

14559

No. 14559

Supreme Court of Illinois

Williams

vs.

Bogue

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

3

No. 360

Reported

~~272~~
31

3

Williams

vs

Boyer

1853

1863

Charles R. Williams et al

vs

Virgil A. Bogue

This was an action of ejectment for part of W 1/2 of SE 1/4. 17. 23. 8. 4. brought by appellee against appellants. the evidence was as follows:

Page of record

- 27 Certificate from the Land Office showing that Oliver W. Kellogg entered the land July 13th 1841.
- 28 2nd Record of a judgment in the Eagle Co. Circuit Court in favor of the People of the State of Illinois who sue for the use of Henry Rhines vs Horatio Wales, Virgil A. Bogue, Frederick Cushman, Oliver W. Kellogg, John L. Stephenson, Smith Gilbraith, implicated with George Chandler for \$10,000 debt and for damages sustained by Henry Rhines by reason of the breaches assigned in the declaration \$308.55. The concluding part of the judgment is as follows: "Wherefore it is considered by the Court that the said plaintiffs do recover of the said defendants the said sum of \$10,000 their debt aforesaid and it is ordered by the Court that the said plaintiffs have an execution against the said defendants for the said sum of \$308.55 their damages in form aforesaid assessed together with their costs of suit to be taxed to the use of the said

Henry Rhines". The date of the judgment was March 22nd 1841.

3^o Execution on said judgment dated Nov. 22nd 1841, the execution commands the Sheriff of the defendant - naming each of them "you cause to be made the sum of \$308.55 which the People of the State of Illinois who sue for the use of Henry Rhines have lately recovered &c

30 27 4^o Pleuris execution, dated November 26th 1847. This is an execution for \$10.000 debt which is to be satisfied upon the payment of \$308.55 damages

31 5^o Return of the officer showing ^{a levy & sale} ~~that the~~ sale of the land in controversy by virtue of the last execution. Levy December 4th 1847. Sale to E. F. Leutcher February 25th 1848, ^{Sheriff} Deed on said sale December 3^o 1849

38 6^o Deed from Edward F. Leutcher & wife to James Applington January 30^o 1850. Deed from James

39 Applington & wife dated April 11th 1852 to Virgil A. Bogue. This was plain & evidence.

42 Defendant offered to prove the following statements that defendant Williams was in possession of the premises in the year 1840 and continued in

possession of the same until after the sale by the Sheriff on the execution under which plaintiff claims title, that he fenced and broke the same, that his improvements were made before the land was entered by Kellogg, that other persons were in possession of other parts of the same so, and the several occupants of the so appointed Kellogg their Trustee to enter the land at the Land Office and convey the same to the respective claimants, that each person furnished Kellogg his portion of the purchase money to enter said lands, that Williams furnished the money to enter the land in controversy.

43 The defendant offered to give in evidence a deed of conveyance from Kellogg to Williams. Bill of exceptions says "which deed does not now appear upon file among the papers of this case. The Court excluded the evidence and defendant excepted."

43 2nd Offr. Defendant offered to read in evidence a certificate of discharge of said Oliver W. Kellogg in bankruptcy (which said certificate does not now appear among the files) and to prove that on the day of May 1842 he filed his petition in the District Court to be declared in bankruptcy and obtained his discharge bankruptcy before the premises in controversy were entered by him

The Court excluded this evidence.

There are three questions arising in the case, the first is: was there such a variance between the executions offered in evidence or either of them as to render those executions void - The Court will perceive that the 1st execution is in precise accordance with the judgment: there can be no question of variance here, the judgment does not order an execution to issue for the debt but directs that an execution issue for the damages. The execution follows the judgment precisely and the only question would seem to be whether the judgment was a void judgment. Of course the judgment being rendered by a Court of general jurisdiction in a case where it had jurisdiction of the parties and of the subject matter it is not a void judgment - however objectionable it may be in point of form. The 2nd execution is precisely such an execution as ^{the Court} ought to have ordered to have been issued upon a judgment. It correctly recites & describes the judgment, and the only objection to it is, that it is in form but not in legal effect variant from the execution ordered to be issued in that case.

This question cannot be raised in this collateral action, and indeed all the questions arising

upon this judgment and these executions are
disposed of by the case of Lunkham vs Heaton
decided at the last Term of this Court.
Opinion second page 642.

2nd. The statement contained in the 1st offer of de-
fendant was properly excluded because: it
was an offer only to prove that defendant Williams
had the equitable not the legal title to the land.
The legal title was vested in Kellogg by his entry
and defendant offered to prove that he himself had
an equitable title to the land. This would not
avail him in a court of law. and after the legal
title had been transferred by the sale under the
execution a Deed from Kellogg to Williams
was utterly inoperative for any purpose and was
properly excluded. This seems to be too plain to
admit of argument.

If the facts are as stated in the offer made by
defendant: then Bogue holds the legal title
and Williams the equitable title, and Williams
in a court of equity can compel Bogue to con-
vey the title to him, but how does that affect
his action of ejectment in a court of law?
The only object of which, is to ascertain who has
the legal title.

The land was entered in 1841 at which time the

lien of this judgment-attached, it is perfectly
clear that no subsequent-discharge in bankruptcy
could affect that-lien.

Glover, Cox & Campbell

5 272, 160

Williams 272/160

^{or}
Bogue

Argument for
appeller

Grove May 16, 1863

J. Leland
C.M.

Advised from
last term

Mr. Justice Walker delivered the opinion of the Court:-

~~Walker~~. This was an action of ejectment, for the recovery of a part of the west half of the S.E. 17, 23, N. 8 E. 4. Appellee, on the trial below, introduced in evidence, a certificate of entry, by O. W. Kellogg. Also a copy of a judgment, in the Oke Circuit Court, in favor of the People for the use of Henry Rhines, and against Kellogg and other defendants, rendered on the 24th day of March 1841. From this copy it appears, that the Court rendered judgment for ten thousand dollars debt, and three hundred and eight dollars and fifty five cents damages, and awarded execution only for the damages and costs. He next introduced an execution issued upon this judgment dated on the 22nd day of November, 1841, for the damages and costs. It was returned "no property found" on the 5th day of February 1842. Next, a plains execution, dated the 26th day of November 1841, for the debt damages and costs, was shown to be satisfied upon the payment of the damages and costs.

The return on this latter execution

shows a sale of the property in contro-
-versy to Edward F. Dutcher, on the
25th day of February 1848; Next a deed
from the Sheriff to Dutcher, for the
premises, dated the 3rd day of Decem-
-ber 1849; Also a deed from Dutcher
and wife to James Aplington bear-
-ing date the 13th day of January 1850,
and, lastly, a deed from Aplington
to appellee.

^{millions,}
Appellant, then offered to prove
that he was in possession of the prem-
-ises ~~in~~ in the year 1840, and so continued
until the sale by the Sheriff. That
he fenced and broke the same, and
that his improvements were made
before the land was entered by Kellogg.
That other persons occupied other por-
-tions of the ^{so a tract of} land, and that Kellogg was,
by the occupants, appointed to enter
~~the land~~ for their benefit, and to ~~carry~~
and the arrangement conveyed to ~~the~~
them, their ^{respective} portions. That
each of the occupants furnished his
proper proportion of the money neces-
-sary to enter the land of the govern-
ment, and that ^{the said appellant} ~~appellee~~ furnished his
~~part~~ the money necessary to enter his
part. Also a deed from Kellogg to

himself, which was not presented in the record, nor is its date given; ~~but the bill of exceptions states that the plaintiff objected to this deed as void because defendant had no right to set~~ Also a certificate of discharge of Kellogg as a bankrupt, in the District Court of the United States, which is not embodied in the bill of exceptions. But it is stated, that the certificate bears date ^{in 1842} ~~prior to the~~ ^{the time} ~~13th of July 1841, when Kellogg entered the land.~~ The court however rejected all of this evidence of the appellants, and the jury returned a verdict against ~~him~~ ^{them}, on which a judgment was rendered. The judgment based on evidence was, no doubt, informal, and might have been reversed on error. But it was not so irregular as to be absolutely void. It found the amount of the debt and damages. It declared that the plaintiff should recover the damages and costs, and awarded execution. This was informal, but it declared the legal rights of the parties; as, under the law, plaintiff had no right to receive any part of the debt. He was only

permitted to recover the damages and costs which ^{would} ~~operated~~ ^{be} operated to satisfy the whole debt. Although erroneous, it was binding upon the parties until reversed.

The first execution was issued with-
in a year ~~and a day~~ from the date
of the ~~of its rendition~~ ^{of the judgment}, and perpetuated the
lien for the statutory ^{of seven years} period, on all
of the real estate of the defendant with-
in the jurisdiction of the court. And
subsequently acquired property became
subject to the lien and liable to levy
and sale, under an execution on
this judgment. Although the prop-
erty in controversy was acquired after
the judgment was rendered, ^{it} was ~~binding~~
upon and sold under a legal and binding
execution, ~~and~~ ^{which} was in all respects suf-
ficient to pass the title to the pur-
chaser.

Even if Kellogg did obtain the
benefit of a discharge under the bank-
rupt act, it was after the lien of the
judgment had attached; and the dis-
charge ~~did~~ ^{not affect} ~~subject~~ to the lien. The
discharge may have passed the title
to the purchaser, ^{to his assignee,} subject to be defeated
by a sale under the execution ~~on~~

on the judgment, but it could not operate to divest the lien. The eleventh section of the bankrupt law, fully recognizes the binding force of such liens, and empowers the assignee to redeem the property from them, under the direction of the court. The third section of the act provides, that the bankrupt's property shall vest in the assignee, as fully as the same was vested in or might be exercised by the bankrupt at or before the time of his bankruptcy. From these provisions it is manifest, that the assignee took the property precisely as it was held by the bankrupt.

Had the evidence been received, that Kellogg only purchased this property as a trustee for appellant, ^{Williams,} it would only have established an equitable title in ^{the latter,} ~~appellant~~. And there is no rule of practice better settled, than, that an equitable title found no bar to a recovery in ejectment. In that trial legal rights alone can be considered. And the deed executed by Kellogg to ^{Williams} ~~appellant~~, only conveyed ~~the~~ the grantor's title subject to lien, if it was made previous to the sale and

execution, and if made after, then
it passes no title of any description.

Appellee having exhibited a per-
fect chain of title from the general
government to himself, was entitled to
recover, unless it was rebutted by a
better legal title, in ^{the appellants,} ~~appellate~~, or out-
standing in an other person. If ap-
pellant ^{Wiggins,} has any remedy on the state
of facts which he proposed to prove,
it is in a court of equity where mat-
ters of trust are cognizable, and pro-
tected. The court below, therefore, com-
mitted no error in excluding appel-
~~lants~~ ^{lants} evidence from the jury, as it
could, at most, have ~~only~~ established
^{only} an equitable title. The judgment of
the court below is therefore affirmed
judgment affirmed.

Williams

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242 vs 160

Boque

Opinion by
Wabber.

C. R.

Received, B. 12, P. 123

State of Illinois }
22^d Judicial Circuit }
Ogle County ss }

At a Circuit Court begun and held in and for
the County of Ogle, at the Court House in Oregon, on the 5th
day of September A.D. 1853, in pursuance of the Statute in
such case made and provided, then and there being present, the

Hon Ira O. Wilkinson, Presiding Judge of the Sixth
Judicial Circuit of the State of Illinois, and Judge of the
Circuit Court of Ogle County -

William T. Meller States Attorney
R. B. Light Circuit Clerk and
Elias Baker Sheriff of said Ogle County -

Praecipi

State of Illinois } Circuit Court of said County
Ogle County ss } Sept. Term A.D. 1853.

Virgil A. Bogue }
vs } Ejectment

Horatio Wales }
Chester K. Williams } R. B. Light Esq.

Clk - Sir - Please docket

the above entitled suit in Ejectment, as of above Term &c

H. A. Mix

for Plff

Endorsed - Filed Aug 19, 1853. R. B. Light. Clerk

Horatio 3^d Notice

State of Illinois } Circuit Court of said County
Ogle County ss } Sept. Term A.D. 1853 -

Virgil A. Bogue complains of Horatio Wales and
Chester K. Williams being in custody &c -

For that whereas the said Virgil A. Bogue on the first day of January A.D. 1853. was patented of a certain tract of land with its appurtenances, situate in the Township of Buffalo County of Ogle & State of Illinois, and being described and known as a part of the West half of the South East Quarter of Section Seventeen, Township Twenty three North Range Eight East of the 4th Principal Meridian. Commencing at the South West Corner of the said South East Quarter of Sec. 17, aforesaid - thence Easterly along the South line of said Quarter to the South East corner of the West half of said Quarter - thence Northerly along the East line of the West half of said Quarter, thirty seven rods & eighty eight one hundredths of a rod - thence South Seventy two degrees & fifteen minutes West. Eighty one rods & Eighty one hundredths of a rod to the West line of said South East Quarter - thence Southerly along the West line of said Quarter to the place of beginning. Containing Eighteen acres more or less - - Which said premises the said Virgil A. Bogue claims in fee, and the said Bogue being so patented thereof, the said Chester K. Williams & Horatio Wales afterwards to wit: on the first day of March A.D. 1853. entered into said premises, and ejected the said Bogue therefrom and unjustly withholds from the said Bogue the possession thereof to the damage of the said Bogue, the sum of Three Hundred dollars -
Wherefore he brings his suit -

Notice

To Horatio Wales & Chester K. Williams

Sirs: - You are hereby notified that the Declaration with a Copy whereof you are now herewith served and to which copy this notice is subjoined, will be filed on the first day of the next September Term, of the Circuit Court in and for Ogle County, State of Illinois, to be begun & holden at Oregon in said County on the first Monday of

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September next (A.D. 1853) that upon filing the same a rule will be entered requiring you to appear and plead to the said Declaration within twenty days after the entry of such rule, and that if you neglect so to appear and plead a judgment by default will be entered against you and the Plaintiff will recover possession of the premises specified in the said Declaration —

Dated this 18th day of August A.D. 1853 —

Virgil A. Bogue —

Service

State of Illinois }
Ogle County ss. }

W. B. Chatfield first being duly sworn on his oath states that he did on the 27th day of August A.D. 1853. serve the within Declaration & the notice thereto attached on the within Defendants, Horatio Wales & Chester K. Williams by delivering to each of them a true copy of the aforesaid Declaration & notice — Subscribed & sworn to before me this 8th day of August A.D. 1853: }

W. B. Chatfield
M. C. Keetfield J. P. }

Endorsed — to wit: —

Saturday, August 27th 1853. delivered a copy of the within to Horatio Wales & C. K. Williams. at 4 o'clock P. M. —

W. B. Chatfield

Filed Sept. 10. 1853 — R. B. Light Clerk —

And afterwards to wit: — on Saturday September 10th A.D. 1853. the same being as yet of said term of said Court. the following among other proceedings were had and entered of record to wit: —

2156 Virgil A. Bogue } In Ejectment

Horatio Wales & } now on this day comes the Plaintiff
Chester K. Williams } by skip his attorney, and on his motion leave is given him to file his declaration and notice herein

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and on his further motion it is ordered by the Court that the cause be entered on the Docket and the defendants ruled to plead in twenty days after the entry of this rule -

General Issue

State of Ills. } Ogle County Circuit Court -
 Ogle County } of the Sept. Term A.D. 1853 -

Virgil A. Bogue }
 vs } Action of Ejectment

Chester K. Williams & }
 Horatio Wales } And the said defendants by Heaton & Atherton
 - their atty. come & defend the wrong & injury when &c - and say they are not guilty in manner & form as the said plff hath above thereof declared against them & of this they put themselves upon the Country &c -

And the Plaintiff doth the like Heaton & Atherton

H. A. Mix for Plff - for defts -

Endorsed - Filed Sept 15. 1853 - R. B. Light Clerk -

And afterwards to wit: - on Wednesday March 29. 1854. the same being one of the days of the March Term 1854. of said Court. the following proceedings were had & entered of record to wit: -

D 232 Virgil A. Bogue } Ejectment

vs } It is ordered by the Court that
 Horatio Wales & } this cause be continued -
 Chester K. Williams }

And afterwards to wit: - on Wednesday September 6th A.D. 1854. the same being one of the days of the September Term 1854. of said

5 Court. the following proceedings were had and entered of record to wit:

D 262 Virgil A. Bogue } Ejectment

as } Now on this day comes the Plaintiff
Horatio Wales & } by Miss his Attorney, and enters his motion
Chester K. Williams } for continuance, and the reasons being deemed
sufficient, it is ordered by the Court that this
cause be continued at Plaintiffs costs, and that defendants have and
recover of Plaintiff, their costs in this behalf expended, and that
they have execution therefor —

Affidavit

State of Illinois } Ogle County Circuit Court
Ogle County } Of the March Term A.D. 1855.

Virgil A. Bogue }
as } Action of Ejectment

Chester K. Williams & }

Horatio Wales } Chester K. Williams one of the above named
defendants being duly sworn, deposes and says that
Ebenezer Williams is a material witness for the defence in the above
entitled cause, whose testimony the defendants desire to take, to be
used upon the trial thereof; That said witness is a resident of the
County of Kane in this State, now stopping a few days at the town
of Buffalo in said Ogle County; That said witness is old, and in
feeble health, and will in all probability be unable to attend at the
trial of said cause at the next Term of this Court, and give testimony
in 3^d Court, in consequence of such feeble health, even if he should
live until that time, which this affiant considers doubtful —
Subscribed & sworn to before me this 23^d day of October A.D. 1854 —

C. K. Williams

C. G. Holbrook J. & Justice of the Peace

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Notice

State of Illinois, Ogle County Circuit Court -
Ogle County 3 Of the March Term A.D. 1855 -

Virgil A. Bogue }
no } Action of Ejectment -
Chester K. Williams + }
Horatio Wales } To the above named Virgil A. Bogue or
H. A. Mix his Attorney

Sir — You will please take notice, that we will take the deposition of Ebenezer Williams a Witness in the above entitled cause, on the fourth day of November next, at the hour of Eleven o'clock of said day, before Christopher L. Holbrook Esq. a Justice of the Peace of said County, at his office in the town of Buffalo in said County; when & where you can appear and put Cross Interrogatories to said Witness, being a resident of Kane County Ills. now stopping at said Town of Buffalo, and an aged man in feeble health, so that his attendance can not be had at the trial of said cause in said Court —

Respectfully yours

Lyon Oct 20th 1854

Chester K. Williams
Horatio Wales by
Heaton & Atherton Attys
Baltimore Md

Endorsed - Filed Nov 6-1854. R. B. Light Clerk -

Description

State of Illinois }
Ogle County } Before L. G. Hallbrook Esquire a
Justice of the Peace -

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Virgil A. Bogue } Suit in Ejectment

^{vs}
Chester K. Williams } Deposition of Ebenezer Williams aged
Horatio Wales } about sixty years, a witness in the
above entitled suit, taken before C. J.

Holbrook Esq. a Justice of the Peace of the County of Ogle on the 4th day of November A.D. 1854. at the office of the said Justice in the Town of Buffalo in said County in the presence of the plaintiff & defendant Williams and W. W. Keaton his attorney—

Ogle County ss. Ebenezer Williams being duly sworn deposes & says as follows viz

"Signed Ebene Williams"

1st Interrogatory Are you acquainted with the parties to this suit?

Ans — I am —

2^d Inty How long have you known them? —

Ans — First knew the plff in 1838. have known the defendants for a time previous. they being my son and son-in-law

3^d Inty Are you acquainted with the premises in controversy in this cause?

Answer I am —

4th Inty Who was in possession of these premises during the month of August 1853?

Ans I do not know

5th Inty Do you know of the defendants. either of them. having possession of said premises. and if so. when did you first know of such possession?

Ans I first knew of their possession in 1841. don't recollect as def Williams exercised acts of ownership before entry. am not sure which of the defendants had the crops that year. but should think defendant Wales. Defendant Williams has had possession ever since the land was entered at the land office in Dixon —

6th Inty Do you know by whom. or in whose name. the land was purchased from the general Government? —

- 8 Ans - By Oliver W. Kellogg & in his name
- 7th Inty - Do you know by whom the money was furnished to enter said land, if so, say by whom and when? -
- Ans - I do know by whom. I furnished the money & paid the same to Oliver W. Kellogg to enter the land. I furnished it for the defendant Williams viz: the tract of land in dispute & then occupied by said Williams, one of the defendants. The money was furnished about the time of the entry by sd Kellogg. My impression are that I furnished a part of the money before and a part after the entry, all furnished about the time of entry -
- 8th Inty - State, if you know, by what arrangement or agreement, in relation to the title of said land, made between your son the deft and said Kellogg, said money was so furnished
- Ans - On condition that said land was to be deeded to said defendant Williams by the said Oliver W. Kellogg, after the entry of said land, or said Kellogg was in fact to enter the land for said Williams one of the defendants
- 9th Inty - State if you know, who was in possession of said land when the aforesaid agreement was made in relation to the entry of said land.
- Ans - I do not know who, one or both of the defendants occupied it. I never knew any other persons to occupy said land -
- 10th Inty - Do you know what amount of money you furnished to enter said land, if so, state the amount? -
- Ans - Do not know the amount, there were some Eighteen or Nineteen acres. I furnished enough to enter the same, at one dollar & twenty five cents per acre -
- Cross Interrogatory No one - by the Plaintiff - In relation to Inty 3
- How was you acquainted with the premises in controversy? -
- Ans - I knew them by having been on the premises & by their having been in dispute for some time & by the plaintiffs trying to get possession of them

3

Cross Inty 2nd When did you know of the plaintiffs trying to get possession of them? —

Ans Some time within three or four years —

Cross Inty 3rd Do you know on what Section or Quarter, or what subdivision of land the said disputed premises are? —

Ans — I am not acquainted with the Government numbers or subdivision of the land, and do not know —

Cross Inty 4th Do you know who has had possession of said premises since August 1853? —

Ans — There was corn raised on said land the present season, and am informed it was occupied by defendant Wales —

Cross Inty 5th Do you know if def^t Wales pays rent for said land to defendant Williams? —

Ans I do not —

Cross Inty 6th How much of said disputed land has been under cultivation at any time? —

Ans I do not know —

Cross Inty 7th Do you know of any part of said disputed land being cultivated

Ans — I have been on the land, when there have been crops on it —

Cross Inty 8th Do you know what part of said land has had crops on, spoken of above? —

Ans As

Cross Inty 9th Was there any written agreement between the witness & the said Oliver W. Kellogg in relation to the land being conveyed to defendant Williams? —

Answer There was not any according to my recollection —

Cross Inty 10th Was all the money paid before the land was deeded to def^t Williams? —

Ans It was

Direct Interrogatory No 11 — State if you know what direction from the town of Buffalo, and how near to the plat of said town said land lies? —

Ans -

Do not know the boundaries of said town. should think it lay in a South or South Westerly direction from said town. and about Eighty rods from the business part of said town -

"Signed Ebene^r Williams"

Ogle County ss.

I the subscriber, a justice of the peace of the said County, do hereby certify, that the above deposition was taken by me at the time and place mentioned in the caption thereof; that the said Witness was first duly sworn; and that the said deposition was carefully read to the Witness and signed by him -

Dated this 4th day of November A.D. 1854 -

C. G. Holbrook J. P.

Fees of Justice \$1.50

Justice of the Peace

Endorsed - Filed May 8. 1855 - R. B. Light Clerk -

And afterwards to wit; on Wednesday May 9th A.D. 1855. the same being one of the days of the May Term 1855. of said Court the following proceedings were had and entered of record to wit: -

D 329

Virgil A. Bogue

} Ejectment

vs

Horatio Wales & Chester H. Williams

} On this day comes the Plaintiff

by his Attorney, and the defendants

by their attorney, and on motion of plaintiffs Attorney, and oral statements made by Council, it is ordered that this cause be continued at plaintiffs costs, and that defendants have and recover of Plaintiffs their costs in this behalf expended and that they have execution therefor

And afterwards to wit; on Tuesday October 9th A.D. 1855 the same being one of the days of the October Term 1855. of said Court the following proceedings were had & entered of record to wit: -

Virgil A. Bogue }
 vs } Ejectment

Horatio Wales &

Chester K. Williams }

By agreement of parties, it is ordered
 by the Court that this cause be continued

Deposition—

Dedimus

State of Illinois }

Ogle County ss }

The People of the State of Illinois, to Henry
 F. Bushman Esq. of the Town of Battin
 in the County of Winona, and in the Territory of Minnesota—

Greeting:— Know ye, that we, in Confidence of your
 prudence and fidelity, have appointed you, and by these presents
 do give unto you full power and authority, and do hereby authorize
 and require you, that, at a certain time and place, to be designa-
 ted and appointed by you, for that purpose, you do cause the witnesses
 whose names are mentioned in the caption, of the enclosed interrogatories
 as well on the part of the said Virgil A. Bogue Plaintiff as on the
 part of the said Chester K. Williams & Horatio Wales Defendants to come
 before you and then and there diligently and faithfully examine each of
 them apart, upon the said interrogatories on their respective corporeal
 oaths, first taken before you, both on the part of the said plaintiff
 and defendant and none other, and that you do take such— their
 examination and cause the said interrogatories as they are propounded
 together with the answers of the witnesses thereto, to be reduced to writing
 in the order in which they shall be propounded and answered and
 when you shall have so taken them, you shall cause the said witnesses
 to sign their names to the same in their proper places in your presence
 and thereupon you will annex at the foot thereof, a certificate
 subscribed by yourself, in which you must state that they were
 sworn to and signed by the deponents, and the time and place

when and where the same were taken - After which you are to send the depositions, with this commission, and the enclosed interrogatories carefully enclosed and sealed up, to the Clerk of the Circuit Court in and for the County of Ogle and State of Illinois, with the names of the parties litigant endorsed thereon - And this you shall in no wise omit -
 Witness R. B. Light, Clerk of our said Court, and
 the seal thereof this 15th day of September 1855 -
 R. B. Light Clerk -

To Chester K. Williams and Horatio Wales -

Gentlemen - Please take notice, that on the 15th day of September 1855, I shall attend at the Clerk's office of the Circuit Court of Ogle County, Illinois, at Oregon in said County for the purpose of seeing out, a Commission to be addressed to Henry F. Kushman, Justice, Winona County, Minnesota, a Commissioner appointed by said Court to take the deposition of Frederick Kushman a non-resident Witness, to be produced, to give his deposition on the annexed interrogatories, taken, to be used and read in evidence in a cause pending in the aforesaid Court, wherein I am plaintiff and you are defendants.

Ogle County, Ill., Aug 30, 1855 -

Virgil A. Bogue

Interrogatories to be propounded to Frederick Kushman a non-resident Witness, to be produced to give his deposition before the above Commissioner -

1st Interrogatory - Are you acquainted with the parties to the above entitled suit, if yes - when, where and how long have you known them -

2^d Int - Did you ever reside in Ogle County, Illinois, if yes - when and how long? -

3^d Int - Are you or not acquainted with the premises in controversy in the above entitled suit, if yes - please describe the same, state when you first became acquainted with them, and fully all

- you know in regard to the occupancy, possession, and ownership of the same, since you became acquainted with them? -
- 4th Int - Is there any relationship existing between Chester K. Williams and Horatio Wales, if yea - what?
- 5th Int - Please state the pecuniary circumstances of Horatio Wales and Chester K. Williams, when you first became acquainted with them, and since? -
- 6th Int - Please state whether or not, Chester K. Williams ever had possession or occupied the premises in controversy, and all you know about it? -
- 7th Int - Please state whether or not said Wales has been em-barrased, if so: - when and from what cause, and what declaration you have heard him make in regard to the disposition of his property, and what property he disposed of and to whom? -
- 8th Int - Do you know of any other matter or thing material to be proved by the plaintiff on the trial of the above entitled suit, if yea: - declare the same? -

V. A. Bogue Plff -

Service

State of Illinois }
Ogle County ss. }

Henry Smith first being duly sworn, upon his oath deposes & says that he this day served a notice similar to the above on Horatio Wales and Chester K. Williams

Subscribed and sworn to this Henry Smith -

Fourth day of September 1855.

L. G. Hollbrook J. S. J. P.

Deposition

Territory of Minnesota }
Uniona County ss. }

The Deposition of Frederick Cushman taken by virtue of a Commission issued by the Honorable the Circuit Court of Ogle County, Illinois, and to Henry F. Cushman, the undersigned Commissioner directed

taken to be used and read in evidence on the trial of a certain suit now pending in said Circuit Court of Ogle County Illinois wherein Virgil A. Bogue is plaintiff and Chester K. Williams and Horatio Wales are defendants, on the part of said Plaintiff, and the said bushman being produced and sworn according to the law, deposed in answer to the several interrogatories propounded to him, as follows -

1st Interrogatory - Are you acquainted with the parties to the above entitled suit: if yea - when, where, and how long have you known them? -

Ans - I am acquainted with the parties to the above entitled suit. I have known Virgil A. Bogue from his youth up, and have known him in Vermont, New York and Illinois - I first knew him in 1802, or 1803. I have known the defendant Wales since 1836, and the said Williams since 1837 or 1838. I knew Wales and Williams in Ogle County, Ill -

2^d Int - Did you ever reside in Ogle County, Illinois, if yea: - when and how long -

Ans - I have resided in Ogle County, Illinois. I first came to reside there in November 1835, removed my family there the ensuing Autumn, and from that time until June 1853, when I removed to this Section -

3^d Int - Are you or not acquainted with the premises in controversy in the above entitled suit - if yea, please describe the same: and state when you first became acquainted with them and fully all you know in regard to the occupancy, possession and ownership of the same, since you became acquainted with them? -

Ans - I am acquainted with the premises in controversy, it is a piece of land containing some 17 or 18 acres taken from the South end of the West half of the South East Quarter of Section Seventeen, Town 23, North, Range 8 East of the

Fourth P. Mo. in the County of Ogle and State of Illinois - this piece of land is a little wider at the East end. than at the West. I first saw the premises in controversy in the Autumn of 1835, and have seen them almost daily from that time until I left Ogle County as above stated. I during all of said period having resided in the immediate vicinity of the said land, and on the same Eighty of which said premises constitute a part. When I first saw the said premises, there was about two acres on the North side of the said tract that was then enclosed and in the possession and occupancy of Oliver W. Kellogg. Some two or three days subsequent, I purchased the said West half of the South East Quarter of Section Seventeen aforesaid, and also the North East Quarter of Section Twenty, which lay immediately South and South Easterly of the aforesaid premises and also a tract of timber land in Buffalo Grove contiguous to said premises containing about three hundred acres. - these premises contained in all about 300 acres, which I bought of said Kellogg as a claim and for which I paid him \$2668.00 the fee to the said premises at that time was in the United States - Immediately after my said purchase I sold an undivided half of the said premises to Virgil A. Bogue the plaintiff, and said Bogue and myself entered immediately into possession of the said premises, and our right to the aforesaid premises were known and recognized in the settlement and was registered as our claim in the Claim Association in 1838 said Bogue and myself partitioned the said West half and the South East Quarter of Seventeen between us, and the said Bogue taking the South half thereof, and I the North half. - the said Bogue during the summer of 1838 built a dwelling house on the South West Quarter of the South East Quarter aforesaid and during Autumn moved into said house and from - time hitherto and still does continue to occupy the same, and has tilled and cultivated the strip on the North side of the premises

in controversy. from the time we first came into possession up to this time in the Spring of 1850, according to the best of my recollection W. A. Bogue enclosed the whole of the premises in controversy by moving a fence around on the lines of the 80, and has since continued to cultivate the aforesaid strip of plow land on the north side of the aforesaid premises, and by moving the unbroken prairie inclosed by him aforesaid - in 1836 Oliver W. Kellogg broke for us a small tract of some two or three acres on the West end of the aforesaid premises in controversy - in the latter part of 1838, or the forepart of 1839, I casually learned that Oliver W. Kellogg was endeavoring to sell his right of claim to the premises in controversy together with a sixty acre tract near the same, to the said defendant Wales, that I soon after hearing this report, saw Wales one of the defendants and told him that the claim belonged to us, meaning Bogue & myself, that we had bought it of Kellogg, and paid him for it, and meant to hold it, notwithstanding this notice, Wales purchased this right of claim and during the season of 1839, cultivated the South part of the two or three acre tract aforesaid, on the West end of the premises in controversy, in connection with the adjacent land enclosed in a common field, the said Bogue continuing to cultivate the north end of said tract, the premises having been sold under execution issued from the Circuit Court of Ogle County in 1847 or 1848, after the said sale the fencing around the common field above referred to was removed and the two or three acre tract was thrown open and continued open until 1850, when the said Bogue enclosed the said premises as above stated embracing the aforesaid two or three acre tract on the West end. After said Bogue had so enclosed said premises said Wales intruded into said enclosure and cultivated said two or three acre tract on the West end of the premises in controversy, during the year 1850, claiming the whole tract in question -

4th Int - Is there any relationship existing between Chester

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Ko. Williams and Horatio Wales, if yea, state what? -

Ans - Horatio Wales married a Sister of Chester K. Williams -

5th Int - Please state the pecuniary circumstances of Horatio Wales and Chester K. Williams, when you first became acquainted with them and since? -

Ans - When Wales first came into the country in 1836, he brought with him a stock of Merchandise, and was reputed to be fore-handed - Williams came to the country in 1837 or thereabouts, a young man and work - out on wages, seemed to have but little means - Mr. Wales went through bankruptcy. Mr Williams is reputed to be worth from \$12. to 15,000 \$ at the present time -

6th Int - Please state whether or not Chester K. Williams ever had possession or occupied the premises in controversy, and all you know about it? -

Ans - He never did - They were purchased by Horatio Wales of Oliver W. Kellogg as I have above stated, and Chester K. Williams never manifested the least interest in the matter. The same have always been managed and controlled by Wales, Williams claiming title to the same

7th Int. Please state whether or not since Wales has been embarrassed if so, when and from what cause, and what declarations you have heard him make in regard to the disposition of his property and what property he disposed of and to whom? -

Ans - Said Wales became embarrassed in the Spring of 1841, by having two judgments against him & his sureties, as Sheriff of Ogle County - these judgments amounted to some 14 or 1500 \$. they were obtained against himself, said Bogue, myself, John D. Stevenson and Oliver W. Kellogg and Smith Hillbraith, at the time of obtaining these judgments Horatio Wales owned the right of claim to a 15 acre tract of land on which he had erected a frame dwelling house about 20 by 30 feet one story and a half high, and out buildings, he then occupied, has ever since and still does occupy, he also had the right of claim

to 60 acres mostly enclosed and under cultivation, he also owned a claim to 40 acres of timber land in Buffalo Grove and at the same time claimed the right to the premises in controversy, and all this property, about the time of the rendition of judgment aforesaid together with a large amount of personal property, he transferred and conveyed to Chester K. Williams and as this deponent verily believes without any consideration whatever, from the fact that the said Wales told this deponent that he had put his property out of his hands to avoid the aforesaid judgments and repeatedly advised this deponent to do the same

8th Int- Do you know any other matter or thing material to be proved by the plaintiff on the trial of the above entitled suit if yes: declare the same :-

Ans - The deponent knows of nothing, unless it is the fact that all the personal property sold or mortgaged by said Wales to Williams remained in the possession and under the control of the said Wales and has ever since been under his control. As far as the knowledge of this deponent extends, and has never been taken possession of by the said Williams, and that the money that was paid by the said Kellogg to the United States for the purchase of said West half of the South East Quarter of Section Seventeen aforesaid was procured from Charles Stevenson, Senior, as I now recollect - I have stated in answer to 5th Interrogatory that Mr. Williams came to the country a young man, without anything, and as Wales grew poor, Williams became the ostensible owner of Wales' property. I have no interest in the result of this suit -

Frederick Cushman -

Territory of Minnesota

Winona County

I Henry F. Cushman a Commissioner appointed by the Circuit Court of Ogle County State of Illinois, to take the deposition of Frederick Cushman do hereby certify, that I did on this day cause the said

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Witness to come before me and after being duly sworn according to law in the above entitled suit. deposed in answer to the several interrogatories propounded to him in manner as I have caused the same to be reduced to writing in the foregoing deposition, and the same having been carefully read over by the said deponent he signed and swore to the same before me, at my residence in Catlin, Winona County, Minnesota on this 22nd day of March A.D. 1856 -

Commisarius fees \$5.00

Henry F. Kushman

Witness fees \$1.00 -

And afterwards to wit: - on Wednesday May 14th A.D. 1856. the same being one of the days of the May Term A.D. 1856. of said Court. the following proceedings were had and entered of record to wit: -

2418

Virgil A. Bogue }
vs } Ejectment

Horatio Wales & }

Chester K. Williams }

Now on this day comes the Plaintiff by his attorney, and the defendants by Heaton their Attorney, and issue being joined, thereupon come the Jurors of a Jury, good and lawful men to wit: - John Perrine, John Light, M. M. Meinkler, Edwin Kinkler, Daniel T. Green, Seth H. Wells, William Spring, Charles B. Royce, Richard Donovan, Hosea Alverson, Hugh Rea & Luther Odell, who were duly elected tried and sworn, well and truly to try the issue in the cause. After hearing the evidence and arguments of counsel, and being fully advised in the law by the Court, the said Jury retired to consider of their verdict, and afterwards returned into Court, and delivered the following verdict to wit: - We the Jury in this cause find the defendants not guilty - and thereupon the Plaintiff enters his motion for a new trial, and the cause is continued without having a decision on said motion -

Motion

State of Illinois } Circuit Court of said County
 Ogle County } May Term 1856

Virgil A. Bogue }

vs

Horatio Wales & }

C. K. Williams }

The plaintiff comes and moves for a new trial in the above cause, and assigns the following reasons -

1st Because the Court excluded the execution offered by the plaintiffs, dated on 26th Nov - 1847 -

2^d Because the Court excluded, from the consideration of the Jury, the execution offered by the plaintiff dated 22^d day of Nov 1841 -

3^d Because the verdict was contrary to the law and evidence
 Sweet & Chip for Plff

Endorsed - Filed May 19, 1856. R. B. Light Clerk -

And afterwards to wit: on Tuesday October 13th A.D. 1857, the same being one of the days of the October Term 1857, of said Court the following proceedings were had and entered of record to wit: -

8168 Virgil A. Bogue }

vs

Horatio Wales & }

Chester K. Williams }

In Ejectment

This day comes the said plaintiff by his attorney, and the defendants come by their attorney, and now comes on to be heard the said Plaintiffs motion for a continuance herein and after argument of counsel and consideration by the Court, it is ordered that the said motion be sustained, and that a new trial be awarded, and thereupon the cause is continued generally -

2
"Refused" J. V. Eutaw vs Judge

Instruction

Bogue } No 3-
vs }
Wales & Williams } The defendant ask the court to instruct the
jury, that unless the plaintiff has proved that
an Execution was issued upon the judgment offered
in evidence herein within one year from its date, to wit: March the
27th A.D. 1841, they must find for the defendants

Endorsed - Filed March 2, 1858. M. W. Smith Clk

By H. J. Smith Det

Verdict

Use the jury empanelled in the case of V. A. Bogue vs. Chester
K. Williams and Horatio Wales, find the issue in favor of the plain-
tiff, and that the said defendants are guilty of unlawfully with-
holding the premises mentioned and described in the declaration
of the plaintiff, and that the plaintiff is seized of the premises
in the declaration mentioned, in fee -

John R. Chapman

J. A. Patterson

Lewis Fosha

D. W. Stover

James Thompson

Benjamin Garman

C. S. Hammond

Jacob Barnhart

Jonathan Wagner

Elias Malone

Edward K. Lester

Perry Norton

Endorsed - Filed March 2, 1858. M. W. Smith Clk -

And afterwards to wit: on Tuesday March 2^d A.D. 1858, the
same being one of the days of the March Term 1858, of said Court
the following proceedings were had & entered to wit: -

8213 Virgil A. Bogue } Ejectment

vs }
Horatio Wales & } This day comes the said plain-
Chester K. Williams } -tiff by Ellis his attorney, and the
defendants come by Heaton their attorney

and thereupon to try the issue herein come the jurors of a jury good and lawful men to wit:— Benjamin Gorman, Lewis Fozhay, Elias Malone, John R. Chapman, John H. Patterson, Jacob Barnhart, E. K. Lester, Sanford Hammond, James Thompson, D. W. Stover, Perry Horton and Jonathan Wagner, who being duly elected, tried and sworn and having heard the evidence, the argument of Counsel, and the instructions of the Court, retired to consider their verdict, and afterwards to wit: on the same day returned into Court and rendered the following verdict to wit:— We the jury empanelled in the case of V. A. Bogue - vs - Chester K. Williams and Horatio Wales, find the issue in favor of the plaintiff, and that the said defendants are guilty of unlawfully withholding the premises mentioned and described in the declaration of the plaintiff and that the plaintiff is seized of the premises in the declaration mentioned in fee. And thereupon come the said defendants by their attorney, and enter their motion in arrest of judgment and for a new trial herein as by Statute is provided

And afterwards to wit:— on Saturday June 19th A.D. 1858. the same being one of the days of the June Term 1858. of said Court the following proceedings were had and entered to wit:—

E 455 Virgil A. Bogue } Ejectment

vs } This day comes the said
Horatio Wales & } plaintiff, by his attorney, and the
Chester K. Williams } defendants by Heaton their attorney, and
now comes on to be heard the defendants
motion for a new trial herein and after argument of counsel and
the Court being fully advised in the premises, it is ordered that the
said motion be sustained, and that a new trial be awarded, upon
payment by the said defendants of all costs which have been made
herein since the last October Term of this Court within sixty days

from this date, and thereupon on motion of the said defendants. It is ordered that the plaintiff pay all costs made herein at and previous to the said October Term -

Verdict

State of Illinois } Circuit Court
Ogle County } Oct. 7. 1858 -

Virgil A. Bogue }
vs. } Oct 9. 1858.

Noratus Wales & }

Chester K. Williams } The jury empannelled in the above entitled - do find the issue in favor of the plaintiff, and that the defendants are guilty of unlawfully, withholding the premises described in the plaintiffs declaration, and that the plaintiff is seized of the premises, described in the declaration in fee -

Harvey Colburn

Jacob Williams

Eli C. Linscott

Jesse Ohmert

Harvey Jewett

Edmund Longdon

John Eycharer

Richard Donoran

James S. Jorelyn

Perry Barker

Lewis Stocking

George Lilly -

Endorsed - Filed Oct 9. 1858. M. W. Smith Clk By H. J. Smith Det

And afterwards to wit :- on Saturday October 9th A.D. 1858 the same being one of the days of the October Term 1858. of said Court, the following proceedings were had & entered to wit :-

E 514 Virgil A. Bogue

vs.

Noratus Wales & Chester K. Williams } Ejectment
And now on this day comes the said plaintiff

by Miss his attorney, and the defendants come by Heaton their attorney, and now to try the issue herein come the jurors of a jury, good and lawful men to wit: - Richard Donovan, Jesse Ahment, John Eyeharow, Eli L. Ginnott, Edmond Longdon, Jacob Williams, Harvey Jewett, Perry Barker, Harvey Colburn, Lewis Stocking, George Silly & James Joslin, who being duly elected, tried and sworn, after hearing the evidence and considering their verdict, say that, "We the jury empannelled in the above entitled cause do find the issue in favor of the plaintiff, and that the defendants are guilty of unlawfully withholding the premises described in the plaintiffs declaration, and that the plaintiff is seized of the premises described in the declaration in fee" - And thereupon the defendants enter their motion in arrest of judgment and for a new trial herein -

And afterwards to wit: on Friday March 30th A.D. 1860. the same being one of the days of the March Term 1860. of said Court the following proceedings were had and entered to wit: -

14305. Virgil A. Bogue } Ejectment

no }
 Horatio Wales & } Plaintiff by H. A. Miss. his attorney, and
 Chester K. Williams } the said defendants come by W. W. Heaton
 their attorney, and now comes on to be heard
 the motion of the said defendants for a new trial herein, and
 after argument of counsel and consideration by the court, it is
 ordered that the said motion be overruled. And thereupon it is
 considered by the court, that the said Virgil A. Bogue do
 recover of the said Horatio Wales and Chester K. Williams the
 possession of the premises described in the plaintiffs declaration
 according to the verdict of said jury. And it is further

considered that the said Bogue have and recover of the said defendants, his costs and charges in and about this suit in this behalf expended, and that he have his writ of possession for said lands and tenements, and that he have his writ of Execution for his said costs - And now the said defendants pray an appeal of this cause to the Supreme Court, which is allowed, upon their filing Bond within thirty days, in the sum of One hundred dollars, conditioned as required by law, with William E. Mason as security & that a bill of exceptions ^{therein} be signed within thirty days -

Appeal Bond

Know all Men by these presents: That we Horatio Wales, Chester K. Williams and William E. Mason, of the County of Ogle, in the State of Illinois, are held and firmly bound unto Virgil A. Bogue, in the penal sum of One Hundred dollars for the payment of which well and truly to be made, we bind ourselves, our heirs, executors, administrators and legal assigns, jointly and severally, firmly, by these presents -

Witness our hands and seals this 26th day of April A.D. 1860 -

The Condition of this Obligation is such - that whereas the said Virgil A. Bogue did, at the March Term A.D. 1860, of the Circuit Court of Ogle County, in the Twenty second Judicial Circuit in and for the State of Illinois, recover a judgment in Ejectment against the above bounden Horatio Wales and Chester K. Williams, establishing the title of the said Virgil A. Bogue to the following Real Estate to-wit: - That certain tract or parcel of land situated in Township Twenty three, North Range Eight East of the Fourth Principal Meridian, in the West Eighty of the South East Quarter, and the East Eighty of the South West Quarter of Section Seventeen, containing thirteen acres

Three Rods. Two Rods. and sixty five one hundredths of a rod
 (19^a 3^r 2^r 67th). bounded as follows viz. Commencing at the South
 West corner of the South East Quarter of Section Seventeen, running
 North. Forty and one half (40½) degrees West. Twenty seven (27) rods
 to a point designated by a stake and stones:— thence running North
 Seventy two degrees fifteen minutes East (N 72° 15' E) fifteen and
 sixty one hundredths rods (15^r 60th) to a point of intersection on the
 West line of the South East Quarter of Section Seventeen: thence
 continuing in the same direction. Eighty one and Eighty eight one hun-
 dredths rods (81.88 R), to the East line of the West Eighty of the
 South East Quarter of said Section— thence on said line. Thirty seven
 and Eighty eight one hundredths (37.88) Rods. to the South East corner
 of the West Eighty. of the South East Quarter of Section Seventeen
 thence West. Eighty and thirty two one hundredths Rods (80.32 R)
 to the place of beginning: all the corners of which tract of land
 are designated by stake and stones: and of which. Eighteen acres
 two Rods. Five and Eighty one hundredths Rods (18^a 2^r 51th) are
 in the West Eighty of the South East Quarter. and one acre and
 thirty six and eighty five one hundredths Rods (1^a 36^r 85th) is in
 the East Eighty of the South West Quarter of Section Seventeen
 and awarding to the said Virgil A. Bogue a writ of Habeas
Facias Possessionem against the said Horatio Wales and
 Chester K. Williams. and also a judgment for costs of said suit
 From which said judgment. the said Horatio Wales and Chester
 K. Williams have prosecuted an appeal to the Supreme Court
 of the State of Illinois. in order to obtain a reversal of the
 same— Now if the said Horatio Wales and Chester
 K. Williams shall prosecute their said appeal without delay. and
 pay and satisfy said judgment with costs. interest and damages
 as may be awarded by the said Supreme Court. in case the
 said judgment shall be affirmed in the said Supreme Court—
 and shall also yield up to the said Virgil A. Bogue. the

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possession of the said parcel of land, in case said judgment of said Circuit Court shall be affirmed by the said Supreme Court (saving the rights of the said Horatio Wales and Chester K. Williams under and by virtue of the thirty sixth Chapter of the Revised Statutes of Illinois, in force September 10th 1845), then this obligation to be void, else to remain in full force and virtue —

Horatio Wales (Seal)
 Chester K. Williams (Seal)
 W^m E. Meason (Seal)

Endorsed — Filed April 28, 1860. M. W. Smith Clerk —

Bill of Exceptions —
 State of Illinois } Ogle County Circuit Court
 Ogle County } of the March Term A.D. 1860.

Virgil A. Bogue }
 do } Ejectment

Chester K. Williams and }
 Horatio Wales }

Be it remembered that on the trial of the above entitled cause the plaintiff by H. A. Misp his attorney offered in evidence: first, the following Certificate of Entry to wit: —

Land office Dixon Illinois
 March 17th 1854

I Hugh Wallace, Register of the Land Office at Dixon Illinois, do hereby certify, That Oliver W. Kellogg of the County of — and State of — did on the thirteenth day of July in the year of Our Lord one thousand eight hundred and forty one, purchase of the General Government at this office, the West half of South East Quarter of Section Seventeen, Township Twenty three, North Range Eight East of

"4th P. M. - and that said Land at the time of said purchase
 "was within the District of lands subject to sale at this office.
 "and rendered subject to sale by Law: all of which appears of
 "Record in my office - Given under my hand the day and
 "year first above written -

"Hugh Wallace. Register -

Second, The following judgment, Executions and the Returns
 thereon to wit: -

"At a Circuit Court began & held at the Court House
 in Oregon City, and for the County of Ogle, in pursuance of
 "the Statute in such cases made and provided on Monday the
 "Twenty second day of March in the year of our Lord One
 "thousand eight hundred and forty one -

"Present the Hon. Thomas Ford, Associate Justice of the
 "Supreme Court of the Ninth Judicial Circuit -

"Benjamin T. Phelps Clerk pro tem -

"Seth B. Farwell Circuit Attorney and

"William T. Ward Sheriff of said County of Ogle

And afterwards to wit: on Saturday March 27th 1841, the same
 being one of the days of the said March Term 1841, of said
 Court the following proceedings were had & entered to wit: -

a 304 "The People of the State of Illinois who sue for }
 "the use and benefit of Henry Rhines } Delit on a
 no } Penal Bond

"Horatio Wales, Virgil A. Bogue, Frederick Leckman }

"Oliver W. Kellogg, John D. Stephenson & Smith Gil - }

"braith impleaded with George Chandler } This day come
 "the parties by their attorneys

"and issue being joined, whereupon come the jurors of a Jury (to wit:)

"John Popler, Irvin Palmer, Nicholas Shaver, Thomas O. Youngs

"Pearson Shoemaker, Nathan C. Tyrrell, George D. Johnston, A. E

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Hurd. L. O. Bryan. Samuel Fouts. Abner Sandford and Samuel Wilson. who being duly elected. tried and sworn. well and truly to try the issues joined. and a true verdict render. according to evidence after hearing the evidence and arguments of counsel and being sufficiently advised by the Court. retired to consider of their verdict after a short absence returned into Court and presented the following verdict to wit: - We of the jury do find the issues in this cause in favor of the plaintiffs and that the said defendants do owe to the said plaintiffs the sum of Ten thousand dollars the debt in the declaration mentioned. and do award the damages sustained by Henry Rhines by reason of the breaches assigned in the declaration to the sum of Three hundred and eight dollars and fifty five cents - Wherefore it is considered by the Court that the said plaintiffs do recover of the said defendants the said sum of Ten thousand dollars their debt aforesaid. and it is ordered by the Court that the said plaintiffs have an execution against the said defendants for the said sum of Three hundred and eight dollars and fifty five cents. their damages in form aforesaid awarded together with their costs of suit to be taxed for the use of the said Henry Rhines -

Execution

State of Illinois }
 Ogle County ss } The People of the State of Illinois. to the Sheriff
 of said County. Greeting: -

We Command you that of the goods and chattels. lands and tenements of Horatio Wales. Virgil A. Bogue. Frederick Bushman. Oliver W. Kellogg John D. Stevenson and Smith Gilbraith (impleaded with George Chandler) - which shall be found in your County. you cause to be made the sum of Three hundred and eight dollars and fifty five cents. which the People of the State of Illinois. who sue for the use and benefit of Henry Rhines. hath lately in the Circuit Court of said County recovered against them for their

damages by reason of certain trespasses by them the said Horatio Wales, Virgil A. Bogue, Frederick Cushman, Oliver W. Kellogg, John D. Stevenson & Smith Gilbraith (impleaded with George Chandler) to the said People of the State of Illinois who sue for the use & benefit of Henry Rhines: lately done - And also the further sum of Twenty three dollars and sixty two and a half cents, which were adjudged to them the said People of the State of Illinois who sue for the use and benefit of Henry Rhines, for their costs and charges in that behalf expended, whereof the said Horatio Wales, Virgil A. Bogue, Frederick Cushman, Oliver W. Kellogg, John D. Stevenson and Smith Gilbraith (impleaded with George Chandler) is convicted as appears to us of record, and have that money ready in ninety days from the date hereof, to render to the People of the State of Illinois, who sue for the use and benefit of Henry Rhines, for their damages and costs aforesaid. Hereof fail not, and make return of this writ in ninety days from the date hereof, with an endorsement thereon as to the manner you executed the same - Utesup B. J. Phelps Clerk of said Court and the seal thereof, at Oregon City, this twenty

(Seal) second day of November A.D. 1841 -

B. J. Phelps Clk

Endorsed - November the 24th 1841, 3 o'clock P.M. received this writ for collection

W. J. Ward Sheriff

I have made search and can find no property on which to levy

February 5th 1842 -

W. J. Ward Sheriff

Filed Feb'y 9, 1842. B. J. Phelps Clk -

Pleurius Execution

State of Illinois 3

Ogle County ss 3

The People of the State of Illinois to the Sheriff of said County - Greeting: -

We command you that of the goods and chattels, lands and tenements of Horatio Wales, Virgil A. Bogue, Frederick Cushman, Oliver W. Kellogg, John D. Stevenson & of the lands

§ tenements of Smith Gilbraith now-deceased, impleaded with George Chandler, in your County, you cause to be made the sum of Ten Thousand dollars, which by the judgment of our Circuit Court within and for said County of Ogle at the March term thereof A.D. 1841. The People of the State of Illinois who sue for the use and benefit of Henry Rhines, recovered against the said Horatio Wales et al. which is to be satisfied upon the payment of Three hundred & eight dollars & fifty five cents & also the further sum of twenty eight dollars & sixty two cents cost, in a certain action of Debt, as appears to us of record, and have that money ready in ninety days from the date hereof, to render to the said Henry Rhines for his damages and costs aforesaid - Hereof fail not and of this writ and your service, make due return within ninety days from this date - Witness Henry Roberts Clerk of our said Court, at Oregon this 26th day of

(Seal) November A.D. 1847 -

Henry Roberts Clerk -

This Execution to be satisfied on the payment of Three hundred & eight dollars & fifty five cents & twenty eight dollars & sixty two cents costs & interest thereon from the 27th March 1841 -

Henry Roberts Clerk -

Endorsed as follows to wit: -

Received this Execution this 29th day of November A.D. 1847

E. W. Dutcher Sheriff of Ogle County

By virtue of the within Execution, I have this day levied on the North East Quarter of Section Twenty (20) in Town Twenty three (23) of Range Eight East of the Fourth principal meridian containing one hundred & sixty acres. December 4th 1847 -

E. W. Dutcher Sheriff

By virtue of the within Execution I have this day levied on the following described parcels of land, taken as the property of the

defendants. this February 4th 1848. to wit: in addition to the
 former levy made on the back of the Execution Dec 4, 1847 -
 The East half of the South West Quarter of Section Seventeen
 in Town Twenty three of Range Eight East of the Fourth Principal
 Meridian. Also the following portions of the North West Quarter
 of Section Seventeen Town and Range above mentioned, bounded as
 follows to wit: - Beginning at the North East corner of the North
 West Quarter of said Section Seventeen, thence West 27 poles to
 a stake, thence South to the creek, thence down the creek
 meandering to the west line of said Quarter Section, thence
 forth to the South West corner. thence East to the South
 East corner of said Quarter Section, thence North to the place
 of beginning. Containing One hundred and seven acres more
 or less - Also the East half, and the West half of the North
 East Quarter of Section Twenty. Town and Range above mentioned
 Also the West half of the South East Quarter of Section Seven-
 teen. Town and Range above mentioned accepting the portions
 of said Eighty laid out into Town Lots and Streets in the Town
 of Buffalo in said County. Also the following Lots situated in
 the Town of Buffalo, formerly called St Marian as more fully
 appear from the Plat of said Town to wit: - Lots One hundred
 fifty seven. One hundred fifty eight. One hundred fifty nine -
 one hundred sixty. one hundred sixty two, one hundred sixty
 three, one hundred sixty four, one hundred sixty five, one
 hundred sixty six. One hundred sixty seven. One hundred
 sixty eight, all in Block One of said Town. Also Lots fifty-
 one, fifty three, fifty four, fifty five, fifty six, fifty seven
 and sixty in Block Two of said Town. Also Lots sixty one
 sixty two, and portions of sixty three, sixty four, seventy one and
 seventy two, in Block Three of said Town. being on the West
 half of the South East Quarter of Section Seventeen. Also
 Lots forty one, forty two, thirty seven & thirty eight in Block

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chine in said Town. Also portions of Lots forty three, forty four, forty five, forty six & forty seven, being on the west half of the South East Quarter of Section Seventeen, in Block chine - Also Lots chiney seven in Block Ten, in said Town, and portions of Lots chiney eight, chiney nine, One hundred, One hundred & one, One hundred & two, One hundred & seven, & one hundred & eight in Block Ten, being on the West half of the South East Quarter of Section Seventeen. Also Lots one hundred forty nine, one hundred fifty on Block Sixteen, portions of Lots one hundred and forty five, one hundred forty six, one hundred forty seven, one hundred forty eight, one hundred fifty two, one hundred fifty one, in Block Sixteen, being on the West half of South East Quarter of Section Seventeen. Also Lots Eighty five, Eighty six, Eighty seven, Eighty eight, Eighty nine, chiney, chiney one, chiney two, chiney three, chiney four, chiney five, chiney six in Block Five in said Town, together with all the Streets, alleys and Public grounds in said Town, being on the South East Quarter of Section Seventeen. Also the West half of said Quarter of Section Seventeen, being the residue of said Quarter Section Seventeen, Town and Range above mentioned -

E. W. Dutcher, Sheriff

By virtue of the within Execution I have this day made the amount of the damage and costs by selling the following described parcels of land as below. Lots 160, in Block one in Buffalo in the County of Ogle and State of Illinois, for which E. F. Dutcher bid the sum of five dollars - Also Lot 157, for which E. F. Dutcher bid the sum of five dollars, Also Lot 158, for which E. F. Dutcher bid the sum of four dollars. Also Lots 159, for which E. F. Dutcher bid the sum of Fifteen dollars, Also Lot 161, for which E. F. Dutcher bid the sum of Four dollars. Also Lot 162, for which E. F. Dutcher bid the sum of four dollars also Lot 163, for which E. F. Dutcher bid the sum of five dollars Also Lot 164, for which E. F. Dutcher bid the sum of forty five dollars

Also Lot 165. for which E. F. Dutcher bid the sum of Forty five dollars
 Also Lot 166. for which E. F. Dutcher bid the sum of Seven dollars. Also
 Lot 167. for which E. F. Dutcher bid the sum of Seven dollars. Also Lot 168
 for which E. F. Dutcher bid the sum of Seven — all of the above Lots
 in Block One in said Town of Buffalo, in said County. Also Lot 51. in
 said Town. for which E. F. Dutcher bid the sum of three dollars. Also
 Lot 53. for which E. F. Dutcher bid the sum of three dollars. Also
 Lots 54 for which E. F. Dutcher bid the sum of four dollars. Also
 Lot 55. for which E. F. Dutcher bid the sum of Ten dollars. Also Lot
 56. for which E. F. Dutcher bid the sum of Ten dollars. Also Lot 60. for
 which said E. F. Dutcher bid the sum of five dollars. all the above Lots
 in Block Two in Buffalo in said County of Ogle, also the following
 Lots in Block three in said Town. Lot 61 for which E. F. Dutcher bid
 the sum of three dollars. Also Lot 62. for which E. F. Dutcher bid
 the sum of Two dollars. Also portions of the following Lots in Block three
 in said Town, Lots 63. for which E. F. Dutcher bid the sum of One
 dollar and fifty cents. Also Lots 64 ~~for~~ for which E. F. Dutcher bid the
 sum of one dollar. Also Lot 71. for which said E. F. Dutcher bid the sum
 of one dollar. Also Lot 72. for which E. F. Dutcher bid the sum of Two
 dollars and fifty cents. also the following Lots in Block three in said Town
 of Buffalo. Lot 41. for which E. F. Dutcher bid the sum of three dollars
 also Lots 42. for which John Monahan bid the sum of Three ²⁷/₁₀₀ dollars
 also Lot 37. for which E. F. Dutcher bid the sum of five dollars. also portions
 of the following Lots in said Block. Lot 43. for which E. F. Dutcher bid the
 sum of one dollar. also Lot 44 for which E. F. Dutcher bid the sum of
 one ⁵⁰/₁₀₀ dollars. Also Lot 45. for which said E. F. Dutcher bid the sum of
 Two dollars. Also Lot 46 for which E. F. Dutcher bid the sum of two dollars
 Also Lot 47. for which E. F. Dutcher bid the sum of one dollar. Also Lot
 97 in Block Ten in said Town. for which Herim Butte bid the sum of
 Thirteen ⁵⁰/₁₀₀ dollars. Also portions of the following Lots in Block Ten
 in said Town of Buffalo. Lots 98. for which E. F. Dutcher bid the sum of
 four dollars. Also Lot 99. for which E. F. Dutcher bid the sum of

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three dollars. also Lot 100 for which E. F. Dutcher bid the sum of Two dollars. Also Lot 101 for which John Mooneyhan bid the sum of Ten $\frac{5}{100}$ dollars. Also Lot 102 for which E. F. Dutcher bid the sum of Ten dollars also Lot 107. for which E. F. Dutcher bid the sum of $\frac{5}{100}$ dollars. Also Lot 108 for which E. F. Dutcher bid the sum of Eight dollars. also the following Lots and portions of Lots in block sixteen. in said town of Buffalo in said county. Lot 149 for which E. F. Dutcher bid the sum of three dollars. also Lot 150. for which E. F. Dutcher bid the sum of four dollars. also portion of Lot 145. for which E. F. Dutcher bid the sum of One $\frac{5}{100}$ — also Lot 146. for which E. F. Dutcher bid the sum of Two dollars — Also Lot 147. for which E. F. Dutcher bid the sum of Three dollars. also Lot 148. for which E. F. Dutcher bid the sum of Three dollars. also Lot 152. for which E. F. Dutcher bid the sum of one dollar. Also Lot 151. for which E. F. Dutcher bid the sum of one $\frac{5}{100}$ dollars all the above described Lots situated in the Town of Buffalo. formerly called St. Marian in the County of Ogle and State of Illinois and lying & being on the West half of the South East Quarter of Section Seventeen in Town Twenty three of Range Eight East of the Fourth Principal Meridian Also all the Streets alleys and public grounds in said Town of Buffalo for which E. F. Dutcher bid the sum of Seventeen dollars. Also all the remaining part of said West half of the South East Quarter of Section Seventeen in Town Twenty three of Range Eight East of the fourth Principal Meridian not laid out in Town Lots. for which E. F. Dutcher bid the sum of Two hundred dollars. and the above lots and parcels of land were sold and struck off to the said persons E. F. Dutcher. John Mooneyhan and Herim butts as above mentioned they being the highest and best bidders therefor for the amt of damage and costs on the within Execution the remainder of the lands levied upon were sold to satisfy an Execution in my hands in favor of J. H. Ransom against the same defendants - Oregon Feby 25. 1848 -

E. W. Dutcher Sheriff

All the costs paid to Henry Roberts. except my fees. by E. F. Dutcher

my fees paid me by E. F. Dutcher

E. W. Dutcher, Sheriff

Is the admission in evidence of which said judgment and each of said Executions and returns the defendant by his Counsel then and there excepted. for the reason that said judgment was irregular and informal, that no sufficient jurisdiction appeared, that said executions did not follow the judgment and did not appear to be issued thereon and were irregular and void upon their face and varied from the judgment, and it being further admitted by the plaintiff, that Smith Gilbraith one of the defendants departed this life in January A.D. 1843. defendants objected for the further reason that it did not appear that due notice of the issuing of the last dated executions, had ever been given to the Administrator or other legal representatives of the estate of said Gilbraith, all which objections were, by the Court overruled and the said judgment and executions were read to the jury, to the admission of which said judgment, executions and returns in evidence the said defendants by their Counsel then and there excepted: the plaintiff then offered in evidence the Sheriffs deed, as follows to wit: -

To all to whom these presents shall come: Whereas, The People of the State of Illinois who sue for the use and benefit of Henry Rhines did at the March Term, of the Circuit Court for the County, of Ogle: in the State of Illinois, in the year of our Lord, one thousand eight hundred and forty one, recover a judgment against Horatio Wales Virgil A. Bogue, Frederick Leushman, Oliver W. Kellogg, John D. Stevenson & Smith Gilbraith impleaded with George Chandler for the sum of Ten thousand dollars, Debt to be satisfied on the payment of Three hundred & eight dollars & fifty five cents, and costs of suit: upon which judgment and execution was issued, dated on the twenty sixth day of November in the year of our Lord one thousand eight hundred and forty seven directed to the Sheriff of Ogle County aforesaid, to execute, and by virtue of said execution the said Sheriff of Ogle

bounty on the fourth day of December in the year of our Lord One thousand eight hundred and forty seven. levied upon the lands herein after described, and the same were struck off and sold to Edward F. Dutchu, on the twenty fifth day of February in the year of our Lord one thousand eight hundred and forty eight, for the sum of Two hundred dollars he being the highest and best bidder therefor and the time and place of the sale thereof having been duly advertised according to law. And the said _____ having duly assigned _____ certificate of purchase to _____ Now therefore, know all by this Deed, That I, Elisha W. Dutchu Sheriff of the County of Ogle, in the State of Illinois, and successor in office to the said Elisha W. Dutchu late Sheriff as aforesaid, in consideration of the premises, have granted, bargained, and sold, and do hereby convey to the said Edward F. Dutchu his heirs and assigns, the following described tract, piece or parcel of land, situate, lying and being in the County of Ogle and State of Illinois, to wit: - The West half of the South East Quarter of Section Seventeen in Township Twenty-three in Range Eight East of the Fourth Principal meridian - excepting & reserving so much of said Eighty of land as is laid off into Town lots in the Town of Buffalo according to the Plat of said Town - To Have and to Hold the said described premises with all the appurtenances thereto belonging to the said Edward F. Dutchu his heirs and assigns forever - Witness my hand and seal, this third day of December in the year of our Lord One thousand eight hundred and forty nine -

Signed, Sealed and delivered in the presence of Charles B. Light Elisha W. Dutchu
 Sheriff of the County of Ogle in the State of Illinois

County of _____ ss. J. R. B. Light Clerk of the Circuit Court, in and for the said County, in the State aforesaid, do hereby certify, That Elisha W. Dutchu Sheriff of the County of Ogle who is personally known to me to be the real person whose name is subscribed to the annexed deed, appeared before me this day in

person. and acknowledged that he executed and delivered the said deed. as such Sheriff of said County. freely and voluntarily. for the uses and purposes therein set forth. Given under my hand and the seal of said Court. at my office in Oregon. in said County. this 3rd day of December in the year of our Lord one thousand eight hundred and forty nine —

(Seal)

R. B. Light Clerk

Endorsed: - State of Illinois } Records office

Ogle County ss. 3 Filed for Record Dec 3rd 1849. at 8.

O'clock P. M. Recorded Dec 3rd 1849. Book

P. pages 535 + 536 —

R. B. Light Clk. Circuit Court

Fees \$0.48 —

and Ex officio Recorder —

Know all men by these presents. that we Edward F. Dutcher and Elizabeth wife of the said Edward F. Dutcher in consideration of the sum of One Hundred + Seventy five dollars to us in hand paid by Zenas Aplington of the County + State aforesaid. the receipt whereof we do hereby acknowledge. have sold + Quit Claimed. and by these presents do sell and Quit Claim unto the said Zenas Aplington and to his heirs and assigns forever our and each of our interest title. interest. claim + demand both at law and in equity. and as well in possession as in expectancy. of in and to all that certain piece or parcel of land lying + being. in the County of Ogle + State aforesaid. described as follows to-wit: - The South half of the West half of the South East Quarter of Section Seventeen in Township Twenty three. Range Eight East of the 4th P. M. Containing Forty acres of land be the same more or less - being the same Forty of land on which the House occupied by V. A. Bogue now stands. with all + singular the hereditaments + appurtenances thereunto belonging - In Witness Whereof we have hereunto set our hands + seals this thirtieth day of January in the year One thousand eight hundred + fifty

Edward F. Dutcher (Seal)

Elizabeth Dutcher (Seal)

State of Illinois }
 Ogle County ss. } Be it remembered, that on the 30th day of
 January A.D. 1850. before me the Subscriber, one
 of the Justices of the Peace, in and for said County - appeared Edward
 F. Dutcher + Elizabeth Dutcher his wife - to me personally known to be
 the individuals described in, and who executed the within deed - that
 the said Edward F. Dutcher acknowledged that he had executed the
 same, and that the said Elizabeth Dutcher wife of the said Edward
 F. Dutcher, after having been by me ~~made~~ acquainted with the
 contents of the said deed, on an examination separate + apart from
 her said husband acknowledged that she had executed the same and
 relinquished her dower in the lands + tenements therein mentioned
 voluntarily + freely and without compulsion of her said husband
 S. Addison Irvine J.P. (Seal)

Endorsed: State of Illinois } Recorder's Office

Ogle County } Filed for record Jan 31st 1850 at

- Ch. Recorded Feb 18th 1850. in Book

ls. of Deeds page 29. + expd -

R. B. Light Recr

By Miles B. Light Deputy -

This Indenture, made this Eleventh day of April in the
 year of our Lord One thousand eight hundred and fifty two - Between
 Zenas Aplington and Caroline his wife of the town of Buffalo,
 County of Ogle, + State of Illinois of the first part, and Virgil
 A. Bogue, of the same town, County + State of the second part: -
 Witnesseth, That the said parties of the first part, for and in consider-
 -ation of the sum of One hundred and Seventy five dollars, in hand
 paid by the said party of the second part, the receipt whereof is hereby
 acknowledged, and the said party of the second part, forever released
 and discharged therefrom, have remised, released, sold, conveyed and
 quit claimed, and by these presents does remise, release, sell, convey
 and quit Claim unto the said party of the second part his heirs

and assigns forever. All the right, title, interest, claim and demand which the said parties of the first part have in and to the following described lot, piece or parcel of land, to wit: - The South half of the West half of the South East Quarter of Section Seventeen, in Township Twenty three, Range Eight East of the fourth Principal Meridian, laying & being in the County of Ogle and State of Illinois, containing Forty acres of land - To Have and to Hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatever, of the said parties of the first part, either in law or equity, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever. In Witness Whereof, the said parties of the first part hereunto set their hands and seals the day and year first above written -

Signed, Sealed and Delivered in presence of Zenas Aplington (Seal)
John Van Blick 3 Caroline Aplington (Seal)

State of Illinois, 3

Ogle County, ss. 3 J. Edward Keelm a Justice of the peace in and for said County, in the State aforesaid, do hereby certify, that Zenas Aplington is personally known to me as the same person whose name is subscribed to the foregoing instrument of writing appeared before me this day, in person and acknowledged that he signed, sealed, and delivered the said instrument of writing, as his free and voluntary act, for the uses and purposes therein set forth - And the said Caroline, wife of the said Zenas Aplington having been by me examined separate and apart and out of hearing of her said husband, and the contents and meaning of the said instrument of writing having been by me made known to her, she acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, without compulsion of her said husband, and that she does not wish to retract the same - Given under my hand and seal, this 12th day of April

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A.D. 1852 -

Edward Helm *L.S.*
Justice of the Peace

Endorsed: - State of Illinois 2 Records Office - # 7235 -

Ogle County ss. 3 Filed for Record June 1st 1852. at

9 o'clock A.M. Recorded in Book of

of Deeds page 160. & examined.

R. B. Light, Recorder -

To the admission of which in evidence the defendant objected for the reason that said deed was informal, was not sustained by the previous evidence, and was not properly and in due form executed and acknowledged, which objection was by the Court overruled and the said deed permitted by the Court to be read in evidence to the jury to the admission of which said deed in evidence the defendants by their Counsel then and then excepted - the plaintiff then proved, by one - - - a witness that the defendant Horatio Wales was in the possession of the premises at the time of the service of the declaration in this case, and that the defendant Williams claimed to have some title or interest in said premises at said time, to the admission of which testimony in evidence the defendants by their Counsel then and then objected for the reason that the same was not relevant to the issue and was not sustained by the other proof in the case, which objections were by the Court overruled and the said testimony permitted to go to the jury to all of which ruling of the Court in allowing said testimony to go to the jury the defendants by their Counsel also then and then excepted - This was all the evidence offered by the plaintiff and all the evidence actually given to the jury in the case. -

The defendants after the plaintiff closed his evidence then offered to give in evidence the following deed of Conveyance to wit: (here insert Deed from Kellogg to Williams) (which deed does not now appear among the files in this case) - and also at the same time offered to prove to the Court and jury by the depositions

of Writings, on file, and the testimony of Writings then in Court, that said defendant Williams was in the possession of the premises in controversy by actual occupation and cultivation in the year A.D. 1840. that he so continued in the uninterrupted and actual occupation and possession of the premises either by himself or tenant until after the sale of said premises, by the Sheriff, as shown by the execution offered by the plaintiff, and under which he claims title - That he made all the improvements on said land. That he surrounded the same with a fence and broke and cultivated the same; that all this improvement was made before the land was entered by Kellogg, that other persons, claimed other parts of the same Eighty acre tract, according to the General Government Survey; that they were in possession of the respective parts at the time the land was entered by Kellogg. That said Kellogg was by said occupants and possessors, including said Williams, appointed trustee to enter said land at the land office and convey the same to the respective claimants; that each of said claimants was to, and did furnish and pay to said Kellogg his portion of the purchase money to enter said land before the same was entered; That said defendant Williams did then and then furnish to said Kellogg his share of the purchase money being the sum of one dollar and twenty five cents per acre for the number of acres, so claimed and occupied by said Williams, that said money was so furnished said Kellogg before the entry of said land by him that he received it as the Trustee of Williams and agreed to enter the land in controversy therewith and convey the same to said Williams. That said Kellogg did enter said land as such trustee that said Kellogg in the entry of the land in controversy was a mere naked trustee of said Williams, who was the real owner and occupant of the premises, and that the deed offered in evidence was given in pursuance of said agreement and trust assumed by said Kellogg, and to carry out the same and for no other consideration; to the admission of all which evidence the plaintiff

by his Counsel objected for the reason, that the evidence and deed could not be received at law and in this form of action to defeat the plaintiffs apparent legal title, and which objection was by the Court sustained, and the testimony excluded from the jury to which said ruling of the Court in excluding said testimony and evidence from the jury the defendants by their Counsel then and there excepted - The defendant then offered to read in evidence the following certificate of a discharge of said Oliver W. Kellogg in Bankruptcy (here insert the certificate) (which said certificate does not now appear among the files) - and also offered at the same time to prove that said Kellogg filed his Petition to become a Bankrupt in the District Court of the United States, for the District of Illinois, under and by virtue of which, said discharge was obtained, before the premises in controversy were entered by him to wit: on the — day of May A.D. 1842, - to the admission of which said evidence, the plaintiff by his Counsel objected on the ground, that it was not material, and that a discharge in Bankruptcy did not divest the plaintiff of his right under his judgment, and to have the same attach as a lien to any property said Kellogg might possess as long as the lien existed - and which objection was by the Court sustained, and the evidence not permitted to go to the jury, to all which rulings of the Court excluding said evidence from the jury the said defendants by their Counsel then and there excepted, and afterwards, and after the verdict in this cause was returned into Court, the defendants by their Counsel came and moved for a new trial in this cause, and assign as a cause, that the verdict was not warranted by the evidence and that the Court erred in refusing to admit the defendants evidence offered and in admitting evidence on the part of the plaintiff, which motion was then and there by the Court taken under advisement, and afterwards at the above entitled term, was by the Court overruled - to the overruling of which said motion

for a new trial by the Court the said defendants by their Counsel then & there excepted, and ask that this their Bill of exceptions be signed, sealed and made a part of the record in this cause which is done —

April 28th 1860 —

John V. Eustace (Seal)
Judge 22nd Jud. Cir —

Endorsed — Filed April 12th 1861 —

F. L. Petrie Clerk —

State of Illinois 2

Ogle County ss 3

I Frederick L. Petrie Clerk of the Circuit Court in and for said County, State aforesaid, do hereby certify, that the above and foregoing is a true and correct Transcript of the Record and Files in said cause wherein Virgil A. Bogue is plaintiff & Chester K. Williams & Horatio Wallis are defendants, as appears by the Record & Files now remaining in my said office —

Witness F. L. Petrie Clerk, and the Seal of said Court, at Oregon, this 11th day of May A.D. 1863.

F. L. Petrie Clerk
By M. S. Eittinger Dep



Williams

vs

Bogue

Record

Filed May 12 1863
L. Leland
Clerk

Fee \$12.00