

No. 13472

Supreme Court of Illinois

Rattray.

vs.

Mortell.

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 209.

Rattray
vs
Morse

13472

Supreme Court & Division
April Term 1861

Hannah Rattray
Marion Rattray } By Their Guardian
Euretta Rattray } Wm H. Stow
Ackson J. Burton, by her Guardian J. J. Burton
Jane Stow
William H. Stow
Ellen Burton
Volney J. Burton
vs

John Mortelle +
Michael Mortelle

Error to Cook Circuit Court

plead will you Sci. fa.
Gordy & Maite
for plffs in Error

209

Rathay & others

or

Mortite

Prece

Filed April 16, 1861
L. Leland
Clerk

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable George Manure Judge of the Seventh Judicial Circuit of the State of Illinois, and Sole Presiding Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof begun and held at the Court House in the City of Chicago, in said County, on the Second Monday, (being the Eighth day) of March April in the year of our Lord one thousand eight hundred and Eighty-one and of the Independence of the said United States the Eighty-fifth

Present, Honorable George Manure Judge of the 7th Judicial Circuit of the State of Illinois.

Charles Haven States Attorney.

Anthony L. Hering Sheriff of Cook County.

Attest, William S. Church Clerk.

Be it remembered, that heretofore to-wit, on the Sixth day of February in the year aforesaid, there was filed in the Court aforesaid a certain Bill of Complaint, which is in the words and figures following, to-wit:

Cook County Circuit Court
Of February Term 1860

John Morrell and Michael Morrell

Sarah Blinn and Mrs. L. Blinn, her husband State of Illinois
Ellen Ruston and Volney J. Ruston her Cook County
husband, Achah Same Ruston, c.
Marah Rattray, Gerda Rattray, Marim
Rattray, being the heirs of David Rattray

John and
Michael Morrell, your Orators, humbly complaining
show unto you Honors-

The Hon^{ble} George Mancine Judge of the Cook County Circuit Court, in Chancery, sitting -

That sometime during the month of 1853, the above defendants brought an Ejectment suit vs. John and Michael Mortell your Chancery to recover the possession of the following premises, to-wit, Lot One (5) of the North west quarter of Section Eight (8) in Township thirty nine (39) North of Range fourteen (14) Chicago, County of Cook and State of Illinois; That the said Mortells employed as their Counsel to defend said cause, Andrew Harris a then practicing member of the bar, which the said Harris promised them to do;

That the Attorney of Record for the Heirs of David Rattray, was John E. Bone now of Bone and Brown practicing attorneys at this bar

That said cause was not tried until the fall of 1854 two years after the beginning of said suit -

That it was mutually agreed between the said Attorneys in said Cause - that no advantage should be taken of the absence or sickness of either attorney, but whosoever should call up the said Cause for trial or otherwise, should duly notify the opposing Counsel of his intention so to do,

Now Orders further are - That when judgment was obtained against them by their not appearing and defending the same, as they or their Attorney had no motive that the said plaintiffs

✓
would call up said cause; the said John E. Bone the Attorney of Record for said plaintiffs, was out of the limits of this state, and for that reason the said Andrew Warrick the Attorney of your Orators, did not look after the said cause, as it was expressly agreed by and between the said Attorneys that no step or advantage should be taken during the absence of either counsel. That while the said Bone was so absent, A. W. Widdett a practicing attorney at this bar, at the instruction of Mr. Wm. H. Snow, as your Orators are informed, called up the cause for trial on part of the Heirs of Maria Puttray and your Orators or their Attorney not appearing, for reasons, above stated; judgment rendered by default on part of your Orators -

That your Orators believed and more so informed by their Attorney, that the said Bone and not the aforesaid Widdett, was the Attorney of the defendants, And that though it was expressly agreed to by and between the Attorneys of record, that the said cause should not be called up in the absence or sickness of either Attorney, or any disposition made of the same, yet said cause was so called up as before stated, without notice to your Orators or their Attorney and while their said Attorney was sick and confined to his bed, and that the first intimation that your Orators or their Attorney had, that said cause was and had been tried, was when your Orators was depassed of their property some eighteen months after the trial of

said cause and judgment against your Orators -

And your Orators further aver that it was mutually agreed, and so understood, that said Ejectment suit should be dismissed and an action of forcible entry & detainer brought to recover the possession of the above described premises, in lieu of said Ejectment - That the said Action of

forcible Entry and detainer, was instituted on the 18th day of July 1857 according to agreement before Justice Alkin.

That the said cause of 'Forcible Entry and detainer' is now pending on appeal before your Honor, and is undisposed of.

That your Orators believed and was so informed by their Attorney, that the said action of forcible Entry and detainer was to decide this cause, and that upon the institution of the new, the old cause was to be dismissed and that they therefore agree the old suit no further attention, but prepared themselves to defend the action of forcible Entry and detainer, and are now ready and prepared so to do, and that relying upon the good faith of the said defendants and their Attorneys, they did not defend the Ejectment suit, when they could have done successfully; All of which will fully appear by the annexed affidavit of Andrew Harvey, their Attorney as above mentioned.

Your Orators further aver that the defense of the said defendants, as it appears of record is an entire fabrication, and that the deposition of

one Webb, stating that the aforesaid David Rathay lived and died on said premises is wholly false. That the said David Rathay or his descendants never lived or died on said premises and never occupied the same, but that the said Rathay lived and died on premises East of your Orators and that a petition fence divided the premises of the said Rathay and your Orators, as will fully appear by the affidavits of several respectable old citizens, who lived around said premises, some of whom have there resided for the last twenty years - said affidavits being part and parcel of this said Bill.

Your Orators further aver that the aforesaid Mr. K. Blom, one of the defendants and the Representation and Chief management of the said Ejectment Cause, publicly boasted when your Orators were turned out of possession, that the Attorney of your Orators was sick in bed when said Cause was tried, and that he had knowledge of that fact, and that he had stolen a march upon your Orators, and that it was by such means that he, the said Blom, obtained judgment as will more fully appear by reference to the affidavit of Edmund Barrett and Patrick Brown two respectable citizens of this State & city said affidavits being made part and parcel of this said Bill.

And your Orators further aver that the said judgment was falsely and fraudently obtained on or about Nov 21st 1857, and that the said defendants knowing that your Orators were not cognizant of said judgment -

6.
refrained from having the writ of possession immediately issued
but waited until the following, November 1858 so as to de-
prive your Orators of a second trial under our statute, and
after issuing said writ, had the same returned unexecuted
knowing that a special assessment was to be levied for the
macadamizing of Randolphs street on which said property
was situated; But that said writ was returned "Nul
l tenet" for want of some one to take possession; But
shortly after the levying of said assessment and the pay-
ment of taxes upon said premises, a second writ was
issued and your Orators dispossessed, some Eighteen
months after the judgment was falsely and fraudulently
obtained, and that when your Orators was so dispossessed
it was the first intimation they had that said Ejectment
suit was not dismissed according to agreement and that
judgment had been rendered in said Cause, and that
your Orators ^{attorney} told them that the said Cause had been
dismissed some two years ago.

Your Orators aver that said judg-
ment was most falsely and fraudulently obtained, that
they have a good and substantial defense to said suit
upon the merits, and therefore pray that this Honorable
Court may and will have said judgment vacated and
that said Cause may be reinstated on the docket of
this Honorable Court and set for trial at such time as
this Honorable Court shall deem just and that your
Orators may be reinstated in the possession of said premises
and that their rights may stand as they originally

14. Had prior to the obtaining of the said judgment falsely and fraudulently as above stated; And that the Honorable Court will grant such further and other relief as this Honorable Court shall deem just and equitable from the premises to all parties,

Your Orators further pray that the writ of this Honorable Court shall issue to said defendants commanding them to appear before this Honorable Court at the next term thereof, and true answer make to the allegations of this their Complaint, and that the said answer or answers be sworn to not only by the said Wm. H. Hunt but all the defendants individually and as in duty bound, Your Orators will ever pray &c

John Mortel
Michael ^{his} Mortel
mark

Morris of counsel }
B. J. Semmes, Solicitor }

State of Illinois }
Cook County }

John and Michael Mortel, being first duly sworn depose and say, that they are the Complainants above mentioned, and that the allegations as above made, are true as they verily believe

Subscribed & sworn to before Michael ^{his} Mortel
me this 6th day of February 1869 John ^{mark} Mortel

Wm. Church. ltr

Circuit Court of Jan Term 1859

State of Illinois }
 Cook County }

John Mortell, Michael Mortell
 and
 Heirs of Ruttray

Edmond Barrett and

Patrick Bowen, being both duly sworn, depose and say, that on or about Sept last they were present when Mr. Stone accompanied by Deputy Sheriff Snow deposees the said John and Michael Mortell that when asked how it happened he said "that their Attorney was drunk and pick in'ed when the said Cause was tried, and that it was by this means that he had obtained said judgment" that this conversation passed between the said Stone and the said Barrett, and that the said Bowen was standing by and heard the said Stone utter the above declaration

Subscribed and sworn to before } Edm Barrett
 me this 24th day of Jan 1860 } Patrick Bowen
 Geo W. Davis Notary Public

State of Illinois }
 Cook County Circuit Court }
 Of November Term 1859
 John Mortell
 Michael Mortell
 and
 Heirs of Ruttray } Joseph Wilson & William

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Carpenter being first duly sworn, depose and say that they have lived on West Sake Street for many years around and near the property on which David Rathray lived and died, that they are well acquainted with the premises and have been for many years - that the said David Rathray did not live and die on the premises occupied by the said Mortells and the property of this suit, that the said David Rathray lived and died on the lot East of the Mortell premises and that there was a division fence running between the said premises - that on the property on which the said Rathray died there was a well in the back kitchen and that he the said Mr Carpenter had frequently drawn water from the said well and that this place was unquestionably the property East of that claimed by the said Mortells.

Subscribed & sworn to before me this 24th Jan 1860 } Joseph Nelson
 (Seal) Notary Public } Mr Carpenter

John Mortell
 Michael Mortell
 heirs of David Rathray } Circuit Court for Term 1859
 State of Illinois }
 Cook County } vs
 James German being

first duly sworn deposes and says that he is well acquainted with the premises of John and Michael Morlett, also of the premises upon which the late David Ratray died. That he waited upon him in his last illness, and after his death put upon him his shirt washed him and laid him out, that he was assisted in the above kind offices by Mr M Carpenter an old citizen who has resided here over twenty years that he is well acquainted with the family that the said David Ratray, lived & died on the premises East of the premises of the said Morletts, and not a part and parcel of the Morlett premises that said Ratray did not die on the Morlett premises, but those East adjoining, and that a partition fence divided the said premises

Subscribed to & sworn before
me this 24th Jan 1868

Wm H Davis
Dea Notary Public

James Gorman

M Carpenter being
duly sworn deposes & says that he knows the
above affidavit to be true of his own knowledge
Wm Carpenter

State of Illinois }
 Cook County }
 Chicago March 28, 1859

Received of John McMorrell
 Ten dollars and 48 Cents in full of the following taxes
 due for the Year 1858 on the following described Real
 Estate and on personal property, as valued below to-wit:

Part of Town	Lot	Valuation	State & Comm. County Tax	Total
Men Stars Subdiv	9	250	2 37	25
Sec 8, 39, 14	10	250	2 37	25
	11	250	2 37	25
	12	250	2 37	25
				<u>11.48</u>
				<u>12</u>
				<u>\$ 11.60</u>

W. H. Boyden Treasurer

State of Illinois }
 City of Chicago } City-Collectors Office Chicago, January 27, 1859

Received of J. McMorrell
 One hundred & sixty one dollars 16 Cents being the
 amount assessed by said City on the 4 day of October
 1858 for Macadamizing West Randolph Street
 from Keeler Street to Union Park on the following
 described property situated in said City viz:

Part of City	Lot	Valuation	Amount
Men Stars Subdiv of part	9	2000	40.29
of S. 8, 39, 14	10	2000	40.29
	11	2000	40.29
	12	2000	40.29
			<u>161.16</u>

For W. H. Boyden, collector of the
 City of Chicago

And afterwards to-wit, on the
 same day and year aforesaid there was issued out of
 the office of the Clerk of the Court aforesaid and
 under the seal thereof, ^{the Peoples Court of A. Humphreys} directed to the Sheriff of
 said County to Execute, and clothe in the
 words and figures following, to-wit -

"State of Illinois
 County of Cook."

The People of the State of Illinois to
 the Sheriff of said County Greeting
 We Command you that you summon Jane Blaw and
 William K. Blaw her husband, Ellen Buxton and
 Volney J. Buxton her husband, Absah. James Buxton
 Sarah Rathray, Eula Rathray & Mariah Rathray
 heirs of David Rathray deceased if they shall
 be found in your County personally to be and appear
 before the Circuit Court of Cook County, on the first
 day of the next term thereof, to be holden at the
 Court House in Chicago in said County of Cook
 on the third Monday of February next to answer
 unto John Mortell and Michael Mortell
 in their certain Bill of Complaint filed in ^{the} said
 Court on the Chancery side thereof
 And have you then and there this writ, with an
 Endorsement thereon, in what manner you shall
 have executed the same. Witness William S.
 Church Clerk of our said Court and the seal thereof at Chicago
 aforesaid the first day of February A.D. 1860

See

Wm. S. Church
 Clerk

And after reads to-wit on the 2nd day of February in the year last aforesaid, said writ was returned into the Court aforesaid by the said Sheriff Enclosed as follows. To-wit

" I served this writ on the within named defendants by delivering a copy thereof to each of them the 8th day of February 1860.

Fees & services Hqs. 8 Copies 4.00 10 mile 5.00 Return

10. 8.00 Paly atty John Gray Sheriff
By Abner Hawks deputy

" And after reads to-wit on the 2nd day of February Term of said Court to-wit on the 2nd day of February in the year last aforesaid the following, among other proceedings, was had and entered of Record. To-wit

John Mortell and Michael Merritt

Dane Burr and William H. Burr her husband, Ellen Burston Volney J. Burston her husband Alsas Janet Burston, Hannah Rattray, Eureka Rattray and Marion Rattray their legal representatives of David Rattray

Bill
are

Reading and filing due process of personal service of process of summons issued in said Cause upon the said defendants in accordance with the Statute in such case made and provided and on

11 1/4.
motion of Morris & Bennies of Counsel for said Complainants it is ordered that said defendants plead answer or demur to the Complainants Bill of Complaint filed in said Cause. instantly, and the said defendants failing to plead answer or demur according to the Course of practice in this Court, and they being now three times personally solemnly called in open Court come not, nor does any person for them. Wherefore on motion of said Complainants Solicitors, it is ordered that Complainants said Bill of Complaint be and the same hereby is taken as confessed against the said defendants, and referred to be to Paine & Free. Master in Chancery for leave & bounty to take proofs, and that said Master report the same to this Court with his opinion thereon with all convenient speed.

And after wards to-wit, at the same term of said Court. to-wit, on the 28th day of February in the year last aforesaid, the following, among other proceedings, were had and Entered of Record. to-wit,

John Morrell and Michael Morrell
Jane Blinn and William Blinn her husband
Ellen Bustin & Volney Bustin her husband
Abigail Jane Bustin. Hannah Rathay, Eunice Rathay and Maria Rathay, heirs and legal } Bill

representatives of David Ratray {

This day
again came as well the said Complainants by
Mcarris and Semmes their solicitors, and the said
defendants Jane Blinn & William the Blinn her husband
Ellen Blinn & Volney & Blinn her husband by
their solicitor, and on motion of said last named
defendants and for Cause shown no objection
being made thereto by the Complainants, it is ordered
that the default of the defendants heretofore taken
and entered of record in said Cause, to-wit: on
the 23^d day of February instant, and the order
then entered referring said Cause to the master to
take proofs re. &c. be and they are each hereby set
aside vacated and held for naught, and it is
further ordered on motion of said last named
defendants no objection being made thereto, that
the rule to plead answer or demur to the Complainants
bill of complaint filed in said Cause, as to them
- bevas be extended to Thursday morning next, and
the same hereby is extended accordingly.

And it appearing to the satisfaction
of the Court that the defendants Abigail & Blinn
Mariah Ratray, Eunice Ratray, and Marion Ratray
are minors under the age of twenty one years on motion
it is ordered that Mr. W. Fuller Esq. be and he
hereby is appointed Guardian ad litem for said
Minor defendants, and the said Guardian ad litem

~~Therefor~~ Comes and accepts said appointment and files the answer of the said Infant defendants to said Bill of Complaint

And afterwards to-wit, at the same term of said Court. to-wit, on the first day of March in the year last aforesaid, the following, among other proceedings, were had and entered of Record. to-wit

"John Mortell and Michael Mortell

} Bill

Jane Blom and William H. Blom her husband

Ellen Bustin & Volney J. Bustin her husband

Achsa Jane Bustin, Hannah Rattray -

Eueta Rattray and Marion Rattray

her legal representatives of David Rattray

} This

day, again come the parties by their solicitors and by their agreement now here given in open Court and on motion it is ordered that the rule for the defendants - Jane Blom and William H. Blom her husband Ellen Bustin and Volney J. Bustin her husband, to plead answer or demur to the complainants Bill of Complaint filed in said Cause be further extended to Saturday next, and the same hereby is extended accordingly, and by the like agreement it is further ordered that said Cause then stand referred on Bill of Complaint, answer, replication and exhibits to S. C. Paine Jr. Master in Chancery of Cook County

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to take proofs and report the same to this Court
with his opinion thereon.

And as regards to-morrow the
same day and year last aforesaid, said defendants
Jane Blinn, William H. Blinn, Ellen Burston and
Volney J. Burston filed their certain answer, which
is in the words and figures following. to-wit

Circuit Court of Cook County

State of Illinois }
Cook County } ss

The joint and several answers of Jane Stow. William Stow. Ellen Buxton. Volney J. Buxton. (for himself and as guardian of Achsah Jane Buxton) Hannah Rattray. Eretta Rattray and Marian Rattray. to the Bill of Complaint of John Mortell and Michael Mortell Complainants

These defendants. reserving all right of exception to the said Bill of Complaint on account of its many errors and imperfections for answer thereto say - First. The said defendants Ellen Buxton. Hannah Rattray Eretta Rattray. and Marian Rattray and the said defendant Achsah Jane Buxton answering by her Guardian. Volney J. Buxton answering say they know nothing of the matters and things in said Bill contained. and therefore asks to be excused from further answering the same. and asks that Complainants may be required to make full proof of the same. And the said Eretta Rattray. Marian Rattray and Achsah Jane Buxton say they are Minors. under the age of Eighteen years. and they ask the Court to protect

their rights in the premises.

Second. The said defendants Jane Stow William H. Stow. and Volney J. Burston for answer to said bill pay.

They admit that in 1855 these defendants brought an ejectment suit as in said bill described. but the same was a certain part of said Lot 3 of NW $\frac{1}{4}$ ^{Sec 8} Town 39 N R. 14 E. and not for the whole of the same. The said Lot 3 contains about 5 acres of land, and the land claimed in said Ejectment suit was one half an acre only. They admit the employment of said Idarvey by the defendants in said Ejectment suit - that said case was at the commencement of said Ejectment suit the Attorneys of the plaintiffs in the same. that said Case was tried in the fall of 1857. that said action of Horrible Entry and Detainer was instituted on the 18th day of July 1857. that said cause is now pending and undisposed of in this Court. that a writ of possession was issued in said Ejectment suit. and the same returned as stated in said bill. that a second writ of possession was issued. and that defendants in said Ejectment suit were disposed under said second writ, at the time specified in said bill of Complaint

to make full proof of the same,
(The word "William H. Stow on the
preceding page was raised) before this answer
was signed or sworn to)

And the said William H. Stow, further
answering says he denies that there was
any such agreement between the Attorneys
in said Ejectment suit. to the knowledge
of this defendant. denies that said John
E. Moore had any thing to do with said Eject-
ment suit, or that he was in any manner em-
ployed or retained in the same, when said
judgment was obtained - denies that
there was any agreement that said Eject-
ment suit should be dismissed. to the
knowledge of this defendant, or that said
suit of Forceful Entry and Detainer should
be substituted therefore. denies all fraud or
unfair dealing in obtaining said judgment
but says on the contrary that the same was
obtained fairly and in good faith.

He denies the statement imputed to him
at the time when possession was given to
plaintiffs, but thinks he said, if defendants
in said suit wanted their business attended
to they shouldn't employ drunken Attorneys
or something to that effect. He denies that

And these defendants demur to so much of the said bill as asks for a redelivery of the possession of said premises, and denies all equity in that portion of said bill.

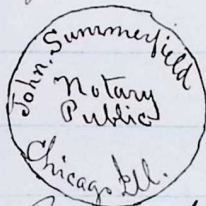
And these defendants deny that any other matter or thing in said Bill of Complaint Contained, which is material to be answered unto, and which is not fully answered herein is true, and having answered said Bill fully, they ask to be hence dismissed with their Costs and Charges in this behalf most wrongfully sustained.

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 1
 Loudy & Waite,
 Solicitors for
 Defendants,

Hannah M. Rattray.
Ettie. Rattray.
Marian. Rattray.
Ellen. Buxton.
Jane. R. Stow.
W. H. Stow.
Volney. J. Buxton.
Achabah. J. Buxton.
By V. J. Buxton her Guardian.

State of Illinois }
Cook County } ^{RS}

Ellen Buxton. Hannah Rattray. Uretta Rattray and Marian Rattray being first duly sworn say they have heard read the foregoing answer, and the statements made in the first part of the same, as coming from these defendants are true
Subscribed & sworn to before me this 29 day



of February A.D. 1860
Jno. Summerfield
Not. Pub.

Hannah M. Rattray
Uretta Rattray
Marian Rattray
Ellen Buxton

State of Illinois }
Cook County } ^{RS}

Jane Stow. William H. Stow and Volney J. Buxton. being first duly sworn. say they have heard the foregoing answer read, and know the contents thereof and the statements therein contained, so far as they purport to be made upon the knowledge of these affiants, are true, and so far as the same purport to be made upon the information and belief of these affiants, they believe them to be true.

Subscribed & sworn to before me this 29th day of



February A.D. 1860.
Jno. Summerfield.
Not. Pub.

W. H. Stow.
Jane R. Stow.
V. J. Buxton

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And afterwards to-wit, in the
1st day of March in the year last aforesaid
said Infant defendants by Me. W Fuller. their
Guardian Ad litem filed their certain answer which
is in the words and figures following. to-wit—

" State of Illinois. Book County. ss
Circuit Court of February Term 1860

John Mortelt

Michael Mortelt

Wife of David Rattray

An Answer of Hannah Rattray,
Eureta Rattray, Marion Rattray, infants under the
age of Twenty One, by Melville W Fuller their
Guardian ad litem to the Bill of Complaint
of John and Michael Mortelt Complainants
These defendants answering by their said above
named Guardian say, that they are strangers
to all and singular the matters and things in
said Bill of Complaint of the said John and
Michael Mortelt, that these defendants
are infants and under the age of Twenty One
and claim such interest in the premises as they
are entitled to and submit their interests to the
protection of this Honorable Court

Melville W Fuller
Guardian ad litem as aforesaid

And afterwards, to-wit, on the same day and year last aforesaid, said Complainants by Morris & Bennies their solicitors filed their certain Replication, in said Court, which is in the words and figures following, to-wit:

"Circuit Court in Chancery, sitting
Of February Term 1860

State of Illinois }
Cook County } ==

John Morlett and
Michael Morlett }

Heirs of David Rathay }

The Replication of
John & Michael Morlett, Complainants to the
Answer of Jane Elm William Esq. Elm Allen
Burlin Olney & Burlin (for himself and as
Guardian of Abigail Jane Burlin, Sarah
Rathay, Maria Rathay, & Maria Rathay (by
Melville W. Fuller their Guardian ad litem)

These replicants having
and reserving unto themselves all hall manner
of advantage of Exception to the manifold in-
sufficiencies of the said Answer, for replication
thereunto, faith that they will aver & prove their
said Bell to be true, certain & sufficient

in the law to be answered unto, and that the
 said answers of the said defendants are uncertain
 untrue & insufficient to be replied unto by these
 plaintiffs; With this, that any other matter
 or thing whatsoever in the said answer con-
 tained material ~~of~~ or effectual in the law to be
 replied unto. Confused or avoided, traversed
 or denied is true, ^{all} and which matters and things
 these plaintiffs are & will be ready to aver
 and prove as the Honorable Court shall
 direct & humbly pray as in and by their said
 bill they have already prayed.

John & Michael Worlitt
 By their Solicitors
 Morris & Bennet

And afterwards to-wit: on the
 second day of March in the year last aforesaid
 there was filed in said Court the complainants
 depositions, taken before the Master in Chancery
 of said Court, which are in the words and figures
 following to-wit:

Circuit Court, Leok Leok
 State of Illinois }
 Leok County }
 John Worlitt and Michael Worlitt
 The Heirs of David Pathway, Etal

Complainants depositions -

The depositions of witnesses produced and sworn before S. L. Paine Esq. Master in Chancery of Cook County State of Illinois, at his office in the City of Chicago, by Consent and agreement of the Solicitors of the respective parties the said depositions were taken to be used on the trial of said Cause on the part and behalf of said Complainants subject only to legal exceptions -

Edmund Barrett.

1 What is your name age occupation and residence do you know the parties to this suit and the premises in question & if you know the premises give them location,

Ans - My name is Edmund Barrett am 60 years of age, am not in business, am a Butcher and live on Fullon St No 138 West Chicago have lived in Chicago the past 14 years, I know the Complainants I have known them ever since their Boyhood - I have known them in this City ever since I have lived here, I don't know any of the defendants except William H. Starr, I do know the premises, they were occupied by the Mertlets previous to their family dispossessed by Mr. H. Starr. They were

described as lot 3 of the North West quarter of Sec 8 in T 39. R 14. Chicago, Cook County.

Q State if you please if you were present in Sept last or any time thereabouts when Amos Slom accompanied Deputy Sheriff Snorr to dispossess the said Comptts of the premises above described if so state when you saw these parties who else was present and what was said by said Slom State fully—

Ans. I was present at the house (on the side walk in front thereof) of the Complainants on the premises in question, in the latter end of August or Early part of September last.

The Snorr Deputy Sheriff and the said Slom were there on the side walk when I came up. John Wortell came up to them— At this time the Sheriff had already removed out part of Michael Wortells furniture and it was on the side walk— I saw said he did not know how they could have got any such order from the Court— Slom then spoke to John Wortell and said that his, Wortells Attorney was sick or drunk in fact when the suit was tried, Wortell said that it had been agreed that the suit should be dismissed— I don't know what said Slom made any reply

Cross Examination raised

Deponent subscribed
before me this 24th
day of February, 1860

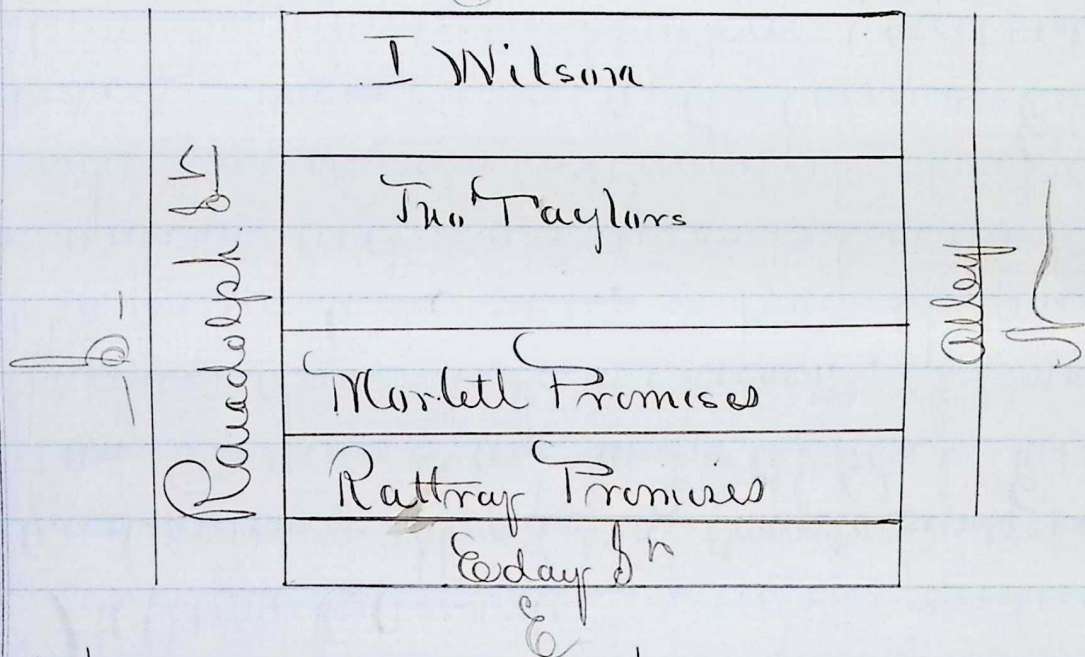
Edm Barrett

J. L. P. Freer, Master in Chancery

Patrick Borran

Patrick Borran a witness
produced and sworn on the part of the said Com-
plainants says, I am twenty-four years of age
I am a Camster and live in the north division
of Chicago. I know the Complainants from
my Boyhood and know of their occupation of
the premises in question. I was present at the
Examination of the witness Edmund Barrett
foregoing and heard his deposition read
I know the premises described in his deposition
I was present at the Conversation and
occurrence referred to in his deposition
between the defendant Mr. LeBlond & J. P.
Sheriff Snare at the house of Compts -
I heard John Martell on that occasion
ask Mr. Snare how he got a judgment again
st them without his knowing it. Snare said
you may blame your Lawyer. He said your
Lawyer was sick or drunk when the trial
was going on. The Compts in the Spring
of 1859, put up Mrs. Burns on said lot with

also the position of the premises occupied by
said late David Rattray for some time prior
to and at the time of his death. The diagram
shows streets and lots and fences
ON



There were fences at the time of Rattray's death
to show all of these parcels of land. There was
about one acre of land in Mortell's tract and
about half an acre in Rattray's. Rattray
lived on his tract for — say two or three
years before and at the time of his death
and before Rattray moved on Volney & Buxton
lived on the Rattray tract — I have known
these lands for sixteen years past — I was
present at the death of David Rattray. He
died on the premises shown in the diagram and
not on the Mortell tract, at the time of Rattray's
death, the Mortell tract was reputed to be
owned by some man in California —

Mr Carpenter -

The above deposition to be suppressed as irrelevant by stipulation of the parties

Joseph Nelson

A witness produced and sworn on the part of the said Complainant says I am 39 years of age, am not in business, live on my income and reside in Chicago. I know the Compts and some of the defendants. I have known the premises in question since 1849 and I know the premises occupied by his family some two months after his death. The diagram in Mr Carpenters deposition shows the location correctly of the Ruttray premises and of the Meertel tract. At the time I first knew the Ruttray family there was a fence in the same position where it is now between the Ruttray and Meertel tracts. When I became first acquainted with the Meertel tract, which was about two months after the reputed death of Ruttray one John Johnson occupied the Meertel tract claiming to hold under Minn & Robt Mr Minn was in California

Sworn to & subscribed before me this 24th day of February 1860

{ Joseph Nelson

Shl P. Freer master in Chancery looked over

The foregoing deposition to be suppressed as irrelevant by stipulation of the parties —

Audrey Warrick —

1. What is your name age occupation & residence and do you know the parties to this suit —

Ans. My name is Audrey Warrick am an attorney and Counsellor at law, and reside in Chicago. I know the Complainants — I do not know the defendants

2. Look at your Affidavit attached to the Bill of Complaint and state whether you still affirm the same to be true —

(Thomas stipulated that the witnesses might make said Affidavit in answer to the foregoing interrogatories and that the same should be taken as the witnesses Examination in Chief the defendants to be Cross Examining the witnesses upon the same —

Ans. I have looked at said Affidavit and re-affirm the same according to the best of my knowledge & belief

1 x When was the Ejectment suit commenced

Ans I Cannot now remember the date I believe the affiant referred to set for the date as I then remembered it —

2/ When were you first Employed in said suit —

Ans I Cant remember distinctly think in 1854 or 1855 I cant remember whether it was at the commencement of the Ejectment suit or the suit for forcible Entry and detainer, but am pretty sure it was at or about the time when the right of possession of the Camps was first questioned by those assuming to be the heirs of Railway so far as I was informed —

3/ What were the premises in Controversy in that Ejectment suit —

Ans I Can give no specific description, never have seen them, but merely as to my belief and subsequent information they are the lands now in Controversy situate on Randolph Street —

4/ What suit was first commenced the Ejectment or forcible Entry and detainer

Ans According to my best recollection it was the Ejectment suit —

5. x How much land is contained in said Lot 3 (dore) described in your Affidavit—

Ans That I cannot now remember further than that it was one of the ordinary lots of land said division in that part of the city—

6. x Are you sure that said lot dore (3) of the NW 1/4 Sec 8, T 39, R 14 is the same property in controversy in said Ejectment suit

Ans From personal knowledge or survey I have no distinct knowledge of the extent or particular descriptions of the lands, nor have I since made any personal examination of the surveys and descriptions. but I then believed and still believe that the land in controversy in the Drabble Entry and defendant suit and Ejectment suit were and are the same

7. x On what did you base the statements contained in your Affidavit that in 1855 Blom & others brought suit against Compts to recover possession of said lot dore (3)

Ans From information alone, from — I can not remember but think from the Compts in the Bell—

8 + Might you not have got such information description from Compt^r Solr

Ans No I think not, nor had the solr in this cause any conversation with me as to the precise lots, nor have I had conversation with any other person on the subject -

9 + When did you first know that Solm, E. Leone was attorney for defendants herein in said Ejectment suit -

Ans I cannot now remember but believe that my affidavit heretofore referred to sets forth my own knowledge and belief.

10 + How do you know that Leone was the attorney of plaintiffs in said Ejectment suit while he was absent from the State as stated in your Affidavit

Ans From my remembrance of the Records of the Court - what I was ^{then} informed, and also as I think and believe from conversation held with Mr Leone at the institution of the Ejectment suit -

11 + From whom did you obtain said information other than from said Leone

Ans My present belief is that I derived my information from Leone and referred to him from finding his name of Record in the return indorsed on the summons -

12+ By whom was the agreement referred to in your Affidavit concerning the disposal of said Ejectment case, and the substitution of the Forceable Detainer Case therefor made and between what parties, ~~it~~^{was} it made and entered into -

Ans I cannot now remember but it must have been between the plaintiffs Attorney and myself and I believe that the plaintiffs were Mr Leone -

13+ Were you any distinct recollection of your interviews or communications with Mr Leone concerning said suits or either of them -

Ans I have a distinct recollection of interviews and conversations with Mr Leone in relation to the matter but as to their number or precise import I cannot now remember, but now refer to my affidavit on file in this Cause -

14+ At the time of making said Affidavit had you any thing more than you now have with

which to refresh your recollection

Ans Nothing but the nearer proximity to the time spoken of in it

15+ Where was Merlones office at the time
It objected to by Compts Balr

Ans I do not now remember. I believe some where to the North West corner of the Public Square

16+ Did you ever have any ^{interviews or conversations} ~~Conversations or interviews~~ with any of the Depts to this Bill of Compt Concerning said two former suits or either of them

Ans I say No

17+ Did you ^{Ever} have any such Conversations or interviews with any Attorney or proposed Attorney of the heirs of Railray Except one

Ans Nothing Except in a professional way, nothing in regard to the agreement, with any one but one

18+ What is the present condition of said Horcible Entry & Detainer suit

Ans That I can't pay but refer to my affidavit

19+ What defense have said Mortels to said action of Ejectment
(Int. objected to by Compts Solr)

Ans That appears or will appear from the papers on file and the proceedings in the cause -

20+ Is that the only answer you can give to that question

Ans I deem it the only answer that can be given to a question thus put. Claiming my privilege having appeared as Attorney and Counsel for the Mortels in a cause in which the subject matter of the present suit was involved

21+ Did said Mortels have a good defense to said suit

Ans That appears from the papers in the cause

22+ Do you decline giving any further answer to said question

Ans I decline to give any irrelevant impertinent or unprofessional answer -

Ans That I can't pay but refer to my affidavit

19+ What defense have said Mortels to said action of Ejectment
(Int. objected to by Compts Solr)

Ans That appears or will appear from the papers on file and the proceedings in the cause -

20+ Is that the only answer you can give to that question

Ans I deem it the only answer that can be given to a question thus put. Claiming my privilege having appeared as Attorney and Counsel for the Mortels in a cause in which the subject matter of the present suit was involved

21+ Did said Mortels have a good defense to said suit

Ans That appears from the papers in the cause

22+ Do you decline giving any further answer to said question

Ans I decline to give any irrelevant impertinent or unprofessional answer -

23+ Did you not state in said Affidavit that said Mortells had a good defense to said Ejectment suit

Ans The Affidavit will speak for itself

24+ Did you at the time of making such affidavit deem such statement impertinent or unprofessional (Not objected to by Compt's Solr)

Ans I decline to answer the affidavit speaks for itself

25+ Do you refuse to be cross Examined on that portion of your testimony (Not objected to by Compt's Solr)

Ans I before said I declined to answer all illegal impertinent and unprofessional questions, and I deem this one.

26+ I see that you state in your Affidavit attached to said Bill that the first knowledge that they (meaning the Mortells) had that the Ejectment suit was not dismissed was the morning which they were dispossessed some 18 months after trial was had in the same. How ^{do} did you know that fact

Ans From their assertions and my full belief -

Direct resumed

1 Was not the defense of the said Mortells to said suits professionally ~~confessed~~^{ided} to you as their Attorney, and which you as in duty bound can or could not disclose —

Ans They were —

2 State if you had not a distinct recollection of the facts contained in your Affidavit when made

Ans I certainly had — but my attention has not since directed to it until the present Examination

3 Were not those facts stated in your Affidavit based upon an inspection of your private papers at the time

Ans They were and of the Records of the Court —

Sworn to & subscribed before me this 1st day of March 1860 } And Mr. Harris

L. L. Frier

Master in Chancery Court &c

Circuit Court of Cook County Term AD 1859
 State of Illinois }
 Cook County } ss

John Mortell, Michael Mortell

William Elmer Etal

Andrew Harris

being first duly sworn deposes and says that he is and has been a practicing attorney at this Bar from 1854 That sometime during the month of 1855 William Elmer Etal brought suit vs John Mortell and Michael Mortell to recover possession of premises, to-wit: of Lot three (3) of the north west quarter of section Eight (8) in Township 39 North of Range fourteen 14 City of Chicago, State of Illinois. That the said Mortells employed him as their attorney to attend to said business, which he promised to do. That the attorney of the said plaintiffs in the above cause was John Elmer a practicing attorney at this Bar. That said cause was not tried until the year 1859 two years after the institution of said suit. That it was mutually agreed between the said Counsel for the plaintiffs and this deponent the attorney of said Mortells, that no advantage should be taken of the absence or sickness of

Either Attorney, but that whoever should call
 up this Case and duly notify the opposing Counsel
 of his readiness to do so. This deponent further avers
 that when judgment was taken by default
 of the said defendants not being heard in the
 said Cause, the said Attorney for the plaintiffs
 was out of the limits of this State and this
 deponent knowing that fact did not look
 after said Cause as it was expressly agreed
 by and between the said Attorneys that no
 steps or advantage should be taken during
 the absence of either Counsel, that while
 the said Leon was absent the said plain-
 tiffs by A W Windett called the Case for trial
 on part of plaintiffs and the issues being tried
 judgment went by default on part of the defen-
 dants. ^{that this} deponent believed that the said Leon
 and not the said Windett was attorney for the
 plaintiffs, and though expressly agreed thereto
 by the Attorneys this deponent was not notified
 that the said Cause was to be called for trial
 or any disposition whatever made of the same
 and that the first intimation that this affair
 had that the Case was disposed of was that
 the said Windett his clients had been disposed
 of. And this deponent further ~~says~~
 avers that it was expressly understood and
 agreed prior to the taking of judgment by default

in the above Cause, that the said Cause was to be dismissed, and a new and distinct suit brought for the recovery of the said property, that the said new Cause to-wit, an "Action for Forcible Entry & Detainer" was instituted on the 18th day of July AD 1854 according to agreement of and Justice Allyn. That on the 25th of same month & year the said Cause was tried and the following verdict rendered by the jury "We the jury find the defendant guilty in manner and form as charged in the plaintiffs Complaint". Whereupon the defendant prayed an appeal, which was granted, and when said Cause came on for hearing, it was reversed by the Circuit Court and judgment given for the defendants.

And this deponent further avers that he considered and believed & that it was so understood & believed that this was to be the End of said Cause, and that the first Cause above mentioned was to be dismissed, and that on the said second suit they did not avail themselves of the defense to-wit of the pendency of a suit for the same Cause, because it was then understood as above avowed that this Action of forcible Entry and detainer was to take the place of the first suit above mentioned. And that this deponent verily

believed that the said Cause was to be dismissed
and that the first knowledge he had to the
contrary was the deposing of said Mortells
the Clients of this department.

This department further avers that
the said Mortells have a good and perfect
defense to said Action up in the minds of the same
that the said John and Michael Mortell
are entirely ignorant of the forms of law, being
common laborers and that they were informed as
above written by him the said Andrew Barrie
and that the first knowledge that they the
said Mortells had that the same was not
dismissed was the writ by which they were
deposed some 18 months after trial as above
mentioned was taken in the same.

Subscribed & sworn to before { Andrew Barrie
me this 4th day of November 1859 }
Elliott Anthony
Notary Public

J. L. Paine Treas. Master in Chancery, County
County State of Illinois, do hereby certify that the
above and foregoing depositions were taken
before me at my office in the City of Chicago
by Consent and agreement of the solicitors of the
respective parties. Except the depositions agreed
to be suppressed as above specified the said

witnesses having been severally sworn according to law, and
 the same to be used on the trial of the above Entitled Cause
 on the part and behalf of said Complainants subject
 only to legal exceptions
 Master's fees \$7. L. LeRue Freer
 paid by Compt. Master in Chancery
 books

And afterwards, there was
 filed in said Court a certain stipulation, in words
 and figures following. to-wit:

Mortell }
 James Horner }

I desire to prove that David
 Patray was in possession of said premises for several
 years previous to his death in 1849. Claiming to own the
 same. Also that Mortell the Atty who took the
 Judgment was no party to any agreement such as is de-
 scribed in Bill, but took such judgment in good
 faith acting under the directions of James Horner

O. B. Weller
 The Deft says he will admit these facts for the
 purpose of this Chancery proceeding only
 O. B. J. Semmes

I am obliged to leave town for a day or two, and if

These admissions are not made & trust nothing will
be done in the case until my return which will be
as Early as Tuesday -

Said facts, if admitted are not
to be used against said Mortells in any other than this
Chancery suit, the admission being made for the pur-
poses of this suit only
Sincerely H. B. Waite for Deft
Chicago. Dec 10. 1860 B. J. Semmes.

And afterwards, to-wit: at the
March Term of said Court, to-wit: on the 26th day
of March in the year of Our Lord One thousand
Eight hundred and sixty, the following proceedings,
among others, were had and Entered of record
to-wit:

" John Mortell and Michael Mortell

Jane Blom and William A Blom her husband
Ellen Buxton Volney J Buxton her husband
Abraham Jane Buxton, Sarah Patray
Eureta Patray, and Maria Patray
heirs and legal representatives of David Patray
Deceased

Bill

This

cause having been brought in to be heard upon the

Bill of Complaint of the said John and Michael
 Wortell and the answer of William H. Starr
 and Jane his wife Volney J. Burtin and Ellen his
 wife and Achah Jane Burtin by her guardian
 Volney J. Burtin and the answer of the guardian
 additem of Eureka Pattray, Hannah Pattray, Achah
 Jane Burtin and the replication of the said John
 and Michael Wortell, the said Bill of Com-
 plaint praying for a new trial and that they might
 be reinstated in the possession of the premises to-wit
 Lot Three (3) of the North West quarter of Section Eight
 (8) in Township thirty nine (39) North of Range fourteen
 (14). City of Chicago, County of Cook and State of
 Illinois, and that they might be placed in the same
 position they originally occupied prior to the obtain-
 ing of a certain judgment, on or about the 21st day
 of November 1857 in an Ejectment suit brought by the
 said William H. Starr and the above named de-
 fendants some time in the year 1855 against the said
 John and Michael Wortell, said judgment
 being obtained by fraud and the violation of the
 agreement of the attorneys of record, whereby it was
 mutually agreed that no advantage that no
 advantage should be taken of the absence or
 sickness of either party, and that said cause
 should not be called for trial without due notice
 to the opposing Counsel, - And Melville W. Fuller
 having been appointed Guardian additem for the

infant defendants, and having filed his answer as such, and the said William H. Stone and Jane his wife and Volney James Ruston and Ellen his wife having answered, and Achsah Jane Ruston by her guardian Volney J. Ruston and the complainants having filed their replication to the said answer, the said Cause was referred to Dr. R. R. Ramey Free Master in Chancery, to take proofs touching the charges in said Bill of Complaint alleged, and it appearing to the Court by the report of the Master, from said Evidence therein contained, that the agreement as above mentioned, was made and violated, and that the judgment was obtained in said above described Ejectment suit. Under such circumstances as would work a fraud upon the complainants, and by which they were precluded from a hearing upon the merits of the said Cause, and that the allegations in said Bill of Complaint are true,

It is hereby ordered, adjudged and decreed by this Court, that the Clerk reinsert upon the Docket the Original Ejectment suit above described, and that it stand for trial upon its merits.

That the judgment so fraudulently obtained, is hereby declared vacated and null and void.

And it is further ordered and adjudged and decreed that the Clerk of this Court issue a writ of restitution whereby the said John

And Michael Mortell may be reinstated in the premises which they originally occupied prior to the fraudulent obtaining of said judgment—being part of Lot Three (3) of $\frac{1}{4}$ of Sec Eight Township 29 N R. 14. E in the City of Chicago, County of Cook and State of Illinois To-wit: Lots 9-10-11-12- of Sec 8. Township 29. N R. 14. East—

And afterwards, to-wit: at the same term of said Court last aforesaid, to-wit: on the 28th day of March in the year last aforesaid, the following proceedings, among others, were had and Entered of record, to-wit:—

" John Mortell & Michael Mortell
 Jane Blom and William D. Blom her husband
 Ellen Ruston & Volney S. Ruston her husband.
 Achsa. James Ruston. Hannah Rattray
 Gertrude Rattray and Marion Rattray
 Heirs and legal representatives of
 David Rattray deceased

Bill

This day again come the said defendants by their solicitors and pray an appeal herein to the Supreme Court of the State of Illinois, which is granted by the Court upon Condition that the defendants shall within One week from this date. Execute and file

Their appeal bond herein in the penal sum of Five hundred dollars, Conditioned according to law with good and sufficient surety, to be Approved of this Court

And afterwards, to-wit: at the same term of said Court, to-wit: on the Fourth day of April in the year last aforesaid, the following proceedings, among others, were had and Entered of record, to-wit:

John Mortell & Michael Mortell

19015

Jane Storr and William Storr her husband, Ellen Burton and Volney J. Burton, her husband, Abigail Jane Burton, Hannah Patray, Aurelia Patray and Marion Patray, heirs and legal representatives of David Patray deceased

Motion to set aside decree

This day came the said defendants by their solicitors, and moved the Court to set aside the decree heretofore taken and Entered in said cause for the reasons assigned in the written Motion.

And afterwards, to-wit: on the 5th day of April in the year last aforesaid, said defendants by their solicitors, filed in the Court aforesaid their Certain Motion, in words and

figures following, to-wit,

"State of Illinois, County of Cook
Circuit Court, March Vacation Term
A. D. 1860

John Mortell Etal }

William H. Starr Etal }

The Defendants by their Solicitors Move to vacate the decree rendered herein and allow further proofs to be taken, and also to dismiss the Bill, because

1. No Equity is shown in favor of the Complainants in the Bill, or the Evidence,
2. The Court has no power to order a new trial and set aside the judgment obtained in the suit at law.
3. The Court ought not to order the restoration of the possession.
4. The Allegations of the Bill are not sustained by the Evidence,
5. Material Evidence exists in favor of the Defendants, which is necessary to a just disposition of the case, which has not been produced as appears by affidavits filed & the record in Ejectment suit.

Gandy and Wark
deft Solicitors,

And afterwards, to-wit: on the same day and year last aforesaid, there was filed in the Court aforesaid, the affidavits of Arthur W. Windett, John E. Kane and Ira Brown, which said affidavits are in words and figures following to-wit:—

Affidavit of A. W. Windett.

"State of Illinois }
Cook County }

Circuit Court of Cook County—
March Vacation Term A.D. 1860

John Mortell Esq }
William D. Stor Esq }

Arthur W. Windett being first duly sworn, deposes and states, that he was retained by William D. Stor as counsel for himself and the Rattray heirs in an Ejectment suit by the said heirs against the Mortells during the November Term of this Court in the year 1856, and this affiant states that he finds an Entry of Charge against said Stor for said retainer of \$500 # dated December 5, 1856 which Entry was made at that time in this affiant's day book by himself—

This affiant verily believes that at or about that time he entered his appearance as Counsel in said Cause upon the Judges or Clerk's ^{Term} Docket for Nov 1856, and this Affiant assumed the Conduct and management of said Cause from that time onward, and until the trial of the Cause before the Court and a jury at the November Term 1857. — This Affiant further states that at the Spring Term 1857 said Cause was passed by reason that one of the parties could not get in their witnesses at the moment the Case was called; Andrew Waverly then acting on behalf of the Mortells and this Affiant on behalf of said Rattray heirs.

This Affiant further states that some time in the Month of July or August 1857 he was Employed by said Stor to institute an Action of forcible Entry and detainer by the said Rattray heirs against the said Mortells which Cause was tried by a jury and a verdict ^{found} for the plaintiffs, and which Case was appealed by said Mortells to this Court to the October Term 1857.

This Affiant further states that he never made any agreement or stipulation with said Warrall who was the Attorney at Record for said Mortells in the Ejectment Case, and also was the Attorney of said Mortells in the Detainer suit at the trial thereof. — This

36-
Affiant has no recollection of ever having heard of
a pretence or claim that there was any agreement
relative to the trial of said suits or either of them
until he was applied to by Judge Morris to
consent that the judgment in the Ejectment suit
should be set aside, some time this last winter -
There was no agreement made at any time by this
Affiant with said Warray that said detainer
suit should be begun, or should be tried in lieu
of the Ejectment suit or that said Ejectment
suit was to be passed, in fact there never was
any understanding on that subject to which this
Affiant was a party, or of which he ever had
any knowledge - And this Affiant states he
could not and would not have made any
such agreement or understanding with any one
unless expressly authorized by his Client to do so
in the particular case - This Affiant
from the time he was first employed on the
part of the heirs acted alone for them as he
was informed by them, and that he had no
further connection with the case - This
Affiant further states that said Ejectment suit
was tried in its regular order when called;
that the Appeal in the detainer suit was passed
by the Court at the November Term 1857 in January
Term 1858 against the efforts of this Affiant
to have the said Appeal dismissed for want

of prosecution And as the affiant believes to the best of his recollection because the affiant had not entered his appearance for said heirs at the beginning of the term or some similar reason. Although the affiant was then ready and urgent to have said Appeal tried at that time, or dismissed for want of prosecution — This affiant neither ^{had} made, nor knew of any agreement by or with any person whatever then, before or since that said Appeal should not be tried or be passed at said November Term 1857 or January Term 1858

This affiant states that the reason why said Detainer suit was begun while the Ejectment was pending was that there had been so much delay in the suit, without having a trial, that it was thought that the heirs might be able more quickly to recover possession of the premises in controversy by that means, than by the Ejectment suit —

This affiant further states that at the November Term 1858 said Detainer suit was dismissed by the Attorney for the Mortels for want of prosecution Under the following circumstances the affiant the Atty. for the Raybrey heirs, was confined to his house by a severe toothache that day — that the Case was quite unexpectedly reached with no other Cases in which this affiant was of Counsel, all of which were dismissed — that

The next morning upon learning of the fact, this
 Affiant made affidavit of the fact and all
 of said Case were reinstated by the Court.
 the Atty for the Mortelle Mer B. Blackburn
 Consenting. This Affiant further states that at
 the last November term of the Court, the affiant
 made an arrangement with Mr Semmes that the
 Detainer Case should be passed which was
 mentioned to the Court at the time. And said
 Case was afterwards struck from the Docket
 not at the instance of the affiant, but as he
 believes through the mistake or misapprehension
 on the part of the Judge, or of the Clerk.
 Further this Affiant says not
 subscribed reform to $\frac{1}{2}$ Arthur N. Windett
 before me this 5 April 1860

Wm L Church Atk

Affidavit of John E. Lane,

"State of Illinois }
 County of Cook }

Circuit Court

March Vacation Term, 1860.

John Mortell Esq }
 William W. Starr Esq }

John E. Lane being

March Vacation Term, 1860.

John Mortell Esq

Wm W Stor Esq

Ira Snow Fenig Horn
 says he executed a writ of possession issued in
 an Ejectment suit where the defendants were plain-
 tiffs and Complainants-defendants in August or
 September 1859 as deputy Sheriff of Cook County,
 and William W. Stor was present at the time with
 him on behalf of the plaintiffs in the writ, that
 in answer to questions of the Mortells, said Stor
 referred to his deponent and refused to reply.
 On the second day this deponent asked one or both
 of the Mortells what they had ascertained about
 the case. One of them replied that their Attorney
 was drunk at the time of the trial, then Stor
 remarked you should employ a sober Attorney
 which was the only conversation heard by this de-
 ponent and he had the opportunity of hearing
 all that Stor said.

Subscribed & sworn to before } Ira Snow
 me this 5 day of April 1860

Wm L Church Chy

And afterwards to-wit, at
 the same term of said Court last aforesaid to-wit:
 on the seventh day of April in the year last aforesaid

the following proceedings, among others, were had and Entered of record. to-wit:

John Mortell and Michael Mortell

Jane Blom + William H. Blom her husband
 Ellen Benton + Volney J. Benton her husband
 Achah Jane Benton, Hannah Pattray, Aurelia
 Pattray, and Marion Pattray, heirs and legal
 representative of David Pattray Deceased

Motion to set
 aside Decree

This Cause
 coming on this day to be heard upon the motion of the Defen-
 dants, heretofore entered to set aside the decree in
 said Cause and Counsel having been heard, as well in
 support of said Motion as in opposition thereto, and
 the Court not being sufficiently advised in the premises
 takes said Motion under advisement

And afterwards, to-wit: at the
 same Term of said Court, to-wit: on the 5th day of
 July in the year last aforesaid, the following proceedings,
 among others, were had and Entered of record. to-wit—

John Mortell and Michael Mortell

Jane Blom and William H. Blom, Ellen
 Benton and Volney J. Benton her husband
 Achah Jane Benton, Hannah Pattray

Eureta Patray & Maria Patray
 heirs and legal representatives of
 David Patray Deceased

This day again
 Come the parties by their respective solicitors, and the Court
 being fully ^{advised} of and concerning the defendants motion
 to vacate or modify the decree rendered herein and
 allow further proof to be taken and also to dismiss
 the Bill, doth order adjudge and decree that
 the said motion so far as it asks vacation of said
 decree and dismissal of said Bill be and the same
 hereby is overruled; And the Court doth further
 order adjudge and decree, that so much of said
 decree as orders and directs that the judgment
 recovered at law by the defendants and mentioned
 by the Complainant's Bill, shall be set aside and
 rescinded; And that so much of said decree as
 orders and directs the clerk of the Circuit Court
 in which said judgment was recovered, to reinstate
 upon the Docket the original Ejectment suit above
 described, and that it stand for trial upon its merits,
 be and the same hereby is set aside; And it is fur-
 ther ordered considered and decreed by the Court
 that the defendants be restrained from proceeding
 And further upon the said judgment in Ejectment
 until the final disposition of this cause, and
 that the Complainant be allowed a new trial upon
 the subject matter upon said suit upon a rejoinder

issue, to be made up in this Court, and to be directed for trial, to the same side of this Court, and it is further considered and adjudged that the said issue involving the question of title and possession of said land be made up by the parties under the direction of this Court, so as to present the same question as those involved in the original suit at law, leaving the parties respectively in the trial of such issue to stand in the position that each occupied before the recovery by the defendants in said Ejectment suit, the defendants holding the affirmation of said issue as before; And it is further Considered and decreed that the Costs abide the final decree to be entered herein.

And afterwards, to-wit: on the 15th day of October in the year last aforesaid there was issued out of and under the seal of said Court, a certain writ of Possession, directed to the Sheriff of said County to Execute, in words and figures following, to-wit:

"State of Illinois }
County of Cook }

The People of the State of Illinois to the Sheriff of Cook County. Greeting

And afterwards, to-wit: at the October Term of said Court, to-wit: on the Twenty-fourth day of October in the year last aforesaid, the following among among other proceedings, were had and entered of record to-wit:

"John Wortell and Michael Wortell

19015 Jane Stor and William H. Stor her husband
 Ellen Ruston and Volney J. Ruston her husband
 Asah Jane Ruston, Hannah Rattray, Gerula Rattray and Marion Rattray heirs and legal representatives of David Rattray deceased } Motion re

This day came the said Defendants by Gaudy and Waile their solicitors and moved the Court for an order and decree against the Complainants, requiring them to surrender and deliver up to the defendants the possession premises described in the Bill of Complaint, ^{plead} in this cause.

And afterwards, to-wit: on the Twenty-fourth day of October in the year last aforesaid there was filed in the Court aforesaid, the affidavit of W. L. Gaudy, in words and figures following - to-wit:-

"State of Illinois }
 County of Cook }

Circuit Court
 October Term 1860

John Mortell and
Michael Mortell

William H. Starr Esq

In Chancery

William H. Bondy being
duly sworn on his oath says, that he is one of the
solicitors of the defendants in this case and as
such has had the Exclusive management thereof
since last March, that this cause has been held
under advisement upon the motion of the defendants
to vacate the decree rendered in March last
and for leave to take further testimony since
the time such motion was made until some time
during the present month, and further as this depo-
nent is informed and believes the 15th inst - at which
time and during the present term, this deponent is
informed by the clerk of this Court a decree
was ~~rendered~~ ^{entered} by the order of the Court as of the 5th
July 1860. that this deponent has frequently during
the time such motion has been under advisement called
the attention of the Court and of the opposite Counsel
to the case and asked a decision of such motion &
on several of such occasions, has stated to both the
Court and Counsel of Complainants, that he desired
to inspect the decree and have notice of the same
when or before the same was rendered, and this de-
ponent understood the Court to direct that such
decree should be submitted to this deponent;

and this deponent further states, that the decree so rendered on the 13th inst, and ordered to be entered as of July 5th 1866 was never submitted to him or to the defendants, or any one representing them, but on the contrary the same was so entered & prepared without any notice to the defendants or any one of their solicitors, and that the first intimation thereof received by them was a notice from the tenant of the defendants who resided on the property or a part of it described in the Bill, on the 18th October last that he was being forcibly removed from the premises by one of the Deputy Sheriffs of the County under pretence of some Authority from this Court, that this deponent immediately called at the Office of the Clerk, where the decree rendered on the 13th October as aforesaid was exhibited to him for the first time and he was informed by one of the deputies of the Clerk that by virtue of said decree he had on that day and during the present term not yet expired issued and delivered to the Sheriff a writ of possession in the action of Ejectment wherein William H. Starr & Charles were plaintiffs and the Complainants were defendants being the same referred to in the Bill herein, that this deponent then sent an agent of the defendants to inform the Officer who was removing their tenant, that the writ had been improperly

issued, and he is informed and believes and therefore states that such notice was given to the Officer, one Steinhouse, but he persisted in executing the writ, and did forcibly oust the defendants from their possession and deliver it to the Complainants, who still held the whole of the property described in the Bill and in controversy in this suit — And this deponent further states that he immediately sent his Clerk to the Sheriffs Office and the said Steinhouse to obtain a copy of said writ, but the said Steinhouse neglected and refused to furnish the same or permit it to be inspected until the 22d inst, when he furnished a copy thereof with a receipt thereon, which is hereto attached and made a part of this Affidavit, and upon such information this deponent states that the only writ which has issued and by virtue of which the Complainants have acquired the possession aforesaid, is the one of which the attached paper is a true copy, and this deponent states that the said writ has not yet been returned.

Subscribed & sworn to before me
the 24 day of October, 1860

Amos Church

W. H. J. J. J. J.

Ch

Writ of Possession

State of Illinois }
 County of Cook }

The People of the State of Illinois to
 the Sheriff of Cook County. Greeting

Whereas John Wortell and Michael Wortell
 defendants hath lately, in the Circuit Court held in
 and for the County of Cook, by the judgment of the
 said Court recovered against Wm of David Rattray
 plaintiffs One messuage, piece, parcel or lot of ground
 to-wit: part of lot three of N. $W \frac{1}{4}$ of Section Eight
 Township 39. N. R. 14. E. in the City of Chicago
 County of Cook State of Illinois, to-wit: Lots
 9-10-11-12 of Sec 8 Township 39 N. R. 14 East in
 the City County & State aforesaid, which said
 premises have been and still are unjustly withheld
 from the said John Wortell & Michael Wortell
 by the said Wm of David Rattray where he is
 charged as appears to us of record, and for
 as much as it is adjudged in the said Court, that
 the said defendants have Execution upon this said
 judgment against the said plaintiffs, according
 to the force form and effect of his said recovery

Therefore we Command you
 that, without delay, you deliver to the said
 John Wortell and Michael Wortell
 possession of the premises so recovered with the

Appurtenances; And that you Certify herein to our
 said Court, in ninety days from the date hereof,
 in what manner you shall have Executed the writ
 And we further Command you, that of the goods
 And Chattels, lands and Tenements of the said
 Heirs of Pabray, you Cause to be made the
 sum of One dollar and twenty Cents. which the
 said Debt also recorded against said Peffe
 for their Costs and Charges in that behalf Ex-
 pended, whereof the said Peffe are Compelled
 as appears to us of record; And have you that
 money ready in ninety days, to ^{render} ~~ready~~ to the said
 Debt for their Costs and Charges aforesaid.

Seal

Witness, William S. Church, Clerk of our
 said Circuit Court, and the Seal thereof
 at Chicago in said County this 13th
 day of Oct. A D. 1860
 Signed Wm S Church

Received of John Gray Sheriff of Cook County the
 possession of the within described premises this 13th
 October 1860

Signed John Mortell
 Signed Michael Mortell

And afterwards to-wit on
 the Twentieth day of November in the year last
 aforesaid there was filed in the Court aforesaid

An Affidavit of B. J. Semmes, which is in words and figures following to-wit:

"State of Illinois }
Cook County }

Circuit Court in Chancery Sitting
Of October Term. A. D. 1860.

John Mortell
Michael Mortell

Wm. H. Starr Esq

Benedict J. Semmes being
first duly sworn, deposes and says, that he, jointly
with Buckner S. Morris has conducted the
above Cause on the part of the Complainants, -
That some time in March last, the Circuit
Court of this County in Chancery sitting, Entered a
Decree in favor of Complainants - that shortly
thereafter on motion of defendants Counsel, the above
Cause was reargued before his Honor George
W. Canine, and upon full hearing of said argument
of counsel on both sides, an order on or about July
5th 1860 was given to the clerk of the Court to
be entered upon his docket, said order changing
the original decree in one particular, to-wit,
instead of granting a new trial at law, as of original
decree, it was so changed that the parties to the
suit should form a feigned issue in Chancery

to try the title to the property. — That from that time to-wit: July 5th 1860, to the present, this Cause has not been held under advisement by the Court, but regarded as "res adjudicata", of which the said defendants must have been Cognizant of, for their Attorney M^r le Goudy, frequently conversed with this affiant upon said order, and that said decree was only modified in accordance with the order of July 5th 1860, and is now the decree in this Cause — That said Modification of the original decree is not changed in any essential part, which goes to effect the merits of said Cause, but the original decree ordered possession of the premises to be given to the Complainants, and that they entered into possession of said premises under the Original decree of said Court, that said order modifying said decree, on motion of defendants Counsel, was made in July last, and does in no manner alter the original decree as to giving possession of premises to Complainants, and that the defendants Attorney has been Cognizant of said order since on or about the entering of the same. — This deponent says that it is true that this Court did request the decree to be ~~entered~~ submitted to the said Goudy, and that in compliance with said request, this affiant handed the decree to M^r le Goudy

ment to be correct, unless his memory fails him
in the premises

I now + subscribed to
before me this 25th
day of Nov. A.D. 1860

Benedict J. Semmes
J. L. Church Clk

And afterwards to-wit:
on the 31st day of November, in the year last
aforesaid, there was filed in the Court aforesaid
the affidavits of W. L. Goudy, Mrs. Greenleaf
and Stephen Beck, which said affidavits
are respectively in words and figures following
to-wit:

Affidavit of W. L. Goudy

"State of Illinois, County of Cook ss
Circuit Court

John Mortell Esq } November Term. 1860
Wm L. Starr Esq } Ch. Chancery

William L. Goudy being
duly sworn, states in addition to his affidavit filed
herein October 24th 1860, that a decree was
in part prepared by B. J. Semmes Esq. Com-
plainant's solicitor during last July as directed
by the Court - and this deponent was asked
to approve of it, which he refused to do

that said decree proceeded to determine the cause de novo, as if no former decree had been made and did not purport to be a modification of the decree Entered in March last, but a new decree, that a blank was left in the same and the said Sumner requested the deponent to fill it up corresponding to the decision of the Court so far as it differed from the decree entered last March, which the deponent declined to do, and told the said Sumner that he must fill it up himself or get the Court to do so, that the deponent would not take any responsibility or waive anything; that the decree which was made by the Court on the 13. October is not the one presented to the deponent and has no single point of resemblance to it in the opinion of the deponent, but the same was prepared by the judge of the Court as a new decree and corresponding in the opinion of the Court to his verbal decision last July and further he faith not-

Subscribed & sworn to }
 before me this 30th day }
 of November 1866 }

W. L. Gandy

Paul S. Church Clerk

Affidavit of W. L. Greenleaf.

State of Illinois County of Cook

Circuit Court - November Term 1860

John Mortell Esq }
v
William H. Starr Esq }

William H. Starr Esq }

William L. Greenleaf

Feing Morris, says that he was acting as deputy-
Clerk of this Court, in attendance on the Court -
and entering minutes of the action of the Court
in an order book used for that purpose on
the 5th day of July 1860, that the above En-
titled suit was called up and a decision
rendered on some questions previously submitted
to the Court and under the direction of the Court,
this deponent entered the following minutes on
said order book as it now appears thereon to-wit,
"Mortell }

Chy 701

v
Starr

Chy Modification of decree
Sentes to prepare Goudy to approve "

And that no other order or decree was entered
on that day; that Judge McAnis immediately
adjourned Court on that day & left the City
remaining absent until about the first day
of September as deponent is informed & believes,
that this deponent applied to both Sentes the
Complainant's solicitor & Goudy the defendants
for the decree that was to be prepared by
Sentes & approved by Goudy in order to have
it entered of record, but none was

furnished by either of them, to this deponent's
 knowledge
 subscribed & sworn to before me } Mrs. Greenleaf
 this 3rd Nov. 1860 }
 Mrs. Churchak

Affidavit of Stephen Beck.

" State of Illinois County of Cook
 Circuit Court

John Mortell Esq } November Term 1860
 Wm. L. Starr Esq }

Stephen Beck being
 sworn states that he is a deputy clerk in the
 Office of the Circuit Clerk of this Court, that
 as such he entered in the record a decree in
 this case from the original among the files
 on page 52 of the Records of the Circuit
 Court (Volume X) in Chancery which purports
 to be entered on the 5th July 1860, that this
 deponent in fact made such entry since the
 13th day of October A.D. 1860 and that
 he made the entry as of the 5th day of July
 1860 by virtue of the following minutes entered
 in the Clerk's docket to-wit-

" Oct 13. Mo to vacate decree & to diss Bill
 overruled & decree modified this order to be

Entered none pro tunc as of July 5 1860 (see files)
 subscribed & sworn to before
 me this 3rd Nov 1860
Wm L Church Clerk } Stephen Beck

And afterwards to-wit:
 on the 7th day of December in the year last afore-
 said, there was filed in the Court aforesaid
 the affidavit of B. B. Morris, in words
 and figures following, to-wit—

Circuit Court of Cook County Illinois
 John Mortell — }
 Michael Mortell } In Chancery
 Wm L. Starr Esq }
 B. B. Morris

B. B. Morris makes
 oath & says he was present in Court and assisted
 in the management of this Case on or about the
 5 July 1860 brought about as he was informed
 by the request of the defendants Solicitor Wm
 Bondy with a view to making some change
 in the order made in this Case in March
 before — That on the close of the argument
 the Court gave his opinion in the case and
 stated the substance of the order which
 would be made in the case, and this affi-
 ant further says, that he understood from

the Court. that he would draw up the order himself or it might be drawn by Counsel and submitted to him, Consequently this affiant paid no ^{further} attention to the matter until after the adjournment of the Court. He understood Mr Semmes to say the order was not made because the Court had so much to do. it could not find any - to make it or to examine one he had drawn in this case to meet the views of the Court which he gave July 5 1860. and early in the first term thereafter this affiant learned that the Court made the order he said he would make, as of the date when the opinion was given on reargument of July 5, 1860 as aforesaid, according to the opinion then expressed.

Subscribed & sworn to before

me this 7th day of Dec 1860

W. B. Morris

J. S. Church

(Not of record)

That afterward to wit, on the 28th day of December in the year last aforesaid, there was filed in the Court aforesaid in said cause a certain writ commonly called a writ of possession which with the return of the Officer enclosed thereon is in the words and figures following to wit, State of Illinois)

County of Cook }^{ss} The People of the State of Illinois
to the Sheriff of Cook County Greeting,

Whereas, John Mortell and Michael Mortell Defendants hath lately in the Circuit Court held in and for the County of Cook, by the judgement of the said Court, recovered against Heirs of David Rattery Plaintiffs one message piece, parcel or lot of ground to wit:

part of lot three of
NW 1/4 of Section Eight, Township 39, N.R. 14, E in
the City of Chicago, County of Cook, State of Illinois
to wit,

Lots 9, 10, 11, 12, of sect 8 Township 39 NR 14 East in the City, County, and State aforesaid, which said said premises have been and still are unjustly withheld from the said John Mortell and Michael Mortell by the said Heirs of David Rattery where he is convicted as appears to us of record and forasmuch as it is adjudged in the said Court that the said Defendants have execution upon their said judgment against the said Plaintiffs according to the force form and effect of said recovery.

Therefore we command you

that, without delay you deliver to the said John Mortel and Michael Mortel possession of the premises so recovered with the appurtenances, and that you certify hereon to our said Court in ninety days from the date hereof, in what manner you shall have executed this writ, and we further command you, that of the goods and chattels, lands and tenements of the said Heirs of Rattery you cause to be made the sum of One Dollar and twenty cents which the said Deft also recovered against said plff. for their costs and charges in that behalf expended, whereof the said plffs are convicted as appears to us of record, and have you that money ready in ninety days, to render to the said Defts for their costs and charges as aforesaid.

(Seal)

Witness William L Church Clerk
of said Circuit Court, and the Seal
thereof at Chicago, in said County this 13th day of Oct
A.D. 1860.

Wm L Church clk

"Received of John Gray Sheriff of Cook County the possession of the within described premises this 13th October 1860

John Mortel, Michael Mortel
I have taken possession of the within described premises and delivered the same to plaintiff as per receipt endorsed and no property found to make the costs, October 13, 1860,

John Gray Sheriff
By Adolphus Deputy

And afterwards, to-wit: at the November Term of said Court to-wit: on the 12th day of December in the year last aforesaid. the following proceedings, Among others were had and Entered of record to-wit—

1911
John Wortell and Michael Wortell }
Jane Storr & William L. Storr her husband } Motion re
Ellen Benton & Volney J. Benton her husband }
Abraham Jane Benton, Hannah R. Rattray }
Eureta Rattray & Marion Rattray heirs and }
legal representatives of David Rattray deceased } This

Cause coming on this day to be heard upon the motion of the defendants, supported by affidavits, for reasons stated therein, to vacate and set aside the decree heretofore entered therein, and Counsel having been heard as well in support of said motion as in opposition thereto, and the Court having carefully considered the premises, and being now fully advised therein, doth order that said motion be and the same hereby is overruled to which ruling of the Court in overruling said motion to vacate decree the defendants by their Counsel now here except, and there upon the defendants filed their declaration in the nature of a signed issue, and ask

that the same be approved by the Court
and the Court being fully advised in the
premises, doth approve the said declaration
and orders that the said Complainants be
and they are hereby ruled to plead thereto
within ten days.

42-
And afterwards: to-wit: on the
12th day of Decemr in the year last aforesaid
these mds filed in the Court aforesaid a certain
declaration in a Case of feigned issue. ~~to-wit~~ in words
And figures following to-wit—

Rattray Eureka Rattray and Achsah J Buxton
 being then and there the sole heirs at law of
 David Rattray deceased to and of the following
 described Real Estate to wit: The West half
 of a tract of land part of the Lot number Three
 in the partition among the owners of the South
 West quarter of Section Eight in Township Thirty
 Nine North of the base line of Range Fourteen
 East of the 3^d Principal Meridian, The said
 tract of land bounded as follows, Commencing
 at the South East Corner of said Lot Three
 and running thence West Two Chains and
 ninety four links, thence North Three Chains &
 forty four links, thence East Two Chains &
 ninety four links & thence South Three Chains
 & forty four links to the place of beginning and
 situated in the County of Cook and State of
 Illinois, and upon such discourse the said
 John Doe then and there affirmed and asserted
 that the said Jane Stow, ^{William de Sarr} Ellen Buxton Volney
 J Buxton Hannah Rattray, Marion Rattray,
 Eureka Rattray and Achsah J Buxton were
 on the 10th day of November A D 1855 then & there
 possessed of the above described premises and
 that the said last named persons being
 then & there so possessed thereof certain persons
 named John Mortell & Michael Mortell
 Entered upon such possession & unlawfully

withheld the same from the said Jane Stow
 and others aforesaid to their damage of one cent
 and that the said Jane Stow & others were
 seized in fee simple of the said premises, which
 said assertions the said Richard Roe denied
 then and there to be true and then and there
 affirmed the contrary thereof, and thereupon
 afterwards to wit: on the day and year
 aforesaid at the place aforesaid in consideration
 that the said John Doe at the special instance
 and request of the said Richard Roe had then
 & there paid to the said Richard Roe the sum
 of One Hundred dollars to the said Richard
 Roe undertook and then and there promised
 the said John Doe to pay him the sum of
 Two Hundred dollars in case the said Jane
 Stow William H Stow Ellen Buxton Volney J
 Buxton, Hannah Rattray, Marion Rattray
 Eureka Rattray and Achsah J Buxton
 were possessed of the premises aforesaid
 were ousted by the said John Mostell &
 Michael Mostell and were seized of an
 Estate in fee simple as by the said John Doe
 asserted and affirmed as aforesaid
 And the said John Doe in fact says that the
 said Jane Stow William H Stow Ellen Buxton
 Volney J Buxton Hannah Rattray Marion Rattray
 Eureka Rattray & Achsah J Buxton were possessed

of the said premises and seized in fee simple & the said John Mortell & Michael Mortell did unlawfully enter upon the possession of said premises & withheld the same as by the said John Doe asserted & affirmed to wit: at the time & place aforesaid of which the said Richard Roe then and there had notice.

By reason whereof the said Richard Roe became liable to pay to the said John Doe the said sum of two hundred dollars to wit at the time and place aforesaid and being so liable he the said Richard Roe then and there in Consideration thereof promised to pay the said sum to the said John Doe, when he the said Richard Roe should be thereunto afterward requested.

Nevertheless the said Richard Roe hath not paid the said sum or any part thereof to the said John Doe and therefore he sues &c

Goudy & Waite

Attys for John Doe

State of Illinois Cook County ss

Jane Stow Etal

vs

John Mortell Etal

Circuit Court

December Term 1860

In Chancery.

B J Semms Esq

Solicitor for Compt.

Take Notice that in accordance with the Decree

5.
45
rendered in the above Entitled Cause we shall
on Wednesday the 12th inst file in said Court
the above declaration tendering a feigned issue
whereby to try the title of said Defendants
in the above Cause, and that on the said
Wednesday at 9 o'clock in the forenoon we
shall apply to the said Court for a rule re-
quiring the said Complainants to appear and
plead to said declaration.

Goudy & Waite.

Chicago, Ill Dec 11th 1860

I hereby accept service of the above Declaration
and notice by Copy

E J Semmes

Atty of Mortellz -

And afterward, to-wit: on the
5th day of January in the year of Our Lord one
thousand eight hundred and sixty one, there
was filed in the Court aforesaid, a certain plea
in the feigned issue case, in words and figures
following. to-wit: —

possess the said plaintiffs from the possession of said premises, or interfere with their rights therein, or contract with the plaintiffs as to the rental of said premises in their declaration described as the said plaintiffs have above in that behalf alleged, and of this the said Mortell ~~Trustees~~ put themselves upon the courtesy of John^d Michael Mortell.
 By Morris^d Semmes their Attorneys

And the said John Doe plaintiff in this issue doth likewise

W. L. Gandy
 Atty for John Doe

State of Illinois
County of Cook &c.

John Doe

Richard Roe } Circuit Court March Term
A D 1861.

I George Manierre Judge of the
Seventh Judicial Circuit in and for the State
of Illinois holding Court in and for the County of
Cook upon the common law side thereof do hereby
certify unto the said circuit court sitting in Chan-
cery that in pursuance of an order of the the
said court in Chancery sitting awarding a
feigned issue for trial out of said court of
Chancery in a cause therein pending wherein
John Mortell and Michael Mortell are complai-
nants and William H Stow and others are Defen-
dants I have proceeded as Judge of the said circuit
court on the common law side thereof to empanel
a jury to hear and determine the said issue on the
15th day of March in the year A D 1861 at a
regular term thereof and the parties thereto appeared
and put themselves upon the jury so empanelled
for trial and thereupon the plaintiff in such
feigned issue offered to read in evidence the following
Deposition to wit:

State of Illinois } Cook County Circuit Court
Cook County }

The Heirs and legal
Representatives of David
Rattray Deceased

John Moortell And
Michael Moortell

} Ejectment

The Deposition of Nathaniel
Webber, witness on the part of the said plaintiffs, pro-
duced sworn and examined by and before me, John
Summerfield a Notary Public in and for the City of
Chicago, County of Cook and State of Illinois, at my
office in said City of Chicago, commencing on the
15th day of September A D 1857. In pursuance of the
notice thereto attached marked Exhibit "A"

Interrogatory 1st Do you know W^m H Stow, Jane
Stow, his wife, Marian Rattray, Eureka Rattray,
Hannah Rattray Volney Burston, Ellen Burston his
wife, Arch^d J. Burston, if yea, state when you be-
came acquainted with them or either of them, when
and how long have you known them, or either of them,

Answer. I know these parties in Chicago, have
known them since eighteen hundred and forty eight

Inter 2^d State whether or not you knew David
Rattray in his life time, if yea, state when and
where, and how long you knew him.

Ans. I know David Rattray. Knew him in the year Eighteen Hundred and forty five. or six. Knew him in Chicago. I knew him from the year Eighteen Hundred and forty five. or six, up to the time of his death ^{in the year} Eighteen Hundred and forty nine.

Inter 3^d. State whether you knew his Children and family at the time spoken of, if yea. state the names of the Children and family so far as you know them.

Ans. I knew the Children their names were Jane now Mrs W. H. Stow Ellen now Mrs Buxton Hannah, Marian, Eureka, Sarah, the former wife of Buxton and mother of Arch. J. one of the plaintiffs in this suit. there was also a son whose name I do not recollect. who died in the year Eighteen Hundred forty seven or Eight. there are all of the Children I ever knew.

Inter 4th. State whether or not Mrs David Rattray died leaving a widow.

Ans. I think he did not.

Inter 5th. State whether or not you know the property described as follows. that part of Lot three of the South West quarter of Section Eight in Township

thirty nine. North of Range fourteen, and bounded by a line beginning at the South East corner of said Lot three. thence running west two chains and ninety four links. thence North three chains forty four links and a half to the place of beginning, on the City of Chicago ^{thence East 2 chains 7 ninety four links. thence South 5 chains 4 forty four links 1 1/2 to} and County of Cook. if yea. state how long you have known said property, your means and opportunity of knowing it.

Ans. I know the above described property. Have known said property since Eighteen Hundred and forty five or six. I know the property from being frequently upon it. and doing various jobs of Carpenter work in and about said property, a part of the work that I done was repairing fence. on the West half of said tract of land. I repaired the fence on the South West corner near the place occupied by Johnson and the North West corner next to Mr Jacksons to keep Mr Jacksons cattle from a stack ^{of hay} belonging to David Rattray.

Inter 6th. State if you know who has occupied the said premises from the time you first knew them up to the first day of January Eighteen Hundred and fifty three - state your knowledge fully and particularly and your means of knowledge.

Ans. Mr David Rattray occupied said premises

up to the time of his death. Miss Jane Rattray then occupied them with the children, as their (the said childrens) guardian. My means of knowing are that I was one of the bondsmen of Miss Jane Rattray now Mrs Wm H. Stow she being the administratrix of the estate of David Rattray, as we lived then we considered ourselves neighbors, as I was very frequently at their house.

Inter. Qth. State if you know what was the condition of the property at the time of David Rattray death in Eighteen Hundred and forty nine as to building and improvements, if any.

Ans. There was one house with two wings which sat on the West line of the East half and occupied by David Rattray, and there was an old building haused there which sat on the North East corner of the East half a part of which was occupied a blacksmith Shop. Then on the West half there was a Shanty kind of a building used as a stable, which sat about ten or fifteen feet back from Randolph Street on about the centre of the West half belonging to David Rattray. The whole premises were enclosed, in front by a picket fence, on the West side by a Clove board fence and on the East and North sides by a post and rail fence.

Inter. 8. State whether you know the Defendants John and Michael Mortell, or either of them, if so, how long have you known them.

Ans. I know them by sight, have known them by sight but a few weeks.

Inter. 9. State if you know who if any are in possession of the above described premises, or any part thereof, and if so, of what part.

Ans. There are two houses on the West half occupied by John and Michael Mortell.
Nathl Webber

State of Illinois
Cook County ss

I, John Summerfield a Notary Public in and for the City of Chicago, County of Cook, and State of Illinois, do hereby certify that on the fifteenth day of September A.D. 1857 Nathaniel Webber the above named witness was examined by and before me at my office at Chicago in said County, under and by virtue of the notice hereto attached marked Exhibit "A" that previous to the commencement of the examination of said witness he was duly sworn by me to testify the truth in relation to the matter in controversy between said Complainants and Defendants so far as should be interrogated concerning the

Inter. 8. State whether you know the Defendants John and Michael Mortell, or either of them, if so, how long have you known them.

Ans. I know them by sight, have known them by sight but a few weeks.

Inter. 9. State if you know who if any are in possession of the above described premises, or any part thereof, and if so, of what part.

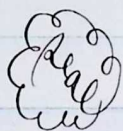
Ans. There are two houses on the West half occupied by John and Michael Mortell.
Nathl Webber

State of Illinois
Cook County ss

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same. That after the Deposition was taken and written down by me the same was read over to said witness and he thereupon subscribed the same before me at the place and on the day and year aforesaid.

In testimony whereof I have hereunto set my hand and affixed my Notarial seal at Chicago this fifteenth day of September 1857



John Summerfield
Notary Public

"A"

Volney J. Burton and others heirs } Cook County Circuit
at law of David Rattray, Deceased } Court.

John Mortell and Michael Mortell } Ejectment.

To Andrew Harvie atty
for the above named Defendants take notice, that
on the fifteenth day of September next, at the hour
of two O'clock PM before John Summerfield a
Notary Public authorized to take Depositions at his
office number 41 Clark Street Chicago. I shall
take the Deposition of Nathaniel Webber, a witness in
the above entitled Cause also is about to depart
from this State, to be used as testimony upon
the trial of the above entitled Cause: when and
where you will be a liberty to attend if you think proper,
September 4th 1857, Arthur W. Kindell, Atty for Peff

State of Illinois,
Cook County ss

Served a copy of the within upon
Andrew Harvie the fourth day of September A D 1857.
Sworn to and subscribed before B. Hendricks
me this day of A D 1857 Const

Which Deposition was taken in an Ejectment suit wherein Jane Stow & Mrs H Stow her husband Ellen Burston & Volney J Burston her husband, Achsah J Burston Hannah Rattray Marion Rattray and Eureka Rattray were plaintiffs and John Mortell and Michael Mortell were defendants, and which is the same suit wherein the Judgment was rendered mentioned in the bill in the cause whence this feigned issue proceeded. to obtain a new trial of which the said Bill was filed and at the same time the plaintiffs proved a service of Notice as required by the Statute upon the attorney of the Defendants in said Ejectment suit, of the intentions to take said Depositions, but the Defendant in this feigned issue objected to the reading of said Deposition in evidence because no affidavit of the ground of taking such Deposition was offered or produced, which objection was sustained and the Deposition excluded to which decision the plaintiffs in this feigned issue then and there excepted.

And this being all the evidence offered the jury

were directed by the Court to render a verdict for the Defendant, which they accordingly did.

Thereupon the plaintiff in the feigned issue moved for a new trial, which was overruled by the Court at the request of Plaintiff and no exception taken.

And I further certify that I am satisfied with the decisions of the Court, and the verdict of the Jury aforesaid.

George Manierre Seal
Judge of 7th Judicial
Circuit Ill

And afterwards, to-wit: at the April Term of said Court, to-wit: on the 11th day of April in the year last aforesaid, the following proceedings, among others were had and entered of record to-wit:

(6)
State of Illinois
County of Cook }

Circuit Court in
John Mortell^d & Michael Mortell }
Chancery March Term
@
William H. Stow Etal } A D 1861.

This cause coming on
for a hearing upon the bill, answers and replication
and the finding of the jury, upon the feigned issue
herein as certified from the common law side of
this Court by the Judge thereof, and the evidence taken
reported and filed herein by Depositions, and the
Court being now sufficiently advised in the premises.

It is ordered, adjudged and Decreed that the
Complainants are entitled to the possession of premis-
es described as follows, to wit:

The West half of that part of Lot three (3) in the
South West quarter of Section Eight (8) in Township
Thirty nine, North of Range fourteen East of the
third principal meridian bounded as follows, begin-
ning at South East corner of said Lot three, thence
West two Chains and ninety four links, thence
North three Chains and forty four links, thence
East two Chains and ninety four links, thence
South three Chains and forty four links, and that
the Defendants were not seized or possessed of any
title in fee thereto, or any part thereof, that the
Defendants, be and are hereby enjoined perpetually

from interfering with or in anywise disturbing the Complainants or those claiming by through or under them in the possession of the said premises by virtue or under claim of any title had, held, or claimed by the Defendants or any of them on or before the commencement of the Ejectment suit described in the Bill of Complaint. to wit: the 17th day of November A.D. 1853. saving to the Defendants or any of them the right to assert any title or claim acquired since that time or hereafter acquired if any they or either of them may have, and that the Defendants pay the costs therein and that execution may issue therefor.

I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of the papers and all proceedings entered of record in a certain cause labelled pending in said Court on the chancery side thereof, wherein Michael Mortell Charles Complainants and Jane Elm Charles more Defendants.

In Witness Whereof, I have hereunto set my hand, and affixed the Seal of said Court at Chicago, this Twenty day of April A. D. 1861

Wm L Church Clerk.



State of Missouri 3^d Division
 Supreme Court April Term 1884

Hannah Rathay & al

John Mortell &
 Michael Mortell

} Error to Cook
 } Circuit Court
 }

And the said Hannah Rathay, Marion Rathay, Euretta Rathay by their Guardian Mrs H. Stow, Absah J. Burton by her Guardian Volney J. Burton, William H. Stow, Jane Stow, Ellen Burton and Volney J. Burton, Plaintiffs in error come by their attorneys and say that manifest error hath intervened the proceedings whereby the foregoing is a record & they assign the following

1st The Circuit Court erred in ordering a new trial ~~in~~ the action at law

2nd The Circuit Court erred in awarding a feigned issue for the trial of the issue at law.

3rd The Circuit Court erred in ~~re-~~ awarding a writ of restitution.

4th The Circuit Court erred in overruling the motion to vacate decree & restore possession of the premises.

5th The Circuit Court erred excluding the evidence on trial of the feigned issue.

6th The Circuit Court erred in rendering the final decree against plaintiffs in error.

7th The Circuit Court had no power to entertain the proceedings to the injury of the plaintiffs.

10th The Bill ought to have been dismissed

Wherefore they pray re

Gondy & Waite

for Opp in Error

And the said Hannah Rathay Marion Rathay & Euretta Rathay by their said Guardian assign the following separate error - to-wit:

There was no notice to them or their Guardian ad litem of the taking of evidence or the hearing.

Wherefore they pray re

Gondy & Waite attys.

And the said Absah J. Burton by her Guardian Volney J. Burton assign the following separate error - to-wit - There was no Guardian ad litem appointed for her nor answer for her &

Wherefore she prays re

Gondy & Waite attys

State of Illinois 3^d Division
 Supreme Court April Term 1862

Hannah Rathay & 2

John Mortell &
 Michael Mortell

} Error to Cook
 } Circuit Court
 }

A. & the said, Hannah

And the said John Mortell and
 Michael Mortell Defendants in Error
 come by their attorney say there is
 no such error or errors as before
 alleged &c.

W. L. Morris for
 Defendants
 in Error

It is agreed that this case is to be
 submitted on brief & points to be
 hereafter prepared & filed
 April 24, 1862

W. L. Gandy for
 Plaintiff
 B. Morris for Defendant

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Hannah Rathray & al
vs.
John Mortell & al

Filed April 18. 1861.
L. Leland
clerk