not, I am certain they were in the, that is my office together, and Dodge then handed me back the Deed, saying he had offered it to Hobson three times, and Hobson would not take it, and saying that the last time he had offered it was just before that time on the Street in Hinghamton in presence of Joseph E. Springer, and Springer said yes he had seen him offer it, as I now recollect the language, I then remarked to Springer I can prove a tender of the Deed, by you if necessary and he Springer said yes. Dodge then gave me the Deed, and said I could give it to Hobson if he would accept it. I replied if he would not take it from him, I supposed he would not from me.

I afterwards made out a Deed from H to Plover, as I now recollect, and expected to produce on the trial of this cause, the tender of the Deed to Hobson by said Springer. I handed the Deed to Springer on the witness stand, but he could not

at the time recollect, this evidence was not offered on the former trial because by the ruling of the court it was not necessary. I was very much surprised at the trial at this term, at the fact that Springer and the other witnesses Endicott having forgotten the tender, and believe on a new trial the tender can be fully proved.

Subscribed & Sworn to  
before me Dec 31<sup>st</sup> 1861. } R. E. Williams,  
Wm. McCullough, Clerk }  
By G. Burr.

Deal + Deal } In McLean Circuit Court  
vs } In Assumpsit,  
Dodge + Endicott. } State of Illinois }  
McLean County. }

Mc W. Packard being duly sworn on oath says that he was law partner of Robert E. Williams Esquire before and during the winter of 1858 and up to June or July 1859, and recollects very distinctly that Willis Dodge came to the office of himself & partner several times to consult about the defence to the first suit brought by Deal on the Notes in question, and on learning from said Dodge the facts about said notes, their having been given for the purchase money

of certain lands of Eric Hobson, and that said  
Hobson could not make a good deed, and that  
said notes were assigned after maturity. It was  
decided by us that a quit-claim deed of said  
lands should be executed by said Dodge & Co.,  
deed back to Hobson, that in accordance with  
said decision such a deed was filled out and  
given to Dodge in our office, and he was par-  
ticularly instructed to have the same signed & ac-  
knowledged by himself & wife, and then in the  
presence of a witness or witnesses to tender the same  
to Hobson. Dodge took the deed and left the  
office and affiant never saw it again until  
the present term of the Court as affiant re-  
members & further saith not.

Subscribed & sworn to before me (W. H. Packard,  
the 7<sup>th</sup> day of January A. D. 1862.

W. M. Cullough, Clk.

By L. Burr, Dep.

State of Illinois

McLean Circuit Court, December Term 1862.

Henry J. & Samuel C. Deal

vs

Willis Dodge & Absalom T. Endicott.

Joseph E. Springer, being duly affirmed & says,

In Assump. pt.

that on the trial of this cause, at the present term of this Court, affiant was called as a witness by Defendants, and was asked as to the tender of a Deed, by Deft. Dodge to Iris Hobson a certain Deed of quit claim made by said Dodge & his wife, to said Hobson for the S. E.  $\frac{1}{4}$  of Sec. 31, T. 21, N. R. (1) West 3<sup>d</sup> P.M. which Deed is dated Dec. 3<sup>d</sup> 1858, affiant was asked by the counsel of Defendant about an interview between said Dodge and said Hobson in the City of Bloomington in McLean County Ill. in December 1858, that affiant at the trial recollected the meeting referred to and gave his recollection of the time and place of the meeting, but, had at the time of said trial forgotten what passed at said interview, the transaction had taken place about three years before the trial, and affiant had only been subpoenaed as a witness on the trial on the day before the trial commenced and his attention had not been called to the fact of said interview, and what took place at the same until very shortly before the trial, and at the trial affiant could not recollect, what took place at the interview, but since said trial affiant has been thinking the matter over, and now recollects as follows: affiant

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recollects that he was at the office of R. E. Williams  
on the day said Deed was written out by said  
Williams which affiant believes was on the day  
said Deed bears date, that Dodge was present,  
and that said Williams made out said Deed and  
gave it to Dodge, and instructed Dodge to have  
said Deed properly signed by him said Dodge  
and wife, and to have it properly acknowledged  
before an officer, and then in presence of a  
witness to deliver the same to said Hobson, and  
if Hobson refused to receive it, to have the wit-  
ness prepared to prove the tender and that Dodge  
took away said Deed from Williams office, that  
affiant now further recollects that during said  
month of December 1858 the exact time in the  
month affiant cannot tell, but affiant feels  
confident that it was in the month of December  
as affiant was attending the December term of  
the circuit Court of said McLean County at the  
time in session on business of affiants in said  
Court, that affiant was walking along the so-  
side of the Court house square in Bloomington  
saw said Dodge and Hobson meet and stop  
and commence a conversation. It was the time  
going to the office of said Williams, and suppose

said Dodge was also going there. I came up to Dodge just about that time we met Hobson coming towards us in the opposite direction. Dodge and myself both spoke to Hobson, we all being very well acquainted, at that moment Dodge placed his hand to the breast coat of his pocket and commenced pulling out a paper, and said to Hobson here is that Deed for this piece of Land, (at that moment I think I took a step back, and was standing rather at the side, and sort of behind Dodge and he and Hobson were facing) Hobson immediately replied to Dodge: I have nothing to do with it, I have sold the Land to Brewer and having nothing more to do with, Hobson immediately walked on, and myself and Dodge then both went on in the direction we were before going and went to the office of said Williams and Dodge then handed said Deed to said Williams, and told said Williams, that he had offered said Deed to Hobson several times, and he would not take it, and that he Dodge could not do anything more with it, and that he would then leave it with said Williams. I took the Deed in my hand and looked it over and recognized it to be the same Deed, I have first before spoken of, and the same Deed that was

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handed to me on the trial at this term of the Court. I also recollect of their telling said Williams that I could prove the tender of said Deed, if it was necessary, as said Dodge had immediately before that time tendered said Deed to Hobson in my presence.

Subscribed & sworn to before me Dec 21<sup>st</sup> 1861.

Jos. E. Springer.

L. Burr, Dep. Clk.

State of Illinois

McLean Circuit Court.

December Term 1861

Henry S. & Samuel C. Deal

Willis Dodge & Abalom<sup>us</sup> N. Endicott.

Nathaniel Perry

being duly sworn on his oath says, that he is well acquainted with Eric Hobson has known him for over twenty years, that he has lived in the neighborhood with said Hobson for over twenty years, that he is well acquainted with the reputation of said Hobson for truth and veracity in the neighborhood in which said Hobson lives, that said Hobson's reputation for truth and veracity among his neighbors is bad from said Hobson's reputation among his neighbors for truth

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and veracity, I would not believe him on oath  
where he had any feeling or prejudice in a case.

Subscribed & sworn to before  
me Dec 26<sup>th</sup> 1861. } Nathaniel Perry.

Wm McCullough, Clk

By L. Durr, Depty

State of Illinois

W. L. Lean Circuit Court. } December Term 1861.

Henry J. & Samuel C. Deal

vs.

Willis Dodge & Abalom S. Endicott.

Thomas Garris,

Jacob Cooper, William Garris and Nathaniel Hin,  
shave duly sworn on oath say, that they and  
each of them is well acquainted with Eric Holson  
have known and lived in his neighborhood for  
Eight years and upwards, that they are well ac-  
quainted with the reputation of said Holson for  
truth and veracity in the neighborhood in which  
said Holson lives, that the reputation of said  
Holson for truth and veracity in the neigh-  
hood in which he lives, is very bad, that from  
the reputation of said Holson for truth and ver-  
acity among his neighbors they would not be-  
lieve him said Holson on oath, where he had  
any feeling of prejudice in a cause. — Sub.

Subscribed & sworn to before me Dec. 31<sup>st</sup> 1861.  
 L. Burr, Depy. Ck. } Thomas Garris  
 } Jacob <sup>his</sup> Cooper  
 } William <sup>mark</sup> Garris.  
 } Nathan Hinshaw

State of Illinois }  
 McLean Circuit Court. } December Term 1861.  
 Henry J. + Saml. C. Deal }

vs.  
 Willis Dodge + Absalom T. Endicott. }

= John Webber being  
 duly sworn on his oath says that he is well ac-  
 quainted with Eric Holson, that he has known  
 him said Holson for six or seven years, that he is  
 well acquainted with said Holsons reputation for  
 truth and veracity in the neighborhood in which  
 he said Holson lives, that said Holsons re-  
 putation for truth and veracity in the community  
 in which he Holson lives is bad, from the re-  
 putation of said Holson for truth and veracity  
 among his neighbors, I would not believe him  
 oath, where he had any feeling or prejudice  
 in a case.

Subscribed & sworn to before } John Webber  
 me Decr. 26 1861. Wm M. Cullough (Ck.) }  
 By L. Burr, Depy

State of Illinois  
 N. Leon Circuit Court, December Term 1861  
 Henry & Samuel C. Deal  
 vs  
 Willis Dodge, A. T. Endicott

In Assumpsit.

= Willis Dodge, one of

the Defendants, being duly sworn on his oath says that on the trial of this cause at this term of the Court, as he was advised by his counsel R. E. Williams it was material for Defendants to prove a tender of a Deed, from affiant to one Iris Hobson, affiant says on the 3<sup>rd</sup> day of December 1858, said Williams made out the Deed hereto attached and made part of this affidavit, and gave it to affiant and instructed affiant to have said Deed duly executed and acknowledged by affiant and wife, and for affiant then to deliver said Deed to said Hobson, and if Hobson refused to accept the same to have a witness by whom affiant could prove the tender, that affiant took said Deed and had it executed and acknowledged as directed, and shortly afterwards, and during the same month of December 1858, affiant did tender said Deed to said Hobson three different times, and in the presence of James T. Endicott, and twice in the presence of Joseph E. Springer, the

tender in presence of Endicott, and one in pres-  
ence of Springer was in Bloomington, McLean County  
Illinois, the other tender in presence of Springer  
was in the town of Concord in said County, that this  
case has been in Court three times, the first time  
a new suit was taken, that at the trial before the  
case went to the supreme Court as affiant was  
informed, by the rulings of the Court, and by  
his Counsel it was not necessary to prove said  
tender, and the witnesses, although they were not  
called to prove said tender, that said trial was a  
year ago, the case then went to the supreme Court,  
and was not sent back for a new trial, until  
a few days before this term of Court, affiant  
was advised by his counsel, that he thought the  
case would not be tried at this term of the Court,  
as his Counsel thought the mandate of the Supreme  
Court had not been in this Court long enough  
to compel a trial at this term of the Court, that  
this cause was among the first on the Docket  
affiant was only informed a few days before  
trial, that the case was to be tried at this term  
and what was necessary for affiant to prove  
upon this trial, that affiant immediately after  
receiving said notice went to work to prepare for

the trial, that affiant had both said Endicott and said Sprunger subpoenaed and present at the trial, as witnesses and affiant expected confidently to prove said tender by both of said witnesses; but affiant was surprised on the trial by both of said witnesses having forgotten the facts about said tender; affiant had the greatest confidence that said Sprunger would recollect said tender, as the same was made in his presence in Bloomington, and his attention was called to it, and immediately after said last tender, affiant and said Sprunger went together to the office of R. E. Williams, affiant's Attorney, and there the matter was talked over and said Sprunger then and there told said Williams, that he Sprunger had just seen affiant tender said Deed to said Hobson, and if necessary he said Sprunger, could prove said tender, that affiant now knows, that if he can obtain a new trial, he can prove said tender by said Sprunger, that it is owing to no want of diligence on the part of affiant, that he did not prove it on the trial, as he truly believes as he believed and had good reason to believe that at Court said Sprunger would prove said tender, affiant further says, that he believes, on another trial he can prove that the

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Deed from U. S. Dodge to Hobson was not  
delivered to Hobson, affiant further says, that  
he fully and confidently believes on a new trial  
that he can so successfully impeach the credit of  
Iris Hobson for truth and veracity by his neigh-  
bors, were of respectability, as totally to destroy  
the weight of any evidence said Hobson might  
give in this cause.

Wells H. Dodge  
Subscribed & sworn to }  
before me, Dec 21<sup>st</sup> 1861. }  
L. Burr, Dep. Clk.

Attached to the affidavit of Wells Dodge was  
a quit claim deed from Wells Dodge wife to  
Iris Hobson - being the same Deed inserted in  
full in the testimony of Joseph E. Springer,  
on pages 41 & 42 of this Record,

Which motion was overruled by the Court to which  
ruling of the Court Defendants then and there  
accepted and tender this their Bill of Ex-  
ceptions and pray that the same be signed  
sealed and made part of the record which  
is done by the Court.

Chas. Emerson Judge

State of Illinois  
McLean County

I, Wm. McCallough, Clerk of the Circuit Court in and for said County, do hereby certify that the foregoing is a true and complete Transcript of the records and files of my office pertaining to a certain cause wherein Henry S. Deal & Samuel C. Deal are plaintiffs, and Willis Dodge & William J. Emlicott are Defendants.



Given under my hand and seal of office at Bloomington, this 7<sup>th</sup> day of March A. D. 1862.

Wm. McCallough, Clerk  
By L. B. Burr, Deputy

*Rodgers & Co. Dist.*

*J. L. & A. C. Deal*

*Record & Errors*

*Filed March 29. 1862.  
A. Keland*

*Att. fees for this Record paid  
by A. C. Williams. atty for Dodge*

