

No. 12025

Supreme Court of Illinois

Merritt

vs.

Merritt

71641  7

Daniel Menitt } Bill to foreclose Mortgage
 vs. } Bureau Cir. Ct. May 1. 1844
 Stephen Menitt }

Abstract of the record.

Original
 Bill (H2)
 (3)

Bill filed April 23, 1844.
 It states that on July 30, 1836 Deft. was indebted
 to compl^t in the sum of \$3,500 & then gave compl^t
 his note for that sum, payable April 1, 1837, interest
 at 12 pr. ct. pr. ann.; & seal. copy made of bill (A)
 original also to be filed, &c. — On July 30. (same day)
 Deft. made mortgage to P^{ty} of S. E. fr. gr. of 24: E.
 fr. gr. & S. W. gr. 25: 16 N. 11 E. 4th P. M. conditioned
 to pay said note. — Mortgage is exhibit C.
 Note is due & unpaid, & aft \$110 ordered Sept. 1, 1837 —
 \$550, Sept. 20, 1838, & the residue is due & wholly un-
 paid & mortgage undischarged.

Prayer:
 (3)

for subpoena — that deft. may answer (oath waived)
 that deft. may be decreed to pay the money due —
 or he be bound & foreclosed — & the mortgage premises
 sold, & for general relief.

Rule for an-
 swer (7)

Rule on second day of Apr. 1. to answer by
 July 1. then next.

Rule extended at Sept. 7, 44, for answer & an-
 answer filed March 20, 1845

Deft. ans^r
 (8)

Admits the making of the note & mortgage as alleged
 in the bill — denies that any part of the money is due
 or was due, at filing of bill.

States that on April 16, 1844, the parties submitted
 all matters of difference, causes of action, suits, bills,
 bonds, specialties, damages &c. &c. both at law & equity
 to the record, & arbitrament & determination of

Arbitra-
tion -

Arbⁿ Bond
(10)

Wurton Agnes, Dejeuall Lathrop, & Henry Headly
arbitrators mutually agreed upon - & sets out
the arbitration bond, in the penal sum of \$1000
dated Apr. 16/44, & conditioned to submit said
matters in difference to the award to be made
to be delivered on or before May 1, 1844, to be made
by said arbitrators or any two of them. The submis-
sion, ^{it is agreed} shall be made a rule of the circuit court of
La Salle Co. pursuant to the Statute in: Signed & sealed by
the parties respectively - there being mutual bonds - &
notifies Off. to procure his bond from Dist. at the
hearing: - Answer charges, that pursuant to the
terms of the submission, & before said May 1, to wit, on
April 17/44, arbitrators met & proceeded to investi-
gate the matters of submission, & on same day, after
having heard the parties, their proofs & allegations, made
their award, which is set out;

Award -
(12)

The award first recites the submission, & then
proceeds to "arbitrate, award, order & decree &
adjudge, of and concerning the premises," as follows
1. That Dist (Stephen Merritt) or his heirs shall on or
before May 1. next (i.e. 1844) make & execute a good, wor-
ranty deed to Daniel Merritt for $5\frac{1}{2}$ of S.W. qr. of section
7. T. 33 N. R. 1 E. 3^d for. M. - Also S.E. fr. gr. 25, &
S.W. qr. of section 25 & $5\frac{1}{2}$ of W. half of S.E. gr. of
35. T. 16 N. 11 E. 4th P.M. - & N. $\frac{1}{2}$ of E. $\frac{1}{2}$ of N.W. 2, &
15 N. 11 E. 4. P.M. - Also a certain forty acre lot now
owned by said Stephen & lying upon river creek in
Boonville Co.

2 - That Stephen pay Daniel \$200, thus, \$25. on
or before May 1. next - \$100 in one year from
said first of May with 6% int. from date -

3. That Daniel give into the possession & entire control of Stephen all bonds, mortgages, notes & obligations of whatever or nature held by him against Stephen. — This to be done & performed on or before May 1. next

4. That the said Grant & Stephen on or before May 1. next, seal & execute unto each other mutual & general releases of all causes of action, accounts, demands, &c. by reason of any matter or thing from the beginning of the world, to the date of said bonds

5. That each of said parties pay one half of the costs of arbitration. Signed, & sealed by all the arbitrators. —

~~then~~ then avers, that the award on the day of its date was ready to be delivered.

offer to
perform.
(14)

That deft. has complied & offered to comply & always been ready, & is ready to comply with the award in all things, that on May 1st 1844, he with his wife Mary made a deed & offered to deliver it to Daniel, a good & sufficient warranty deed of all the land & real estate mentioned & described in the award, & directed to be conveyed by him to Daniel, & offered to pay him the sum of \$25. — & on same day offered to Daniel, his (Deft's) two promissory notes, bearing date May 1. one for \$75, 6 months from date, & the other for \$100, one year from date with 6 per. cent int. — & complainant refused to accept or receive. — copies of deed & notes annexed to the originals to be produced &c. —

Deft. has always been ready & willing to, & pay the \$25 & to pay the notes at maturity, according to the award, & in all things to comply with the award on his part —

That the mortgage & notes in the bill are part & parcel of the claims submitted to said arbitrators, & awarded upon & adjudicated by them in their said award —

That the complainant against all conscience &c.
refused to comply with the award & has refused to deliver
to Deft. possession of the lands, notes, mortgages, & obli-
gations which he held against Deft. - & to release all
actions &c. as awarded by said arbitrators in their
said award, notwithstanding Deft. did on May 1/44
make & deliver & offer to deliver to Pff. a release on his
part in the manner & in view of him by said award -
a copy of the release, attached, -

(16)

(17)

copies of the notes set out in the answer -

copy of release from Deft. to Pff. also set out -

also copy of deed from Deft. & wife to Pff. - consideration

Deed
Deft. & Pff.
that answer
closed,

(18 & 19)

\$2000. of the following tracts of land, to wit, S $\frac{1}{2}$ of S.W.
qr. 7, 33 N. 1 E. 8th pr. M. - S.E. qr. gr. 25, & S $\frac{1}{2}$ of N.W. qr.
S.E. qr. 35, T. 16 N. 11 E. 4th pr. M. - N $\frac{1}{2}$ of E $\frac{1}{2}$ of N.W. qr.
2, T. 15 N. 11 E. 4th pr. M. - N $\frac{1}{2}$ of N $\frac{1}{2}$ of N.W. qr. &
sec. 19, T. 16 N. 11 E. 4th pr. M. containing 40 acres &
lying upon Niger creek in the county of Prentiss -
& full covenants of title & possession, - & deed ~~deed~~ acknowl-
edged, but not in conformity to statute

Supplemental
Bill -

(20)

March 7, 1845 - Supplemental bill filed by Pff. -

States, that before & on Apr. 16/44, Deft. was indebted
to Pff. as follows, one note for \$1000 date Aug. 1, 1836
with interest at 7 pr. ct. - sealed note - endorsed on this
note \$100 Apr. 2/37 - also endorsed \$102.60 July 20, 1837
Another note dated Aug. 1, 1836 for \$2500, on or before
Apr. 1, 1837 & seal. -

Endorsed June 1, 1838 \$100

" Sept. 20, 1838 \$500

" Oct. 21/39 \$65.00

To this last note is appended a written agreement
of Deft. that if he does not pay it when due he will
keep it at the rate of twelve per cent thereafter -

of same date as the note -

another note for \$3500, dated July 30/36, payable on or before Apr. 1/37 - if not paid when due, then to bear 12 per. int. interest, seal.

endorsed Sept. 1/37 \$100.

" Sept. 20/38 - \$550;

notes will be produced at hearing - & Pff. is the holder & owner thereof, & are justly due & owing - were given for good consideration, bona fide without fraud &c.

Deft. was also indebted to Pff. \$310 for money recd. by said Deft. for land of Pff. sold by Deft. - Also \$700 for hogs sold by him - Also \$15 for lumber - Also \$10 for money lent; - Also about \$35 for money had & recd. on two notes of Pffs, against H. Menitt & N. Wood, left with him for collection, for which Pff. holds depts. receipts.

Also \$29 for taxes & to redeem from tax sales &c. which Deft. had mortgaged to Pff. & which Deft. brought to home paid - & Pff. paid, to secure his mortgage security;

that Pff. has no claims or set-offs against these claims of Pff.

Admits the submission as stated in the original answer - that the arbitrators met, & made an award substantially as stated - but arbitrators were not sworn - neither the submission or award has been made a rule of court, nor has any action, order, judgment or decree of any circuit court been had or made in relation thereto, that there is now due Pff. on said demands about \$14250, over all credits & set-offs - They were all

clearly proved, or admitted by Deft, before said arbitrators -
a Defr, rather than or seem denied but they were legal
& valid demands - nor ever pretended that they were not
just & legal demands - nor attempted to prove that he had
any legal or equitable offsets - nor was any evidence
given tending in the remotest degree, to impeach or deny im-
ish Pffs, said claims - so that if the award stands, Pff, will
be about \$14000 =

Tho, reluctant to charge fraud & corruption upon
the referees, yet he states & charges, that they must have
made the most egregious & monstrous blunder & mis-
take, or they must have acted most fraudulently &
corruptly, as no man, even with an ordinary under-
standing & governed even in a slight degree by common
& well known rules of law, justice & equity, would have
arrived at any such result as did those arbitra-
tors in said award. -

That 14 acres, part of East fr. of 8th sec. 25, ^{part of} which
the referees awarded Deft. should convey to Pff., long before
the submission & award, Deft. had sold to Geo. W. Hawley of
N. Y., & given him a bond to convey, & was recorded in the
recorders office of Rensselaer Co. La Salle & is held by Hawley
& he is entitled to a conveyance thereof from Deft., so that
Deft. could not give a title thereto - copy of bond to be filed.

The note of \$3500 in original bill some also that for that
sum in this amended bill. -

Prayer (with again revised) for answer, whether Deft. is
indebted as is charged; & how much; - whether the notes were
not given; & for a good consideration; what was the
consideration; whether he had any claim against Pff., -
what payments he had made - was any demand pre-
sented against Pff. by Deft. before referees, & what; & by

in negotiating on the several allegations of amended bill -
that the record may be set aside & corrected, as he
has signed in his original bill -

Answer to
amended bill
(28)

filed some days as amended bill -

Does not deny that Pff. held the notes under seal
as alleged - but denies they were all due & owing
without discount or set off on 16th Apr. 1844 -

That prior to that time from 1834, Pff. being brother
of Deft. had been closely connected in pecuniary affairs,
& without any formal co-partnership, they had been doing
business for each other in each others names for ben-
efit of each & both - & in the course of their business
some of them (the notes) were paid - circumstances of
others such that they ought not to be paid & there
were set off - their transactions being varied & compli-
cated, denies Deft. deems unnecessary to set out in de-
tail the particular defences, disavow or considerations
which was presented to & passed upon by said arbitrators
in making their award -

Arbitrators were duly sworn to perform duty as

Denies arbitrators made any egregious blunder or
mistake or acted fraudulently or corruptly in making award.
(Admits that before said submission & award Deft. executed
to Hallley a bond to convey 14 acres, as stated in amended
bill - being part of Ex. 25, part of land mentioned in award
to be conveyed by Deft. & Pff., but states that this bond was
made to carry out a sale thereof to Hallley by Pff. & Deft.,
& about the time of making the bond, for the purpose of con-
veying out said sale, Pff. executed a deed to Hallley; - deed ex-
hibited. So that the effect is the same on all the parties
whether said conveyance be made by Deft. & Pff. or to said Hal-
ley - the title passing to said Hallley in any event -

Denies that any part of said amended bill & the allegations thereof are not sufficient to authorize any decree in favor of Pff.; & having fully answered & -
General Replication to answers -

30
Replication,
Amended answer
Am. Bill
31

That from examination of papers & accounts not in his possession, when amended answer was made, has ascertained that he was mistaken, in alleging that Pff. had executed a deed to Holley for the 14 acres - & instead thereof, Pff. made his bond to said Holley in penal sum of \$2500, conditioned that on the payt. by Holley to Pff. of \$810.82 Pff. should convey the land to Holley & all his right, title & - bond dated Sept. 12, 1840, & a copy of which - this bond also refers to the bond executed by Stephen (the Dft.) mentioned in Pffs. amended bill; & he believes was executed on the same day; -

Alleges that Holley paid Pff. the money stipulated by the bond to be paid; & Pff. received the same, which in equity passes the 14 acres to Holley, - & Dft. calls upon the Pff. to answer under oath whether he did not make the bond to Holley, & whether Holley did not pay him the money stipulated by said bond; - & whether Dft. did not tender to Pff. the money, notes, release & due mentioned in Dft's original answer; -

Settled
Answering
Pff. to
Dft's Int.
(36)

That sometime in fall of 1840, about the date of the bond set forth in amended answer - Dft. made an agreement with Holley for sale of about 120 acres of land to Holley for ten dolls. per acre, including the 14 acres - which was under mortgage to Pff., & in consideration that Pff. would execute a release by quit-claim, or permit Holley to perfect his title in the manner specified in the bond &

(36)

Pff., Dft. agreed that Pff. should receive the money mentioned in the bond from Halley, & in pursuance of said agreement Dft. executed his bond to secure the bond to Halley, & Pff. also executed the bond referred to in annexed bill - that some before this sale to Halley by Dft., he had deeded his interest in the 129 acres to Dft. & taken Dft. mortgage thereon for security; - the instant of Pff. when Dft. sold to Halley, being solely the said mortgage for the purchase money & being a lien upon said land, & which Halley wished to have secured by, & Pff.'s bond was given for no other purpose whatsoever -

That at about the time mentioned in the original answer Dft. showed to Pff. a paper purporting to be a deed but which according to Pff.'s best information & belief was not made in accordance with the terms of the award; the land, as he believes, not being properly described; that Dft. also at same time showed ~~to~~ Pff. some money & some other papers purporting to be notes for the payment of money, which said Dft. told this complainant he would have, if he, Pff. would comply with the terms of the award on his part; & this is all the tender of any of said papers, that Pff. has any knowledge of -

That he has no recollection of tender of any release & Dft. to prove he is a party as in original bill - sworn to. -

Depositions, Was one of the Arbitrators = There were notes,
B. Ayres mortgages & I think accounts, & a contract & notes, of which
39 A.B. & C, attached were submitted to us as arbitrators;
were produced by Pff. = Two mortgages E.H. D. & E,
were also produced by him; quite a number of
items in the account submitted; think they may be
same as mentioned in amended bill.

Don't remember whether Stephen produced any
accounts against Daniel or not. =
No payments or set-offs introduced in writing - might
have been but do not recollect any; think some-
thing was said between them about payments made
East = good deal said about what had happened east,
but don't remember much about it = All the evi-
dence we had was statements of the parties & the
papers produced by them. = Don't recollect any con-
trap; = Stephen claimed his wife had a legacy of some
hundreds of dolls, perhaps \$400 or \$800, & that this
legacy went to purchase some land on Crow Creek;
Statement was made that this land was deeded to
Stephen's children; = something like 400 acres;
nothing said at what time she rec'd. the legacy; it
must have been sometime between 1825 & the
arbitration = Stephen claimed that this legacy pur-
chased the land on Crow Creek; =

The two notes (B. & C), & the mortgages D. & E. were
given to secure the purchase money of land sold
by Daniel to Stephen; & the same mentioned in the
mortgages; = Don't know whether it was the whole
amount; = Had the impression that they
owned the lands together; think it was rather
of. that they owned the lands together - some-
thing said about purchase of a stock of cattle -

2 horses & dogs - about twenty lot or lots in
Paris - a claim down at Henry from Daniel &
Stephen; - Amount was considerable; think
to a thousand dollars or over; - the claim \$800 =
Think the property exclusive of the claim amounted
to \$1000 = can't say whether I learnt this from
the evidence or not;

Think Stephen stated before us that he had lost
considerable by purchase of stock from Daniel -

In making up award, arbitrators did not com-
pute any interest; - the accounts were thrown on
side, & they (arbitrators) undertook to make an
equal division of property, as near as they could
between the two; I signed the award, but it did
not meet my mind; I signed it thoughtlessly =
The others said it would make no difference
as it would stand any how; - I thought of it after
wards, & was sorry I signed it = I thought
we ought to set them even = but I thought Stephen
got too much.

It was considered that they were two young men who
had drawn their capital from their father - they
had operated a good deal together in terms of specula-
tion, & we did not consider that those notes were well
or would or ought to be paid - those enormous prices
for property ought not to be paid for; - without re-
garding the evidence, it was concluded to divide
the property equally between them; - Some talk that
Daniel was older & ought to be allowed more; I had
brought into the country from \$300 to \$500 before they
went into partnership; - The arbitrators in making
their award considered them equal partners in
their land operations; - My impression of a partnership
was not drawn from the evidence -

we spent most of the two days at the arbitrations;
Daniel was unwell - wished to make some statements -
would get further evidence; - Arbitrators thought
there was no use, as they could not make up their
award from the ^{the} transactions - think Daniel said he
could prove some of Stephen's statements to be false -
It was talked that Daniel had earned some three hun-
dred dollars - this one reason I thought he ought
to have more; - Mr. Seths said there might be some
difference on that account; but thought they had settled
it the best it could be; -

Legacy of Stephen's wife, it was thought, ought not
to be shared by Daniel, &c -

refs ^D₁₁

Before entering upon the arbitration, we were sworn -
I signed the award

Think the arbitrators were governed by principles of justice
equity - an examination was made of their accounts but
they were thrown out afterwards.

Think the parties did no business for each other, holding
no working lands; suppose their mortgages & notes grew
out of the winding up of their affairs - no evidence of
their doing business together after passing the notes &
mortgages -

Don't remember any evidence of payments; -
Nothing introduced in evidence about Daniel having
recd. \$1000 for releasing land or mortgage & flulley;
Some payments were admitted, but can not say as they
related to the flulley purchase; -

Think the parties stated that they got their money
from their father; - Don't know how much either
of them brought; - think the lands were bought by
the joint funds of both; & owned in equal portions;
tho don't know as I got this from the evidence -
The matters in controversy were very complicated

I I cannot recollect distinctly evidence introduced before the arbitrators;

My impression is that the mortgages covered the interest of both parties; & that they were both interested in the land mortgaged; - considerable payments had been made by Stephen - Don't know how much; -

Deenit talked with me as to my recollection, & tried to refresh my recollection as to what took place before the arbitrators; But he did not refresh it; - I have been very sick; not yet fully recovered; - think my memory not as good as before I was sick;

Dep't of
Dep't. Lothrop }

49-50

was one of the arbitrators - there were submitted to us, demands by notes, mortgages & book accounts - do not recollect all - recollect of debts A, B, C, D, & E, were the ones submitted by Deenit - recollect no items of his account, or of Stephen's, that were taken into the account in making up the award - think the legacy to Stephen's wife was the largest; a legacy to Deenit's wife of \$200 or \$400 - S's wife's legacy \$6 or \$700 - This is my impression - we had impression the brother's had rec'd. the money, but how it was applied, do not recollect; but in some way it had to be accounted for;

The evidence was notes, ^{documentary evidence} accounts & statements of the parties - recollect none other;

Arbitrators did not compute the amounts - ground of decision was that the money, except the legacies, was derived from their father, & that justice & equity demanded they should be placed on an equal footing; Accounts were thrown out, because we thought we could hit upon a more equitable mode for the award; - Both parties made statements; the

asked some, but we took them all into consideration.
We endeavored to arrive at the truth between them.
I was sworn -

Matters between the parties complicated, & difficult
of adjustment on any basis but the one was
adopted; intended to do justice between the parties.
Impression that we handed each a copy of award im-
mediately after it was made; -

The Halley matter was talked over & understood by
the arbitrators, & taken into account in making the
award - think we all understood but would not
be positive - so also the matter between the parties
& their father; -

Peter Terry

Heard Stephen say he bought certain stock of Dennis
in the year 1836; embraced horses, cows, oxen, young
cattle, hogs, farming utensils, 6 or 7 stacks of wheat
ploughs &c. amounting as he said to \$16 or \$1700
this amount also included in some notes which
Dennis held against some (?) persons;

That fall & winter & next spring Stephen said he had
sold part of it & would make 600 or \$800 - I think
he said a \$1000, or that he would make that on two
lots in Pierce; -

Had conversation with Stephen relative to their busi-
ness in '34-'35-'36 - He always derided any partne-
rship - said in 1836, that he bought claim of
Dennis near Henry & was to pay him what he
gave for it; & he should make something out of
it - price was about \$800; -

Heard Dennis say that the money to buy the
stock, he kind of his father - that Stephens was
under age & considered as a hired man - if he
worked & did well was to have a share of the profits;

Heard Dant say he had entered eight 80 acre
lots in La Salle & Port Co. in his own name & some
in Stephen's name - Heard both say they
got money from their father; - Daniel said he was
accountable for the whole of the money - that they gave
their joint notes for it; Stephen was a minor, so
I supposed Dant only accountable; -

Heard Dant say he had sold 4 town lots but
don't know whether they were included in the
\$16 or \$1700 -

I bought a wagon & harness in 1836 of Daniel
for which I paid him \$100. - said he had sent to
his father for wagon & this was the one sent -
He said Dant wanted to make him do as he said -
Have no hard feelings towards him;

Nach. Jeff. (58) In 1836 heard D. say he had bought some stock of
Daniel, & all of his book property, amounting to
\$16 or \$1700; & that two town lots were included -
but exclusion of any real estate on Spring Creek -
This was soon after the sale -
Stephen said he would make \$1500 or \$1600 on the
property. -

Nach. Menitt (60) Stephen bought 400 acres of land of me sometime one or
two years ago, about 5 miles from Henry - that I
deeded it to his children - Early in 1837, J. A. Nach
brought a claim of Stephen & gave over joint notes
to Stephen for \$850. - Nach afterwards became
bankrupt - In 1839 or 40 I gave my note
in lieu of original notes; given to Stephen pay-
able to his wife; old note taken up at that time -
last note, included both note & interest -

I deeded the land to Stephen's children for this
note & interest, took up the note
I speak of the claim about two miles from Henry;
Daniel once owned it; Daniel purchased my
concern, when he & Stephen were doing business
together - know of no particular business;
nor on what conditions - might or might not
have been a partnership - know nothing about it;
Daniel paid \$800 for the claim; - he had \$1002
I lent him seven hundred to pay for it; - Stephen
had no other claim or land near Henry that I
know of. - I should have been likely to have
known it if he had - the claim was on Crow
Meadow near the town of Henry;

44-
Stephen paid me \$500 of the \$700 borrowed by
Daniel, to pay for claim; - Daniel paid the \$200;
Stephen's wife received money from her father's
estate - don't know much; - Stephen said he
made the note payable to his wife, because
he had used her money; - Land deeded to S's
children worth between \$600 & \$800 - O. & S.
had stock, when they did business together; can't
say who owned it - Stephen speaking of the
stock called it 'beers' - Daniel did not say
otherwise - Daniel had bees in New Paltz
N. Y. I had them 3 yrs., then sold out &
brought the money & Peter & paid it to Daniel,
O. & S. lived together in N. Y. 2 for a month
or two after they came out here; - I un-
derstood from Stephen that the stock was
'beers' [bees] but Daniel called it bees.

think part of the land was called Stephen's &
part of it was Deenil's

Impression that the stock on the farm was
common stock; - I thought they treated the per-
sonal as common property;

recd

Stephen paid the \$500, \$90 in stock, balance in
money - the stock was the cattle running on
the place when I came there, except one cow
he got of Swanin. -

I never saw any money paid over on account
of Stephen's wife - saw them have money & in-
ferred that it was that - saw them have
very \$50; -

Deenil went East in Aug. 1856 - He
sold out his personal to Stephen, as I under-
stood - Stephen took full control of it afterwards;

I do not know as Deenil had any control afterwards;
the \$50, was in Stephen's wife's possession when I
saw it; - farm of the father worth \$5000 perhaps \$10,000
Estate would give \$1000 specie to the heirs if
clear of debt; there may have been debts & may
have been money at interest; - there six children

(73)
(74)

Stipulation as to depositions.

Deft's Depositions.

Aaron Gumm,
(75)

I was present when J. Merritt tendered to Paul M. a deed, 2 notes & \$25 in specie - the last of April or May 1, 1844 - I was well acquainted with the award & believe the tender was made according to its terms; - I read the deed about half thro' & Mrs. Stephen Merritt read the other half - Daniel Merritt declared he did not take possession in pursuance of the award - Daniel is fencing a field where he lives, & he told me he had 5 acres broke last week,

C. Coffingsdep.
(79) (8)

Bond (A) exhibited - I signed it as subscribing witness - saw Deft. Merritt sign it; - in passing me some fees some years since D. M. an order on Geo. W. Halley, quarter of the bond, would be some as money to him, & it was the same as money to me; he said he was going East & should call on Halley for the money at Niagara falls - I gave him the order - I saw him P.M. afterwards in N. Y. City, & he told me Mr. Halley had paid him; afterwards after told me Halley had paid him the full amount of said bond; or that he had rec'd. it - Mr. Halley wrote to me to obtain the quit-claim deed of Deft. Merritt of his interest in the lands mentioned in the bond - called upon P.M. - he declined giving a deed, on the ground that he had already deeded his interest to Halley, & saw no use of giving two deeds of same land - the intent of Daniel, as I understood from him & Stephen was the mortgage he had from Stephen covering some or all of it - Stephen's intent, was a mortgage from H. L. Henshaw, which I saw then foreclosing on

no particular reference to Bond A. in conversation with Piff. about order on Halley - but reference to the land bought by Halley of Menitt - at Post Office in Peru, when I demanded the deed, whole matter relative to giving a deed to Halley was talked over - & he refused to give a deed, because he had already given one. - I do not know whether a dollar was ever paid on the bond - nor do I know of any understanding who was to receive the money only so far as it was expressed in the papers -

Peter Lamy's

depts

(85)

am acquainted with following lands -

5/8 S.W. 7. T. 33 N. 1 E. 30. M.

S. E. 1/4 gr. 25 & S.W. 25 & S. 1/2 of W. 1/2 of S. E. 35, T.

16 N. 11 E. 4th pr. M. = N. 1/2 of E. 1/2 of N.W. gr. 2.

15 N. 11 E. 4 P. M. - a certain 400. tract formerly

owned by Stephen Menitt & lying upon Negro Creek,

described as N. 1/2 of N. 1/2 of N.W. 19. T. 16 N. 11 E. 4 P. M. -

except the best tract; I don't Mr. has & does occupy them

& all acts of ownership over them, except the last -

do not know as to that - He lives on part of it, on

this side meridian on section 7 - is in the habit

of cutting wood & timber - cultivating fields, making

a farm on said lands, I should think he had some

30 acres fenced in - some 8 or 10 acres on other lands.

Went into occupation some year ago last fall - after

several was made between him & Stephens -

Heckrich

88

Menitt's depts
88 — } Stephen was a hind boy in 1834 - when he came out in Spring of 1834, I was in York State - I moved out late in 1836 - to Stephen's on Spring Creek

Daniel had gone East a month or two before -
they never told me they were partners - Daniel has
told me they were not partners - From what little
I knew, I supposed they were partners - I supposed so
from their having their things together -

Stephen, ^{and} Daniel, & Mr. Green came at my house
my family present. Stephen pretended to have
a deed (Green, it is written "deal" in the record) for
a part of the land here in contention - for the part
Dan^l was to have - I did not read the deed - I should
not know it now if I was to see it; the deed was
read I think - Green read part of it; & Stephen's wife
part of it - it was offered to Daniel - Stephen also had
\$25 in silver, which was counted out on the table,
& it & the deed was offered - Stephen said he had offered
them agreeable to the award; do not remem-ber
about any other papers - know nothing about any
release - there might have been one; that there
was a note or two notes, that were tendered to Daniel
amounting in all to about \$200 with the specie - not
sure they were read - the deed, money & notes were
tendered - Daniel objected & said he should not take
them; I had heard of the award - one of parties had one
of them - & one of them had told me about it -

(964)

Daniel said the deed covered a some land which Stephen
had no right to deed to him; - I said it was agreeable to
the award - Daniel said 12 or 15 acres had already been
deeded to Healey - said the papers were not right - Ste-
phens insisted they were agreeable to the award - I think
they had copy of the award there - Daniel said the
deed was wrong - I know he said, "you are deeding
land which you have no right to" - think it was
given in on comparing with copy that was agreeable to
the award -

(92)

#

papers & money were freely tendered - Daniel reached out his hand to take money, but Stephens would not let him have it - I think the papers & money had been refused before - I think Daniel did not offer to take the money as proof of the award - but said he would receive it & apply upon some other matter -

at this time Daniel said the award would not have been as it was, if Stephen had not sworn false - referring to some money he had of Holley - don't remember the sum; think \$200 or \$400 which he said Stephen swore he had rec'd. no benefit from; & about some money Daniel paid for a claim near Henry which Stephen said & took land in payment, for which land was added to his children - Daniel asserted & Stephen denied it; Stephen said it was bought with his wife's money - Daniel said it was bought with his money - Daniel lived where he now lives before the award in 1841 - made some improvements about that time, such as building temporary stable & shed - repaired the house - dug a well - but the whole land was called the Glen's - Very before Daniel went away, I understood from him there was division of the land between him & Stephen - & the premises now occupied by him were called his:-

(95)

Exhibit A. Attached to this deposition is a deed bond from Daniel Moritt to Holley dated Sept. 24/40 conditioned to convey certain lands on payt. of \$800 - with certain recitals re. (see this bond at length) recorded in Beecan Oct. 10/43 -

Aaron Gunn's
deposition -
99

Have given deposition before in this case -
Stephen Moritt requested me to go to the Moritts

when Daniel was boarding - Stephen said, that according
to the award he was to pay Daniel \$25 that day - & the
deeds he. to be odd. that day - the Deed I mean, from
Stephen & wife to Daniel - There were also two notes -
from Stephen to Daniel - I believe also a release from
Stephen to Daniel of all matters in controversy, but
do not distinctly recollect - the papers marked
Exhibits L, M & N. are like the ones then shown by
Stephen to Daniel - & in my opinion the same -
These papers & \$25 in money were presented - I would
not the money - Stephen said he was ready to fulfill
on his part, if Daniel would fulfill on his part - &
the money was counted out on the table in specie;
Daniel refused to accept it & said the deed was not
made and right in my memory serves me - no papers
presented by Daniel to Stephen & nothing said about the
award as I recollect

+2
(101)

the money lay upon the table, the deeds are read - after
the deeds were read, the money was laid upon the table &
Stephen said all was ready if Daniel complied on his part;
but do not remember whether Stephen held the papers
in his hand; believe Daniel held out his hand to take
them, but Stephen said that he would not have them un-
less he fulfilled on his part: think those words were said,
when Daniel held out his hands to take the papers, I
said he would not have them unless he performed &

direct of 2 hands - I have spent hours & days with Daniel to dis-
suade him from going to law & to accept of the
award - His reply was that his brother's conduct
had been villainous & he would not abide the award -
has told me repeatedly that he would not abide the
award -

Dixwell Lathrop's Name before giving any deposition in the case
Depⁿ (104) was arbitrator with Ayres & Headly & made &
delivered an award - Exhibit ^P~~Q~~ is the award -
made under Ex. O. =

106. 7. 8: - Exh. L. is the deed tendered from Stephen to Daniel -
The acknowledgment must be defective, in not stating that
she relinquished down &c. but only that she was exam-
ined &c

109 - Exhibit M. - release of Stephen & Daniel of all
causes of action &c -

110 - Exh. N. the note for \$75 - & that for \$100 -

" Exh. O. - Articles of submission -

" Exh. P. the award -

He, Headley's - acted as one of the arbitrators - he was sworn by
Depⁿ
(117)
Reuben Em. - parties appeared & submitted all matters
of difference to us - After two days hearing we made
an award on April 17/46 at Newbury & on evening
of same day, copy of award del. to Daniel Merrill -
Two mortgage deeds were presented by Daniel on one dated
July 30 1836, I think - the claims of Daniel Merrill as to
the ~~award~~ mortgages was duly considered by the arbitra-
tors & for making the award

All the items claimed by Pff. in his amended bill were
duly weighed & considered before making out the award -
Daniel was requested to bring forward all his
claims against S. - & he said he had no more to present &c

Yes^d

112 -

He (witness) acted as clerk of arbitrators - I took down
brief minute of the accounts & wideners of the parties &
there was quite an account in favour of Stephen against
Daniel not mentioned in the demand bill &c

the whole amount that I had paid Daniel was near
\$5000, between \$4500 & \$5000 - including and over notes on
notes mentioned in bill - one demand not mentioned
in amended bill was a legacy coming from Stephen
which was received retained by Daniel - amounting
to about \$900 - as appeared by the evidence before the
arbitrators - the \$900 was retained by Daniel from
Stephen on a note, either a joint or security note, not
positive which - thinks it appeared that at the time
the money was obtained Stephen was a minor & that Dan-
iel & Stephen gave their notes for the whole amount, &
when Stephen became of age, he gave his note to Daniel
to secure the joint note - which note was assigned by
Stephen. Daniel & his father to pay part of the joint
note - Daniel rec'd. the joint note & procured it before
the arbitrators - one other item not mentioned in a-
mended bill was \$1000 or thereabouts for land they sold to
Holly which was paid to Daniel - one other item of between
three or four hundred dollars, not mentioned in amended
bill; paid to Cole Merritt by Stephen Merritt on the
order of Daniel Merritt; which note taken up by
Stephen was procured before the arbitrators - have
impression there was some other items not mentioned
in amended bill as payment made by Stephen to Daniel,
but the precise amount & nature, do not remember -
as to the mortgages, the facts as they appeared before the
arbitrators, as I recollect them, are, Daniel & Stephen
purchased the lands jointly with money borrowed of their father -
each was to have an equal share in the land - part of
the land was in Pat. Co. - part in La Salle - & the same
lands or the greater part were included in the mortgages,
about two forty's; sometime in 1836 Daniel sold his
interest to Stephen & took his notes & the mortgages referred to

to secure the payt. of the purchase money, agreed to be
paid by Stephen & Daniel for his interest in the said
mortgages including not only that portion of the land's pro-
ceeds by Stephen & Daniel but also the whole of Ste-
phen's interest to said lands, with the exception of the two
portions before referred to.

The ground of the decision of the arbitrators was, the
parties as it appeared before the arbitrators, commenced their
^{operations} ~~business~~ as partners, equal as to property - the arbitrators
believed that the transactions of 1826, as regards the value
of the land, were ideal & imaginary; & that in point of
equity, if Daniel Moritt got back the land he sold to
Stephen, after having received between \$4000 & \$5000
in payt. of those obligations of Stephen's, and as the arbi-
trators believed, true in the value of the whole in question,
inasmuch as it appeared that Daniel had offered to
take back the land he had sold to Stephen, but they
had never been able to come to a final agreement
but were mutually desirous to submit all their
differences to arbitrators, as to what was right & equi-
table between man & man, that therefore Daniel ought in
good faith to be well satisfied with the final award
of the arbitrators - which award gave to him the
whole of the land which he sold to Stephen & given
with \$4000 or \$5000 which he had received from Stephen
as also \$200, & three parts more than was contained
in the original mortgages - the arbitrators believed
their award was such as to leave said parties equal
as to property as they commenced in their business
transactions = =

There was a writing purporting to be an agreement
of the parties to take back the land which the arbi-
trators regarded in no other light than showing a dis-
position on Daniel's part to take back the land -
we computed the whole accounts, taking there

Deceen & thought about them, & after several few-
hours consultation, made what we believed a
just & equitable award.

We computed the whole interest, but believed as
arbitrators, if the interest was to be paid, that it
would demand the payment on the obligations
& in that case it would be useless to submit their
differences to the decisions of arbitrators, & I think
we computed the interest & in spirit of equity the ar-
bitrators regarded the interest as they did the obli-
gations.

Deceen
129

Recites that all matters in issue are submitted
to the court without argument - court takes an
order (advisement), & it is agreed that decree be
made in execution & enforced as part of the record
of this term - agreement on this filed May 18, 1847.

It is ordered & decreed, that compl^d bill be dis-
missed & the cause stricken from the docket &
no costs adjudged against either party - but costs
made by either party may be allowed by the bill.

Merritt vs. Merritt
Abstract of the Record.

Filed June 24. 1850.
T. Leland Clk.

after motion made by
Dickey same day —

Supreme Court - June Term 1850 -
Daniel Merritt plff in error

vs
Stephen Merritt -

Ms by defendant for rule upon
plaintiff - to file a more perfect ~~record~~
abstract and a more specific state-
ment of the points relied upon or
that he shall waive - the following
points viz -

1st "That the record shows that the
arbitrators awarded on matters not
submitted to them". What matters?

2nd "That there was such mistake or
fraud as will avoid or annul the
award" In what? Which is it? What
part of the record shows it? ≠

3rd "The award is void for uncertainty"
Uncertain in what respect? as to
what matter? What does it lack to make
it certain?

5th "That there was no sufficient offer to
perform the award by defendant"

Answer says there was - no abstract
of proofs filed - therefore question can
not be examined by court -

6th "That there was no sufficient offer by
defendant to perform specifically the
several acts & things required by the award
to be by him performed". In what act has
he failed to offer? How can Court determine
without abstract of proofs?

7th "That no sufficient tender of the money or papers has ever been made by deft to plff" How can this be determined without abstract of proof on that point - ~~or a statement in~~

If the intention of plff is to try this case upon bill an answer - the points are not properly stated - if the plff expects to sustain his points by reference to the evidence - he should make an abstract thereof -

The abstract contains a very imperfect statement of bill and answer - but not of replication - exhibits - or proofs or any part thereof

Ollennitt as Ollennitt
Mrs. J. M. C.

Filed June 24, 1880.
L. Deland Ollennitt.

47
141
17
985
141
2,390

State of Illinois,
 Supreme Court, } SS.

The People of the State of Illinois

TO THE SHERIFF OF *La Salle* 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 *Bureau* county, before the Judge thereof, between *Daniel Clemenitt*

Complainant & Stephen Clemenitt

defendant it is said that manifest error hath intervened to the injury of the said *Complainant*

as we are informed by *his* complaint, the record and proceedings of which said judgment, 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 *Stephen Clemenitt*

that *he* 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 *second* Monday in *June* next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *Stephen Clemenitt* notice, together with this writ.

WITNESS, the Hon. *Daniel H. Treat*
 Chief Justice of our said Court, and the seal thereof,
 at Ottawa, this *31th* day of *May*—
 in the year of our Lord, one thousand eight hundred
 and *forty*—

V. Deland

Clerk of the Supreme Court.

Daniel Clennett
 vs
 Stephen Merritt
 Sci fa.

To June Term 1880.

Entered this writ May 30th
 1880, by reading to Stephen Merritt
 J. H. Huntback Shff
 16 miles 80 LaPalle Co
 \$1.40

Filed May 31st 1880.
 L. Ireland Clk.

Friday the 31st May is
 the last day to serve in



TO THE SHERIFF OF
 The People of the State of Illinois
 County of [illegible]

WITNESS the Hon.
 Chief Justice of our said Court, and the seal thereof,
 in the year of our Lord, one thousand eight hundred
 and [illegible]

Daniel Merritt } In Sup. Court.
vs
Stephen Merritt }

It is stipulated
& agreed ^{on the part of this trial} that the certified copy of
the answer this day filed shall form
part of the record in this cause
& that the same is the true and
correct copy of the ^{as set out in} answer ^{to the original bill}
that the acknowledgment of
the debt from Daniel Stephen
Merritt & wife is correctly set
forth in the certified copy of
the ~~above~~ same this day filed
and that the same is a true copy of
acknowledgment to deed proved to have
been offered by Stephen to Daniel on
1st of May 1844.

Wm Peters
for J. J. in error.

State of Illinois, Oct.

WRIT OF ERROR.—FREE TRADER, OTTAWA.

The people of the State of Illinois,

To the Clerk of the circuit court for the county of *Bureau*—Greeting:

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of *Bureau*—county, before the Judge thereof, between *Daniel Bennett Complainant*

~~plaintiff~~ and *Stephen Bennett*—

defendant it is said manifest error hath intervened to the injury of the aforesaid ———

Complainant —————
as we are informed by *his* complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint 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 *second Monday in June* — 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. *Daniel A. Heat* Chief Justice of our said Court, and the seal thereof at Ottawa, this *27th* day of *May* — in the year of our Lord one thousand eight hundred and *sixty*—

L. Ireland

Clerk of the Supreme Court.

Supreme Court
Daniel Olenitt
vs
Stephen Olenitt
Writ of Error

Filed May 27. 1850.
L. Keland Clk.

Clerk of the Supreme Court.

one thousand eight hundred and fifty —
in the year of our Lord
and of the Independence of the United States the day of
Witness, the Hon. Chief Justice of our said Court, and the
D. J. Keland

the judge thereof between
judgment of a case which was in the Circuit Court of the District of Columbia
BENJAMIN in the record and proceedings as also in the rendition of the
the books of the State of Illinois
State of Illinois, etc.
with a record — case taken, etc.

Menitt vs. Menitt

The jstf. in error, in respect of
the points made by him, relies on the following authori-
ties—

Scote vs. Sheppard 3 Gil. R. 483— ✓

Imley vs. Michoff 1 Southard's Rep. 138-9 ✓

Young vs. Shook 4 Rauler's R. 304 ✓

Shearer vs. Handy 22 Pick. 417 ✓

^{Culver}
Carter vs. Ashley 17 Paik. 98— ✓

Dwyer vs. Teas 4 Scam. 257 ✓

O'Leary vs. Long 2 Gil. R. 679 ✓

Wright vs. McNeely 11 2d's Rep. 241 ✓

Webster et al vs. French et al. — 11 2d's Rep. 275 ✓

3 Gaines Cases 166—

— vs. Gillette 5 Conn. Rep. 172— ✓

Keyd on Awards, 264 et passim— ✓

Commonwealth vs. Pejepscut Proprietors 2^d 399—
(7th Mass)

1 Bac. Abridg. Little Abatement 2 Award 3032 post:
312-12 &c—

4 Scam. R. 124 — 3 Gil. 483—

9 N. H. R. 182 — 4 Shep. 164 = 9 Greenb. 128

23 Paik. 302 — Story's Agency 56—

Com. Dig. Lit. Alt.

38 Lew Library 196-72

1 Aug, Dr Powers - Little, Defective operations = 2228 -

Fisher vs. Pinsky 11 East 187 - 3 1/2. 18 - 13 1/2. 22

27 Aug, C. L. H. 10 to 6 36 - 32 1/2. 37 1/4

23 Mar. N. 628 - 1 Veg. jr 3 1/4

Orville Menitt }
vs. }
Stephen Menitt }

Pff. filed his bill to foreclose a mortgage dated July 30/36, to secure payment of note to him of Deft. for \$3500 dated April 1. 1837 July 30/36, & payable April 1. 1837 = Bill in usual form & prays for foreclosure & general relief -

The deft. in his answer, admits the allegations in the bill, but sets up in avoidance & in bar of the foreclosure a submission entered into by the parties in 1844, of all matters in difference between them to three arbitrators, and an award made in pursuance of the submission.

The award required that Deft. should convey certain lands named to Pff. & pay him \$200, \$25. on May 1. 1844 - 200 in one year & interest - (no provision made for payment of which)

That Deft. Pff. give up to Deft. all bonds, notes, mortgages, obligations be. on or before May 1. next -

That each execute to the other full releases of all demands be. that each pay one half of the costs:

Deft. avers his offer to perform the award on his part, & a refusal by Pff. = that the note & mortgage are part of the claim submitted to the arbitrators.

The Pff. on leave, filed a supplemented bill, stating that Deft. owes indebted in large amounts, in all about \$8500 besides interest - that there were no offsets -

admits the submission & award - neither the submission nor award has been made a rule of court - that there is now due on the demands \$11250 over all

credits & offsets: that all these demands were approved or admitted before the arbitrators - & not then or since denied by Deft. - nor offsets claimed: charge fraud or gross mistake of referees -

That 14 acres awarded to be conveyed by ~~Pff.~~ to ~~Deft.~~ Pff. had long before been conveyed to Geo. W. Huddy - & the bond given to convey, which was duly recorded, & he is entitled to conveyance. & Deft. would give no title &c.

Deft. answered amended bill - Admits depts. held the notes - Aves that he & ~~Pff.~~ Pff. did business together. were not partners. in the course of the business some of the notes were paid; owing to circumstances some of the others ought not to be paid; deems it unnecessary to set out the details of the business as it was all presented to, & passed upon by the arbitrators: denies any blunder or mistake or arbitrators, or that they acted corruptly.

Deft. admits he executed to Huddy the bond for the 14 acres: but says, it was to carry out a sale by Pff. & Deft. to Huddy - & that Pff. conveyed to Huddy - & thus the effort is then done on all the parties whether the conveyance was made by Pff. or Deft. - Deft. to Pff. or to Huddy, the title passing to Huddy in any event: =

Deft. afterwards filed a further answer, stating that he was mistaken in saying that a deed had been made by Pff. to Huddy for the 14 acres - but Pff. made his bond to Huddy in parcel sum of \$2500. unconditioned to convey on payt. of \$80.82 Alleges that Huddy paid the money to Pff. & calls

upon Pff. to answer under oath, in interrogatories
pro pounded -

Pff. answers - that in fall of 1840, Deft. made an agree-
ment with Hally for the sale of 120 acres of land - for
\$10 per acre, including the 14 acres, which was under
mortgage to Pff., in consideration that Pff. would release
by quit claim, or permit Hally to perfect his title as
stipulated in the bond of Pff. Deft. agreed that Pff.
should receive the money from Hally, & by reason of
this the bonds were executed. Pffs. interest when Deft
sold to Hally was only his mortgage for the per-
sonal money, which Hally wished to have cleared off.
& Pffs. ~~mortgage~~ bond was given for no other pur-
pose: - Deft showed Pff. a paper purporting
to be a deed; but Pff. thinks it did not describe
the land according to the award - at some time
showed some money & some other papers, per-
porting to be notes for the payment of money, & told
Pff. he would have them if Pff. would comply with
the award - this is all the tender made.

The foregoing is the substance of the pleadings -
The record contains the exhibits & the deposition
of witnesses:

The Pff. in Error will insist upon the follow-
ing points:

1. That the record shows, that the arbitrators
awarded on matters not submitted to them.

2. That there was such mistake or fraud as will avoid, & annul the award.
 3. That the award is void for uncertainty.
 4. That the award is wholly void in awarding the 14 acres to L. assigned to Pff. when he, Dft. had no title thereto.
 5. That there was no sufficient offer to perform the award by Dft.
 6. That there was no sufficient offer by Dft. to perform specifically, the several acts & things required by the award to L. by him performed.
 7. That no sufficient tender of the money or papers, has been here made by Dft. to Pff.
- O. Peters for Pff.

Chenett & Bennett

Abstract

Filed June 18. 1850.

d. Deland Clk.

35

Daniel Clennett

vs

Stephen Clennett

120 25

1850

Prepared

W. D.