

14479


No. _____

Supreme Court of Illinois

Holbrook

vs.

Brenner et al

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division

No. 96

1847

Holbrook
78

Lawrence

Handwritten scribbles and lines

of James B. [redacted] and the [redacted]
[redacted] of his assignee, said
Bostwick, to which deed and copy
of diese objection was made and
and sustained.

In discussing all the questions
I propose to group the points together
in this order.

- 1 The case as made by the plain-
tiff.
- 2 This case as aided by the title
papers of defendants.
- 3 Points made by the defendant below
and renewed here.
- 4 Points made here by defendants for
the first time.

The case is of some considerable im-
portance to me, and although it
seems to me that there is no substan-
tial defence to the case made here,
yet (as there is so great contrariety
of opinions in law matters) it behooves
me to ensure, as far as may be done
by ^{my} labors, a full consideration of
any case and a reversal of the judg-
ment. The court will therefore pardon
me if I make further and particular

9
suggestions on every point in the case.

I was much surprised at the suggestions of the court below, that I must prove that Bostwick gave bonds - otherwise it did not appear that he was assignee.

I was not aware that such a proposition had ever been thought of: though it seems it has arisen in the Maryland courts, on suit by assignee for personal property. I relied on the language of the 15th Section of the law, I relied on the common practice, particularly on the practice in the U. S. District Court at Chicago, where such deeds, supported by such proof, are considered unobjectionable. I relied on the decision of this court already made, which, if one could not rightfully rely on, could be regarded only as a trap for the way as well as the un-
way - for who of the most diligent suspicious and watchful could expect to look beyond this?

Of course I was not prepared with such proof - and the case
con

1
First, the case as presented by the plaintiff on his deed, exhibiting copy of decree for a certified copy of decree, and \$120 rule of the Bankrupt Court.

I cannot by the use of any language, or argument, make the case any better than it is by the mere presentation of it, under the decision already made in any case against Biny & Co. The papers are the same in this as in that. I am within the letter and the spirit (on reflection I believe it seems that in that case the certified copy of the decree was not in evidence, but the Court held if it had been it would have been within the law.)

I expect of course that that decision will be adhered to, both for the reason that it is plainly right, and for the reason that it has been made and become a rule: and that the judgment below will be reversed without the consideration of any thing further in the case - and so, while I ~~must~~ enter into a further discussion, I do it with

3

a protest that it is (according
to my judgment ~~that it is~~) unreason-
-sary and uncalled for.

In proceeding then, it cannot
fail to be observed, as a thing quite
significant, as to the weight of, and
bona fides of this objection, that it
was not raised by the counsel who
tried the cause. (although very
learned in the law, skilful there, as
here in raising objections, Messrs Beard
& Powell) but it was volunteered by
the Judge. Still I am aware that
no legal inference can be drawn
from this fact in this Court: and the
case must probably be heard as if the
point were made by counsel; was -
-much, at least, as they have taken
advantage of it.

A few words on the force of the
15th Section of the Bankrupt Law.
This section is the rule of evi-
-dence pertaining to the form and
force of deeds of real estate by the as-
-signee; and the rule of construction
is, that in such cases the deed is to be

specific as to this matter, prevail
over other parts of the Statute, and
other laws more general and not
specific, although they may be
be antagonistic. It is important to
observe this throughout the whole
discussion, as frequent reference
will be made to it the section. It
is the failure to observe the para-
mount force of this section that
has led to any contrariety of decis-
ions. For, as to deeds made by assign-
ees, it does away with every objec-
tion raised by dependants in this
case, and seemingly should have
settled every question discussed in
the authorities quoted. Take for instance
the question raised on the 9th section
— the limitation of actions by assignees,
&c. If there be a conflict between the
two, the 15th will prevail as to its
special subject matter. So as to pro-
ceedings by the assignees, the manner
of sales, &c, the rules of court to which
they are subject, &c, if there be a con-
flict, the 15th Section prevails as to
its subject matter.

This principle of construction is ad-
verted to in 12 Ills 339. Jones of Ottawa

4

us. The county of LaSalle - Also in the Revised Statutes Secs. 23, 24. of the Dictionary Chapter.

It is I don't know as I can point to an authority concerning the application of the principle to conflicting sections of the same Statute. But the principle is the same. It is common sense. A special statute, as to its special subject matter, shall prevail over a general statute. ~~All parts of a statute~~ The whole statute should be so construed as to give force to every part. Such a construction will ~~and will~~ cause all ^{parts} to harmonize.

I insist then that the 15th Section, to the full of every expression, is the paramount law to any and all other, as to the form, force, and effect of deeds of real estate by assignees.

It will be understood that, through out this discussion, I claim such legal pre-eminence for the provision of said section over all other parts of the law same statute, or other laws, as to what it proposes to govern.

I may as well pursue this matter further ~~and~~ ~~will~~ ~~be~~ ~~returning~~

to it under the various points.

Adopting this rule, and applying it, we will see what follows.

The 8th Section must have a more limited meaning than is sought to be given it. There is no limitation in the 13th Section, but the rule is, such a grantee of the assignee shall have such title "as fully, to all intents and purposes" as if he were the grantee of the assignor without bankruptcy. So the question is what he would get in the latter case. In different states it might be different. In New York, if the land were possessed adverse by, the ~~could assignee~~ assignee could not convey. Otherwise here, "To all intents and purposes," I believe, means that such grantee may enforce his rights in the same manner that he could if he purchased of the assignor without bankruptcy. That makes a universal law of limitations: that is, a rule is established of universal application, and reasonable, = (but agree of this in another place). Limiting the 8th Section to suits by the as.

assignee, or against him touching rights of property vested in him, and claimed adversely - in the United States Courts, ^{only} - and which would prevent the settlement of the estates, and we find no conflict.

Can it be supposed (according to the positions taken) that this ^{statute} limitation of actions to two years in all cases - and as it is applicable to assignees, so it is to all who claim under them - also, that the assignee cannot act after the two years - that Congress, whose object was to have the property of bankrupts distributed among their creditors, intended that a large amount of their estate should have a chance to escape conversion, by such a short limitation law? If the assignee live here, and a debtor on a note in New York City or Sacramento, and find to be discovered, then such ^{debtor} has a great advantage by having a creditor become bankrupt. And if land is not found and converted in the two years, it becomes a waif, - the creditors can't touch it, but the finder and possessor can

hold it.

This 8th Section then can mean
no such thing.

Neither can other sections of the
statute interfere with the 15th
Section. A bona fide purchaser
of a fraudulent grantor, holds his
estate untainted with fraud.
So it is with the purchaser of the
assignee - for the rule is made
by the statute that he shall hold
the title is fully to all intents and
purposes as if he had purchased
of the ~~of~~ assignor, without bank-
ruptcy. The rules of court, or whether
the assignee obeyed or not, are foreign
to him, as inter alios acta. Neither
is he affected by what the assignee
may do, or not do, afterward. It
is not for him to know if he is required
to make a report to court, or whether
he make it. He has got his deed
according to law.

I am willing it should be as-
sumed (for it looks reasonable) that
if there be irregularity known to the
purchaser, or want of good faith,
that his purchase could be set aside
on application of creditors - but none

others - for so it would be if he got a deed fraudulently from the assignor without Bankruptcy.

But to return.

My 2^o - 3^o - & 4th points can hardly be made more evident than they are by their mere statement.

The case in 5 Barb. was quoted by me in the Coney case, and I suppose was duly considered.

The 13th Sec. requires that a "copy of the decree of Bankruptcy, and the appointment of assignee" shall be recited in the deed, and the deed shall be supported by certified copy of such order, &c.

Now then the essential part of the decree only extends to the words "assignee of said bankrupt." Whatever more of the decree than this is inserted is mere surplusage, or redundancy, and whatsoever more than is of the decree pertaining to other matters than the appointment, &c. need not be inserted.

It matters not if this appointment be a conditional; that it is the decree of appointment, and comes with

-in the words of the Statute, the Statute
is where requiring the purchaser
to see that the conditions are
performed, but on the contrary
dispenses with it expressly.

~~I confidently~~

I most strenuously insist that
such is the law, and I confidently
expect that this Court will so hold
as it has heretofore held, according
to my understanding, and I think
I may say, the common understand-
ing of the decision.

But the defendants counsel sug-
gested that it did not appear by
my deed to whom the bond of \$500.
was given: and the Court held that
I must show that Bostwick gave
bond, for the purpose of showing
that he was assignee, which brings
me to.

2. The case is aided by the defen-
dants title papers.

Submitting (as I was compelled to)
to the ruling of the Court, I insisted,
and insist now, that these rows

7

sufficient proof before the court to show that Bostwick filed his bond, became, and was the assignee of Campbell; either coming by way of estoppel, admission, or preponderating testimony.

It matters but little, ^{single} of these. I had ~~put~~ ^{read} in evidence, a deed of Bostwick to Doolittle of the same property, reciting the same decree, and that he gave bond to the United States in \$500, &c and they had put in evidence a certified copy of proceedings in Bankruptcy &c. (see abstract) which treated Bostwick as assignee all the way through. Now having put such a paper in evidence how can they dispute what it says. I think they were estopped from doing it.

In 22 U.S. 202 Thompson et al vs Freeman. The defendants put in a writing for evidence; then undertook to dispute it by oral evidence, but could not do it. This is not precisely similar, but if they could not prove the contrary, then they were bound by their written testimony, and so here. They have no more ^{rights} to insist ~~and~~ ^{against} it than they have to prove against it.

The deed affects them by admission
(though it seems almost by estoppel
as we both claim from the same
grantor, and so some of my au-
thorities quoted seem to hold.)

The language in 1 Phil Ev. is this
(after speaking of estoppel) "A recital
in a deed will however be prima
facie evidence against a party
to it on behalf of a stranger, as an
admission"

Note 130 quotes many authorities
precisely in point; among them
of Corv. Rep. 86 "And such recital
in a deed is evidence equally
high even against the obligee,
and all claiming under him."

Now ~~that~~ deed says in that deed
Bostwick styles himself the "assignee
appointed ~~in and~~ by virtue of
the decree of assize" (after having
recited the same decree that I of-
fered - that he "had filed with
the clerk his sufficient bond" "approv-
ed by the proper commissioners"
& "complied with all other require-
ments" &c

I think defendants are struck
with the force of this position =

I have to have requested to notice dependants with out, only one
 copy of my account of Gill, said by assignee, in attempt, held to
 show a prior he gave bond, and would remedy in analogy to their
 state (under decision of) of insolvency, being a person at
 law by the assignee it recuses an, and from the 15th section.

and, to ^{undue} avoid it by saying that
 although Bostonick he thus shown
 to have been the assignee at the
 date of their deed, June 1857, it don't
 appear that he was such at the date
 of my deed, Oct. 1850.

But still his appointment is re-
 cited in their deed as by decree
 of the date of Oct. 3rd 1842 giving a
 copy of such decree. speaking of it
 as his appointment; and again
 their copy of proceedings refers to the
 records of court for proof of his ap-
 pointment, which record I have
 shown by certified copy. If there be
 room enough for him to get out
 then he is "joined as it were by fire".
 It is very far fetched to urge that, be-
 ing appointed in 1842, and acting
 as such, yet he did not file his
 bonds and become such until
 after 1850 ! X

I have insisted, in my printed
 brief, that dependants in taking
 deed from Bostonick admit him to
 be a bona fide title; that, this being ad-
 mitted, a deed by him will carry
 the legal title, though not technically

in form, for an assignees title. The
15th Section contemplates that other
proof than that spoken of will do
(see brief p 3)

In 24 Wend. 227. the language of the
court, in discussing this question
raised on a quit claim deed
taken by party before then in possession
claiming title, is: "By the simple act
of taking title under you, & in com-
mon presumption, admit your
title" but says further that it would
not be a conclusive admission.
The other authorities are of the same
import.

Bostwick, being admitted to be
a source of title, my deed being the
oldest, carries his (the legal) title.

Syllabus of case in 15 Sm. & Mar.
reads thus "The plaintiff in the
first instance need go no further
than the title of the person under
whom they both claim. But the
defendant may set up a title adverse
to

By some of defendant's objections
in the court below it would seem
that they intended to insist on a

9

variance between my decree and
deed - for instance that the deed
does not recite all of the decree
(a part referring to other matters)
but as no notice has been taken of
it here & suppose it to be abandon-
ed. - There was no material, fatal
variance, as the authorities quoted,
as also a late case in this court,
show: and if there were, these
admissions shown by their title
papers remedy all defects. (if any)
in this particular.

It is proper to recall in this con-
nection the erroneous action of the
court below in a matter of practice.
This certified copy of court proceed-
ings was offered by defendants and
was read in evidence generally,
(see abstract p. 6. record copy) but when
I proposed to use it, ^{I was not permitted to do so} this was error.
I understand, and I insist, that
the court cannot permit one party
to have the advantage of his own
document, and prevent the other
from deriving what, ^{reasonable} he may from
it - Let it not be said that because
I was permitted by the court to offer it

as my own, that ~~therefore~~ there was
no error - for if I had not had it
in possession I would have been de-
prived of the use of it - besides, the
effect might have been different, as it
was held by the Judge. While I insis-
ted that there was an admission
of defendants to be drawn from it
he held that that might be so if of-
fered by them: but offered by me it
was not (I think in fact, offered by
them it was an estoppel, by me
it proved an admission)

It will be observed also that
I offered to read it in evidence gen-
erally: was permitted only to read it
to the court, and finally it was ruled
out entirely.

I hold that when a paper is offered
and read in evidence it is in for
all purposes and during the whole
trial unless withdrawn by consent
of the other party, or struck out on
motion of the other party. To say
that he may withdraw it when he
sees the other party is to obtain some
unproven advantage from it would
seem to be unfair and cannot be
sustained

And again another question of practice should be noticed in this connection. It was error for the court when my deed was offered, being duly acknowledged, to permit the defendants to take the laboring oar and attack it by matters alleged to be the deed, and occurring subsequent to the ~~deed~~ execution of the deed.

Their objection was "2^d. Because the plaintiff is estopped by the decree of 1857" &c. and offered evidence to support it which ^{was} entertained by the court.

No authority is needed on this point. The syllabus of the case in 17. M. is thus,

"A deed must go to the jury when the party offering it makes out a prima facie case of execution. The court cannot hear counter evidence and exclude it from the jury."

This authority negatives the right to present counter evidence on the question of acknowledgment. How much greater is the error, while a deed is before the court, on the question of admis-

tion ~~the~~ to permit the opposing party to base an objection on new and subsequent matter and admit proof thereof.

The great burden of the defence is the one thus introduced into the cause.

It is insisted that my deed is avoided by these proceedings in the District court. The second sale, (made to Doolittle) assignee's report, confirmation, &c.

Protesting that I cannot, with any propriety, be drawn into any such discussion, I feel that, though it be had, nothing adverse to me can come of it, and so plainly is this so that I cannot feel that there can really be a contest although pressed by so much apparent aid & confidence.

To get up such a contest Judge Head takes this lengthy course. The assignee stands to the court of Bankruptcy as a Master in Chancery

A sale by a Master in Chan -

10
-cery in England is not perfect
without a report to Court and
confirmation.

The Courts of this Country, and
particularly the U. States Courts,
adopt the Chancery Practice of
England.

The Bankrupt Law provides
that the bankrupt proceedings
~~in equity~~ shall be in the nature
of summary proceedings in eq-
-uity.

Therefore (as I understand
his argument) my title was im-
perfect without a report and
confirmation = and by petition
and other proceedings (assuming
that any sale never was reported
and confirmed) my title was
utterly defeated and another
one is perfected.

Then to ~~strike~~^{bring} the whole with
an impeachable rivet, he says
that all this was done by a
Court of competent jurisdiction
(both of the person and subject
matter) and now ~~there~~ its action
cannot be impeached, or ques-
tioned collaterally!!

This brilliant logic and math-
ematical conclusion would all
do very well and would proba-
bly take the premium, if the prem-
ises were true. But here is the
difficulty - the premises are false.

The starting point is not conceded,
now est datum. I know that
in my former suit the court
dropped this remark - and
as the assignee occupied to that
court for the purposes of selling
the estate, of ^{the relation of} ~~Master~~ ⁱⁿ ~~Chancery~~
- but the court, ^{was speaking} of the amount
of discretion that he might
be entrusted with, and inli-
mating that even a simple
Master in Chancery would
be entrusted with that much
of discretion.

But the assignee does not
occupy simply the position, or
office, of Master in Chancery. He
takes the legal title of the proper-
ty of the assignor. He ~~conveys~~
has the power of disposing of it
(Sec 3) and the 15th section states
what shall be the effect of his
deed, ignoring confirmation.

11

Then is it a wonder that
the counsel comes to so lame
and impotent a conclusion?!

It is assumed that the as-
signee made no report of the
sale made to me. What might
his counsel to assume it.
There is no proof on the subject
except, perhaps, this, (negatively,)
that, in that case the court
would not have made such
an order = a very good and
proper supposition, if at the same
time it can be supposed that
courts have actual knowledge
of all the papers on file - and are
never imposed on - a supposi-
tion that in this case might
not be according to the fact.

As to such report I never had
occasion or opportunity to see
it. The rule of correct practice in
ejectment is this - if a party pre-
sents a deed in form and du-
bly acknowledged it must go
in evidence, as a part of the chain
of title, and the court cannot
compel the attorney as to the or-

... of his links of evidence. Then
if, at the close of his evidence,
there be something wanting, such
defect may be taken advantage
of by instructions, or otherwise.
My deed was excluded by itself.
I was not called upon, nor could
I go any farther.

But why should I ask, or
any body ask, for a report, or
concerning a report, My title is
not made to depend on a re-
port, or confirmation; or the
13th Section is entirely nullified.

A title made by sheriff on ex-
ception does not ^{depend} upon a return
by the sheriff; and my judg-
ment is, that in this country
a deed by a Master carries the
title without regard to the report,
unless the decree specifically re-
quires the report first to be made.
So every as to Masters deeds I do
put Judge Weeks's proposition.
In Eng. the Master does not make
a sale, but receives a bid. On
report, confirmation is made, as
a matter of course, if there be no
opposition. But the bid may

12

be opened by any one who will offer more, and a fair advance on the first bid.

But in this state, and mostly in this country the Master sells and takes the money. Sometimes the practice of opening bidlings or something in the nature of it is allowed. But how is that done. The practice is shown in 9 Paige Ch Rep. 99. Driscoll et al. vs. Dodd et al. Syllabus "The bid-dings at a masters sale will not be opened, except in very special cases; and then it will not be done unless the purchaser is fully, and liberally indemnified for all damages, costs and expense to which he has been subjected."

3^d Term 615 says the Eng. Practice is to advance 10% et.

Now when is their boasted American practice. Where they set aside the sale to me, where they penal me ^{with} money? or have they not rather against the rules of equity attempted condemne by to deprive me of my rights?

Then they say there is a confirmation of Doshitt's sale by a competent court having jurisdiction of the person and the thing - what person? of me? without notice, process or personal appearance? what subject-matter the land, when the assignee had parted with his interest to me? The acquisition of jurisdiction over the person must always be proved. Their decree does not profess to have it over me, and so there is no presumption in their favor. There again the premises in the logical chain, are

The cases of our State quoted by Judge Beale as to Ad^{es} and Guardians sale are not applicable; for the Statutes give positive directions as to proceedings. But see the result, by parity of reasoning, a report and confirmation in such cases are necessary because the Statute expressly requires it. A report and confirmation of sale by an assignee are not required because the

Statute expressly dispenses with them.

It cannot be possible that there is enough in this matter to justify any further pursuit, and so I will "close with a few practical remarks".

The defendant's counsel, very patronizingly informs ^{me} what I must do. He says I must go into the Bankrupt Court and get their sale set aside, and mine confirmed. Suppose I should do this behind their back and without notice, would that be "according to the practice of courts of Equity"? Suppose that I should ~~should~~ simply get mine approved, without notifying his. Suppose still further that I should simply assume to act for Postwick, would his accustomed modesty and his deferential respect for the acts of courts of competent jurisdiction prevent his saying that my acts were ex parte and would not bind him?

Judge Head says that the

assignee petitioned and set forth
that Postwick still had an in-
terest in said lands (notwith-
standing my deed, thus himself,
before the court ignoring my deed)

On close inspection it is to be
observed that Doolittle made
the oath. W. C. Merriam got up
the petition in the name of the
assignee, and A. L. Merriam
as attorney, filed the report in
the name of Postwick, and
got it approved (Record 62) and
these three became the purcha-
sers in the name of Doolittle (as
is brought to light by decree in-
serted in deed of Jones, Master, to
Pethymann) Is it a wonder that
this Postwick, as he had given
me a fair deed conveying to me
the property without reserve, should
have (as if he smelt something in
the wind) proceeded guardedly
as if to protect my rights, and
should have conveyed to Doolittle
his interest at the date of
said sale, to wit, this 17th day
of June 1851.

By the way how does it ap.

hear that the assignee, if he holds simply the position of Master in Chancery, can appear by attorney?

The point made that I should have proved 20 days notice of sale is disposed of by the law and the decisions of this court.

The rule of court is a law to the assignee.

As I understand it I have now gone through the record. But Judge Mead has persisted in raising other questions and so I come to the

3^d Mead. Points will made by dependants in the court below and insisted on here.

As to these I say that dependants are not in a position to assign errors, - but if the court will hear them I make my reply.

One point is that the deeds I used to show dependants title

were certified copies, and that I did not lay the proper foundation to.

The objection against my using copies was made, and so I filed my affidavit. Now certain objections are made, ^{here} not made there nor pointed out. My affidavit was within the law, and the objections made now, are not good, and would not have been good if made there, but if made there could have been removed, and for this additional reason are not good here.

It is urged that I did not show a perfect deed to Doob-little, in that I did not support it by certified copy of decree in Bankruptcy;

and also did not show a perfect deed by Jones, Master to Pettyman, in that I did not show decree of court to do.

It was not my object to show a perfect title in defendants, but to show claim of title. This can be

15

done
"by even void deeds.

And herein I must speak
of the position of Judge Mead that
all ~~say~~ this proceeding in the
mode of proof was wrong. That
I cannot claim for them. That
(substantially) this principle of
law & practice (that in ejectment
when both parties claim from
the same source, you need not
go behind that common source)
is limited to cases where each
party so claims in open court. He
-and his assertion that they
did not claim from Bostwick
etc.

My view was this, and is now.
When a party is in possession
of land he is presumed, not only
to be there claiming under his
deed, but also in accordance
with its provisions; thus, if a deed
in fee in fee, if for life, then for life,
if a lease then a tenant &c &c.
Pettyman being in possession,
then by showing the deed of one
to him, shows him prima facie
to be in possession under such deed,
and this deed supports to carry

the title which rears of Wm B Goodittle,
and so by showing the title deed
to Wm B Goodittle, I show the claim
of title from Bostwick, grantor in
that deed. Then any deed from the
same grantor, being the eldest and
first recorded shows the better
title.

This seems to me to be the proper
course of proving title from a com-
mon source. If not, how shall it
be proved? you can hardly expect
a contestant to admit it in open
court. Must you hunt up the parties
and see what they will say. They
might say nothing. The tenant
might not know, and then verbal
admissions might not be good
evidence, particularly of the land-
lord out of ^{actual} possession.

And if title be proved from a
common source, one need go no
farther. Judge Beard objects that I
did not offer to prove the fact
you. It does not appear that I
had opportunity. My single deed
being ruled out I could go no
farther. Nor constat but that

I should ^{agree} have offered to have done so.

Void and irregular deeds may be used to show how one claims. The syllabus in 7 Mon. 107 is thus. "Void decree and deed may be given in evidence to show how a party claims held and the extent of his claim."

The other authorities the same see 5 Dana 232. Shackleford vs Smith. Syllabus. "a deed not valid to pass title may be used to show how a party holds."

Our courts refer the possession of a party to his deed and extend his actual possession with the paper title. And our statute provides for judgment to try title to vacant land, against a claimant.

It must be that claim of title can be proved in this way.

The case in 17 Ill. 55 quoted by Judge Wood that the plaintiff could not claim for defendant has no bearing. When the question was one of estoppel this I do not claim, only prima facie evidence leaving the party to...

know it if he can.

But Judge Wood insists that I did not prove, or offer to prove that Pettyman was in possession. - To what straits are dependants driven!

The return of service of declaration shows Bremer to be in possession. Her files are plain. Pettyman asks leave of court to defend as landlord: plea Gen. issue - and now it is not proved that he was in possession!

11 Dredge vs. Wiggins vs. Reddick (syllabus) says in quotation the ~~only well established~~ ^{of the court} when a person is admitted to defend as landlord, which he has a right to claim he stands in the place of his tenant and can make no defence which his tenant could not have made: and in the case this sensible reason - for, except as landlords they had no right to make themselves dependants, and after doing so they were bound to act up to the relation which they professed in order to get the privilege of making defence!

171

Some rule in Ad. Op. 258, 260 note
quoting 11 John Rep. 434, Woods v. Harrow
in 5 Mon. 539.

None abscond to say that if a
man thrusts himself into a case
to defend, he must still be proved
to be in the actual possession
when in fact he was not.

This objection not made below
and if called upon to reply here
I might say that I did ^{not} arrive
at that point in any case when
I was called upon to prove
possession.

4 a point made here by defen-
dant, not made in the
court below. The demurrers
of the 8 Section.

It is claimed by Judge
Wood that the assignee had
no power over the property
after two years, could bring
no suit after two years, and
no one claiming under him
can bring suit after two years
from the Bankruptcy.

This point to avoid New York.
have been made in the court
below, so that proof ^{might} have ^{been}
had, as to adversity of possession
length of time &c.

But if the court will look
into this matter I arrake these
suggestions.

The statute only applies to
~~claiming~~ persons claiming ad-
versely to the assignee. These de-
fendants do not claim ad-
versely to ^{the} assignee but
through ^{under} the assignee.

Again the plaintiff here
is not an assignee, but his
grantee. Can it be pretended
that this two years limita-
tion applies to the rights of
action that grantees, immedi-
ate and remote, may have
through all time accruing
after the assignee parted with
his interest?

There is no proof here of the
length of time defendants have
been in possession. Judge Beal's
statement, that they were in pos-
session under another title, a long time

ago will pass unheeded. It is not likely they were in at the time of the sale to me. If they were, their petition to court stating Campbell owned it would be rather singular.

The authorities quoted by them have no ~~bearing~~ precise application to the case at bar. Case in 11 Al. N. was a personal action by assignee, detinue for a note.

12 Al. Suit by assignee for money due on a loan.

20 Al. Bill in Chancery for a receipt which had been sold by assignee, in his name.

Observe that two only of five judges give an opinion that the suit is barred, and the other three "prefer to be considered as expressing no opinion as to the construction of the 8th section" which is rather significant.

5 Bar (Ill) Suit in exdempt by ~~ass~~ lease of assignee

27 Barb. This was in Chancery and called "a most un-

conscionable suit." The assignor had mortgaged the land, and when Bankruptcy occurred, a suit for foreclosure was pending. The assignee did not notice it but after many years sold, and his purchaser brought Bill to redeem. - held that assignee was bound by the proceedings: also that he could not make a valid sale of lands held adversely. The assignees deed was not before the court. It does not appear that the limitation law was discussed and the remarks of the court are rather obiter dicta than otherwise.

Now in all these cases it is to be observed, that no aid was derived or attempted to be derived from the 15th Section, - no claimant within that section, nor that could be aided by it.

These decisions are therefore according to the common sense view of the Statute, nor are they according to the general tenor of the decisions.

I present decisions of different
tenor.

There is a decision (I think
in Pa Reports but I have
lost track of it just now which
holds that this Statute or ~~other~~
~~Statutes generally~~, as to limitation
of action only apply to U.S. Courts.

This section (9th) is rather dif-
ficult to be understood, rather
difficult of construction. The best
disquisition I find on it is in
11 Pa Rep. (Jones) 176. *Union
Central Co. vs Woodside assignee*.
venue by assignee in 1847. to
assess damages. held not barred
by time, and section confined
to adverse claims

2 Centis L.C.N. 488
The court holds this language
"An assignee has precisely the
same rights to sue on a notes-
sed note that the bank or payee
himself had" held to continue 20 years.
"This statute clothes the assignee with

every right of action of the bankrupt
founded on contract; and if the
bankrupt would have had a right
of action if he had not become a
bankrupt, the assignee has the same
right of action"

Observe, this decision is by the U.S.
court, and it seems to me to be
the most in accordance with the
whole law, and common sense,
for the 3^d Sec. says that ^{the} assignee
shall have the same right to all
interests and purposes that as-
signee had just before bankrupt.

^{2d} e.g. *Maria Lewis vs Lord*.
Suit by assignee on note held
debtor on note not one claiming
adverse interest ^{in the} note, suit
not barred.

3 *William 108. Warren vs Miller*
The 9th Sec. does not limit assign-
ee to 2 years in which to sell real
estate

- 5 *Bushby* 442
- 18 *Howe*, 244
- 17 *Howe*, 321.

have something on the subject

My own judgment about this
restriction is that it is a limita-
tion in the U.S. courts, as to
suits which might interfere with
the settlement of estates, concern-
ing the ownership of the prop-
erty transferred by the bankrupt
to the assignee, and the adverse
claimants were the claimants
of the very rights that things
that the assignee would claim.
That is to say, that if the assignor
assumed to transfer a note as
if he were the person
claimed to own the note, so that
the assignee could not proceed
in the settlement of the estate
without settling the right, &c.,
then such suit only was meant
to be limited. The debtor on a note
is not an adverse claimant
of the right to the note. It seems
to me strange that any one
should have ever thought so.
As to real estate, it does not ap-
ply unless the adverse claim-
ant claims the very right that
the assignee through the bank-
rupt does. If the claimant of

land stands on a tax title, or
limitations, or on another claim
than that which the bankrupt
claimed the section does not
apply. neither do I suppose the
section applies to the purchaser
of the assign^{ee}. The reason of the
limitation has ceased. The con-
troversy into which his purchaser
may be thrown will not impede
the settlement of the estate. I
know of no reason why the Sec-
tion should apply to purchasers ex-
cept this that when a statute of
limitation has commenced to run
it continues to run. But the
court may make that rule other-
wise, and I believe it has.

Such a construction as this
will give force to all parts of the
Statute and lead to sensible re-
sults, which any other will not.

But whether the construction
of the 9th Section may be I think
it cannot affect purchasers of real
estate by deed under the 15th Sec-
tion. As I have said this is the

21

paramount Law and sets the whole matter at rest. Whatever the Bankrupt without a purchaser of the Bankrupt without bankruptcy could do, and whatever rights he would have, such the grantee of the assignee can do, and such rights he has. There is not one of the cases cited on either side that presents this identical question, and I think, probably one reason is, because the matter has not been considered in double

A number of cases have been cited in cases before this court, that the limitations clause of the Statute has been repealed by the repeal of the Statute before any bar had been effected, and these authorities are quoted

1 Carter (Ind) 56. - 8 Blackford. 506
5 Met. 400. 14 Ill. 494

1 White 324.

1 Iowa 338

2 Branch. 272.

2 - 181

The principle is rather abstract, and as I cannot believe that this question will be taken up I will not pursue the matter farther.

May it please your Honors, I have
gone through the whole case at
length, I don't know but I ought
to beg pardon for trespassing so much
on your valuable time; but most
of this work has been forced upon
me by the course of Judge Wood
in travelling out of the record,
- or rather perhaps in taking up
what does not legitimately belong
to the case, as it is now. He has
assured me privately that the
court would consider the whole
case - all that there was in the
case, and as he is more versed
in these matters than myself, &
I have followed him as best I might
& have labored under great
inconveniences, as his briefs are lost
and I have had to depend on
memory and hasty notes.

In saying this I wish it were
distinctly understood that I
am not averse to having my
my and all the points made to
her up. I desire they should be
settled, and have an end of controversy.

The only objection I have to this is that
as to some points, the evidence is not
all in and I have not discussed
some points so fully as I should,
perhaps, if I thought they were
of great importance. But I am not vain
enough to suppose that a further
discussion would make any differ-
ence in the result. - and besides I
have the utmost confidence that
my positions are right and that they
will be upheld.

The trial before was the trial
(taken under the statute), and for
that as well as for other reasons,
an early decision is requested

My book will furnish a written
argument on my behalf.

Mr. W. B. Hopkins is with me and
has aided me in this argument.

E. P.
C. P. Holbrook
Plaintiff in Error.

No 96.
Holtbrook
vs
Brenner & Co.

Argument by
Kantoff in Court

Filed May 18, 1863

L. S. [unclear]
[unclear]

Are ready to receive
[unclear]
[unclear]

Mr. Justice Walker delivered the opinion of the Court:

~~Walker~~ Plaintiff, in error, on the trial in the Court below, ~~offered to read~~ in evidence a deed from Bestwick, as assignee of Campbell, a bankrupt, to Do-
 = little, dated the 17th of June 1853, for the pur-
 = poses in controversy. Next a deed from
 = James, Master in Chancery, which recited
 was ~~that~~ made under a decree rendered
 in the Sagwell Circuit Court, in favor
 of H. S. Merriam and against the heirs
 of Do little and H. O. Merriam, ~~containing~~
 = ing the premises to defendant ~~Merriam~~
 = man. He then offered to read a deed from
 Bestwick, as assignee of Campbell, to
 himself, dated October 15th, 1850, for
 the same premises. And in connec-
 = tion with the last deed, he offered a
 certified copy of the decree declaring
 Campbell a bankrupt, and appoint-
 = ing Bestwick his assignee. Also the
 fifty first rule in Bankruptcy adopt-
 = ed by the Court in bankruptcy. ~~The~~
 The deed, the copy of the order and rule, were
 rejected, and not permitted to be read
 to the jury, and a verdict was return-
 = ed in favor of the defendant, upon
 which a judgment was entered.

The first objection to the deed as evidence, was that it was not, it is insisted, connected with a source of paramount title. On the contrary it is urged, that the evidence shows, that the parties claimed title from a ~~common source~~ ^{Barstwick} as a common source. In the action of ejectment it is held, that the plaintiff ~~may trace his title to the common source~~ ^{is not bound} ~~where both parties claim under the same right~~ the plaintiff is not required to trace his title back beyond the common source. ^{Arguison v. Boiles, 3 Gilin. 265; Mc Coyne v. Johnson, 2 S. Am. 528; Mc Blue v. Enck, 17 Ill. 52.} ~~75 Ill. 7 370. Riddle v. Hoop~~

When it is found that the defendant has purchased by deed, and is in possession of the premises, it is prima facie evidence, that he claims under that title. And if he and plaintiff claim from the same source, it is not necessary for the latter to trace his title further in the first instance. ~~But~~ When he exhibits ~~a title~~ ^{a title} ~~to a deed~~ from the same source, better than that of the defendant it is sufficient to put him upon his defence. He may, however, show that he claims under a different title

Report
upon to
Ells. & Wm
Baird
and Pa
Carr

or he may show a paramount, outstanding title, to defeat a recovery. In this case, it was sufficiently shown, that both parties claimed from a common source to authorize the reading of the deed in evidence and the court erred in excluding it from the jury.

It is however urged, that the deed ~~is~~ ^{was inadmissible} because, it was not shown, that Bestwick entered into bond as assignee. That by the terms of the decree, ~~he~~ he was only to become assignee, upon executing such a bond, in a penalty of a number of dollars not specified. By the fifteenth section of the bankrupt act, it is declared, that a copy of the deed and appointment of the assignee, recited in the deed, for lands of the bankrupt, set out and conveyed, by the assignee, together with ~~the deed~~ a certified copy of the order shall be full and complete evidence of the ~~the~~ bankruptcy and assignment, to validate the deed. And all deeds containing such recitals, and supported by such proof, shall be as effectual to pass the title of the bankrupt of, in and to the lands therein mentioned

* act of Congress of August 19, 1841, S. U. S.

Stat. at large, p. 448.

and described, to the purchaser, as fully to all intents and purposes as if made by such bankrupt himself immediately before such order:

This provision was manifestly designed to dispense with all proof, that the assignee had complied with the terms of the decree or the rules of the court, when the deed ~~was~~ ^{should} come in question, in a collateral proceeding. If he failed to act in obedience to the decree, or in violation of the rules of court, and the assignee or his creditors, made no exception to have the sale set aside, the deed would be conclusive, to pass the title of the bankrupt. This enactment has dispensed with proof, that a bond was given, but makes the deed, in a collateral proceeding, evidence conclusive evidence of that fact. It is also evidenced that the sale was reported to, and approved by, the court. Also, that proper notices were given of the time, place and terms of the sale. Or, perhaps, ~~now it is more accurate~~ ^{by saying that speaking} it states, the sale is made valid whether the requirements have or not been observed.

These views are in accordance, with the decisions in the cases of Holbrook vs Honey, 25 Ill. 543 and Joy v. Beedell, Ill. 537.

~~It is next urged, that the assignee had no power to sell the premises after ~~two~~ the expiration of two years from the time he was appointed.~~

The cases referred to by defendant in error, which hold that the assignee ~~has~~ has no power to maintain an action ~~an action~~ to recover the profits of the bankrupt, until he has given bond, do not militate against the validity of this deed. The deed is made valid and effectual to pass the title by express enactment, whilst there is no authority conferred, to bring suit by ~~it~~ ~~one~~ bond is executed. The statute has not provided ~~that~~ that he may sue upon merely producing a copy of the decree appointing him assignee. The questions are distinct and ~~pending~~ pending upon different provisions of the law, and hence, different rules may prevail.

Inasmuch as the decree in ~~the~~ bankruptcy, and the appointment of the assignee, directed the bankrupt

title out of him, and vests it in
 the assignee, there was no title in
 the bankrupt when the second decree
 was rendered. The former decree had
 left no interest in the bankrupt to
 this property, which could be affect-
 ed by the latter decree. And as the
 sale of the premises by the assignee
 to plaintiff in error, transferred the
 title, held by the assignee, to the pur-
 chaser, the subsequent sale to de-
 Witt could pass no title. But even if
 the latter decree of the court in bank-
 ruptcy, had any binding effect up-
 on any person, or upon any thing
 it was not on plaintiff in error, as
 he was not a party to that proceed-
 ing. Even if it purported to set aside
 the sale to plaintiff in error, it could
 have no such effect, unless he had
 been in court, as a party to the
 proceeding. He is not concluded by
 that decree, in that or any other in-
 stant.

It is again urged that the assign-
 ee had no power to sell the premis-
 es, after the expiration of two years
 from the time of his appointment.
 The eighth section of the bankrupt

act, limits the period within which the assignee may sue to recover the assets of the bankrupt to two years ^{after the bankruptcy or the cause of suit has arisen}. The tenth section provides, that "all proceedings in bankruptcy, in each case, shall, if practicable, be finally adjusted, settled and brought to a close, by the court, within two years after the decree declaring the bankruptcy". The first of these provisions, in terms relates to the time of suits to recover assets. It in no wise relates to the sale of property. There does not seem to be the remotest connection between maintaining a suit and selling property. But it is certain, that as the assignee could not recover these premises by an action, that he could not transfer the right to maintain an action. The title was vested in him, and he, ~~is required~~ by to sell it by the requirements of the law, was bound to sell it, and no time for its sale is prescribed. And when we find that the law has vested him with the title for a particular purpose, and has limited no period within which he shall

carry out that purpose, we can not infer that it shall be defeated [≠] because the law has required the performance of other acts, ^{within} a limited period of time.

The property is vested in him for the benefit of creditors, and it can not be that it was designed, that if from any cause it was not sold, that they, without fault or neglect on their part, should be deprived of their beneficial interest in the trust fund. It will hardly be contended, that real estate vests in an assignee, reduced to his possession, but from any cause not sold ^{until the expiration of} ~~within~~ the two years, and after its sale an adverse possession was acquired, that the purchaser could not maintain ejectment. And the doctrine contended for, ~~leads to this~~ would lead to this conclusion. The title was manifestly transferred to the assignee for the purpose of paying creditors, and the assignee was required to sell it for that purpose, and the doctrine contended for would be well calculated to defeat the

design of the law.

The provisions of the tenth section are not imperative, but are advisory. It provides that the entire business of the bank -
 -upt, if practicable, shall be closed up within two years. But it imposes no penalties and divests no titles to property if it is not done. The very fact that it only requires the business to be closed, if practically implied, that if it is not done, the assignee shall still proceed to close the business. And it would seem inevitably to follow, if that if he had the title to property not sold he might dispose of, and convey, it, and thereby pass the title. When the law cast upon him the title, it made no provision for it to be divested, except by such as the appointment of a receiver. And the law could not have assigned to offer him the property as a premium for neglecting his duty in making a sale. And if he cannot sell it after that point it would become his, absolutely and unconditionally. Such

could not have been the design of the law makers. We are then face of the opinion, that the assignee had the power to sell and convey the premises after the expiration of the two years, and that the purchaser acquired all the rights of the bankrupt.

It was further insisted, that the sale could only be made under the order of the court, and that no order was shown. It appears, that the fifty first rule of the court of bankruptcy, which requires the assignee to make sale, and to give notice of the time and place where it will be made, this rule of court, was, for all purposes, an order of court as fully as if it had been copied at large into the decree. When the assignee sold under this rule, he virtually sold under the order and direction of the court. But if this were not true, the provisions of the fifty tenth section of the act dispenses with the proof, when it makes the deed and copy of the order appointing the assignee full and

complete evidence to validate
the debt.

It is for these reasons of
the opinion, that the court be
herein in rejecting the debts
offered by plaintiff in case as
evidence, and the judgment is
reversed and the case remanded
to Judgment Reversed.

ES
96. vs. 114
A. B. ...

Spinney
Walting.

Revised
page 1

IN THE SUPREME COURT OF THE STATE OF ILLINOIS,
THIRD GRAND DIVISION.
April Term, A. D. 1863.

EDMUND S. HOLBROOK,
vs.
BRENNER S. PRETTYMEN. } EJECTMENT.

PLAINTIFF'S POINTS AND AUTHORITIES.

1. The reason given by the Court below for not permitting the deed of Bostwick, as assignee in Bankruptcy of James B. Campbell, to be read in evidence on the part of plaintiff, to wit: "That it did not appear that said Bostwick was assignee," (Record page 64,) is not valid. It was his view that Bostwick's appointment as assignee, as shown by the decree of Bankruptcy, was a conditional one, and that it devolved on the plaintiff to show that he filed the bond mentioned in the order. This position is erroneous.

1. The certified copy of the decree of the Court of Bankruptcy offered by plaintiff to support his deed was a sufficient proof of the appointment of Bostwick as assignee, without further evidence of his acceptance of of the office, and so this Court held in 25 Ill. 551, Holbrook vs. Coney, et al.

2. Plaintiff insists in reference to this pretended condition (if it be possible that any discussion can be had upon this after the decisions already made upon the law in itself very explicit,) that the condition "is not an operative one. That he give "a bond in the penal sum of (Blank) dollars," (Record page 49) is not a provision for the giving any bond at all. It is the same as no bond. The law (Sec. 9,) says "The Court may require of such assignee a bond!" It is not imperative.

3. The meaning of the decree is the same as if it read "and that he enter into and file with the clerk of this Court a bond," &c.

5215 Lc. 447

The law applicable then is the 15 Sec. of the act of Congress which is the special law pertaining to deeds by assignees and their effect.

The matter as to the security to be given by the assignee is a matter between him and the Court with which purchasers have nothing to do; and so this Court has decided in

25 Ill. 542, Joy et. al. vs. Berdell. See also,

5 * Bar. S. C. Rep. 375. *Barnes v. Mattson*

The "deed" of the assignee only is to be recited and proved. It matters not if it be a conditional appointment of the appointment of the assignee.

4. If any evidence is to be furnished showing that Bostwick filed a bond, it is insisted that the recitals in the deed are sufficient.

5. The fact that Bostwick, as assignee, had made a deed of the same property to Wm. B. Doolittle, and that defendant Prettyman claimed by deed under him, was already in evidence. It is insisted that defendants did not stand in a position to deny, or question the fact of Bostwick's appointment as assignee. By taking title under him as assignee, they either admitted him to be such, or are estopped from denying it. It is a common principle that persons are bound by the recitals of their deeds.

Their deed recites that Bostwick gave bond to the U States,

7 Conn. 220, Stow vs. Wyse.

4 Pet. 83, Carver vs. Jackson.

4 Kent ~~21~~, note. 261

22 Ill. 604, Bynum v. Merchants

1 Phil. Ev. (C. H. & C. notes) 473. Cases cited in note 130

2 ~ 574

1 Green. Ev. Sec 23, note

10 A. Rep. 292

6. But if it be deemed that such deed do not constitute such admission or estoppel, it is further insisted that said deed (Record, page 24-28) together with the certified copy of proceedings in the Bankrupt Court, offered by themselves, (Record, page 50-59) a part of which is recited in their deed, furnish preponderating testimony, that Bostwick was duly appointed, and was the acknowledged assignee, in presence of, and under direction of the Court, and consequently had filed the bond required, and obeyed all the rules of Court pertaining to him.

III.

It is to be observed that this objection on which the cause was made to turn, was interposed by the court, on his own motion. Either defendants' counsel did not think enough of the point to make it, or did not care to deny the appointment of Bostwick, as they claimed title from him.

II. The objections made by defendant's counsel to plaintiff's deed were not valid (Record, page 50).

1. The deed recites all that is necessary of the decree with perfect exactness. The 15th Sec. of the act requires only a copy of the decree of bankruptcy, and the appointment of the assignee to be recited in the deed. This ends at the word (Record, p. 48,) "assignee of said bankrupt."

After this the words "to the United States," which are in the decree are not in the deed. Then a part of the decree pertaining to other matter is entirely omitted.

But these are mere surplussage, and if not, the rules of law as to variance in a collateral matters will not exclude the deed for this reason.

Medley vs Rawson — 1. Scam. 272 332.
Loomis vs Wiley — 24 Ill's 307.
Peather vs Omyard — 4. Gil. 48.

Phillips vs Coffee 17 Ills. 154
1 ~~Phil Ev~~ (C. & E notes) 870
1 St. Ev. 431
1 Green Ev. Secs 67-8-9, notes

Again, it is insisted that, at last as against defendants who have taken a deed from the same source, it is doubtful whether the deed need contain a copy of the decree, or need be supported by a certified copy of the decree; for the defendants by accepting a deed from Bostwick as assignee, admit him to be such, and as a source of title, which was of James B. Campbell. The law throws the title of the bankrupt in the assignee. The object of sustaining the deed by copy of decree is to show by legal proof, how the legal title which was of the Bankrupt comes to the assignee. If this is admitted by defendants in possession, expressly or voluntarily, or by force of law, it supercedes the necessity of such proof, and the plaintiff in ejectment need not go behind the common source of title. The common source of title is William C. Bostwick.

2 Green. Ev. sec. 307.

13 Sm. & Mar. 103, Wolfe vs. Dowell.

24 Wend. 221, 227 *Northrup vs Wright*

III.

Again, it is insisted that the term "recital" in the law does not require the insertion of an exact copy *verbatim, literatim, punctimque*, but simply a rehearsal or description sufficient to identify the decree when produced. The statement in Bostwick's deed as to his acts as assignee, are in legal parlance called *recitals*.

The other objections to plaintiff's deed made by defendants below, the 2d, 3d, 4th & 5th, (Record, p. 50) and 6th & 7th, (p. 66,) are all disposed of by the 15th section of the act, and the two decisions and interpretations of this Court thereof in 25 Ill's. already quoted. "*This language is clear, explicit and comprehensive. It dispenses with proof of advertisements, notices and other requirements of the law and the rules of court.*" Any other holding by the Court cannot be anticipated.

The 3d objection (if of any validity,) was obviated by the production of the 51st rule in Bankruptcy, by the plaintiff when he again offered his deed, (Record p. 65.)

To say now that plaintiff, after having obtained and recorded his deed, can be defrauded of his title by proceedings behind his back, without notice, is simply monstrous and absurd.

III. The Court erred in regard to the certified copy of proceedings in the Bankruptcy Court, offered by defendants.

1. Defendants had no right to offer it at the time it was offered, when plaintiff's deed was under consideration. Plaintiff has a right to make his case as he pleases, before the defendant can offer testimony.

2. It was irrelevant and incompetent. The plaintiff could not rightfully be affected after he had obtained his deed, by the proceedings of Court to which he was not a party. It was error then for the Court to permit it to be read, either to the Court or to the jury for the purpose for which it was offered.

3. Being once in evidence, it was in for all purposes while the trial lasted, and it was error to deny the plaintiff the use of it.

4 *Bluff. 380. Whitaker vs M. Mcaney.*
1 *Mo. & John. 153. Love vs Holbrook.*

4. When offered by plaintiff it was relevant to remove the objection to the deed interposed by the Court, and its rejection was error.

There certainly was error in one or the other of these cases.

17 *Mo. (2 Bennett) 435. Horney, as Warden*

No 96-114
Hollbrook
vs
Bronner et al
Pltys Rounts and
Antitrust

Filed April 29, 1863
L. L. Lane CWR

(Page 1)

Proceedings in the Circuit Courts of
Tazewell, Peoria and Woodford Counties in the case
of Edmund S. Holbrook vs Andrew Branner and
Benjamin S. Prettyman in Ejectment

State of Illinois }
Tazewell County } In Circuit Court June Term 1859

Edmund S. Holbrook the plaintiff in this
cause by James Roberts his attorney complains against
Branner the defendant in this cause for that whereas
the said plaintiff on the first day of May A.D. 1858 was
possessed of a certain tract of land with the appurtenances,
situate in said County, to wit, Blocks one, two, three,
four, five, six, seven, eight, nine, ten, eleven, twelve,
thirteen, fourteen and fifteen, in Campbell Durley
and Newhalls addition to the Town of Pekin as laid
out on the East half of the North West quarter of
Section Thirty five, in Township, Twenty five, north
of range five West of the 3^d P.M. which said premises,
the said plaintiff claims in fee, and being so possessed
thereof afterwards to wit on the first day of June A.D. 1859
the said Defendant entered into the said premises and Eje-
cted the said plaintiff therefrom, and unjustly withholds
from the said plaintiff the possession thereof, to the
damage of the said plaintiff of one hundred dollars
and

x Entered as to read Court Rec. by leave of Court, April 16, 1862

2^d Count It is that whereas the said plaintiff on the

In the year 1858 was possessed
 of a certain tract of land with the appurtenances
 Situate in Saiss County and described as follows
 to wit, The Three fourths parts undivided of the
 said tracts of land, described in the above first
 count, which said premises, said, plaintiff claims
 in fee, and being so possessed thereof after-
 wards to wit on the first day of June A.D. 1859,
 the said Defendant entered into the same premises,
 and ejected the said plaintiff therefrom, and
 unjustly withholds from the said plaintiff the
 possession thereof, To the Damage of the said
 plaintiff of one hundred Dollars, and therefore
 he sues &c

James Roberts
 Atty for plaintiff

To the above named Defendants

You are hereby
 notified, that the Declaration, with a copy whereof
 you are now herewith served and to which this
 notice is subjoined will be filed on the 15th day
 of June 1859 in the Circuit Court of Tazewell
 County Illinois, and that upon filing the
 same a rule will be entered requiring you
 to appear and plead, to the said Declaration,
 within twenty days after the entry of such
 rule, and that if you neglect so to appear
 and plead judgment by Default will be
 entered against you, and the plaintiff will
 recover possession of the premises ^{described} in said Decl-
 aration

(3)

Dated this 11th day of June A.D. 1859

James Roberts
atty for plaintiff

State of Illinois }
Sagewell County }

J B Reeves being duly sworn
says that he did on the 14th day
of June 1859 serve this declaration by delivering a
true copy of this declaration and notice to the within
named Andrew Brammer, and that the said Brammer
was as he is informed and believes in the possession
of the within described premises

J B Reeves

Subscribed and sworn to before

me the 14th day of June 1859

M L Young Clerk

(Filed June 15th 1859)

M L Young Clerk

State of Illinois } In Sagewell leicent court
Sagewell County } June Term A.D. 1859

Edmund S Holbrook

vs

Andrew Brammer + B S Prettyman

Defendant as Landlord

} In Ejectment

And the said Defendant B S

Prettyman comes and defends the force and injury when &c says acts now
Because he says he is not guilty of the said supposed trespass &
Ejectment in the said Plaintiffs Declaration named in manner &
form as the same is therein set forth; and of this he puts himself
upon the law &

J S Prettyman

Pro Se

(Filed June 15th 1859
M L Young Clerk)

(4)

Proceedings

At a Term of the Circuit Court
began and held at the Court House in Pekin within and
for the County of Tazewell and State of Illinois on the first Monday
of the month of June A.D. 1859 Present Hon James Harriott
Judge of the 21st judicial circuit of the State of Illinois
composed of the Counties of Mason Tazewell &c Hugh Fullerton
State Attorney Thomas C. Beane Sheriff & Merrill L. Young
Clerk to wit: =

9th day

Wednesday June 15th 1859

Edmund S. Holbrook

vs

Andrew Brunner + B. B. Prettyman

as landlord in possession

} Ejectment

}
}
}

Now comes the Plaintiff by his
atly Roberts, and the defendant by B. B. Prettyman filed his
plea of not guilty as named in Plaintiffs declaration, and
leave being granted to B. B. Prettyman to defend as defendant
in possession, and it appearing to the satisfaction of the Court
that the defendant has been regularly served with a copy of
the declaration in this cause, a rule is entered upon the de-
fendant to plead in 20 days, and this cause is continued

And ^{now} afterwards, to wit: - at a Term of the Circuit
Court began and held at the Court House in Pekin within
and for the County of Tazewell and State of Illinois on the first
Monday of the month of September A.D. 1859, and on the 9th day of
said month it being the 5th day of said Term the following
proceedings were had to wit: =

Edmund S. Holbrook

Andrew Brunner et al

} Ejectment

}
}

(6)

Now on this day comes the Plaintiff in his own proper person, and moves the Court to vacate the judgment heretofore rendered in this cause and for a new trial under the Statute the costs having been paid. It is ordered by the Court that the judgment heretofore entered in this cause be vacated and a new trial granted. The Plaintiff further moves the Court for leave to amend his declaration which motion the Court refused.

And now afterwards to wit: at a Term of the Circuit Court begun and held at the Court House in Pekin within and for the County of Tazewell and State of Illinois on the first Tuesday of the month of June A.D. 1861. Present Hon James Harritt Judge Hugh Fullerton State Attorney Chapman Williamson Sheriff and George H. Harlow Clerk to wit:

3^d day

Thursday June 6th 1861

E. J. Holbrook

vs

Andrew Brammer Et al

} Ejectment

Now come the defendants by their Attorney and enter their motion upon affidavit filed for a rule on the Plaintiff to give security for costs. which motion the Court allowed and a rule is entered on the Plaintiff to give security for costs by Tuesday morning

10th day

Friday June 14th 1861

E. J. Holbrook

vs

Andrew Brammer + Benjamin S. Pellyman

} Ejectment

(over)

Now comes the Plaintiff in his
 own proper person and being put upon his corporal
 oath justifies as to his solvency and the rule heretofore
 entered upon the Plaintiff to give security for costs,
 is ordered to be discharged whereupon the Plaintiff
 enters his motion for a change of venue, which
 motion the Court granted and the venue in this
 cause is ordered to be changed to the County of
 Peoria. It is further ordered that the Clerk of this
 Court transmit to the Clerk of the Circuit of Peoria
 County a certified transcript of the record of pro-
 ceedings herein and the papers on file in said
 cause

State of Illinois 385
 Taylor County 3

I George A Harlow Clerk
 of the Circuit Court within

& for said County do certify that the foregoing
 contains a true and correct copy of the record of
 proceedings had in said cause and the accompany-
 ing papers marked 1, 2, 3, & 4 are all the papers
 in said cause remaining on file in my office

Witness my hand and seal
 of said Court hereto affixed
 at Peoria this 8th day of July
 A D 1861

G L B

Geo A Harlow Clerk
 in at Peoria and Deputy

(8)

Proceedings at a Term of
 the Circuit Court begun and held at the Court
 House in the City and County of Peoria Illinois
 on the first Monday in the month of December
 in the year of our Lord one thousand eight
 hundred and sixty one it being the second
 day of said month. Present the Honorable
 Amos L. Merriman Judge of the 16th Judicial
 Circuit in said State Alexander McLevy States
 Attorney James Stewart Shepp and Enoch P
 Sloan Clerk to wit

Friday December 6th A.D. 1861,

Edmund S Holbrook

vs

Andrew Branner + ds

Ejectment

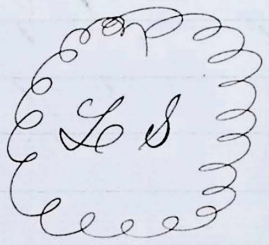
The Court here being
 interested in the result of this suit it is ordered
 that the venue herein be changed to the adjoining
 County of Woodford in this State; and it is
 further ordered that the Clerk of this Court
 transmit to the Clerk of the Circuit Court of
 Woodford County the papers filed in this
 cause together with a transcript of the proceed-
 ings of this Court appertaining to the same duly
 certified

State of Illinois 2⁵⁸
 Peoria County 3

J. Enoch P. Sloan Clerk of the

(over)

lieut Court in and for said County and State
 do hereby certify that the foregoing is a full true
 and complete transcript of the proceedings of said
 Court appertaining to the cause wherein Edmund
 S Holbrook is Plaintiff and Andrew Branner & Co
 are defendants as the same appears of Record in
 my Office. and I further certify that the papers
 herewith enclosed marked "A" "B" "C" "D" "E" are all
 the papers in said cause



Given under my hand and
 the Seal of said Court at
 Peoria this 8th day of March
 A D 1862
 Enoch P Sloan Clerk

Five vertical columns of wavy, scribbled lines, likely representing illegible or redacted text.

(10)

United States of America }
 State of Illinois } ss
 Woodford County }

At a regular term of the Circuit Court of the twenty third judicial circuit of the State of Illinois began and held at the town of Metamora within and for the County of Woodford on the fourteenth day of April in the year of our Lord one thousand eight hundred & sixty two

Present the Honorable Samuel L Richmond Judge
 James D Perry clerk
 Reuben L Sidwell Sheriff
 James St L Boal State attorney

Attest James D Perry clerk

State of Illinois } In Circuit Court
 Taylor County } June Term 1859

Edmund S Holbrook the Plaintiff in the cause by James Robert his attorney complains of Andrew Branner the defendant in this cause. For that whereas the said Plaintiff on the first day of May A D 1858 was possessed of a certain tract of land with the appurtenances situate in said County, to wit, Blocks one, Two, three, Four, five, six, seven, eight, nine, Ten, eleven, twelve, Thirteen, Fourteen, and fifteen, in Campbell Dingley and Newhalls addition to the Town of Pekin as laid out on the East half of the North West quarter of section Thirty five in Township Twenty five, North of Range five West of the 3^d P M which said premises the said Plaintiff claims in fee, and being so possessed thereof afterwards to wit on the first day of June A D 1859, the said defendant entered into the said premises and ejected the said Plaintiff therefrom

X Amended so as to read South West by leave of Court April 16, 1862.

(11)

and unjustly withhold from the said Plaintiff the possession thereof. To the damage of the said Plaintiff of one hundred dollars and therefore he sues &c

2^o Count For that whereas the said plaintiff on the first day of May A.D. 1858 was possessed of a certain tract of land with the appurtenances situate in said County and described as follows to wit; The three fourths parts undivided of the said tracts of land, described in the above first Count, which said premises, said plaintiff claims in fee, and being so possessed thereof afterwards to wit on the first day of June A.D. 1859, the said defendant entered into the said premises, and ejected the said Plaintiff therefrom, and unjustly withhold from the said plaintiff the possession thereof, To the damage of the said plaintiff of one hundred dollars. And therefore he sues &c

James Roberts
Atty for plaintiff

To the above named Defendant

You are hereby notified that the Declaration with a copy whereof you are now herewith served and to which this notice is subjoined will be filed on the 15th day of June 1859 in the Circuit Court of Tazewell County Illinois, and that upon filing the same a rule will be entered requiring you to appear and plead, to the said Declaration, within twenty days after the entry of such rule; and that if you neglect so to appear and plead, a judgment by default will be entered against you, and the Plaintiff will recover possession of the premises described in said Declaration Dated this 11th day of June A.D. 1859

James Roberts
Atty for plaintiff

(12)

State of Illinois }
Tazewell County }

J B Reeves being duly sworn says that he did on the 14th day of June 1859 serve this Declaration by delivering a true copy of this Declaration and notice to the within named Andrew Branner, and that the said Branner was as he is informed and believes in the possession of the within described premises

(Signed) J B Reeves

Subscribed and sworn to
before me this 14th day of
June 1859 M C Young clk

(Filed June 15th 1859)
M C Young clk

State of Illinois }
Woodford County } du the Circuit Court
April Term AD 1862

Edmund J Holbrook

vs

Andrew Branner tenant and } Ejectment suit
Benjamin D Prettyman Landlord } pending in said Court by
change of venue first
from Tazewell to Peoria and
thence to Woodford

The said plaintiff by leave of Court first obtained, on the 16th day of April AD 1862 comes and amends the first count of his said declaration in this manner, to wit, by striking out the word North-west, and inserting in the place thereof the word South-west.

3^d Count of said Declaration filed by leave of Court.

(13)

For that whereas also the said plaintiff on the first day of May AD 1858 was possessed of certain tract of land with the appurtenances, Situate in said County and described as follows to wit, the following named town lots in Campbell Duley and Newhalls addition to the Town of Pekin, as laid out upon the east half of the South west quarter of Section No thirty five (35) in Township No Twenty five (25) North of Range No five (5) West of the 3^d Principal Meridian, in said Tazewell County, platted and recorded in the Records Office of said Tazewell County:

- 1 = Lots No one, two, three, four, five, and six, of Block No one =
- 2 = Lots No one, two, three, four, five, six, and seven in Block number two.
- 3 = Lots one, two, three, four, five and six, in Block No three -
- 4 = Lots one, two, three, four, five, six, seven, eight, nine, ten, eleven, and twelve in Block Number four =
- 5 = Lots one, two, three, four, five, six, seven, eight nine, ten, eleven, twelve, thirteen, and fourteen of Block No five =
- 6 = Lots one, two, three, four, five six, seven, eight, nine, ten, eleven, and twelve in Block six =
- 7 = Lots one, two, three, four, five, six, seven, eight, nine, ten, eleven, and twelve in Block No seven =
- 8 = Lots one, two, three, four, five, six, seven, eight nine, ten, eleven, twelve, thirteen and fourteen of Block No eight =

14
9 (14)

= Lots one, two, three, four, five, six, seven, eight, nine, ten, eleven, and twelve, of Block No Nine, =

10 = Lots one, two, three, four, five, six, seven, eight, nine, ten, eleven, + twelve in Block No ten, =

11 = Lots one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen + fourteen, in Block eleven =

12 = Lots one, two, three, four, five, six, seven, eight, nine, ten, eleven, and twelve of Block twelve =

13 = Lots one, two, three, four, five, six, seven, eight, nine, ten, eleven, and twelve in Block thirteen =

14 = Lots one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen and fourteen of Block fourteen =

15 = Lots one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve in Block fifteen, (which ~~some~~ lots of said Blocks severally, are all of said Blocks, and constitute the same premises named in the above first count) which said premises the said plaintiff claims in fee and being so possessed thereof afterward to wit, on the first day of June A.D. 1859 the said Defendant entered into the said premises and ejected the said plaintiff therefrom, and unjustly withholds from the said plaintiff (and unjustly withheld the same at the time of the commencement of this suit) the possession thereof, to the damage of said plaintiff of one hundred dollars, and therefore he does

4th count. For that whereas also the said plaintiff owns

(15)

first day of May A.D. 1858 was possessed of certain tracts of land with the appurtenances situate in said County of Tazewell and described as follows. to wit undivided three fourths parts of the following lots in Campbell Durley and Newhalls addition to the Town of Pekin, to wit

= Lots one, two, three, four, five, and six in Block one =

2 = Lots one, two, three, four, five, six, and seven, in Block two, =

3 = Lots one, two, three, four, five, & six in Block three =

4 = Lots one, two, three, four, five, six, seven, eight, nine, ten, eleven, and twelve, of Block four =

5 = Lots one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen and fourteen of Block five =

6 = Lot one, two, three, four, five, six, seven, eight, nine, ten, eleven, and twelve in Block six =

7 = Lot one, two, three, four, five, six, seven, eight, nine, ten, eleven, and twelve in Block seven =

8 = Lots one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen and fourteen of Block Eight =

9 = Lots one, two, three, four, five, six, seven, eight, nine, ten, eleven, and twelve of Block Nine =

10 = Lot one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve of Block Ten =

(16)

- 11 = Lots one two three four five six seven, eight nine, ten, eleven, twelve, thirteen and fourteen in Block Eleven =
- 12 = Lots one, two, three, four, five, six, seven, eight, nine, ten, eleven, and twelve in Block twelve =
- 13 = Lots one, two, three, four, five, six, seven, eight, nine, ten, eleven, and twelve of Block Thirteen =
- 14 = Lots one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen and fourteen of Block fourteen =
- 15 = Lots one, two, three, four, five, six, seven, eight, nine, ten, eleven, and twelve in Block fifteen (being the same premises set forth in above 2^d count) which said premises said plaintiff claims in fee and being so possessed afterwards to wit on the first day of June AD 1839 the said Defendants entered into the said premises and ejected the said plaintiff therefrom, and unjustly withheld at the time of the commencement of this suit, and now unjustly withhold from the said plaintiff the possession thereof, to the damage of the said plaintiff of one hundred dollars and therefore he sue

E S Holbrook pro se
H B Hopkins
his atty

(Filed April 16th 1862
James D Perry Clerk)

(17)

State of Illinois } In Tazewell Circuit Court
Tazewell County } June Term A.D. 1859

Edmund S Holbrook }
v } An Ejectment
Andrew Branner & }
B S Prettyman Defendant }
as Landlord }

And the said Defendant B S
Prettyman comes and defends the force and injury where
says acts upon because he says he is not guilty of the said
supposed Trespass & ejectment in the said Plaintiffs
Declaration named in manner & form as the same is
therein set forth; and of this he puts himself upon the
country

B S Prettyman

Filed June 15th 1859

Pro Se

M Le Haung clerk

Filed July 11th 1861

Enoch P Sloan clerk per J Newton Deft

Filed March 21st 1862

James D Perry clerk By J Le Weyer Deputy

The the Jury find the Defendants are not guilty of
unlawfully withholding possession of the premises described
in the Plaintiffs Declaration as therein alleged

Edmund S Holbrook }
as } Ejectment No 463
Andrew Branner & Benjamin S Prettyman }

(18)

On this day the jury empanelled in this cause returned their verdict as follows "We the jury find the Defendants are not guilty of unlawfully withholding possession of the premises described in the Plaintiffs Declaration as therein alleged". And now again comes --- the Plaintiffs and moves the Court for a new trial which motion is by the Court overruled. It is therefore ordered and adjudged by the Court that the Defendants are not guilty of unlawfully withholding possession of the premises described in the Plaintiffs Declaration as therein alleged. It is further ordered and adjudged by the Court --- that the Defendants have and recover of the said Plaintiff their costs and charges by them in this behalf expended and that they have execution therefor

United States of America 9
 State of Illinois 2 ss
 Woodford County 2

At a Regular term of the Circuit Court of the Twenty third Judicial Circuit of the State of Illinois began and held at the Town of Metamora within and for the County of Woodford on the fourteenth day of April in the year of our Lord one thousand eight hundred & sixty two

Present the Honorable Samuel L. Richmond Judge
 James D. Perry Clerk
 Reuben L. Bidwell Sheriff
 James St. C. Poal State Attorney

Monday April 14th 1862

(19)

Edmund S Holbrook
 v
 Andrew Brammer &
 B S Prettyman

} Ejectment - Change of
 } Venue from Peoria County
 } No 463

Now on this day this cause coming on to be heard comes the Plaintiff Edmund S Holbrook in his own proper person and enters herein his motion for leave to amend Declaration filed in this cause

Wednesday April 16th 1862

Edmund S Holbrook
 v
 Andrew Brammer &
 B S Prettyman

} Ejectment Change of
 } Venue from Peoria County
 } No 463

This day come the parties the Plaintiff Edmund S Holbrook in his own proper person and the Defendant Andrew Brammer by his Attorney & the Defendant B S Prettyman in his own proper person and this cause came on to heard on the Plaintiff motion for leave to amend the declaration filed herein and the Court being fully advised in the premises doth order that said motion be sustained and leave given Plaintiff to amend said declaration—

Saturday April 19th 1862

Edmund S Holbrook
 v
 Andrew Brammer & B S Prettyman

} Ejectment
 } No 463

Now on this day by agreement of parties this cause is continued generally

(20)

United States of America }
State of Illinois } ss
Woodford County }

At a regular term of the Circuit Court of the twenty third Judicial Circuit of the State of Illinois began and held in the Town of Metamora within and for the County of Woodford on the Second Monday of August in the year of our Lord one thousand eight hundred and sixty two being the eleventh day of said month

Present the Honorable Samuel L Richmond Judge
James D Perry Clerk
Benben L Sidwell Sheriff
John J Weed State attorney pro tem

Attort James D Perry Clerk

Friday August 15th 1862

Edmund S Holbrook

vs

Andrew Brommer + Benj S Prettyman }

} Ejectment No 2163

Now on this day this cause is continued by the adjournment of Court

United States of America }
State of Illinois } ss
Woodford County }

At a regular term of the Circuit Court of the Twenty third Judicial Circuit of the State of Illinois, began and held at the Court House in the Town of Metamora within and for the County of Woodford and State aforesaid on the Second Monday of December

(21)

the year of our Lord one thousand eight hundred and
Sixty two being the eighth day of said month

Present the Honorable Samuel L. Richardson judge

James D Perry clerk

Louis A Bullock Sheriff

+ James St L Boal States attorney

Attest James D Perry clerk

Wednesday December 10th 1862

Edmund S Holbrook

v

Ejectment

No 463

Andrew Brammer +

Benjamin S Prettyman }

Now on this day this cause coming
on to be heard come the parties the Plaintiff in his own proper
person and the Defendants by Mead and Prettyman their attorney
and thereupon came a jury to wit, James M Finley, Jacob
Koffinger, Michael Siefert, James O Mundell, Grovel Armstrong,
A H Brubaker, William Chapman, J D Franklin, Jonathan
Macy, J D Woods, Joseph J Perry, and Joseph J Summers
who being empanelled and sworn the truth to speak upon the
issues joined between the parties, and the evidence not being
closed were adjourned untill tomorrow morning at eight
O'clock

Thursday December 11th 1862

Edmund S Holbrook

v

Ejectment

No 463

Andrew Brammer +

Benjamin S Prettyman }

(22)

The jury empannelled yesterday (Dec 10th) in this cause not having heard all the evidence are adjourned until tomorrow morning at eight O'clock.

Friday December 12th 1862

Edmund S Holbrook	}	Ejectment	No 463
as			
Andrew Branner + Benjamin S Prettyman			

On this day the jury empannelled in this cause, returned their verdict as follows "We the jury find the Defendants are not guilty of unlawfully withholding possession of the premises described in the Plaintiffs declaration as therein alleged" And now again comes the Plaintiff and moves the Court for a new trial which motion is by the Court overruled. It is therefore ordered and adjudged by the Court that the Defendants are not guilty of unlawfully withholding possession of the premises described in the Plaintiffs declaration as therein alleged. It is further ordered and adjudged by the Court that the Defendants have and recover of the said Plaintiff their costs and charges by them in this behalf expended and that they have execution therefor.

(Bill of Exceptions)

Edmund S Holbrook	}
as	
Andrew Branner and Benjamin S Prettyman	

Ejectment Suit in the Circuit Court of Woodford County, State of Illinois.

It is remembered that on the trial of this cause which was on one of the days of the December Term A.D. 1862 before his Honor Judge Richmond and a jury, the Plaintiff to maintain the issue on his part offered in evidence for the purpose of showing that defendants claimed title to the premises mentioned in the declaration from the same source of title with plaintiff, to wit James B Campbell and William L Bostwick, his assignee in bankruptcy, a certified copy of a deed of William L Bostwick to William B Doolittle in words and figures following to wit

W L Bostwick assignee } No 14,082

To

Wm B Doolittle

} Recorded April 25. 1853

Whereas by a Decree of the Honorable District Court of the United States of America for the district of Illinois sitting as a Court of Bankruptcy, James B Campbell of the County of Jo Davies in said District was decreed a Bankrupt, which said decree bears date the Third day of October A.D. 1842 and is in the words and figures following to wit:

District Court of the United States }

For the District of Illinois }

In the matter of the petition of James B Campbell to be declared a Bankrupt and to be discharged from his debts

} In the matter of the

On hearing the petition of the said James B Campbell filed in this Court 22nd August A.D. 1852 praying to be declared a Bankrupt in pursuance of the Act of Congress entitled "An act to establish a uniform system of Bankruptcy throughout the United States" and it appearing satisfactorily to the Court that notice has been published in pursuance of the previous order of this Court and no sufficient cause being ^{shown} to the contrary

(24)

It is therefore ordered adjudged and decreed that the said James B Campbell be deemed a Bankrupt within the purview of said act, and it is further ordered and adjudged that William C Postwick of the County of Jo Daviess be, and hereby is appointed assignee of said Bankrupt, upon his entering into before a commissioner, and filing with the clerk of the court a penal Bond in the sum of Dollars, to the United States with two or more sureties to be approved by the Commissioner of the County wherein the Bankrupt resides, conditioned for the due and faithful discharge of all his duties as such assignee, and his compliance with the orders and directions of the Court. And whereas, I the said William C Postwick appointed assignee of the said James B Campbell a Bankrupt in and by virtue of the decree aforesaid have complied with the provision of said decree and have filed with the clerk of said Court my sufficient bond in the penal sum of Five hundred Dollars with two sufficient securities approved by the proper Commissioner, and have complied with all other, the regulations and directions of said decree, and with all the rules in Bankruptcy of said Honorable Court, so far as the same apply to or are binding and incumbent upon me have as such assignee sold the property hereinafter described at Public Auction at the Court House in Galena in said County of Jo Daviess having first duly advertised the same according to Law, and said sale being made in pursuance of a decree of said District Court dated 15th May 1851, and which said decree is in the words and figures following to wit

In the Matter of the Petition of } In the United States
William C Postwick assignee in } District Court within
Bankruptcy of James B Campbell } and for the District
declared a Bankrupt } and State of Illinois

Petition for sale of Real Estate of Bankrupt

And now on this day this case coming on to be heard on the petition of William C Postwick assignee of James B Campbell a Bankrupt and upon the exhibits and proofs, and it appearing to the Court that the said James B Campbell has an interest or claim in and to the following real estate situate in the County of Tazewell and State of Illinois to wit;

(Here follows a description of the tracts of land and lots of ground in this deed hereafter mentioned and described, including the whole and every the tracts of land and lots of ground hereinafter described) which said lands were not contained in the schedule filed in said Court by said Bankrupt. It is therefore ordered adjudged and decreed by said Court, that the said assignee William C Postwick proceed to sell all the estate right, title and interest in him vested as such assignee in and to the lands above specified, in such manner, upon such terms and at such times as is specified in the rules of this Court heretofore made, and still in force in regard to the sale of the real estate of Bankrupts. It is further ordered that said assignee make report of his doings herein to this Court, at the earliest opportunity, at which sale William B Doolittle of Tazewell County, State of Illinois hereinafter named became the purchaser of said lots and lands and at the prices hereinafter mentioned, he being the highest and best bidder for the same, the said property, lots and lands and Real Estate are situated, designated, and described as follows to wit: Seventeen Lots in the Town of Pekin in Tazewell County, State of Illinois viz; Lot No. fifteen in Block No. Sixty two, Lot No. 4 in Block No. Sixty three, Lots No. Nine, Ten, Eleven, and Twelve in Block Sixty nine, Lot No. Thirteen No. Seventy, Lots No. one, two, three, and four in Block No. Seventy eight, Lots No. five, six, seven, eight


(26)

and nine in Block No. Eighty two and Water Lot No. Eighty one, each of which said 17 lots were struck off separately to the said William B Doolittle at the sum and price of ten cents each, also the following described lots in "Campbell, Durley & Northalls addition to the Town of Pelkin" aforesaid in said Luzerne County, being three hundred and eighty in number to wit: Lots No. one, two, three, four, five, six, seven, eight, nine, ten, eleven, and twelve in Block No. one, Lots No. one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen and fourteen in Block No. two, Lots No. one, two, three, four, five, six, seven, eight, nine, ten, eleven, and twelve in Block No. Three, Lots No. one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve in Block No. Four, Lots No. one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen and fourteen in Block No. Five, Lots No. one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve in Block No. Six, Lots No. one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve in Block No. Seven, Lots No. one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve in Block No. Eight, Lots No. one, two, three, four, five, six, seven, eight, nine, ten, eleven & twelve in Block No. nine, Lots No. one, two, three, four, five, six, seven, eight, nine, ten, eleven, and twelve in Block No. Ten, Lots No. one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen & fourteen in Block No. eleven, Lots No. one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve in Block No. Twelve, Lots No. one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve in Block No. Thirteen, Lots No. one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen and fourteen in Block No. Fourteen, Lots No. one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve in Block No. Fifteen, Lots No. one, two, three,

five, six, seven, eight, nine, ten, eleven and twelve in Block
 No Sixteen - Lots No one, two, three, four, five, six, seven, eight,
 nine, ten, eleven, twelve, thirteen, and fourteen in Block No. Seventeen -
 Lots No one, two, three, four, five, six, seven, eight, nine, ten,
 eleven and twelve in Block No. Eighteen - Lots No one, two
 three, four, five, six, seven, eight, nine, ten, eleven, twelve
 in Block No Nineteen, Lots No one, two, three, four, five, six,
 seven, eight, nine, ten, eleven, twelve, thirteen & fourteen in Block
 No Twenty - Lots No one, two, three, four, five, six, seven, eight,
 nine, ten, eleven, and twelve, in Block No twenty one - Lots
 No one, two, three, four, five, six, seven, eight, nine, ten, eleven,
 and twelve in Block No. Twenty two - Lots No one, two, three,
 four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen,
 and fourteen in Block No. Twenty three - Lots No one, two, three,
 four, five, six, seven, eight, nine, ten, eleven and twelve in Block
 No. Twenty four - Lots No one, two, three, four, five, six, seven,
 eight, nine, ten, eleven, and twelve in Block No. Twenty five,
 Lots No one, two, three, four, five, six, seven, eight, nine,
 ten, eleven, twelve, thirteen and fourteen in Block No. Twenty
 Six - Lots No one, two, three, four, five, six, seven, eight,
 nine, ten, eleven, and twelve in Block No. twenty seven
 Lots No one, two, three, four, five, six, seven, eight, nine,
 ten, eleven, and twelve in Block No. Twenty eight - Lots No
 one, two, three, four, five, six, seven, eight, nine, ten, eleven,
 twelve, thirteen and fourteen in Block No. Twenty nine -
 Lots No one, two, three, four, five, six, seven, eight, nine,
 ten, eleven, and twelve in Block No. Thirty; each of which said
 380 lots, were struck off separately to the said William B Doolittle,
 at the sum and price of ten cents each - also the one half
 of the South West quarter of Section No. Thirty five in
 Township No. Twenty five of Range No. Five West of the third
 principal meridian in said Poyewell County, Illinois also the
 West-half of the North East quarter of Section No. Thirty five

(28)

Township No. twenty five North of Range No. five West of the third principal meridian in said Poywell County, the said two tracts last named having been struck off separately to said William B Doolittle for the sum and price of three dollars and ten cents each - Also the following described real estate situate in the County of LaSalle in said State of Illinois, to wit: The undivided five acres part of the East half of the North East quarter of Section No. 18 in Township No. 33. North of Range No. one, East of the 3^d principal meridian which said undivided five acres were struck off to the said William B Doolittle for the sum and price of four dollars and ten cents - Now therefore know all men by these presents that I William C Postwick as assignee of the said James B Campbell a bankrupt as aforesaid in consideration of the sum of Fifty dollars to me in hand paid by the said William B Doolittle the receipt whereof is hereby acknowledged being the aggregate of said several bids as aforesaid as such assignee sell and convey unto the said William B Doolittle, and to his heirs and assigns all the right, title and interest in me vested as such assignee, in and to the lots, lands and real estate hereinbefore specified, designated and described at the date of said sale, to wit: this 17th day of June 1851. In witness whereof I the said William C Postwick assignee as aforesaid, hereunto set my hand and seal the said 17th day of June A.D. 1851.

Wm C Postwick 
assignee in Bankruptcy of James B Campbell

State of Illinois }
So Daviess County } Before me the undersigned Clerk of the
County Court, in said County & State
personally came this day William C Postwick, to me personally
known to be the identical person described in, and who executed
the foregoing deed and acknowledged to me that he had executed

the same freely voluntarily and for the uses and purposes therein mentioned

Seal

Witness my hand and official Seal this Thirteenth day of August A D 1851
attest Richard Seal Clerk

State of Illinois }
Sagwell County } 288

I George A Harlow Clerk of the Circuit Court and ex officio Recorder in and for said County and State, do hereby certify that the foregoing 7 1/4 pages contain a true and correct copy of the conveyance therein mentioned, as fully as the same appears of Record in Book K of Deeds pages 462, 463, 464, 465 & 466 in my office

Seal

Witness my hand and official Seal hereto affixed at Pekin this 15th day of November A. D. 1861

George A Harlow Clerk
per A. P. Griswold Deputy

to the reading of which defendants by their counsel objected, on the ground that the foundation was not laid for the use of a copy, whereupon the Plaintiff filed the following affidavit to wit

Edmund S Holbrook }
vs }
Brammer & Prettyman }

Suit in Ejectment in the Circuit Court of Woodford County State of Illinois December Term A D 1862 -

Edmund S Holbrook plaintiff in above entitled suit being duly sworn says that two certain deeds which he wishes to use in evidence on the trial of

(30)

this cause to wit. a deed of William C Bostwick as assignee of James B Campbell to William B Doolittle and deed of John A Jones to Benjamin S Prettyman are not in his possession power or control
Subscribed and sworn E S Holbrook
to before me this 11th day
of December 1862

James D Perry clk

Defendants still further objected because said deed was insufficient for the purpose offered + illegal + the offer based on a false legal principle; The court permitted said deed to be read, and defendants excepted
2 The plaintiff next offered to read in evidence for the purpose of showing the claim of title by defendants from said common source, a certified copy of deed of John A Jones to Benjamin S Prettyman in words and figures following to wit

John A Jones Waste Chancery No. 18666

vs
Benjamin S Prettyman } Recorded
} January 8th 1856

Know all men by these presents,
that whereas, at a term of the Circuit Court of the County of Tazewell and State of Illinois, begun and held at Pekin on the first Monday of the month of October in the year of our Lord one thousand eight hundred and fifty five, Present the Hon David Davis Judge of the eighth judicial Circuit composed of the Counties of Sangamon, McLean, DeWitt, Tazewell &c and on the 11th day of said month, being the 10th day of said Term, Amos Lee Merriam obtained a final decree against Halsey Lee Merriam Harriett P. Merriam, Simson W Merriam, Sidney Pulsifer, Guardian of Halsey Lee Merriam Harriett P Merriam and Simson W Merriam Amos Lee

Doolittle, George W Doolittle, Mary M Doolittle, Irvin B Doolittle, Jesse A. Nason Guardian of said Mary M and Irvin B Doolittle Martha Doolittle, Mary Doolittle and Middleton Tackaberry executor of William B Doolittle deceased, in the words and figures as follows to wit:

Tazewell Circuit Court October Term A.D., 1855

Amos L Merriman

Term A.D., 1855

vs
Halsey L Merriman Harriett P. Merriman, Simeon L Merriman, Sidney Pulsifer, Guardian of Halsey Lee Merriman, Harriett P. Merriman and Simeon W Merriman, Amaziah Doolittle, George W Doolittle, Mary M Doolittle, Irvin B Doolittle, Jesse A Nason, Guardian of said Mary M + Irvin B Doolittle Martha Doolittle and Middleton Tackaberry executor of William B Doolittle deceased

And now on the day this cause came on to be heard upon the report of the Master to whom this cause was referred to take proof of the allegations in the Bill contained and to state the account between the parties; and it appearing to the Court that Halsey O Merriman and Amos L Merriman were partners under style of H. O. and A. L. Merriman, and that said A. L. Merriman is the survivor of said copartnership concern, that said H. O. + A. L. Merriman and William B Doolittle purchased the lands in said Bill described on account said Doolittle having one half interest in the same; and said H. O. + A. L. Merriman having one half interest in the same, that William B Doolittle has become deceased, and that

(32)

Middletown Jacksonburg is ~~the~~ executor of the last will and testament of said William B Doolittle, that a portion of said lands were purchased in the name of said William B Doolittle, and a portion in the name of said Halsey O Merriam that the payments were made at the time of the purchase sometimes by said H. O. Merriam and A L Merriam and sometimes by said Doolittle, and in some of the purchases said William B Doolittle, and said complainant, individually gave their Notes, which notes were paid by said H. O. and A L Merriam - And it further appearing to the court, that the estate of the said William B. Doolittle has not received from the rents and profits accrued from said land, sufficient to pay all disbursements by said Doolittle expended or paid out in and about said purchases, and that there is now due to said complainant as survivor of Halsey O Merriam from said joint concern for and on account of said purchases and expenses the sum of one hundred and fifty one dollars and forty five cents, and that there is due to said complainant as survivor of Halsey O. Merriam from said joint concern for and on account of said purchases and expenses the sum of one thousand two hundred and ten dollars and thirty nine cents; and that there is no personal property belonging to said concern, It is therefore ordered, adjudged and decreed that the Master in Chancery of Tazewell County, proceed to sell the real estate described in said Bill to wit: Lot number fourteen Block number forty four, Lot number fifteen Block number Sixty two, Lot number four Block number Sixty three; lots number one and two Block number Sixty six; lots number nine, ten, eleven and twelve in Block number Sixty nine; lots number five, six, seven and eight Block number seventy one; lots number, one, two, three and four in

number Seventy eight; lots number five, six, seven, eight
 and nine, Block number Eighty two; and Water lot number
 eighty one, all in the City of Pekin. also the following lots
 in Campbell Durley & Newhalls addition to the Town of Pekin
 to wit; lots number one, two, three, four, five, six, seven, eight,
 nine, ten, eleven, and twelve Block number one;
 lots number one, two, three, four, five, six, seven,
 eight, nine, ten, eleven, twelve, thirteen and fourteen
 Block number two, lots number one, two, three, four,
 five, six, seven, eight, nine, ten, eleven and twelve
 in Block number three; lots number one, two, three,
 four, five, six, seven, eight, nine, ten, eleven and twelve
 in Block number four; lots number one, two, three, four,
 five, six, seven, eight, nine, ten, eleven, twelve, thirteen
 and fourteen in Block number five; lots number one,
 two, three, four, five, six, seven, eight, nine, ten, eleven
 and twelve in block number six; lots number one, two,
 three, four, five, six, seven, eight, nine, ten, eleven and
 twelve in block number seven; lots number one, two,
 three, four, five, six, seven, eight, nine, ten, eleven,
 twelve, thirteen and fourteen in Block number Eight;
 Lots number one, two, three, four, five, six, seven, eight,
 nine, ten, eleven and twelve in Block number nine;
 lots number one, two, three, four, five, six, seven, eight,
 nine, ten, eleven and twelve in Block number Ten;
 lots number one, two, three, four, five, six, seven, eight,
 nine, ten, eleven, twelve, thirteen and fourteen in
 Block number eleven; Lots number one, two, three, four,
 five, six, seven, eight, nine, ten, eleven and twelve
 in Block number twelve; Lots number one, two, three,
 four, five, six, seven, eight, nine, ten, eleven and
 twelve, in Block number thirteen; lots number one,
 two, three, four, five, six, seven, eight, nine, ten, eleven,

(34)

twelve, thirteen and fourteen in block number fourteen; lots number one, two, three, four, five, six, seven, eight, nine, ten, eleven, and twelve, in Block number fifteen; lots number one two, three, four, five, six, seven, eight, nine, ten, eleven and twelve in Block number sixteen; lots number one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen and fourteen in Block number seventeen; lots number one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve in Block number eighteen; lots number one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve in block number nineteen; lots number one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen and fourteen in block number twenty; lots number one, two, three, four, five, six, seven, eight, nine, ten, eleven, and twelve in block number twenty one; lots number one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve in Block number twenty two; lots number one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen and fourteen, in block number twenty three; lots number one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve in Block number twenty four; lots number one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve in block number twenty five; lots number one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen and fourteen, in block number twenty six; lots number one, two, three, four, five, six, seven, eight, nine, ten, eleven, and twelve in Block number twenty seven; lots number one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve in block number twenty eight; lots number one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen and fourteen in block number twenty nine; lots number one, two, three, four, five, six,

seven, eight, nine ten, eleven, and twelve in block number thirty; also the West half of the North East quarter of section number thirty five, Township number twenty five, North Range five West of the third principal Meridian; also the East half of the South West quarter of section number thirty five; Township number twenty five, North Range number five West of the third principal Meridian all of the County of Tazewell and State of Illinois, also the undivided five acres part of the East half of the North East quarter of section number sixteen, Township number thirty three North Range one East of the third principal Meridian in the County of LaSalle in said State - also the South half of section number ten in Township number eight North Range number five East of the fourth principal Meridian in Peoria County or so much thereof as may be necessary to satisfy said sum above mentioned to wit; =

Thirteen hundred and sixty one \$4,000 dollars with interest from the date of this decree, at Public Vendue at the front door of the Court House in the City of Peoria County of Tazewell and State of Illinois, upon the first day of December A. D. 1858, between the hours of ten o'clock in the forenoon and four o'clock in the afternoon, after giving at least thirty days notice by publication in some public newspaper printed and published in said County of Tazewell, ^{for} four successive weeks, which sale shall be to the highest & best bidder upon the following terms to wit; =

" one fourth cash and the balance in two equal payments
 " of six and twelve months with interest" and said Master
 " is further ordered and authorized to execute to the purchaser
 " or purchasers at such sale, Deeds for the premises sold in
 " It is further ordered that the cost of this proceeding be first
 " paid out of the proceeds of such sale, - It is further ordered
 " that said Master make a full report of his doings - - -

(36)

"at the next term of this court" As will more fully appear from the original decree filed of Record in said cause in said court, and, whereas, pursuant to said decree said Master did give at least thirty days previous public notice of the time, place and terms of said sale for four successive weeks in the Tazewell Weekly Mirror a newspaper printed and published in said Tazewell County; and on the first day of December in the year of our Lord one thousand eight hundred and fifty five; at the front door of the Court House in Pekin between the hours of ten o'clock A. M. and four o'clock P. M. expose the premises herein described in said decree to the highest and best bidder; and that Benjamin S. Prettyman being the highest and best bidder became the purchaser of the following described premises in said decree described, to wit: lot number one, two, three, four, five, six in Block number three for the sum of sixty five cents each; also of lot number one, two, three, four, five, six, seven, eight, nine, ten, eleven, and twelve in Block number four, for the sum of seventy five cents each; also of lot number one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve in Block number seven for the sum of one dollar and five cents each; also of lot number one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen and fourteen in Block number eight for the sum of seventy cents each; also of lot number one, two, three, four, five, six, seven, eight, nine, ten, eleven, and twelve in block number nine for the sum of fifty cent each; also of lot number one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve in block number ten for the sum of fifty cent each; also of lot number one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen and fourteen in block number eleven for

(37)

the sum of sixty cents each; also of lots number one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve in block number twelve for the sum of seventy cents each; also of lots number one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve in block number thirteen for the sum of seventy cents each; also of lots number one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve thirteen and fourteen in block number fourteen for the sum of sixty cents each; also of lots number one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve in block number fifteen for the sum of fifty cents each; also of lots number one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve in block number sixteen for the sum of sixty cents each; also of lots number one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen and fourteen in block number seventeen for the sum of sixty cents each; also of lots number one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve in block number eighteen for the sum of sixty cents each; also of lots number one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve in block number nineteen for the sum of sixty cents each; also of lots number one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen and fourteen in block number twenty for the sum of sixty cents each; also of lots number one, two, three, four, five, six, seven, eight, nine, ten, eleven, and twelve in block number twenty one for the sum of sixty cents each; also of lots one, two, three, four, five, six, seven, eight, nine, ten, eleven & twelve in block number twenty two for the sum of sixty cents each;

(38)


also of lots number one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen and fourteen in block number twenty three for the sum of sixty cents each; also of lots number one, two, three, four, five, six and seven in block number twenty six for the sum of sixty cents each; also lots number one, two, three, four, five & six in block number twenty seven for the sum of sixty cents each; also lots number one, two, three, four, five, & six in block number twenty eight for the sum of sixty cents each; also lots number one, two, three, four, five, six, and seven in block number twenty nine for the sum of sixty cents each; all in Campbell Durley and Newhalls addition to the City of Pekin, County of Tazewell and State of Illinois, and for the West half of the North east quarter Section number thirty five, Township number twenty five (25) North Range number five West of the third principal Meridian Benjamin S. Prettyman bid the sum of Eighteen dollars per acre, and he being the highest and best bidder said tract of land was struck off to him at that price; - said lots and land being all and each struck off to him severally one by one - Now therefore I John A. James Master in Chancery of said Tazewell County, by virtue of said decree and the proceedings thereon had, and in consideration of the sum of Sixteen hundred and three dollars and seventy cents (\$1600⁷⁰/₁₀₀) the aggregate amount of said purchase the receipt whereof is hereby acknowledged have granted, bargained and sold, and by these presents do grant bargain and sell unto the said Benjamin S. Prettyman and his heirs and assigns all the following, described real estate, lying, being and situate in the County of Tazewell and State of Illinois to wit: Lots number one, two, three, four, five, and six in Block

number three, Lots number one, two, three, four, five
 six, seven, eight, nine, ten, eleven and twelve in Block
 number four, Lots number one, two, three, four, five
 six, seven, eight, nine, ten, eleven and twelve in Block
 number seven, Lots number one, two, three, four, five,
 six, seven, eight, nine, ten, eleven, twelve, thirteen and
 fourteen in Block number eight, Lots number one, two,
 three, four, five, six, seven, eight, nine, ten, eleven and
 twelve in Block number nine, Lots number one, two,
 three, four, five, six, seven, eight, nine, ten, eleven,
 and twelve in Block number ten, Lots number one,
 two, three, four, five, six, seven, eight, nine, ten
 eleven, twelve, thirteen and fourteen in Block number
 Eleven, Lots number one, two, three, four, five, six,
 seven, eight, nine, ten, eleven and twelve in Block
 number Twelve, Lots number one, two, three, four,
 five, six, seven, eight, nine, ten, eleven and twelve
 in Block number Thirteen, Lots number one, two, three,
 four, five, six, seven, eight, nine, ten, eleven, twelve
 thirteen and fourteen in Block number fourteen, Lot
 number one, two, three, four, five six, seven, eight,
 nine ten, eleven and twelve in Block number fifteen,
 Lot number one, two, three, four, five, six, seven,
 eight, nine ten, eleven and twelve in Block number
 Sixteen, Lots number one, two, three, four, five
 six, seven, eight, nine, ten, eleven and twelve
 thirteen and fourteen in Block number Seventeen
 Lot number one, two, three, four, five, six, seven
 eight, nine, ten, eleven and twelve in Block number
 eighteen, Lots number one, two, three, four, five,
 six, seven, eight, nine, ten, eleven and twelve in
 Block number nineteen, Lots number one, two, three
 four, five, six, seven, eight, nine, ten, eleven, twelve,

(40)

thirteen and fourteen in Block number twenty; Lots number one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve in Block number twenty one; Lots number one, two, three, four, five, six, seven, eight nine, ten eleven, and twelve in Block number twenty two; Lots number one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve thirteen and fourteen in Block number twenty three; Lots number one, two, three, four, five, six and seven in Block number twenty six; Lots number one, two, three, four, five and six in Block number twenty seven; Lots number one, two, three, four, five & six in Block number twenty eight; Lots number one, two, three, four, five, six & seven in Block number twenty nine; all in Campbell Dury and Newhall's addition to the City of Pekin, and also the West half of the North east quarter of Section number thirty five Township number twenty five, North Range number five West of the Third principal Meridian To have and to hold the same unto him the said Benjamin B Prettyman and his heirs and assigns forever

In testimony whereof I have hereunto set my hand and seal this 1st day of December
A.D. 1855

John A Jones 
Master Chy. T. C. Ills.

State of Illinois 255
Tazewell County 3

Be it remembered that on this 13th day of December in the year of our Lord one thousand eight hundred and fifty five personally appeared John A Jones, whose name is subscribed to the

foregoing conveyance) before the undersigned Clerk of the County Court in and for said County and acknowledged, that in his capacity of Master in Chancery of said County, he had executed said instrument for the purposes therein expressed.

Seal

Witness John Gridley Clerk and the Seal
of said County Court at Pekin the
day and year last above written
Jm Gridley Clerk

State of Illinois, ss

Tazewell County

I George H Harlow Clerk of the
Circuit Court and ex officio Rec-
order in and for said County and State, do hereby
certify that the foregoing 12 1/4 pages contain a true
and correct copy of the conveyance therein mentioned,
as fully as the same appears of record in Book A. C.
of Deeds pages 604, 605, 606, 607, 608, & 609 in my
office

Seal

Witness my hand and official Seal
hereto affixed at Pekin this 15th day
of November A. D. 1861

Geo H Harlow Clerk
per A. P. Griswold Deputy

Defendants by their counsel objected. The Court permitted
said deed to be read - and defendants excepted.

Plaintiff then offered in evidence, a deed from William
C Westwick assignee in bankruptcy of James B Campbell
to plaintiff in words and figures following, to wit

Whereas, By a decree of the Honorable the

(42)

District Court of the United States of America, for the District of Illinois, sitting as a Court of Bankruptcy, James B Campbell of the County of Jo Daviess in said District, was decreed a bankrupt, which said decree bears date the third day of October AD 1842, and is in the words and figures following, to wit;

No 919

October 3rd 1842

"District Court of the United States
For the District of Illinois

On the matter of the petition of James B Campbell to be declared a bankrupt, and to be discharged from his debts.

On hearing the petition of the said James B Campbell filed in this Court, on the twenty second day of August AD 1842, praying to be declared a bankrupt in pursuance of the Act of Congress entitled "An act to establish a uniform system of Bankruptcy throughout the United States" and it appearing satisfactorily to the Court, that notice has been published, in pursuance of the previous order of this Court, and no sufficient cause being shown to the contrary; It is therefore ordered adjudged, and decreed that the said James B Campbell be deemed a Bankrupt within the purview of said Act. And it is further ordered and adjudged, that William C Postwick, of the County of Jo Daviess be, and hereby is appointed assignee of said Bankrupt, upon his entering into, before a commissioner, and filing with the Clerk of this Court, a bond in the penal sum of _____ dollars, with two or more sureties to be approved by the commissioner of the County, where the Bankrupt resides, conditioned for the due and faithful discharge of all his duties as such assignee, and his compliance with the orders and directions of the Court." And whereas, I the said William

(43)

Q Postwick, appointed assignee of the said James B Campbell, a bankrupt, in and by virtue of the decree aforesaid, have complied with the provisions of said decree, and have filed with the clerk of said Court, my sufficient bond, in the penal sum of five hundred dollars, with two sufficient securities, approved by the proper commissioners, and have complied with all other the requisitions and directions of said decree, and with all the rules in bankruptcy, of said Honorable Court, so far as the same apply to, or are binding and incumbent upon me, and have as such assignee, sold the property, hereinafter described, at public auction at the Court House, in said County of Jo Daviess, having first duly advertised the same, according to law, and the said pieces, and parcels of land and lots, having been offered, and sold separately, and having been sold and struck at the prices following, and said property, lands and lots being described and designated, as follows, to wit: The undivided five (5) acres, in the East half, of the North East quarter of Section No Sixteen (16) in township No thirty three (33) North, of Range No one (1) East, of the 3rd principal Meridian, in La Salle County, State of Illinois. Also the West half of the North East quarter of Section No thirty five (35) in township No twenty five (25) North, of Range No five (5) West of the 3rd principal meridian, in Tazewell County, in said State of Illinois. Also, the following, town lots, in Campbell, Durley and Newhalls addition (sometimes called Campbell and Newhalls addition) to the town of Pekin as laid out upon the East half of the South West quarter of Section No thirty five (35) in township No twenty five (25) North, of Range No five (5) West of the 3rd principal Meridian in said Tazewell County, platted, and recorded in the Recorders Office of said Tazewell County to wit: Lot No one (1) Two (2) three (3) four (4) five (5) and

(44)

Six (6) in block No. one (1) Lots No. one (1) two (2) three (3) four (4) five (5) Six (6) and Seven (7) in block No. two (2). Lots No. one (1) two (2) three (3) four (4) five (5) and Six (6) in block No. three (3) - Lots No. one (1) two (2) three (3) four (4) five (5) Six (6) Seven (7) eight (8) nine (9) ten (10) eleven (11) and twelve (12) in block No. four (4) Lots No. one (1) two (2) three (3) four (4) five (5) Six (6) Seven (7) eight (8) nine (9) ten (10) eleven (11) twelve (12) thirteen (13) and fourteen (14) in block No. five (5) Lots No. one (1) two (2) three (3) four (4) five (5) Six (6) Seven (7) eight (8) nine (9) ten (10) eleven (11) and twelve (12) in block No. Six (6)

Lots No. one (1) two (2) three (3) four (4) five (5) Six (6) Seven (7) eight (8) nine (9) ten (10) eleven (11) twelve (12) in block No. Seven (7) Lots No. one (1) two (2) three (3) four (4) five (5) Six (6) Seven (7) eight (8) nine (9) ten (10) eleven (11) twelve (12) thirteen (13) and fourteen (14) in block No. eight, Lots No. one (1) two (2) three (3) four (4) five (5) Six (6) Seven (7) eight (8) nine (9) ten (10) eleven (11) and twelve (12) in block No. nine (9) - Lots No. one (1) two (2) three (3) four (4) five (5) Six (6) Seven (7) eight (8) nine (9) ten (10) eleven (11) and twelve (12) in block No. ten (10)

Lots No. one (1) two (2) three (3) four (4) five (5) Six (6) Seven (7) eight (8) nine (9) ten (10) eleven (11) twelve (12) thirteen (13) and fourteen (14) in block No. eleven (11) - Lots No. one (1) two (2) three (3) four (4) five (5) Six (6) Seven (7) eight (8) nine (9) ten (10) eleven (11) and twelve (12) in block No. twelve (12)

Lots No. one (1) two (2) three (3) four (4) five (5) Six (6) Seven (7) eight (8) nine (9) ten (10) eleven (11) and twelve (12) in block No. thirteen (13)

Lots No. one (1) two (2) three (3) four (4) five (5)

(45)

Six (6) Seven (7) eight (8) nine (9) ten (10) eleven (11) twelve (12) thirteen (13) and fourteen (14) in block No fourteen (14) Lots No one (1) two (2) three (3) four (4) five (5) Six (6) Seven (7) eight (8) nine (9) ten (10) eleven (11) and twelve (12), in block No. fifteen (15)

Lots No one (1) two (2) three (3) four (4) five (5) Six (6) Seven (7) eight (8) nine (9) ten (10) eleven (11) and twelve (12) in block No. Sixteen (16)

Lots No. one (1) two (2) three (3) four (4) five (5) six (6) seven (7) eight (8) nine (9) ten (10) eleven (11) twelve (12) thirteen (13) & fourteen (14) in block Seventeen (17) -

Lots No. one (1) two (2) three (3) four (4) five (5) Six (6) Seven (7) eight (8) nine (9) ten (10) eleven (11) and twelve (12) in block No. eighteen (18) -

Lots No. one (1) two (2) three (3) four (4) five (5) Six (6) Seven (7) eight (8) nine (9) ten (10) eleven (11) twelve (12) in block No. nineteen (19) -

Lots No. one (1) two (2) three (3) four (4) five (5) Six (6) Seven (7) eight (8) nine (9) ten (10) eleven (11) twelve (12) thirteen (13) fourteen (14) in block No twenty (20)

Lots No. one (1) two (2) three (3) four (4) five (5) Six (6) Seven (7) eight (8) nine (9) ten (10) eleven (11) and twelve (12) in block No. twenty one (21)

Lots No. five (5) Six (6) seven (7) eight (8) nine (9) ten (10) eleven (11) and twelve (12) in block No. twenty two (22) -

Lots No one (1) two (2) three (3) four (4) five (5) six (6) seven (7) eight (8) nine (9) ten (10) eleven (11) and twelve (12) in block No. ~~fourteen~~ twenty three (23) and lots No thirteen (13) and fourteen (14) in said block No. twenty three (23).

Lots No. one (1) two (2) three (3) four (4) five (5) six (6) seven (7) eight (8) nine (9) ten (10) eleven (11) and twelve (12) in block No. twenty four (24)

Lots No. one (1) two (2) three (3) four (4) five (5) six (6)

(46)

in block N^o twenty seven (27) _____
Lots N^o one (1) two (2) three (3) four (4) five (5) six (6)
in Block N^o twenty eight (28) _____


And Edmund S Holbrook of La Salle County
in said State of Illinois, having bid at said Sale, for
the undivided five acres, aforesaid, in the East half
of the North East quarter of Section N^o 16, in township
N^o 33 North of range N^o one East of 3rd principal
meridian, in La Salle County, aforesaid, the sum
of forty cents; for the said West half of the North East
quarter of Section N^o thirty five (35) township N^o twenty
five (25) North of Range N^o five (5) West of 3rd principal
Meridian, in said Jayewell County, the sum of forty cents;
and for each of said lots, in Campbell Durlow & Newhall
(sometimes called Campbell & Newhall's) addition to the
town of Pekin, as aforesaid, as said lots are above recited,
and described, as the same were severally put up, for
sale, the sum of ten cents; amounting in the aggregate
to the sum of thirty dollars; and the said Edmund
S Holbrook being the highest and best bidder for
each and every of said tracts of land and lots of
ground, he became the purchaser thereof, at said
Sale, and the same were, severally and each, and every
of them, struck off to him.

Now therefore
know all men by these presents, that I, the
said William C Westrick as assignee of the said James
D Campbell, a bankrupt as aforesaid in consideration
of the sum of thirty dollars, to me in hand paid by the
said Edmund S Holbrook, the receipt whereof is hereby
acknowledged, do as such assignee, sell and convey unto
the said Edmund S Holbrook, and to his heirs
and assigns, the said tract of land, and lots of ground

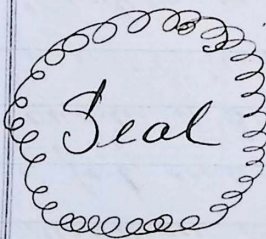
(47)

as the same are hereinbefore designated and described,
To have and to hold the said tracts of land, and lots
of ground, unto the said Edmund T. Holbrook, his
heirs and assigns forever

In witness whereof I the said William C Postwick,
in my capacity of assignee of said James B Campbell,
a bankrupt, as aforesaid, have herewith set my hand
and seal, this 18th day of October A D 1850 in
The word "fourteen" erased before signing—

W^m C. Postwick Assignee 
in Bankruptcy of James B Campbell

State of Illinois }
of Daviess County } Before me, Richard Seal, Clerk
personally appeared, this day William C Postwick to
me personally known, to be the identical person dis-
cribed in, and who executed the foregoing deed, and
acknowledged to me, that he had executed the same
freely and voluntarily for the uses, and purposes there
mentioned.



Witness my signature and the seal
of said Court this 18th day of October
A D 1850 in

Richard Seal Clerk

also the certificate of record on the back of said deed
in words and figures following to wit

Filed October 28, 1850 Recorded Book J, Deeds
Pages 139-140-141 T. Co. Ills

J. A Jones Clerk Circuit
Court & off recorder

Fee \$ 15.00 Paid

(48)

which was read without objection

Also in support of said deed a certified copy of a decree in bankruptcy in the matter of James B. Campbell in words and figures following to wit

No 919 District Court of the United States
October 3^d 1842 For the District of Illinois

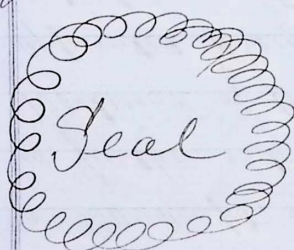
In the matter of the Petition of James B. Campbell to be declared a Bankrupt, and to be discharged from his debts. On hearing the petition of the said James B. Campbell filed in this Court, on the twenty second day of August A. D. 1842, praying to be declared a Bankrupt, in pursuance of the Act of Congress entitled "An act to establish a uniform system of Bankruptcy throughout the United States"; and it appearing satisfactorily to the Court, that notice has been published in pursuance of the previous order of this Court, and no sufficient cause being shown to the contrary; It is therefore ordered, adjudged, and decreed, that the said James B. Campbell be deemed a Bankrupt, within the purview of said act. And it is further ordered and adjudged, that William C. Postwick of the County of Jo Daviess - be, and healy is, appointed assignee of said Bankrupt, upon his entering into, before a Commissioner, and filing with the clerk, of this Court, a bond in the penal sum of

Dollars, to the United States, with two or more sureties to be approved by the Commissioner of the County where the Bankrupt resides, conditioned for the due and faithful discharge of all his duties as such assignee; and his compliance with the orders and directions of the Court.

On motion of People & Merriman Solicitors for Petitioner ordered that cause be shown before the Court on the first day of February - next, at - O'clock A. M. why James

B Campbell should not receive his discharge and certificate as a Bankrupt; and that notice thereof be published for seventy days previous ^{thereto} as required by Rule No 17 of this Court.

I James F Owings, Clerk of the District Court of the United States, for the District of Illinois, do certify the foregoing to be a true and correct copy of the decree, as entered in the Decretal Book, of this Court in the case of James B Campbell



In Testimony Whereof, I have hereunto affixed the seal of said Court, and subscribed my name, this third day of October A. D. 1842, and of our independence the Sixty Seventh year
James F Owings Clerk

to the reading of which deed in evidence defendant by their counsel objected for the following reasons

- 1 Because the deed does not recite the decree correctly
- 2 Because the plaintiff is estopped by the decree of 1837 which authorizes the second sale, and therefore avoids the sale and deed to plaintiff
- 3 Because plaintiff does not produce the orders and rules of the Court concerning the sale of bankrupt effects, and does not show a compliance therewith
- 4 For other reasons, not disputing the execution and acknowledgment

(50)

5 The deed does not show to whom the bond of \$500. was executed.

And in support of the second objection defendants offered a certified copy of record of proceedings in the bankrupt court, to wit the petition of William B Doolittle and William C Postwick assignee for the sale of certain property - the report of sale by Postwick and the orders of Court thereon in words and figures following to wit

Affidavit

State of Illinois }
County of Tazewell }

William B Doolittle of said

County and State being duly sworn deposes and says that he has examined the records of said County diligently and that as appears from said Records James B Campbell late a Bankrupt at the time of obtaining his discharge and decree of Bankruptcy to wit on the third day of October A D 1842 had and still has an interest and claim in and to the following described real estate situated in the County of Tazewell and State of Illinois to wit

- | | |
|----------------------|--------------|
| Lot 15 in Block | 62 in Poline |
| 4 " " " | 63 " " " |
| 9, 10, 11 and 12 " " | 69 " " " |
| 13 " " " | 70 " " " |
| 1, 2, 3, 4 " " " | 78 " " " |
| 5, 6, 7, 9 " " " | 82 " " " |

Water Lot 81

Campbell Doolittle Newhalls addition to Poline

- | | | |
|---|-------|---|
| Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 | Block | 1 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 | " " | 2 |

(57)

- 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12 ~ ~ ~ 3
- " 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12 ~ ~ ~ 4
- " 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. ~ ~ ~ 5
- Lots 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. Block 6
- " 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. ~ ~ ~ 7
- " 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. ~ ~ ~ 8
- " 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. ~ ~ ~ 9
- " 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. ~ ~ ~ 10
- " 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14 ~ ~ ~ 11
- " 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. ~ ~ ~ 12
- " 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12 ~ ~ ~ 13
- " 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14 ~ ~ ~ 14
- " 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12 ~ ~ ~ 15
- " 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. ~ ~ ~ 16
- " 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14 ~ ~ ~ 17
- " 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12 ~ ~ ~ 18
- " 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12 ~ ~ ~ 19
- " 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. ~ ~ ~ 20
- " 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. ~ ~ ~ 21
- " 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. ~ ~ ~ 22
- " 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. ~ ~ ~ 23
- " 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. ~ ~ ~ 24
- " 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. ~ ~ ~ 25
- " 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14 ~ ~ ~ 26
- " 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12 ~ ~ ~ 27
- " 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. ~ ~ ~ 28
- " 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. ~ ~ ~ 29
- " 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. ~ ~ ~ 30

also the East half of the South half
of Section Thirty five (35) Township twenty
five (25) Range five (5) West of the third
principal Meridian

(52)

And also the West half of the North East quarter of Section Thirty five (35) Township Twenty five (25) Range (5) five West of the third principal Meridian. All in the County of Tazewell and State of Illinois

The undivided five acres in the East half of the North East quarter of Section Sixteen (16) in Township Thirty three (33) North of Range one (1) East of the third principal Meridian in LaSalle County and State of Illinois

W B Doslittle

City of Pekin }
County of Tazewell }
State of Illinois }
} ps

Personally appeared before the undersigned Mayor of the City of Pekin William B Doslittle who being duly sworn upon his oath that the foregoing affidavit signed by him is true to the best of his knowledge and belief

Seal

Given under my hand and the seal of said City this 9th day of May A D 1851
James Harrett
Mayor

(54)

Also the following lots in
Campbell Durley & Newhall addition to
the Town of Pettin

| Lots | Palook | |
|--|--------|----|
| 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12. | Palook | 1 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14. | " | 2 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12. | " | 3 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 | " | 4 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 | " | 5 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, | " | 6 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 | " | 7 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 | " | 8 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, | " | 9 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 | " | 10 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, | " | 11 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, | " | 12 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, | " | 13 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, | " | 14 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, | " | 15 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, | " | 16 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, | " | 17 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, | " | 18 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, | " | 19 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, | " | 20 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, | " | 21 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 | " | 22 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, | " | 23 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, | " | 24 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, | " | 25 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, | " | 26 |

| | |
|---|----------|
| Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, | Block 27 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 | 28 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 | 29 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 | 30 |

Also the East half of the South West quarter of Section thirty five (35) Township twenty five (25) in Range five (5) West of the 3^d principal Meridian

Also the West half of the North East quarter of Section thirty five (35) township twenty five (25) in Range five (5) West of the third principal Meridian

Also the following described real estate situate in the County of La Salle in said State of Illinois to wit The undivided five acres in the West half of the North East quarter of Section Sixteen (16) in township thirty three north of Range one East of the third principal Meridian

Petitioner further states that no portion of the above described lands & real estate were scheduled by said Bankrupt as by reference to the schedule of said Bankrupt on the files of said Court reference being thereto had will among other things more fully appear

Petitioner further states that a considerable portion of the debts of said Bankrupt still remain unpaid

Petitioner therefore prays that an order may be granted by said Court for the sale of said real estate under and by virtue of his said capacity as assignee in Bankruptcy of said James

(56)

B Campbell as aforesaid in such manner and at such time as said Court shall direct

And as in duty bound your petitioner will ever pray &c

William C Postwick
per Horas Meriman his atty

Order of Sale

In United States Circuit Court within & for
District and State of Illinois

In the matter of the Petition of William
C Postwick assignee in Bankruptcy of James
B Campbell declared a Bankrupt

Petition for Sale of real estate of
Bankrupt

And now on this day this cause coming on to be heard upon the petition of the said William C Postwick assignee of James B Campbell a Bankrupt and upon the exhibits & proofs and it appearing to the Court that the said James B Campbell has an interest or claim in and to the following real estate situate in the County of Fitzgerald and State of Illinois to wit

Lot No 15 in Blk No 62 in the town of Pekin

" 4 " " 63 " " "

" 9, 10, 11 & 12 " 69 " " "

" 13 " " 70 " " "

" 1, 2, 3, 4 " 78 " " "

" 5, 6, 7, 8, 9 " 82 & Water Lot No 81

Also the following lots
in Campbell Durlay & Newhall's addition
to the town of Pekin

| Lots | Block | |
|--|-------|----|
| 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 | Block | 1 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 | " | 2 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 | " | 3 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, | " | 4 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 | " | 5 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 | " | 6 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 | " | 7 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 | " | 8 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 | " | 9 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 | " | 10 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 | " | 11 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, | " | 12 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, | " | 13 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 | " | 14 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, | " | 15 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, | " | 16 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 | " | 17 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 | " | 18 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, | " | 19 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, | " | 20 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 | " | 21 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, | " | 22 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 | " | 23 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, | " | 24 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, | " | 25 |
| " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, | " | 26 |

(58)

Lots 1 2 3 4 5 6 7 8 9 10 11 12 Block 27
" 1 2 3 4 5 6 7 8 9 10 11 12 " 28
" 1 2 3 4 5 6 7 8 9 10 11 12 13 14 " 29
" 1 2 3 4 5 6 7 8 9 10 11 12 " 30

Also the East half of the South West quarter
of Section thirty five (35) in township twenty five (25)
in Range five (5) West of the third principal Meridian

Also the West half of the North West quarter
of Section thirty five (35) in township twenty five
(25) in Range five (5) West of the third principal
Meridian

Also the following described real estate
situate in the County of La Salle in said State
of Illinois to wit The undivided five acres part
of the East half of the North East quarter of section
Sixteen (16) in Township thirty three (33) North of
Range one east of the third principal Meridian
which said Lands were not contained in the
Schedule filed in said Court by said Bankrupt

It is therefore ordered adjudged and decreed
by said Court that the said assignee William
L Pastwick proceed to sell all the estate right
title and interest in him vested as such assignee
in and to the lands above specified in such manner
and upon such terms and at such times as is
specified in the Rules of this Court heretofore
made and still in force in regard to the sale
of the Real Estate of Bankrupts

It is further ordered that said assignee
make report of his doings herein to this Court
at the earliest opportunity

Dated May 15 1851

Thomas Drummond
Judge &c

Report of Sale

In the United States District Court
within and for the District + State of Illinois

In the matter of the petition of
William C Postwick assignee in
Bankruptcy of James B Campbell
Declared a Bankrupt

By virtue of a decree entered in
said cause on the 15th day of May A D 1851 I
William C Postwick assignee in Bankruptcy as
aforesaid did on the seventeenth day of June between
the hour of Ten o'clock A M and five o'clock P M
in the year 1851 at the front door of the Court House
in the City of Galena County of Jo Daviess and State
of Illinois offer for sale to the highest and best bid-
der for cash in separate tracts and lots the lots
and tracts of land hereinafter described having
first given twenty day notice of the time, place +
terms of sale by pasting notices thereof thereof in
three of the most public places in said City of Galena
and which tracts and lots were each and every of them
struck off to William B Doolittle for the sum and
prices hereinafter stated he being the highest and
best bidder therefor to wit

Seventeen lots in the County of Jo Daviess
of Jo Daviess and State of Illinois to wit,

Lot No 15 in Block No 62

Lot No 4 in Block No 63

Lot No 9, 10, 11 + 12 in Block No 69

(60)

Lot No 13 in Block No 70

Lot No 1, 2, 3, & 4 in Block No 78

Lots No 6, 7, 8, & 9 in Block No 82

And water Lot No 81, each of which said 17 lots were struck off to said William B Doolittle for the sum & price of ten cents each these being the highest and best bids therefor respectively

Also the following described Lots in Campbell Durley & Newhalls addition to the Town of Pekin in said Town being three hundred and eighty in number

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, in Block No one

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, in Block No two

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, in Block No three

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, in Block No four

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, in Block No five

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 in Block No Six

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, in Block No Seven

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 in Block No Eight

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, in Block No Nine

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, in Block No Ten

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 in Block No Eleven

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 in Block No Twelve

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, in Block No Thirteen

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 in Block No fourteen

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, in Block No fifteen

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, in Block No Sixteen

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 in Block No Seventeen

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, in Block No Eighteen

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, in Block No Nineteen

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, in Block No twenty

Lot 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, in Block No twenty one

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, in Block No twenty two

(61)

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 in Block No twenty three
Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12. in Block No twenty four
Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 in Block No twenty five
Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 in Block No twenty six
Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12. in Block No twenty seven
Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12. in Block No twenty eight
Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 in Block No twenty nine
Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12. in Block No Thirty

Each of which said Lots were struck off to the said William B Doolittle for the sum of and price of ten cents each

Also the East half of the South East quarter of Section No thirty five in township No twenty five North of Range No five West of the third principal Meridian in Stagerell County for the sum of three dollars and ten cents also the West half of the North East quarter of Section thirty five in township No twenty five North of Range No five West of the third principal Meridian for the sum of three dollars and ten cents.

Also the following described real estate situate in the County of Shelby and State of Illinois aforesaid to wit The undivided five acres part of the West half of the North West quarter of Section No Sixteen in Township No thirty three North of Range No one East of the third principal Meridian for the sum of and price of four dollars and ten cents which said sum respectively were the highest and best bids received for said Lots and tracts of land and upon such sale I was directed to said William B Doolittle a deed for the land above described as in said decree I was directed to do All which is respectfully Submitted
Galena Ills June 17. 1851

16
(62)

Wm C Postwick

Assignee in Bankruptcy

of James B Campbell

Entered

Filed February 1 1853

Wm Pope Clerk

District Court United States
District of Illinois

Wednesday February 1. 1853

Present The Hon Thomas Drummond
Judge

In the matter of the petition of
of James B Campbell a
Bankrupt

This day came William
C Postwick assignee of said Bankrupt by
his Solicitor and filed a Report of Sale herein
and on his motion it is ordered that a rule
be entered for any person interested to show cause
by tomorrow morning why the said report should
not be approved

Thomas Drummond

(63)

District Court of the United States
District of Illinois

Thursday February 2^d 1853

Present The Hon Thomas Drummond
Judge

In the matter of James B Campbell
a Bankrupt

This day came Wm C Postwick
assignee of said Bankrupt by his Solicitor and
on his motion It is ordered that the report of sale
filed herein on the 1st inst be filed and approved

Thomas Drummond

Northern District of Illinois

I William H Bradley Clerk of the District
Court of the United States for the Northern District
of Illinois do hereby certify the foregoing to be a true
copy of the affidavit Petition for Sale Order of Sale Report
of Sale and the orders of Court concerning the same
in the matter of James B Campbell a Bankrupt
by William C Postwick assignee &c as the same
appear from the original above of ~~now~~ ~~of~~ ~~the~~
office and remaining of custody therein

In testimony whereof I have hereunto
set my hand and affixed the
Seal of the Court at office in the City

(64)

Seal

of Chicago this 16th day of May
1861 and of our Independence
the 85th year

W. H. Bradley clerk

to the reading of which plaintiff objected for
irrelevancy and incompetency

The court permitted the same to be read to which
decision of the court the plaintiff then and there excepted

The court decided that said deed and certified
copy of decree in bankruptcy could not be read in
evidence for the reason that it did not appear
that said Postwick was the assignee in bankruptcy
of James B. Campbell to which decision of the court
plaintiff then and there excepted

Plaintiff then proposing to offer again his deed
in evidence - offered in evidence a copy of the
51st rule in bankruptcy - in words and figures
following to wit

Rule LI. -

It shall be the Duty of the assignee of the Bankrupt
to make sale of all the right title and interest of the
Bankrupt whether equitable or legal, in and to any
real Estate wheresoever situated, with all due diligence,
having due regard to the interest of the creditors un-
less some one of said creditors shall previous to the
time appointed for such sale, file with the assignee
his written dissent thereto; when it shall be the
duty of such assignee to refer the matter to the

Court; and that the sale of said real estate, or any interest therein, be made either for cash or upon a credit not exceeding one and one half years, as the assignee shall deem most advisable, and upon the premises to be sold, or at some public sale as said assignee shall deem best for the interest of said estate, at least twenty days' notice of the time, place, and terms of sale being first given by affixing up, at least three notices; and also by publication in some newspaper nearest the premises, when in the opinion of the assignee, the property is sufficiently valuable to justify the expense of such publication.

to which defendants objected on account of irrelevancy. The court decided that it might be read to the jury and defendants excepted.

The plaintiff then for the purpose of showing further that William C. Bostwick was the assignee in bankruptcy of James B. Campbell offered to read again said certified copy of proceedings in bankruptcy concerning said sale to Doolittle.

The defendants objected on the ground that the same was not now before the court for any purpose and could not now be used by plaintiff unless offered by him.

The court sustained the objection to which decision plaintiff then and there excepted.

Plaintiff then offered to read the same in evidence. The court permitted it to be read.

Plaintiff then offered his said deed of Bostwick to himself again by permission of court - and also said decree in bankruptcy to support it. to the reading of which defendants objected and suggested.

(66)

these further reasons

- 6 Because it is not shown that the lands were advertised.
- 7 Said deed is incompetent evidence and is otherwise objectionable

The Court decided that said deed could not be read in evidence and also excluded said certified copy of proceedings in bankruptcy in regard to the sale to Doolittle, and said copy of Decree in bankruptcy - to which decision of said Court Plaintiff then and there excepted

This was all the evidence in the case
The Court then instructed the jury to find the defendants not guilty

"Ginn"

"The jury are instructed that there is no proof in this case authorizing the Pttf to recover, they will therefore find the Defendants not guilty"

The jury rendered their verdict as follows
We the jury find the defendants are not guilty of unlawfully withholding possession of the premises described in the Plaintiffs Declaration as therein alleged

Plaintiff then moved the Court to set aside the said verdict & for a new trial for reasons on file

which motion the Court then & there overruled & Pttf objected & Excepted

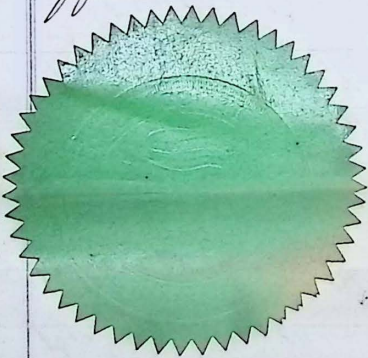
And prays that his bill of exceptions may be signed & sealed which is done

J L Richmond ^{Green}
Judge 23rd Judicial District

(Filed December 12th 1862
James D Perry att)

State of Illinois 355

Woodford County } I James D Perry Clerk of the Circuit
Court in and for said County and
State do hereby certify that the foregoing on pages one
to sixty six inclusive contain a full true and complete
Record of the proceedings in the case of Edmund S Holbrook
vs Andrew Brammer and Benjamin S Petteyman in the
Circuit Courts of Tazewell, Peoria and Woodford Counties
as the same remain of Record and on file in my
office



In Testimony whereof I have hereunto
Set my Hand and affixed the
Seal of said Court at my Office
in Metamora in said Woodford
County this twenty fourth day of
February A D 1863
James D Perry Clerk

Fees \$25.00 Paid by E S Holbrook Plaintiff

Supreme Court 3d Grand Divs
ion. State of Illinois. April Term 1863

And now on the first day of said term
comes the said plaintiff in error
and says that there is an error
in said record and proceedings
and judgment. in this.

1. The court erred in refusing to permit
the deed of Bostonick to plaintiff as part of record
to be read in evidence.
2. The court erred in permitting the certified
copy of proceedings in the District Court
to be read in evidence by defendants.
3. The court erred in not permitting said
~~plaintiff's~~ deed the certified copy of decree in Bank
ruptcy in the matter of Jones & Campbell to be
read in evidence.
4. The court erred in not permitting the plain-
tiff to use the certified copy of proceedings in
the Bankrupt Court. read in evidence by
defendants.
5. The court erred in not permitting said
plaintiff's deed and said certified copy of
decree in Bankruptcy and said copy of
proceedings in the Bankrupt Court as they were
lawfully offered by plaintiff. to be read in evidence.
6. The court erred in not awarding to plain-
tiff a new trial.
7. The court erred in giving judgment
against the plaintiff.

And plaintiff prays that said judg-
ment be reversed

Jy. E. Ireland &
W. B. Hopkins

In nullo est inatum Plaintiff's copy.
Wood & Powell
Attys for Defts

96

Woburn

vs

B. D. Pellyman

Record &
Trust

Filed April 21. 1863

S. Ireland
clerk

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1868.

EDMUND S. HOLBROOK
vs.
ANDREW BRENNER and
BENJAMIN S. PRETTYMAN. } *Error to Woodford.*

This is an action of ejectment, commenced in the Tazewell Circuit Court, to recover 170 city lots in the City of Pekin, of great value.

The plaintiff did not offer to prove any title in himself derived from the Government, but relied upon proving that defendants claimed title from the same common source with himself.

To establish this point, he introduced a deed from William C. Bostwick, assignee in bankruptcy, of James B. Campbell to William B. Doolittle, dated 17th June, 1851, and a copy of the decree in bankruptcy, dated 3d of October, 1842, to which deed defendant below objected, for reasons which will be noticed hereafter.

The plaintiff next attempted to show a conveyance, by virtue of a decree of the Circuit Court of Tazewell county, from the heirs of Doolittle (who had died) to Benjamin S. Prettyman, one of the defendants.

He next offered in evidence a deed from William C. Bostwick, assignee in Bankruptcy of James B. Campbell, to himself, dated the 18th of October, 1850, which deed was excluded by the Court.

He also offered in evidence a rule of the District Court of the United States in Bankruptcy, numbered 51.

And also a certified copy of the decree in Bankruptcy.

It was proven that the sale made by the assignee in bankruptcy of James B. Campbell to Doolittle, on the 17th June, 1851, was made under a special order of the Court (See Abstract, pages 5 and 6.)

On the 9th day of May, 1851, in the District Court of the United States for the District of Illinois, William C. Bostwick, assignee in bankruptcy of James B. Campbell, filed his petition "In the matter of James B. Campbell to be declared a bankrupt," setting forth that (see Abstract, page 5,) James B. Campbell was, at the time of his discharge in bankruptcy, the legal owner, or had some interest in the lands sued for in this case, and that they were not scheduled; that the debts were not paid, and asking the Court for a special order of sale. The petition was supported by the affidavit of Wm. B. Doolittle.

On the 15th day of May, 1851, an order was made directing Bostwick, the assignee, to sell the lands in controversy.

The sale to Doolittle was made on the 17th day of June, 1851, at Galena, and a deed executed on that day.

The deed and a report of the sale were filed in the District Court on the 1st day of February, 1853, and an order made for all persons interested to appear and show cause why the report should not be approved.

On the 2d day of February, 1853, the report of sale was approved.

The Record also shows that Campbell never filed any schedule of the property in controversy.

The assignee, Wm. C. Bostwick, on the 18th October, 1850, more than eight years after the decree in bankruptcy, without any order from the Court, proceeded of his own motion to sell the lands in controversy, and many other lots, worth in all probably \$30,000 to \$40,000, when they were bid off by Holbrook, the plaintiff, for the trifling sum of \$30.00.

This sale never was reported to the Court, and never was affirmed.

The assignee who made it, filed his petition in the District Court a few months thereafter, setting forth that Campbell, the bankrupt, *still had an interest* in the lands.

Waiving all other questions for the present, and denying unequivocally that the plaintiff below can recover in this case, without proving title, by merely showing that defendants purchased at a public sale and received a deed, we proceed to discuss the most obvious and important question in this case.

I.

Can the plaintiff attack and controvert the deed made in 1851 to Doolittle, which was made under a special order of the Court, and has been reported and approved by the Court? The deed to himself never was reported to the Court; never was approved. The Bankrupt Act, U. S. Statutes, page 443, sec. 3, provides, that all property of every name and nature, whether real or personal, of every bankrupt who shall be so declared by decree of the proper Court, shall be deemed to be divested out of such bankrupt without any other act, assignment or conveyance whatever; and the assignee shall be vested with all the rights, titles and powers which the bankrupt possessed before the decree, and may sell, manage and dispose of the same, *subject to the orders and directions of the Court*. This section obviously contemplates that all sales shall be reported to the Court, and approved or set aside, as the Court may judge most expedient.

The sale, until approved, amounts to nothing. It depends for its validity upon that fact. In this case, property worth thousands of dollars was sold to plaintiff for *thirty dollars*, and no report thereof was ever made to the Court. Would the Court have approved the sale, if asked to do so? Would it have been justice to the creditors to have done so?

In case of sales by a master, the sale passes no title until it is reported to and approved by the Court.

See Tooley *vs.* Kane, 1 Smead & Marshall R., 518; Childess *vs.* Hunt, 2 Swan's Tenn. R., 487; 2 Daniel's Ch. Pr. 1454.

By virtue of the Bankrupt Law, 5 vol. U. S. page 445, sec. 6, the

U. S. Court have jurisdiction of all bankrupt proceeding and all matters in controversy relating thereto, which jurisdiction is to be exercised summarily in the nature of proceedings in equity.

The U. S. Court have adopted the English practice in equity for the government of their proceedings in equity. (See 3d Greenleaf's Ev. p. 256, and 1 Howard C. C. R. page 41 and 70.)

And under the English practice it is well settled that the sale by the master until confirmed by the chancellor, is held merely as a bid, subject to the approval of the Court or a proposition to advance, (6 Vesey 513, 8 Vesey 214,) and this doctrine is quoted with approbation by this Court in the case of Coffin *vs.* Coffin, 16 Ill. 144. And they declare, in Grub *vs.* Crane, 4 Scam. R. 156, that the master in chancery should report his sale, and when reported and approved becomes a part of the decree of the Court. The purchaser is not entitled to the benefit of his contract until the master's report of sale is absolutely confirmed. (2 Daniel's Ch. Pr. 1454.)

In this case the whole matter is *res adjudicata*. The District Court had jurisdiction of the person and subject matter, and its decree approving the sale to Doolittle is binding and conclusive upon the whole world, until reversed or set aside. This Court has no right or authority to enquire into the proceedings of the Federal Court, and annul them in a case where that Court has jurisdiction of the person and the subject matter, as it had in this case. It involves a conflict of jurisdiction which this Court will never attempt to raise.

See Foot *vs.* Stevens, 17 Wendell, 483; Hart *vs.* Seixas, 21 Wendell, 40; Chemung Bank *vs.* Judson, 4 Selden R. 254; Ewing *vs.* Lowry, 7 Howard, 181; Grignon *vs.* Astor, 2 Howard, 338, 342; United States Statutes, page 445, sec. 6.

Before the plaintiff can proceed with his case, he must apply to the District Court and get his order affirming the sale to Doolittle set aside and his own sale affirmed. No other Court can have any jurisdiction or right to call in question the decision of that Court. See 4 Selden, 261; 3 Peters, 203; *Ex parte* Watkins, 10 Wheat. 192; McCormick *vs.* Sullivan, 1 Comstock, 507.

II.

But the plaintiff's right to sue is barred by the 8th section of the Bankrupt Law, (Statutes, page 446.)

That section provides, "that no suit at law or in equity, touching any property of the bankrupt, shall in any case be maintainable by or against such assignee, in any Court whatsoever, unless the same shall be brought within two years after the declaration and decree of bankruptcy, or after the cause of suit shall have accrued."

From this, it is obvious that the assignee could not bring an action himself to recover possession of the land in dispute, unless it was commenced within two years after the decree in bankruptcy. The decree in bankruptcy was made on the 3d October, 1842, and the discharge was on the 8th Feb'y, 1843. The sale by the assignee to Holbrook was in October, 1850, and this suit was commenced in June 1859.

The assignee could confer no power by a sale which he did not himself possess. If he could not sue, his vendee could not sue. The statute contemplates that the property of the bankrupt shall be sold and reduced to money within two years; and if not sold within that period, the control of the assignee over it ceases. After that period has elapsed, no suit for its recovery can be instituted by him, and it would seem that his interest in it is at an end.

This very question appears to have been decided in the case of Cleveland *vs.* Boerum, 27 Barbour's Reports, 252, 255. *Alabama Cases*

And, while it is true that this Court, in 25 Ill., *Holbrook vs. Corey*, 550, have decided that the 51st rule operated as an order, and gave the assignee when appointed full power to *sell*; yet there is in that order no power or authority to the assignee to make a conveyance or deed of the land. He might so sell until he had reported his sale to the Court, as required by the chancery practice, and had it confirmed, and an order made to convey in accordance with it. No conveyance of the land of a bankrupt can be legally made by an assignee in bankruptcy without an order of the Court authorizing such conveyance.

The Bankrupt Act qualifies the power of the assignee to sell, and also in like manner to *convey*. "He cannot do either without an order of the Court. In this case no such order to convey is shown" or pretended to

exist. "The requisition is a substantial one, not only because it is expressly provided by statute, but for the additional reasons that the interest of the creditors of the bankrupt," and the U. S. chancery practice, adopted in such cases, requires it. (*Cleveland vs. Leorum*, 27 Barbour R. 254,) where this question is expressly decided.

III.

There was no evidence of the appointment of any assignee in bankruptcy by the Court.

The order or decree of Court shows (Abstract, page 5,) that William C. Bostwick, of the county of Jo Davis, be and hereby is appointed assignee of said bankrupt, *upon his entering into, before a commissioner, and filing with the Clerk of this Court a penal bond in the sum of* dollars, to the *United States, with two or more sureties*, to be approved by the commissioner of the county wherein the bankrupt resides, conditioned for the due and faithful discharge of all his duties as such assignee, and his compliance with the orders and directions of the Court."

Here is no absolute appointment. Bostwick was to be assignee upon conditions only. And those conditions were, *that he should file a bond such as the order required*. No proof whatever was offered to show that he ever complied with the order, ever filed any bond.

Until that was done, he had no power to act. His *power* must be proved like any other fact, by the production of the bond itself or a certified copy thereof. It is true, his deed recites that he has complied with the decree and has filed a bond in the penal sum of \$500, but this recital amounts to nothing. His statement is not proof of compliance. That fact, like any other fact, must appear by competent and legal testimony.

The following authorities establish this proposition :

See 5 U. S. Statutes, page 445, sec. 9. The Court *may* require "Bond;" "*it shall be taken in the name of the United States.*" This is imperative. *Smith vs. Halmon*, 1 Scam. 325; *Thorp vs. McCullen*, 1 Gilman, 629.

The assignee can perform no act nor prosecute a suit without *proof* of having filed his bond under the statute. (See *Hall vs. Sewell*, 9 Gil.

144; Williams vs. Union Bank, 2 Gill. & Johnson, 77; Power vs. Holman. 2 Watts, 218.) And it is insisted that Bostwick was assignee when he conveyed to Doolittle, 17th June, 1851, and defendants are estopped from denying he was then assignee and had then filed bond. But will this Court presume that he had filed his bond, and was consequently assignee, when he conveyed to Holbrook Oct 17, 1850, and are defendants estopped from denying that Bostwick had then filed his bond and was then assignee?

2d. The *recitals* in the deed do not show a compliance with the decree. His recital is, "I have complied with the provisions of said decree, and filed with the Clerk my sufficient bond," &c. But he fails to *show to whom the bond was payable*. The decree requires the bond to be made payable to the *United States*, and he does not show that he has filed any such bond. The Court has never approved his sale, and has had no opportunity to decide whether he has complied with the decree or not. Possibly, if the attention of the Court had been called to the bond, it might differ with the assignee, and hold there had not been a compliance.

It will not do to say that "no bond was required," because in the decree the sum or penalty was left blank. The Bankrupt Act, sec. 9, U. S. Laws, page 447, *imperatively* requires a bond to be given with sureties payable to the United States, and unless such a bond was given we apprehend the appointment would be a nullity. This view of the case is strongly supported by Hall vs. Sewell, 9 Gill. R. 144.

IV.

The 51st Rule in Bankruptcy, adopted by the Court, requires the assignee to give 20 days notice of the time, place and terms of sale by affixing up three notices near the premises.

There was no evidence offered to show that any notice had been given.

The assignee was a mere trustee, with power to sell in a certain prescribed manner, by giving notice. Before his deed can have any effect, it must be proved that he has given the notice which the rule called for. It is believed to be a rule of universal application, that where power is conferred upon a trustee to sell real estate, the trustee must pursue the power strictly; and he who claims title under such power, must prove a compliance with the conditions of the trust.

The deed from the trustee to Holbrook, after stating that he had complied with the orders and decrees of the Court, states (page 43, Record,) thus: "*having first duly advertised the same according to law.*"

The recital in the deed is no evidence of the fact. The assignee should at least set forth the facts, showing how, and when, and where he advertised. When those facts were made to appear, this Court might conclude that he had not advertised according to law. His opinion that he had complied with the law might differ from the Court's, if the facts were shown.

But "having first advertised the same according to law," is no compliance with the *Rule*. It was not "*the law*" which he was to follow, but a *rule of Court*.

And there is no pretence in the deed or out of it, that he complied with the rule "by posting up three notices."

For this reason, then, the deed of the assignee to plaintiff was properly excluded.

V.

The deeds offered were certified copies. No sufficient foundation was laid showing that the originals were not in plaintiff's power or possession. The affidavit which was made for that purpose (Abstract page 3) does not sufficiently describe the deeds to identify them. It does not give the date of the deed, nor describe the property conveyed, nor tell when or where it was acknowledged. For these reasons it was totally defective.

VI.

The plaintiffs, in order to show that Prettyman, the defendant below, claimed title from the same common source, introduced a copy of a deed from John A. Jones, Master in Chancery, to Prettyman, to which the plaintiff objected. He did not offer any decree, or copy of a decree, authorizing the sale. He did not show that any decree had ever been rendered, or that Jones ever had been, or was a Master in Chancery.

Plaintiff contended, then and now, that before he could read the deed he should show that a decree had been made by a court of competent jurisdiction, in a case where the parties had been properly notified—that the deed should have been reported to the Court and approved before any title could pass under it.

2. That he should show the death of Doolittle, how many children he left as heirs, that they were made parties to the suit, and that their interest had been conveyed to Prettyman.

VII.

The plaintiff failed to show, or offer to show, that defendant was in possession under the sale to Doolittle. He simply attempted to do what he had no right to do, viz: to set up a pretence that defendant claimed under that sale. It was *Holbrook* who made the claim *for Prettyman*, and not Prettyman who made it for himself. *He did not claim under that sale.* He had another and better title. He had been in possession for years under another title. He purchased in the Doolittle title in order to get it out of the way. It would be monstrous to admit that by the mere act of buying in that claim, he subjected himself to be ousted because Holbrook claimed by prior deed from the same source. There is no such law, there can be no such law. In precisely such a case this Court held, *McClure vs. Englehardt*, 17th Ill. 50, that one party could not thus set up a claim for another.

We also deny that there is any well adjudged and well considered case where any such doctrine is decided.

In all the cases upon this subject, it will be found that where the title originated from the same *common source*, the party sued was in possession under his claim from such source. And in such cases there is no need for the plaintiff who sues in ejectment, to show title. But where a party already in possession, under color of title, buys in an outstanding claim of title, he does not subject himself to be ousted by any person who may have a prior deed from the same common source. We have known men to bid off lands at a public sale when they were offered on execution against some "land shark" who had a fraudulent claim on them, which they had owned for years, by indisputable title. Could it be pretended, in such a case, that some person who had a prior conveyance from the "land shark" could oust the real owner because he un-

fortunately bid off the land, and thus had title from the same common source? There is no such law. If plaintiff recovers he must do so on the strength of his own title, not on the weakness of his adversary's.

If he can show that he and defendant claim from the same *common source*, and *that defendant obtained possession under such claim*, then indeed he need not show title, but in all other cases he must prove a paramount title. In this case the plaintiff below never offered to show a paramount title, nor did he offer to prove that defendant was in possession under a claim from a common source with himself. For these reasons it was insisted persistently in the court below that the plaintiff could not recover, and the same objections are urged here with entire confidence.

WEAD & POWELL,
Attorneys for Defendant.

96

Brenner edul
ats
Halbrook

Deft's Brief

Filed May 8th 1883
L. Deland Clerk