

12800

No. _____

Supreme Court of Illinois

Holloway & Boggs.

vs.

Freeman.

71641  7

203-92
Bogges
Holloway & Bogges

vs

Alfred Freeman

~~203~~
12800

1859

203

Holloway & Rogers
vs

Alfred Freeman

Filed April 17, 1859
L. Leland
Clerk.

Robert Holloway vs Alfred Freeman } State of Illinois
In the Supreme Court April 7, 1859

Appeal from Peoria County Court

And now comes the said Plaintiff by
Wend his attorney and says that in the
records and proceedings aforesaid and in the
rendering of the judgment aforesaid
manifest error hath intervened to his
injury in this

1st The court erred in striking the motion
to dismiss the cause from the files

2 In striking the plea in abatement from
the files

3. In not dismissing the cause

4. In excluding proper evidence offered
on the part of the plaintiffs in error

5. In refusing to grant a new trial
for which reasons Plaintiffs pray that said
cause may be reversed annulled set aside
& for naught held By Atty W. Wend
his attorney

Alfred Freeman }
 appellee
 as
Ralloway & al. }

And now comes the
said Alfred Freeman says that neither
in the record nor proceedings, nor in the ^{under}
if of the judgment aforesaid is there any
error. Wherefore he prays that said judg-
ment may, in all things, be affirmed:-

J. R. Cooper
for appellee

BE It Remembered, That on the 17th day of June. In the Year of our Lord, one Thousand Eight hundred and Fifty Eight, then issued from the Office of the Clerk of the County Court of Peoria County, and State of Illinois, a certain Writ of Summons, which is as follows

To Wit:

State of Illinois

Peoria County } ss

The People of the State of Illinois to the Sheriff of "Peoria County
Directing

WE Command You that you Summon

Robert H Holloway and Henry M Boggess

if they shall be found in your County, personally to be and appear before the County Court of said Peoria County on the first day of the next Term thereof, to be holden at the Court House in Peoria, in said Peoria County, on the First Monday of July 1858, to answer unto

Alfred Freeman

in a plea of Trespass on the case upon promises to the damage of of the said plaintiff as he says in the sum of Six Hundred Dollars.

And have you then and there this Writ with an endorsement thereon, in what manner you shall have executed the same

Witness, Charles Kettelle, Clerk of our said Court,

and the Seal thereof, at Peoria, aforesaid, this

17th day of June A.D. 1858.

C Kettelle Clerk

per Geo H Kettelle Sply

Seal

County Court Summons

Peoria County Court.

Alfred Freeman

vs

R Holloway
Et al

State of Illinois }
Warren County, ss

I have duly served the within
by reading the same to the within
named.

Robert H. Holloway,
and Henry M. Boggess.

June 23 A.D. 1858.

As I am thereunto commanded

C. M. Miller, Sheriff.

Fees - Service, Two. 1.00.

Charges 4. 20

Returns. 10

\$ 15.50

Filed in County Court, this
day of June 1858.

Clerk.

and, Afterwards, To Wit: on the 17th day of June 1858
there was filed in the Clerk's Office of said County Court
the Declaration of the Plaintiff in this Cause, which is as
follows.

To Wit

State of Illinois }
Peoria County. ss

Of the July Term, in the year of our
Lord, one thousand eight hundred
and fifty eight - County Court.

Alfred Freeman

Plaintiff in this suit, by Jona. K. Cooper, his Attorney, complains
of Robert H. Holloway and Henry M. Boggess, Defendants, in
a plea of trespass on the Case on Promises: For that whereas the said
Defendants, heretofore, to wit: on the 24th day of April in the year
of our Lord, one thousand eight hundred and fifty seven at Peoria
to wit, at: said county of Peoria, to wit, of said, made their
certain promissory note and then and then delivered the same to
said plaintiff, in and by which said note, said defendants by the
name, style and description of Holloway & Boggess, undertook &
then & there promised to pay to the order of said plaintiff, by the name,
style and description of Alfred Freeman - the sum of Four Hun-
dred and one dollars, in one year from the date thereof, with interest
at the rate of six per cent. per annum thereon, from date -
for value received. By means whereof, and by force of the Statute in
such case made and provided, the said defendants became liable
to pay said plaintiff said sum of money & interest mentioned in
said note, and being, liable, in consideration thereof, then and
then undertook and promised to pay the same to said plaintiff.

Declaration

according to the tenor and effect, tone, intent and meaning of
Said Note, to wit at the place aforesaid.

And plaintiff avers that he is & was at the commencement of
this suit, a resident of said Peoria County & That said Note

and cause of action herein declared on accrued in said County.

And Whereas, also the said defendants afterwards, to wit: on the
first day of June in the year of our Lord one thousand eight
hundred and fifty Eight to wit: at Peoria, in said County,
became and were indebted to the plaintiff in a large sum of
money, to wit: the sum of five Hundred Dollars, for money be
fore that time lent and advanced to, and paid, laid out, and ex
pended for said defendants by said plaintiff at said defendants
request, and for money before that time had and received by said
defendants to and for the use of said plaintiff, and also in the
like sum, for goods, wares and merchandise before that time sold
and delivered by said plaintiff to said defendants at like special
instance and request, and also in the like sum, for the labor, care
and diligence of said plaintiff before that time done and per
formed by said plaintiff for said defendants, and at like
instance and request of said defendants, and being so indebted,
said defendants, in consideration thereof, then and there undertook
and promised to pay said plaintiff said last mentioned sums
of money when thereunto afterwards requested.

Yet the said defendant not regarding their said promises and
undertakings, but contriving, &c, although often requested
so to do, have not paid said plaintiff either of said sums of
money, or any part thereof, but so to do, have hitherto wholly
neglected and refused, and still do neglect and refuse, to the dam
age of said plaintiff of six Hundred Dollars, and therefore he
brings suit, &c.

Jonathan H. Cooper Atty for Plaintiff

Copy of Note and Account Sued upon.

"# 401 =

Peoria April 24 / 1857 "

" One Year after date, We promise to pay to the Order of
Alfred Freeman, four hundred and one dollars, for value
received, bearing interest at six per cent from date "

"Holloway & Bogges"

Alfred Sherman

v.s.

Holloway & Boggess.

NARR.

Filed this 17 day of June 1858
Charles Hallett Clerk.
1- mds.

Cooper & Co

And afterwards, To Wit, on the 6th day of July A.D. 1858, there was filed in the Clerk's office of said County, the following ^{Motion} of said Defendant in this cause, which is as follows

To Wit:

4 Alfred Sherman

vs.

Robt. Holloway

Henry M Boggess

County Court of Peoria County,
July Term 1858.

And now comes the defendants & moves the Court to dismiss this suit for the following reasons to wit

- 1 The Cause of action did not arise in Peoria County Illinois nor was the same made specifically made payable in or at Peoria County Illinois
- 2 The defendants did not at the time of the commencement of this suit nor at any time since the commencement of this suit nor either of them reside in this County of Peoria Illinois nor were either of them found nor served in said Peoria County Illinois with process in said cause
- 3 The said defendants & each of them reside in the County of Warren & State of Illinois & did reside in said County of Warren Illinois at the time of the commencement of this suit & still do each & all of them reside in said County of Warren aforesaid, & both of defendants were served with process in this cause in Warren County Ill & not at the County of Peoria nor were either of them served at or in the County of Peoria Illinois

Head & Williamson

attys for dfts.

Mr Williamson being duly sworn deposes & says that the matters & things set forth & averred in the foregoing Motion are true

in substance in Matter of fact
M. Williamson

Sworn to & Subscribed
before me this 6th day of
July A.D. 1858.
Chas Kettelle Clerk
per Geo. H. Kettelle Deputy.

Freeman
vs
Holloway & Boggess.

Filed July 6 1858.
C. Kettelle clerk
per Geo. H. Kettelle
Deputy.

And also, on same day, To Wit. July 6th A.D. 1858. there was filed
in the Clerk's office of said County. the following Cross Motions
of the Plaintiff in this cause. as follows.
To Wit.

Alfred Freeman
vs.
County Court: July Term 1858

Robert H. Holloway
Henry M. Boggess
Plff. enters Cross Motion to Strike
the Motion of Defts herein from the file.

for the reasons

- 1 Said Motion has not been filed two days before the day.
Set for trial of this cause as required by rule No 4 of this
Court, which is here referred to. & made part of this motion
- 2 Said Motion has not been entered on the Motion Docket
as required by rule 7 of this Court, have refused to & made part
of this motion
- 3 Because the Questions embraced in said Motion can only
be raised by Plea in abatement, unless by consent of the
opposite party.

Done July 6/58.

Cooper for Plff.

Plff Cross Motion

12000-2

Freeman
vs
Holloway & Boggess.
Cross Motion
by Plff

Freeman
vs
Holloway & Boggess.
Cross Motion
by Plff

Freeman
vs
Holloway & Boggess.
Cross Motion
by Plff

6 And afterwards, To wit on the 7th day of July. A.D. 1858, there was filed in the Clerk's office of said County - a Plea in Abatement of said defendant, which in words and figures, is as follows.

To Wit:

Alfred Freeman

vs.

Robert H. Holloway &
Henry M. Boggess

County Court Peoria County
July Term A.D. 1858.

6 And the said Robert H. Holloway & Henry M. Boggess defendants in this suit come & defend & when & pray judgment of the writ & declaration aforesaid, because they say that at the time of the commencement of this said suit and at all times since the commencement of this suit the said defendants & each of them were and still are residents & citizens of Warren County Illinois and were not & neither of them residents of the County of Peoria State of Illinois. And the said defendants aver that the process in this said cause was served on the said defendants & each of them at & within the County of Warren State of Illinois & was not served on the defendants nor either of them in or at the County of Peoria State aforesaid. And the defendants further aver that cause of action on which this suit is brought and each & every part thereof arose in the County of Warren State of Illinois & not in or at the County of Peoria State aforesaid. And that the same was not nor any part thereof made specifically payable at or in the said County of Peoria & State aforesaid. All of which the said defendants are ready to verify. Whereupon the said defendants pray judgment & that the said writ & declaration be quashed & also for his costs.

Robert Holloway.
H. M. Boggess.

Alfred Freeman

vs.

Robert H. Holloway
Henry M. Boggess.

County Court in & for the County of
Peoria State of Illinois
July Term A.D. 1858

Plea in Abatement

Robert H Holloway & Henry M Boggess the defendants
being duly sworn depose & say that the above plea by
them pleaded is true in substance & in matters of fact.

Sworn to & Subscribed

before me this 6 day of July 1858.



Wm F Smith Notary Public for the
City of Monmouth Ill.

Alfred Freeman
vs
Holloway & Boggess

Motion in abatement

Filed July 7th 1858
C. H. H. H. H.
H. H. H. H. H.

And also on the same day to-wit the 7th July 1858. in said
Clerks office of said County, there was filed a Motion by
the Plaintiff, which was in the words and figures following
To Wit.

Alfred Freeman
vs.
Robert H Holloway
Henry M Boggess

In the County Court July Term
A.D. 1858.

And now comes the plaintiff herein and moves
the Court to strike the plea in abatement filed herein from the files
for the reasons

1st Said plea does not purport to be filed nor is the same issued
by the defendants in this Suit.

2nd Said plea is not duly sworn to.

3^d Said plea has not been filed in apt time.

4th Said plea and the jurat attached thereto appears to have been al-
tered & filed up since the same was made & sworn to.

Whereupon for other good & sufficient reasons, self moves to strike
said plea from the files

Cooper for self.

Peoria, July 7/58

Motion to strike Plea Abatement - from file

Filed July 7 1858
C. H. H. H. H.
H. H. H. H. H.

8 And afterwards to Wit on the 2nd July A.D. 1858. there was filed in the Clerk's office of the County Court aforesaid a Plea by the defendant in this cause, which, in words & is as follows

To Wit:

Robert W. Holloway.
Henry M. Boggess. } County Court Peoria County.
ads
Alfred Framan }

And now comes the defendants by Head Williamson their attorneys & defend the Wrong & Injury & say they did not assume & promise in manner & form as the plaintiff hath above complained against them of this they put themselves upon the Country &c.
And plff. doth
Head Williamson

8 Likewise

Cooper for plff.

2 And for further plea in this behalf, the defendants say Altho now because they say that the only & sole cause of action in the said several counts in plaintiffs declaration mentioned is the said promissory Note mentioned & described in the plaintiffs first count. in said declaration And the defendants aver that the only & sole consideration of said note was the purchase by defendants of the plaintiff of the following described premises to wit The North East quarter of section Eight in Township Eight North Range four West of the fourth principal meridian And the South West quarter of section number thirty two (32) in Township Ten North of Range three West of the fourth principal meridian And in Consideration of which Sale of said premises to wit on the 24th day of April 1857 at the County aforesaid the defendants then & there executed their said promissory Note to the plaintiff which is the said promissory Note in said first count in plaintiffs declaration mentioned & described And the said defendants aver that the said plaintiff did not at the time of said Sale of said premises as aforesaid to the defendants as aforesaid have any title, right interest or claim in & to said lands or either of them nor did said

Defendants Plea

plaintiff at any time since have any title interest or claim
in or to said lands either in law or Equity - Wherefore the
defendants say that the Consideration of said note has
wholly failed & thus they are ready to verify
Wherefore they pray judgment for their costs in this behalf
unjustly laid out. Expended &c

W. E. Williamson

attys for defts

And for a further plea in this behalf the defendants say
actio non. because they say that the sole cause of action
is the said promissory note in said first count in plaintiffs
declaration mentioned & described & not other or different
and that the only & sole consideration of said promissory note
was the bargain & sale of the following described lands
from the plaintiff to the defendants To Wit: The Northeast
Quarter of Section Eight in Township Eight North Range
Four West of the fourth principal Meridian and the South
West Quarter of Section Thirty two (32) in township Ten North
Range three West of the fourth principal Meridian in con-
sideration of which said bargain & sale of said premises from
the plaintiffs to said defendants as aforesaid to wit on the
24th day of April 1857. at the County aforesaid the said
defendants then & there executed their said promissory note
to said plaintiff mentioned & described in the first count
in said plaintiffs declaration. And the said defendants
aver that the said plaintiff at the time of said bargain & sale
of said premises from said plaintiff to said defendants to induce
said defendants to purchase of said plaintiff the said prem-
ises & execute the said note then & there falsely & fraudulently
represented to said defendants that he the said plaintiff was the
owner in fee simple of said premises & each of them & had good
right & title to bargain sell & convey the same. And the
defendants aver that Confiding in the said false & fraudulent
representation of said plaintiff they did then & there to wit
on the 24th day of April 1857 at the County aforesaid bargain
contract for & purchase of said plaintiff the aforesaid prem-
ises & each of them & in consideration thereof did then & there
execute & deliver to the said plaintiff the said promissory
note in said plaintiffs first count mentioned & described.

And the defendants in fact say that the said plaintiff did not at the time of said bargain & sale to said defendants of said premises and at the time of said false & fraudulent representations aforesaid have any right title interest claim or demand in or to said lands or either of them nor any right to bargain sell or convey the same nor any nor either of them nor any part thereof defendants therefore say that that the Consideration of said note has wholly failed and this they are ready to verify Wherefore they pray judgment for their Costs &c

By Head & Williamson their attys

4 And for further plea in this behalf the said defendants say Actio Non because they say that the only & sole cause of action is the said promissory note in plaintiffs first count in said declaration & not other or different And that the sole and only Consideration of said promissory note was & is the sale by the plaintiff and Ambrose C Hankinson to the defendants of their right title & interest in & to the North East quarter of Section Eight in township Eight North Range four West of the 4th principal Meridian And the South West quarter of Section Thirty two (32) in Township Ten North Range Three West of the 4th principal Meridian in consideration of which said bargain & sale the said defendants then & there to wit on the 24th day of April 1857 at the County aforesaid executed to said Plaintiff for the purchase Money of said premises the said note mentioned & described in said first count of plaintiffs declaration And the said defendants aver that at the time & place of said sale to induce the said defendants to enter into said Contract purchase of said premises the said plaintiff and said Hankinson by their attorney in fact falsely & fraudulently represented to said Defendants that the first above mentioned & described premises was owned by the said plaintiff & said Hankinson by good & sufficient Tax Title that the same was vacant & ever had been vacant & unoccupied and that the said plaintiff & said Hankinson had for a great many years successively next previous to said

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Sole to said defendants regularly. Said all Taxes assessed
thereon - and said plaintiff further by their said attorney
in fact at the time & place of said sale of said premises as
aforesaid to said defendants then & there in order to induce
said defendants to enter into said Contract aforesaid
& execute said note then & there falsely & fraudulently
represented that the last mentioned & described quarter
Section of Land was owned by said plaintiff & said
Hankinson jointly by a good & sufficient perfect chain
of patent title thereto from the Government of the U-
nited to said plaintiff & said Hankinson & that they the
said plaintiff had a fee simple estate therein to each of
said quarter sections of Land and the defendants aver
that Confiding in the said false and fraudulent rep-
resentation of the said plaintiff & said Hankinson so
made by said Attorney in fact as aforesaid they the
defendants did then & there make execute & deliver to
said plaintiff the said promissory note on said plaintiff's
declaration mentioned in consideration of the purchase of
said premises & each of them from said plaintiff & said
Hankinson by & through their said attorney as aforesaid
And the said Defendants in fact faith that the said plain-
tiff & said Hankinson nor either of them did not have
or own any tax title or any other title in or to the said
first above described quarter sections of Land nor any
interest or claim thereto either by tax title or otherwise nor
had the said plaintiff & the said Hankinson nor either
of them nor any one for them paid any taxes thereon and
the plaintiff avers that the said Quarter section of Land
so represented to be vacant & unoccupied was not at
the time of said sale & fraudulent representation vacant
& unoccupied but the same was then & for a great many
years before that time & continually occupied by actual re-
sidence thereon And the defendants further aver that the said
South West quarter of Section thirty two (32) in Township
Ten North Range three West aforesaid was not owned by
the said plaintiff and the said Hankinson nor either of them
by patent title nor any other title nor had they nor either
of them any title claim or interest therein by patent

title or otherwise all of which false & fraudulent representations
 in relation to both & each of said quarter sections of land
 were well known by said Plaintiff and also by said
 Hawkinson and their said attorney in fact to be false &
 fraudulent at the time the same were made,
 and the Defendants say that confiding in said false & fraudulent
 representations as aforesaid & each of them they did make
 & execute & deliver to said Plaintiff the said Promissory
 Note in Plaintiff's declaration mentioned & described and
 hence the Defendants aver that the consideration of
 said Note has wholly failed all of which Defendants
 are ready to verify. Wherefore they pray judgment & for their
 costs &c.

Head & Williamson

their attys

Alfred Freeman
 vs.
 Holloway & Boggess.

Plea

Filed July 22^d 1858

Noted. clk

Wm H. H. H.

And afterwards, To Wit, on the 2^d of August, A.D. 1858. there
 was filed in said Clerk's Office, a Demurrer of Plaintiff
 to Defendants' Plea, which in words &c is as follows
 To Wit:

Alfred Freeman
 vs.
 Robert A. Holloway
 Henry M. Boggess.

County Court

August Term 1858.

And said Plaintiff as to the 2nd, 3rd
 & 4th pleas of said defendants herein, says that the same
 & the matters & things therein contained, in manner & form
 as therein pleaded, are not sufficient in law to bar the action
 of said Plaintiff & that he is not bound in law to answer
 the same. And thus the Plaintiff is ready to verify. Wherefore

And for cause of demurrer, plff. shows
 1 It does not appear from said 2nd plea that said plff.

claimed to have title to the lands in said in said plea named, or that he was in any way bound to warrant the same. nor is it shown, when or how said lands were to be conveyed

2. Nor aught that appears in any of said pleas, said defendants were to take the titles to said lands at their own risk.
3. Neither said Second 3^d nor 4th pleas shows that the time for conveying said premises has arrived, and constat, but that plaintiff may have title when he shall be required to convey.
4. Said 3^d plea does not show that there was any want of consideration for the note, sued on at the time of suit bro't
5. Said 4th plea is bad for uncertainty
6. Said 4th plea states that the alleged false & fraudulent representations complained of, were made by the Attorney of plff. & A. C. Hankinson, without showing who the Atty was, or that he was authorized to make the representations in question, or that plff. & Hankinson knew of them
7. Said 2nd, 3^d & 4th pleas are otherwise defective, uncertain, informal & insufficient
8. None of said pleas show whether the Contract for the purchase & sale of said land was in writing or by parol Cooper for plff.

Demurrer of Plff.

Filed Aug 2 1858
C. H. Hatcher
Clerk
p. 6. 1858.

And afterwards To Wit. on the 3^d Aug. 1858. there was filed in the Clerk's Office aforesaid, a Demurrer of Plaintiff, which, is as follows
To Wit.

Alfred Freeman
vs.

County Court

Aug Term 1858.

Holloway & Boggess,

And as to the 2nd 3^d & 4th pleas of said defts herein, plff says - the same & the Matters & Things therein contained, in manner & form as pleaded are insufficient in law to bar the action of plff & that he is not bound in

law to answer the same. And thus he is ready to verify -
Whereupon &
and for special cause of demurrer - plff says -

- 1 The failure of consideration relied on is not sufficiently set out in any of said pleas.
- 2 Said pleas are all defective in substance
- 3 It does not appear from said pleas or either of them whether the Contract for the Sale of the Lands referred to in said pleas was in writing or by parol.
- 4 Said 4th plea is bad for uncertainty & other respects
- 5 Said pleas are all otherwise defective, uncertain informal & insufficient
- 6 It is not shown by said 4th plea that the plff had any knowledge of the fraudulent representations charged to have been made by his atty, nor does it appear who said atty was.
- 7 Said 3^d & 4th pleas does not show that the plff has not now title to the lands specified as the consideration of said note - nor does it appear that the time for the conveyance thereof has yet arrived

Cooper for plff.

Filed Aug 3^d 1858.
Chas. H. H. H. H.
per Geo. H. H. H.
Ditz.

And Afterwards, To Wit, on the 13th day of August A.D. 1858. there was filed in said Clerk's office of said County, the following "Amended Pleas of Defendants"

To Wit.

Amended pleas of defendants by leave of Court.

- 1 And for further plea in this behalf the said defendants say Actio Non because they say that the only & sole cause of action is the said promissory note mentioned & described in the first count of plaintiff's declaration & they say that the only & sole consideration of said promissory note was the purchase by the defendants of the plaintiff of the North East quarter

Plaintiff's Demurrer

14

of Section Eight in Township Eight North Range four West of the fourth principal Meridian & also of the South West quarter of Section thirty two in Township Ten North Range three West of the fourth principal Meridian.

And the defendants aver that to induce the said defendants to purchase said above described parcels of land the plaintiff on the sale thereof to said defendants to wit on the day & year aforesaid at the County aforesaid falsely & fraudulently represented to the defendants that he was the owner in fee simple of the first of the above mentioned pieces or parcels of land and had perfect title thereto and a good and indefeasible estate in fee simple, therein and that the same was then & ever had been vacant & unoccupied and the said plaintiff further falsely & fraudulently in order to induce said defendants to make said purchase of said lands aforesaid then & there represented to said defendants on the sale to them of said lands as aforesaid that said plaintiff was the owner of the said last above described tract of land to wit the South West quarter of Section thirty two in Township

- 2 Ten North Range three West of the 4th principal Meridian by a perfect chain of patent title from the original patentees of said lands to said plaintiff and the defendants aver that confiding in said false & fraudulent representations aforesaid of said plaintiff they the said defendants did then & there purchase of said plaintiff the said lands above described and executed their said promissory note to the defendants for the purchase money of said lands which is the said promissory note mentioned & described in the first count of plaintiffs declaration. And the defendants further aver that the said plaintiff was not at the time of said sale & purchase of said lands as aforesaid the owner in fee simple of the said North East quarter of Section Eight in Township Eight North Range four West as aforesaid nor did not have any right title nor interest therein or thereto. and defendants further aver that the said North East quarter of Section Eight in Township Eight North Range four West as aforesaid was not at the time of said sale & at the time of said false & fraudulent representations aforesaid vacant, and unoccupied. But on the contrary thereof the

Amended Pleadings

said defendants aver that the said last mentioned quarter section of land was at the time of said false & fraudulent representations aforesaid occupied by paramount Title and had for many years previous to said false & fraudulent representations been so occupied

And the said defendants further aver that the said plaintiff did not at the time of said ^{as aforesaid} sale, or at the time of the execution of said note nor at any other time have any title or claim of title to the said South West quarter of Section thirty two in Township Ten North range three West as aforesaid nor did he have any right nor title to said South West quarter of said section thirty two in township Ten North Range three West as aforesaid All of which said representations so made by said plaintiff as aforesaid were at the time of making the same as aforesaid known by said plaintiff to be false & fraudulent All of which these defendants are ready to verify Wherefore they pray judgment.

Wm Williamson

Atty for defts:

And for further plea in this behalf the defendants say action non because they say that the sole cause of action is the said promissory Note mentioned & described in the first count in plaintiffs declaration & not other or different and the defendants aver in consideration that the said defendants would then & there to wit at the time & place aforesaid execute their said promissory to the said plaintiff mentioned & described in the said first Count of Plaintiffs declaration in the said Plaintiff then & there contracted and agreed in writing to convey by Quit Claim Deed the fee simple Estate in & to the said ~~by good & sufficient title of & to the said North East Quarter of Section Eight in Township Eight North Range four West. & had for seven successive years then and preceding the time of the making of said contract as aforesaid regularly paid all Taxes and thereon~~ and that the said Land was & ever had been vacant & unoccupied and the said defendants aver that all of the said representations so made as aforesaid were false & fraudulent.

Amended Pleas

North East quarter of Section Eight in Township Ten
North Range four West on the payment of the last note given
for the purchase money thereof to wit on the 24th day of April
1859. the time when the said last payment on said land should
become due & payable And the said Plaintiffs further agreed
I bound themselves by a certain other contract and agreement
in Writing dated to wit on the said 24th day of April 1857. as
I for further consideration of said promissory note to convey to
the said defendants by Quit Claim deed the Tax Title
to said South West Quarter of Section thirty two in Township
Ten North Range three West of the fourth principal meridian
on the payment of the last payment to become due as the
purchase money of said last mentioned quarter section of land
to wit on the 24th day of April 1859 and the defendants aver
that the sole and only consideration of said promissory note
was the last & parcel of the consideration to be paid by the
defendants for both of the above described pieces or parcels
of land as aforesaid

17 And the said defendants aver that in order to induce
the said defendants to enter into said Written Contract
for the purchase of said above described lands & each
of them & in order to induce the defendants to execute
to the plaintiff the said promissory note above described
the plaintiff then & there at the time of the making of said
contract & the execution of said promissory note falsely
& fraudulently represented to the defendants that he the said
plaintiff was the Owner by good & sufficient Tax Title of
the said North East quarter of Section Eight in Township
Eight North Range four West & had for seven successive
years then next preceeding the time of the making of said contract
as aforesaid regularly paid all taxes due thereon And that the
said land was never had been vacant & unoccupied. And
the said defendants aver that all of the said representations
so made as aforesaid were false & fraudulent and that the
said plaintiff was not the Owner of said land by Tax
or any other title nor had he at any time paid any taxes
thereon although the same had been regularly taxed for
thirty years each & every year
And defendants aver that the said land was not at the

time of the making of said contract & the Execution of
said Note vacant & unoccupied All of which was known
to the plaintiff at the time of the making of such false &
fraudulent representations to be utterly false & fraudulent
And the defendants further aver that in order to induce the
said defendants to enter into said contract as aforesaid
at the time & place of making the same as aforesaid & in or-
der to induce the said defendants to execute the said prom-
issory note the said plaintiff further falsely & fraudulently
represented to the defendants that he the said plaintiff
was the owner by perfect patent title in & to the said South
west quarter of Section thirty two in Township Ten north, range
three West of the 4th principal Meridian as aforesaid which
said last mentioned false & fraudulent representations were
well known by the plaintiff to be false & fraudulent at the time
of making the same

And the defendants aver that the said plaintiff did not
have any patent title nor any other title whatever to said
last mentioned quarter section of land which was also
well known to plaintiff at the time of the making of said last
mentioned false & fraudulent representations

18 And the defendants aver that confiding in said false & fraud-
ulent representations as aforesaid & believing the same to be
true they did then & there to wit on the day & year aforesaid
enter into said written agreement & contract & execute to
the plaintiff the said promissory note described in the said
first count of Plaintiff's Declaration mentioned - defendants
therefore say that the said promissory Note was executed
to said plaintiff without any good or valid consideration
They therefore pray judgment & for their costs &c.

And for further plea in this behalf the said defendants say
Actio Non because they say that the only & sole cause
of action is the said promissory note mentioned & de-
scribed in plaintiff's first count in said declaration men-
tioned and that the only & sole consideration for said promissory
note was the sale by the plaintiff And one Ambrose C. Han-

19
Kinson by Bond in Writing of the North East quarter
of Section Eight in Township Eight North Range four
West and the South West Quarter of Section thirty two
in Township Ten North Range three West of the 4th
principal meridian and defendants aver that by the terms
of the said Contract the said plaintiff & Ambrose C.

Hankinson purported to bargain and sell to the defend-
ants a fee Simple Estate in the North East Quarter of Section
Eight in Township Eight North & Range Four West of the
fourth principal meridian and therein bound themselves to
execute a good & sufficient Quit Claim Deed conveying the
Fee Simple Estate to the defendants in & to said last mentioned
Quarter Section of Land To Wit on the 24th day of April 1859
And defendants further aver that by the terms of said written
Contract also the said plaintiff and said Ambrose C.
Hankinson purported to bargain Contract & sell to said defendants
the Tax Title to the said South West Quarter of Section Thirty two
in Township Ten North Range three West of the principal meridian
And defendants aver that by the terms of the said Contract the
said plaintiff & Ambrose C. Hankinson purported to bargain
and sell to the defendants a Fee Simple Estate in the North East
Quarter of Section Eight in Township Eight North & Range four
West of the fourth principal meridian and therein bound them-
selves to execute a good & sufficient Quit Claim Deed conveying
the Fee Simple Estate to the Defendants in & to said last mentioned
Quarter Section of Land To Wit on the 24th day of April 1859
And defendants further aver that by the terms of said written
Contract also the said plaintiff and said Ambrose C. Hankinson
purported to bargain Contract & sell to said defendants the Tax
Title to the said South West Quarter of Section thirty two in
Township Ten North Range Three West of the fourth principal
meridian and to convey the same by Quit Claim Deed to the defendants
on the 24th day of April 1859.

And defendants aver that to Wit on the 24th day of April 1859
is the day on which other payments were become due & payable
to said plaintiff under said Contract with said defendants
And the defendants further aver that at the time & place
of the making of said contracts by said defendants
with the said Hankinson and said Freeman

And at the time of the entering into said written Contracts
for the Sale & Conveyance of said Lands as aforesaid and the
Execution of said Note as aforesaid the Plaintiff and the
said Ambrose C. Hankinson by their Attorney in fact
John Ellingham by whom said Contracts were made as
aforesaid falsely & fraudulently represented to the defendants that
said Plaintiff & said Ambrose C. Hankinson were the owners
in by perfect Tax Title of the said North East Quarter of
Section Eight in Township Eight North Range Four West as
aforesaid And that the said Land was then & ever had
been vacant & unoccupied which said representations the
Defendants aver were false & fraudulent. And That the said
Plaintiff & said Hankinson did not nor did either of them
at the time of said false & fraudulent representations nor at any
other time before nor since the making of said representations
have any Tax Title nor any other Title to said Land And
the Plaintiff further aver that the said Land was not at
the time of said false & fraudulent representations vacant
& unoccupied but on the contrary thereof was then & for a
great many years previous thereto & ever since has been
occupied by actual residence thereon & still is so occupied
And the Defendants further aver that in order to induce
the said defendants to enter into said Contracts & execute
said Note as aforesaid the said Plaintiff & said Ambrose
C. Hankinson by their Attorney aforesaid further falsely
& fraudulently represented to said defendants that they
the said Plaintiff & said Hankinson were the owners of
the said South West Quarter of Section Thirty Two in
Township Ten North Range Three West of the 4th principal
Meridian in fee simple by a perfect chain of Patent Title
from the United States to the said Plaintiff & said Han-
kinson & had good right to contract sell & convey the same
And the Defendants further aver that the said Plaintiff
& the said Hankinson nor either of them did not at
the time of said false & fraudulent representations aforesaid
nor at any other time before nor since that time have any
patent Title nor any other title to said last mentioned quarter
Section of land nor any Interest therein. And the said

defendants further aver that the said Plaintiff And also the said
 Rankinson & the said Attorney in fact as aforesaid well knew
 at the time of the making of the said false & fraudulent representa-
 tions as aforesaid that the same & each of them were false
 & fraudulent & the same were made to deceive & defraud defendants
 in this behalf. And the Defendants further aver that confiding
 in the said false & fraudulent representations & believing the same
 to be true they the said defendants entered into said contracts
 as aforesaid & made & executed the said promissory note to the
 said Plaintiff as aforesaid Wherefore the said Defendants
 say that there was no consideration whatever for said note
 & that the same has utterly failed Wherefore they pray
 judgment &c. Mead & Williamson
 Atty for defr.

21

Alfred Freeman
 vs.
 Holloway & Briggs
 Amended pleas.

Filed August 13, 1858
 Ch. H. Ketchum Clerk
 111 L. I.

And afterwards, To Wit on the 10th day of September A.D. 1858.
 there was filed in the Clerk's Office, aforesaid, a Motion on the
 part of Pltff in this cause, which is as follows.
 To Wit.

Alfred Freeman }
 vs. } County Court. Sept. Term 1858.
 Robert Holloway. }

And now comes said plff. moves
 to strike from the files of this cause the amended pleas
 filed herein

1st Because said pleas are not entitled of any Term nor of any
 count.

2nd Said pleas are not entitled in any cause.

3^d There is Nothing on the face of said pleas to connect them nec-
 essarily with this suit.

4th Said pleas are so loose & uncertain that no issue can be
 taken thereon. Whereupon & for other reasons, Plaintiff asks
 that they may be stricken from the files of said cause } co. for plff.

Plaintiff's Motion to strike from file

And afterwards, To Wit, on the 3^d day of November AD 1858
thus was filed in the Clerk's office aforesaid, a Demurrer
of said Pltff. to Unended Pleas of dft. which is as follows
To Wit,

Alfred Freeman

vs.

Robert H. Holloway
Jal,

In County Court.

September Term 1858.

22 And said plaintiff as to said amended
pleas Numbered 1, 2, 3, of the said defendants herein say,
that the same & the matters & things therein contained, in manner
& form as therein pleaded, are insufficient in law to bar the
action of said plaintiff. And that the plaintiff is not bound
to answer the same, and thus he is ready to verify
Wherefore I

And for Special Cause of demurrer. pltff. Shows

1. Said pleas are not entitled of any Court, any Term or
in any cause
2. Said pleas are all bad for duplicity
3. Said 2nd plea is uncertain in this. That it sometimes makes
one & sometimes two or more plaintiffs in said action
4. Said 2nd & 3^d pleas purport to be pleas of failure of consid-
eration and yet show that no failure has occurred under
the contract referred to & set up.
5. Said 3^d plea does not show that the fraudulent representations
complained of, were made with the knowledge of the plaintiff
or said Hankinson
6. None of said pleas show any sufficient defence to said action
7. Said first plea sets up fraud in the sale of land and yet does
not propose to rescind the contract or return the land
8. Said pleas are all otherwise inconsistent, uncertain, informal
defective & insufficient

Cooper
for pltff.

Demurrer to Answer Pleas.

Filed Nov 2 1858
Clerk's Office
R. H. Holloway
47

A Demurrer of Plaintiff

And afterwards To Wit on the 8th day of November. 1858.
there was filed in the Clerk's Office aforesaid, An agreement
of said parties to this Cause which is as follows

Alfred Freeman }
vs. } in the County Court
Holloway & Bogges. } November Term 1858.

It is agreed between the parties
herein that all matters of Proof which would be legal
evidence under any special plea well pleaded, may be given
in Evidence under the plea of the General issue

J. K. Cooper.
for Plff.
A. M. Head
for def.

Agreement:

Filed Nov 8 1858
Chas. Little Clerk
per Geo. H. Hester
Stdy

And afterwards To Wit: on the 11th of February A.D. 1859.
there was filed in the Clerk's Office of said County of
Peoria aforesaid, the Verdict rendered in said Cause
which is as follows.

Freeman

vs.

Holloway & Bogges. } We the jury find Issues for the
Plaintiff And award the Damages at four Hundred
& forty four Dollars & ten cents.

John B. Warner
Juror

Verdict

Filed Feb 11th 1859
Charles Clerk
per Geo. H. Hester

and afterwards, To Wit: on the 14th of July 1858.
there was filed in the Clerk's Office of said County aforesaid
a Bill of Exceptions, which in words and figures, is as
follows.

Wherein it is remembered that at the said July Term of the County
Court in & for the County of Peoria State of Illinois the de-
fendants filed their motion to dismiss this suit wherein
Alfred Freeman is Plaintiff & Robert H. Holloway Henry
M. Bogges are Defendants and which motion was verified
by affidavit of W. Williamson defendants attorney and which
motion is in the Words & Figures following to Wit

24
" Alfred Freeman
vs. } County Court of Peoria County.
" Robt Holloway & } July Term 1858.
" Henry M Bogges.

And now comes the defendants,
" I moves the Court. to dismiss this Suit for the following
" reasons To Wit

- 1 The cause of Action did not arise in Peoria County Illinois
" nor was the same made specifically made payable in or at
" Peoria County Illinois
2. The Defendants did not at the time of the Commencement
" of this Suit nor at any time since the Commencement
" of this Suit nor either of them reside in the County of
" Peoria Illinois nor were either of them found or
" served in said Peoria County Illinois with process in
" said Cause.
3. The said defendants each of them reside in the County
" of Warren State of Illinois & did reside in said
" County of Warren Illinois at the time of the com-
" mencement of this suit & still do each & all of them re-
" side in said County of Warren aforesaid & both of def-
" endants were served with process in this cause in Warren
" County Ills & not at the County of Peoria nor were either
" of them served at or in the County of Peoria Illinois

Read & Williamson attys for defts.

Proceedings of the County Court of Peoria County State
of Illinois began and held at Court House in the City
of Peoria in said County and State on
Monday July the 5th 1858 for
judicial and other business

Present Hon Wellington Loucks. Judge
Charles Kittle Clerk and
Francis W Smith Sheriff

Tuesday July 6th 1858.

Alfred Freeman

vs.

Assumpsit

Robert H Holloway and
Henry M Bogges

25 This day came the said Plaintiff by
Jonathan A Cooper, his Attorney and the said defendants by
Heard & Williamson their Attorneys and this cause came on to be
heard on the cross motion of the said Plaintiff to strike from
the files the defendants motion to dismiss this suit. The
Court being fully advised in the premises doth sustain the said
cross motion.

Wednesday July 7th 1858

Alfred Freeman

vs.

Assumpsit

Robert H Holloway and
Henry M Bogges

This day came the said parties together
with their Attorneys and this cause came on to be heard on the motion
of the said Plaintiff to strike the Plea of Abatement of the said
defendant from the files The Court being fully advised
in the premises doth sustain the said motion

Proceedings of the County Court of Peoria County State
of Illinois began and held at the Court House in the City
of Peoria in said County on Monday August 2^d 1858
for judicial and other business

Present Hon Wellington Louch Judge
" Charles Tuttle Clerk and
" Francis W Smith Sheriff

Alfred Freeman

vs.

Assumpsit.

Robert W. Holloway

Henry W Boggess

On Motion of Plffs Attorney this
Cause is ordered to be continued to the September
Term 1858.

26

Tuesday August 3^d 1858.

Alfred Freeman

vs.

Assumpsit

Robert W. Holloway and
Henry W Boggess.

By agreement of Parties leave is given
the Defendant to Amend her Pleas by 13 August. 1858. And this
cause continued until September Term 1858

Proceedings of the County Court of Peoria County State of
Illinois began and held at the Court House in the City
of Peoria in said County for judicial and other business
on Monday September 6th 1858

Present Hon Wellington Louch Judge
" Charles Tuttle Clerk and
" Francis W Smith Sheriff

Alfred Freeman

vs.

Assumpsit

Robert H Holloway

Henry M Bogges.

On Motion of. Williamson. Atty
for Defendant. this Cause is Continued at Costs of
Defendant.

27

Proceedings of the County Court of Peoria County, State of
Illinois began and held at the Court House in the City of
Peoria in said County under its extended jurisdiction for
judicial and other business on

Monday December 6th 1858

Presnt. Hon Wellington Loucks

Charles Kellett

John Bryner

Judge

Clerk

Sheriff

Alfred Freeman

vs.

Assumpsit

Robert H Holloway

Henry M Bogges

On Motion of Plaintiff Atty. this
Cause is ordered to be continued until the next Term of
Jan 7 1859.

Proceedings of the County Court of Peoria County, State of Ill.
began and held in Peoria County, State of Illinois, at the
Court House, in Peoria, under its extended jurisdiction
for judicial and other business on

Monday January 3rd 1859.

Presnt. Hon Wellington Loucks Judge

Charles Kellett Clerk

John Bryner Sheriff

Tuesday January 4th 1859

Alfred Freeman.

vs.

Assumpsit

Robert Holloway and
Henry M. Boggess.

This day this cause coming on for
hearing the Plaintiff's amendment to declaration is
allowed. And this Cause is ordered to be continued
until the February Term at Plaintiff's cost.

28 Proceedings of the County Court of Peoria County, State of Illinois
began and held at the Court House at Peoria in said
County, in and to its extended jurisdiction for judicial and
other business on

Monday February 7th AD 1859

Present Henry Wellington Leach, Judge Charles Kellett, Esq. and John Brynner, Esq.

Friday February 11th 1859.

Alfred Freeman

vs.

Assumpsit

Robert H. Holloway
Henry M. Boggess

This day came the said Plaintiff by
Jonathan R. Cooper his Attorney and the said Defendant by
J. M. Williamson their Attys and it is ordered by the Court that a
jury be empanelled to try said cause. Whereupon came
a jury of twelve good and lawful men to wit, J. A. M. Shaw,
James Delano, Wm. W. Church, Thomas Wood, Henry Morrell,
John Waugh, James Elson, D. A. Wheeler, Edward White, Peter
Blum, E. A. Proctor, and John B. Warner, who were duly
chosen, tried and sworn and having heard the Evidence in
the case, returned into the Court the following Verdict.
"We the jury find for the Plaintiff and assess his damages
at (\$ 444.10) Four Hundred and Forty four and 10/100.

dollars. Thereupon the said defendants Entered their Motion for a new trial of this cause. The Court being sufficiently advised in the premises doth overule the said Motion.

Therefore it is Considered by the Court that the said Alfred Freeman do have and recover of and from the said Robert H. Holloway and Henry W. Boggs the aforesaid Sum of (\$444.10) Four Hundred and Forty four and 10/100 dollars his damages, And also his Costs and Charges by him about this Suit in his behalf Expended and that he have Execution therefor. Thereupon the said Defendants pray an Appeal of this Cause to the Supreme Court of this State. Which is allowed on their Entering into Bond, in the penal Sum of Nine Hundred dollars conditional according to Law within Thirty days Security to be approved by the Court.

And Afterwards, To Wit: on the 7th of July 1858. There was filed in
the Clerk's office of said county aforesaid a Bill of Exceptions
which, in words and figures, is as follows.

To Wit.

Be it Remembered, That at the said July Term of the County court
in & for the County of Peoria & State of Illinois the Defendants
filed their motion to Dismiss this Suit wherein Alfred Freeman
is Plaintiff & Robert H. Holloway & Henry M. Boggess are
Defendants and which motion was verified by Affidavit of
W. Williamson Defendant's Attorney and which Motion is in the
words and figures following To Wit.

Alfred Freeman

vs.

Robert Holloway.

Henry M Boggess

County Court of Peoria County.
July Term 1858

And now comes the defendants & moves
the Court to dismiss this Suit for the following reasons.

To Wit

- 1 The Cause of Action did not arise in Peoria County Illinois
"nor was the same made specifically made payable in or at
"Peoria County Illinois
- 2 The Defendants did not at the time of the commencement
"of this Suit nor at any time since the Commencement of this
"Suit nor either of them reside in the County of Peoria Illinois
"nor were either of them found nor served in said Peoria County
"Illinois with process in said Cause
- 3 The said defendants & each of them reside in the County
"of Warren & State of Illinois & did reside in said County
"of Warren Illinois at the time of the commencement of
"this suit & still do each & all of them reside in said
"County of Warren aforesaid & both of defendants were
"served with process in this cause in Warren County Ills
"not at the County of Peoria nor were either of them
"served at or in the County of Peoria Illinois

Wm Williamson atty for dft.

" Mr. Williamson being duly sworn deposes & says that
" the Matters & Things set forth & averred in the foregoing
" Motion are true in substance in Matter of fact.
" Sworn to & subscribed M. Williamson

" before me this 6th day of
" July A.D. 1858

Chas Kettelle, Clerk

^{per} Geo H Kettelle Dpty.

To which said Motion the Plaintiff filed his cross motion
to strike said Motion from the files of said Court; which
Cross Motion is in the words & figures following To wit,

31
" Alfred Graman

vs.

} County Court July Term 1858.

" Robert H. Holloway

" Henry M. Bogges

} Defendants Cross Motion to strike
the Motion of Defts herein from the files

" for the reasons.

1. Said Motion has not been filed Two days before the day
set for trial of this cause as required by Rule No 4 of
this Court, which is here referred to & made part of this motion

2. Said Motion has not been entered on the Motion Docket
as required by Rule 7, of this Court, here referred to & made
part of this motion

3. Because the Questions embraced in said Motion can
only be raised by Plea in Abatement, unless by consent
of the opposite party.

" Given July 6th 1858.

Cooper for plff.

Which said Cross Motion was sustained by the Court.
And and the Defendants Motion was then & there stricken
from the files to which the said defendant then & there
excepted & objected & prayed the Court to sign & seal this
Bill of Exceptions

Wellington Loucks B
C. Judge.

Be it Remembered That on the

Sustaining of the said cross motion
& striking defendants motion from the files as aforesaid
the said defendants then filed their Plea in Abatement
in the words & figures following to wit.

Alfred Freeman

vs.

Robert H. Holloway.

& Henry M. Boggess.

} County Court Peoria County
July Term AD 1858.

32 And the said Robert H. Holloway
& Henry M. Boggess, defendants in this suit come &
defend & when I pray judgment of the Writ & Dec-
laration aforesaid because they say, that at the time of the
commencement of this said suit, and at all times since the
commencement of this said suit the said defendants & each
of them were and still are residents & citizens of Warren
County Illinois and were not, & neither of them residents of
the County of Peoria State of Illinois. And the said
defendants aver that the Process in this said Cause
was served on the said defendants & each of them at &
within the County of Warren State of Illinois & was not
served on the defendants nor either of them in or at the
County of Peoria State aforesaid And the defendants
further aver that Cause of Action on which this suit is
brought, and each & every part thereof arose in the County
of Warren State of Illinois & not in or at the County
of Peoria State aforesaid And that the same was not
nor any part thereof made specifically payable at or in
the said County of Peoria & State aforesaid. All of which
the said defendants are ready to verify.

Wherefore the said defendants pray judgment that
the said Writ & Declaration be quashed & also for
his costs.

Robert Holloway,
H. M. Boggess.

Alfred Freeman

Robert H. Holloway
& Henry M. Boggess

} County Court in and for the County of
Peoria, State of Illinois
July Term AD 1858

Robert W Holloway & Henry M Boggess the defend-
ants being duly sworn depose & say that the above
plea by them pleaded is true in substance & in matters
of fact.

Sworn to & subscribed before
me this 6th day of July 1858.

Seal

Wm J. Smith Notary
Public for the City of Monmouth Ills.

And the Plaintiff then & there filed this certain Motion to
strike defendants plea in Abatement from the files which
Motion is in the Words & Figures following to wit.

33

Alfred Trauman
vs.
Robert W Holloway
Henry M Boggess } In the County Court July Term
1858.

And now comes the plaintiff herein
and moves the Court to strike the plea in Abatement filed
herein from the files for the reasons

1st Said plea does not purport to be filed nor is the same
signed by the defendants in this suit.

2nd Said plea is not duly sworn to.

3^d Said plea has not been filed in apt time.

4th Said plea and the jurat attached thereto appears to have been
altered & filled up since the same was made & sworn to
Wherefore & for other good & sufficient reasons, plff moves to strike
said plea from the files

Done July 7/58.

Cooper for plff.

And which said Motion was sustained by the Court. & the
plea was then & there stricken from the files to which the De-
fendants then & there excepted & prayed this Court to sign
& seal this Bill of Exceptions

Wellington Loucks. C3
C. Judge.

And Afterwards To Wit on the 12th of February A.D. 1859. this was filed in the Clerk's Office aforesaid, a Bill of Exceptions in this Cause, which in words and figures, is as follows

To Wit:

" Alfred Freeman

vs.

" Robert Holloway &

" Henry W. Boggess

} In the County Court of Peoria County
February Term A.D. 1859.

Be it remembered that on this day, came on this Cause for Trial and the Plaintiff to maintain the issues on his part offered in evidence the Note following to wit

34 "401"

"Peoria Apl 24/1857."

"One Year after date we promise to pay to the order of Alfred Freeman four Hundred and one Dollars for Value Received bearing interest at six per cent from date Holloway & Boggess

The Plaintiff then rested his case and the defendants then offered the following Depositions

To Wit:

" The Deposition of A. G. Kirkpatrick of the County of Perry &
" State of Pennsylvania a witness of Lawful age produced sworn
" And examined upon his corporal oath on the Sixth day of Sept-
" ember A.D. 1858 at my office in the Town of Bloomfield
" in the County of Perry State aforesaid by me David Mickey
" Prothonotary of the Court of Common Pleas of said County
" of Perry being duly authorized by law to take depositions and
" act as a Commissioner by virtue of a *Quedimus* Protostatino
" or commission issued out of the Clerk's office of the County Court
" of Peoria County in the State of Illinois bearing here in the
" Name of Charles Pettelle Esq Clerk of the said County Court
" with the Seal of said Court affixed thereto (which together with
" the interrogatories thereto attached are hereto attached) and
" directed ^{of Henry Boggess another} any person authorized to take Depositions in said

35
county of Perry, as a Commissioner for the examination of
the said A. G. Kirkpatrick a witness in a certain Suit and
Matter in controversy now pending and undetermined in the said
County Court wherein Alfred Freeman is Plaintiff and
Robert Holloway & Henry M. Boggus are Defendants in
behalf of said Defendants as well upon the Cross Interrog-
atories of the said Plaintiff as in the Interrogatories of said
Defendants which were attached to or inclosed with the said
commission and upon none others. The said A. G. Kirkpatrick
being first duly sworn by me as a witness in said cause
previous to the commencement of his examination to testify the truth
as well on the part of the plaintiff as the defendants in relation to
the matters in controversy between the said Plaintiff and said
defendants as far as he should be interrogated testified and
deposed as follows.

Interrogatory first: Are you acquainted with the parties to this
suit named in the notice hereto attached. If so at what
business have each of them been engaged for the last two years?

Answer to 1st Interrogatory I am acquainted with all the parties
The plaintiff as one of the firm of, Hankinson & Freeman has
been engaged during the last two years in buying and selling
Land having an Office for that purpose in Peoria Illinois.
The Defendants as co-partners have been and are engaged in the
same business and have an Office at Monmouth Illinois.
Mr. Holloway one of the defendants is also engaged in the prac-
tice of Law.

Interrogatory Second: Did you at any time know of Plaintiff or
his Agent selling any lands to defendants either by himself or
Agent. If you say he - to defendants who was the agent & when
was the Sale made also state in what Counties the lands lie & give
the numbers if you can

Answer to Second interrogatory: my recollection in regard to the
whole transaction is this. Mr. Milham (whose first name
I don't now remember) who represented himself as, and who is
I believe, the agent of Hankinson & Freeman of Peoria Illinois,
came into Monmouth Illinois and offered to sell several tracts of
land, one quarter Section of which was located in Township

36
Eight North and four West in Henderson County, Illinois
(I don't recollect the description of the Quarter Section)
He also offered to sell Tracts of Land in Mercer County Il-
linois and perhaps other located elsewhere which I don't remember.
I think he represented these lands as all belonging to Hankins
Son & Freeman of Peoria, Illinois. He offered to sell these lands
to me and stated several times that this tract in 8 N. 4 W. in Hen-
derson County Illinois was vacant and unoccupied. I believe he
made this same statement to Mr Holloway, one of the defendants
in my presence. I declined to buy. Holloway, afterwards on the
same day that this conversation took place, offered Milham
twelve hundred dollars for the above tract in Henderson County
and two or three tracts part or all of which was located in Mercer
County. Milham refused this offer of Holloway, and said that
he could go out into the vicinity of the lands & sell for more.
I think he asked fifteen hundred dollars for the same tracts
I was not present when this offer of Holloway to Milham
was made but learned the facts from both parties afterwards.
Milham on the day after this conversation took place, started
down as he said to sell the Tract in Henderson County, But
returned the next forenoon without having made sale. He then
stated that in consequence of the bad roads he had been un-
able to get to it or something of that kind and again offered
to sell to me this tract of land. I again declined. He then
accepted the offer which Holloway had made him before
he started down to Henderson County. I was not present when
the bargain and sale between Milham & Holloway was
consummated but learned from both parties directly afterwards
the fact. I think this took place in the Spring of 1857 but am
not certain as regards time, it may have been before that time

Interrogatory 3. Were any representations made by said agent
at the time of the sale of said lands to defendants in re-
lation to the land, in any way, either as to possession or title
or payment of taxes of said State fully & particularly what was
said and all about it

Answer to Interrogatory 3. Milham stated at the time of the transactions as related in my answer to the second interrogatory that he or rather the parties he represented. Haukinson & Freeman owned the tax titles on the land in Henderson county which he afterwards sold to Holloway. He also represented that this tract was vacant & unoccupied as stated in said answer.

He also represented to me that Haukinson and Freeman and their Grantors had paid the taxes on these lands regularly and that there was nothing against them except the patent titles. I cannot recollect whether Mr Holloway was present when this statement was made or not.

37
Interrogatory 4 Did you hear the said Agent say anything about the Sale after the same was made, if so how long afterwards where was it & what did he say. State fully & in whose presence was the same said?

Suppressed
Answer to 4th Interrogatory. I talked to Milham about the Sale after it was made. I think I told him that I had a suspicion or believed that he had been down at the land in Henderson County and having failed to effect a Sale had come back with the "bad road" story. I think however he refused to acknowledge that he had been on the land. My recollection is rather vague however on this point. This occurred on the same day of the Sale to Holloway.

This conversation took place in my office in Monmouth where nearly if not all the conversation I had with either of the parties took place. I don't recollect who was present positively but believe W.R. Looe or his Clerk Mr Lowry or both of them was present. When at least a portion of the foregoing conversation took place.

Interrogatory 5. Did he say anything about the Quarter section of land in Henderson County being vacant or occupied. State fully what he represented to defendants in relation to that quarter at the time of Sale if any thing & state what he told you after the Sale was completed. State all the conversation to plaintiffs titles to said Land. And also what he told others about them after the Sale. Giving all the Names of the

Persons present & also the time as particularly as possible

Answer to interrogatory 5. Milham as before stated in my answer to interrogatory second represented the Land in Henderson County to be vacant & unoccupied and I have no recollection of having any other conversation with him or hearing him make any statements to others which would be material to either party except what I have related in answers to the foregoing interrogatories

A. G. Kirkpatrick

38
I David Mickey Prothonotary of the Court of common Pleas of the County of Perry and State of Pennsylvania being duly authorized by Law to take Depositions and as such to act as Commissioner to take the Deposition of the said A. G. Kirkpatrick a Witness whose name is subscribed to the foregoing deposition by virtue of said commission do certify that previous to the commencement of the examination of the said A. G. Kirkpatrick as a Witness in said suit between the said Alfred Francis Plaintiff and the said Robert Holloway & Henry M. Boggess defendants he was duly sworn by me as such Commissioner to testify the truth in relation to the matters in controversy between said Plaintiff and said defendants so far as he should be interrogated concerning the same; that the said deposition was taken at my office in the Town of Bloomfield in the County of Perry and State of Pennsylvania in the sixth day of September A.D. 1858; and that after said deposition was taken by me as aforesaid the interrogatories and answers thereto as written down were read over to the said witness: and that thereupon the same was signed and sworn to by the said deponent A. G. Kirkpatrick before me, the oath being administered by me as such Commissioner at the place & on the day & year last aforesaid I witness whereof I have hereunto signed my name and affixed the Seal of the Court of Common Pleas of said County of Perry

David Mickey Prothonotary



Alfred Francis
Holloway & Boggess

Subscribed
& sworn to

Subscribed and sworn to before me
this 6th day of September 1858
at Bloomfield Perry Co. Pa.

1858
Sept 6

39
The Depositions of Marquis McLean & James McLean
of the County of Laurence and State of Pennsylvania
Witnesses of lawful age, produced, sworn and examined on their
respective Oath - on the 20th day of September A.D. 1858
at the Office of James Dickson Esq. in the Borough of New Castle
County of Laurence State of Pennsylvania by me the said James
Dickson Esq. a Commissioner duly appointed by a Decree
of the Court of Peoria County, in the State of Illinois. bearing
test in the name of Charles Kittell Clerk of the said County and
with the Seal of the said Court affixed thereto and to me directed
as such Commissioner for the examination of the said Marquis
McLean and James McLean Witness in a certain suit and
matter in controversy, now pending and undetermined in the said
County Court. Wherein Alfred Freeman is Plaintiff and Robert
Wholloway & Henry M. Bogges are defendants in behalf
of the said Defendants. Upon the Interrogatories of the said
Defendants which were attached to the said Commission
and therewith inclosed and upon none others. The said Mar-
quis McLean and James McLean being first severally sworn
by me as witnesses in the said Cause, previous to the commencement
of their respective examinations to testify the Truth as well on
the part of the Plaintiff as the Defendants in relation to the matter
in controversy, between the said Plaintiff and Defendants so far as they
should be severally interrogated. Testified and deposed as follows.

Interrogatories propounded to the said Marquis McLean a witness produced and
sworn as aforesaid on the part of the said defendants and his answers thereto,
as follows.

Interrogatory first What is your Name age and place of Res-
idence

Answer to 1st Inty. My name is Marquis McLean, I am
aged 49 Years near Lancaster, and reside at Wayne Township
Laurence Co. Penna.

Inty 2^d Were you at any time acquainted with James McLean
a Soldier of the War of 1812 If so, State when and where did
you know him?

Answer to 2d. Inty. I was acquainted with him - but do not remember the Year. I became so - I knew him. But do not remember him very distinctly before he went to the War. But I do remember him distinctly, after he came home from said War of 1812. He was my father's brother. And lived at my father's House in Beaver County Tenn. - for a Year or two after the War of 1812. And afterwards, he left my father's house, and resided with our Thomas Hunter - a Tavern Keeper. And for a short time with our Couland - who was then jailer - at Beavertown - Beaver County Tenn. a.

Couland's first Name I do not remember.

40 Inty 3d. State if you know, whether he was a regular Soldier or a Volunteer in said War, In whose Company did he serve When & Where was he enlisted. And in what Regiment? Is he now living or Dead? If Dead, When & Where did he die? If living State where he is living if you know? State where he lived after the close of the War of 1812 as far as you know, And if he at any time removed from that place? State where he went to and When? What was his age at the time he left. State fully every Circumstance Connected with his leaving his place of Residence - fully. And whether he was ever heard from after leaving? When was he heard from by his relations & how long since he has been heard from.

State whether he is reputed among his relations to be dead or living. If reputed to be dead how long has he been so reputed dead. State fully as possible.

Ans to Inty. 3d. - I do not know whether he was a regular Soldier or Volunteer in the War of 1812. I have heard him say he had enlisted. I do not know in whose Company he served nor when or where he was enlisted. Nor in what Regiment. I do not know certainly of my own knowledge - whether he is now living or dead. I believe from circumstance - repute & report - that he is dead. that he died more than twenty five Years ago. I do not know where. If I heard when he died I have for

gotten where - If he be yet living I do not know when he is living -

41 After the close of the War of 1812. He lived for a Year or two with my father - in Beaver County Pennsylvania part of that time on a farm now owned by my brother James (now situate in Laurence County Penna) And part of the time at old Brighton - Beaver County Penna. I was then living at home with my father. He left my father and went to reside & did reside for some time with one Thomas Hunter a Tavern Keeper - now dead, at Beaver Town Brown County Penna. And also for a short time with one Couland (whose first name I do not remember, if I ever knew it) then jailer of Beaver County. He left said Beaver Town and started down the Ohio River, as I was informed, about the Year 1818.

He was aged between 40 & 50 years. I would say from his appearance - at the time he left Beaver Town

I do not know of my own knowledge the circumstances of his leaving Beaver Town. But I was informed by one Thomas Hunter (now dead) then a resident of said Brown Town -

That Uncle had given said Couland his Patent for Boundary Land for his services in the War of 1812. In consideration that said Couland would support Uncle during uncles life time that said Couland - to escape and avoid his creditors ran away from Beaver Town at night - down the Ohio River leaving Uncle at Beaver Town. That some of the Citizens made up some money for Uncle and sent him after said Couland to get his (Uncles) Patent from from him (Couland) again. This were all the Noticeable Circumstances that I recollect hearing - concerning my Uncles removal from Beaver Town. About ten or 12 years ago one Thomas Hemphill told me that my Uncle (said James McLean) - had died in the State of Illinois said Thomas Hemphill - was then a resident of Beaver County Penna. And had been so for many years previously to making said communication to me. And about twenty five or thirty years ago was a Boatman by occupation - and travelled a great deal up and down the Ohio River. He did not state to me when or where (in Illinois) Uncle had died. said Hemphill is now dead. I do not know of any other communication being received by any of my Uncles Relations concerning him. Since

he left Beaver County Penna. He is reputed amongst his relations to be dead and has been so reputed more than twenty five - perhaps thirty years.

Interrogatory 2th. Do you know whether the said James McLean ever drew bounty land for his services in the war of 1812 Did you ever see his Patent for the same - If so when and where and for what land was it?

42 Answer to the 2th Inty. I never saw him have any Patent for land that I remember. I understood from himself that he drew Bounty land for his services in the war of 1812. He wanted my father to go with him to the land - and my father would have went if my Mother had been agreed. I did not understand where it was located.

Interrogatory 3th. Give a full description of the said James McLean At the last time you saw him or while you were acquainted with him - his age - complexion - the color of his hair - eyes - his size and how tall was he. State fully all about his personal appearance.

Answer to 3th Inty. He was between 40 & 50 years of age then as I believe from his Appearance (I do not know in any other way) - his complexion was fair his hair was what is generally called fair hair the color of his eyes I do not remember. He was from 5 ft 8 - to 5 ft 10 inches high as I remember - and weighed not over and near 150 lbs. - He was slender made tough & wiry. He was a Bachelor - and of very intemperate habits.

Interrogatory 4th. Did you ever know a man by the name of James McLean in Warren County, Virginia If so state whether he is the same man described by you above or not.

Answer to Inty 4th. I never knew any such person. Marguer McLean.

Interrogatories propounded to the said James McLean a witness produced and sworn as aforesaid on the part of the said defendants And his answers thereto as follows.-

Interrogatory first What is your name age and place of Residence?

Answer to Inty 1st My name is James McLean - my age is 64 - and residence - New Castle Laurence County Penna.

Interrogatory second - Were you at any time acquainted with James McLean a Soldier of the War of 1812. If so, state when and where did you know him.

43 Answer to Inty 2^d I was - He was a brother of my father and came to live with my father - at my father's house then in Mercer Co. Penna. - about the Year 1809. He remained at my father's till the War of 1812 broke out. when he enlisted in the army.

After the close of the War he returned to my father's and lived with him - perhaps a Year - or more or less. part of which time was on a farm now owned by me - situate then in Beaver County Penna (now Laurence County, Penna) My father during the war having removed from said Mercer County. to said Beaver County. And part of which time was at Old Bridge Then & yet in Beaver County, Penna. After then left my father's I went to reside and did reside with one Thomas Hunter at Beaver Town - Beaver County Penna. how long I do not recollect. He also resided I think a short time with one Coulard at Beaver Town aforesaid. He left Beaver Town aforesaid from about the Year 1818 to 1822. Since which time I have never heard or known any thing of him I knew him well, and personally, from about the said Year of 1809 till he so left Beaver Town, as last stated.

Interrogatory 3^d State if you know whether he was a regular Soldier or a Volunteer, in said War, in whose company did he serve when & when was he enlisted And in what regiment? Is he now living or dead. If dead when and where did

He die. If living State where he is living if you know.
State when he lived after the close of the War of 1812 as
far as You know And if he at any time removed from that
place State when he went to and when
What was his age at the time he left. State fully every
circumstance connected with his leaving his place of residence
fully. And whether he was ever heard from after leaving
When was he heard from by his relatives and how long since
he has been heard from. State whether he is reported amongst
his relations to be dead or living If reported to be dead - how long
has he been so reported dead. State fully as possible

44 Answer to Inty 3d. He was a regular Soldier. He enlisted
regularly about the Year 1812 or 1813 at Mercer Mercer
County Penna. in the Company of one Capt. John Junkin
Whether he served in that Company or some other I do not
know. Nor do I know in what regiment he enlisted or
served. I do not know except by Circumstances and reports
in the family of his relatives. And in his old neighborhood
whether he is now dead or living. If living I do not know
where he is. After the close of the War of 1812 he returned
to my father's. And made that his home - till he went to Beaver
Town to reside as stated in my answer to the second Interrog-
atory. The said Thomas Hunter with whom he resided
at Beaver is now dead and had been as I am informed
a Lieutenant in the War of 1812. And when Uncle lived with
him kept a Tavern in Beaver Town I went to Beaver
Town soon after Uncle left there and made some Inquiries
about him. And was informed by Elon Thomas Henry
(now dead) then a resident of said Beaver Town and by
others whose names I cannot now recollect - that Uncle
had made an Agreement with said Couland to give to said
Couland his (Uncle's) patent - and had given it to Couland - in
consideration that he (Couland) would keep Uncle during his
life time (Uncle's life time) - That to escape and avoid his (cou-
land's) Creditors (he Couland) had ran away after night
down the Ohio River from Beaver Town taking Uncle

patent with him - And leaving Uncle at Beaver - that some of the Citizens of said Beaver Town made up some money to bear Uncle's expenses and with it sent Uncle after Coulard Coulard had been the jail keeper at Beaver Town. His first name I do not remember That was the last I ever heard of him I do not know of him ever being heard from by his relations since he left Beaver Town His age when he left Beaver I believe from his appearance (and I had no other means of knowing) was about 45 years He is reputed among his relations to be dead - and has been so reputed for about 30 years Uncle left Beaver about 1818 to 1822 -

45 Interrogatory 4th Do you know whether the said James McLean ever drew Bounty Land for his services in the War of 1812 - Did you ever see his patent for the same & if so when & where and for what land was it.

Answer to Inty 4th - I never saw him have any patent for Bounty Land for his Military Services - but I have often heard him say that he had one - It was then the understanding and belief among his relations that he had one. I do not know in any other way that he ever drew bounty land for his services in the War of 1812.

Interrogatory 5th. Give a full description of the said James McLean at the last time you saw him or while you were acquainted with him - his age - complexion - the color of his hair and eyes - his size and how tall he was - State fully all about his personal appearance -

Answer to Inty 5th - I do not recollect ever hearing him state his age - But from my memory of his appearance I believe him to have been about forty years old when he enlisted. He carried his age well and did not, if any, look much older when he left Beaver Town or the last time I saw him. His complexion was fair - His whiskers were inclined to be sandy. His hair was what is often called fair hair - It was not black - nor red - The color of his eyes I do not remember - He was from 5 ft 8 to 5 ft 10 inches high - of spare light build. I would

have weighed about 140 to 145 lbs. He was born in Ireland as I was informed by himself & by my father and had some broad Scotch Irish Brogue in his tongue. He always went well dressed and clean. He received a bullet wound in the thigh (which one I do not recollect during the war. which caused him ever afterwards while I knew him to halt some or limp in his gait. He was very intemperate in his habits. He was a bachelor.

46
Interrogatory Oth. Did you ever know a man by the name of James McLean in Warren County Virginia & so state whether he is the same man described by you above or not.

Answer to Int Oth. I never knew any such person
James McLean

State of Pennsylvania
Laurence County ss

James Dickson Esq a Justice of the Peace in and for said county and State, a Commissioner duly appointed to take the Depositions of the said James McLean and Marquis McLean Witnesses, whose names are subscribed to the foregoing depositions do hereby certify that previous to the Commencement of the Examination of the said James McLean and Marquis McLean as witnesses in the suit aforesaid between the said Alfred Freeman plaintiff and the said Robert Holloway and Henry W. Boggess defendants they were respectively & severally sworn by me as such Commissioner to testify the truth in relation to the matters in controversy between the said plaintiff and defendants so far as they respectively should be interrogated concerning the same. That the said deposition was taken at my office in the Borough of New Castle - County of Lawrence and State of Pennsylvania on the 20th day of September A.D. 1858, And that after said deposition were so by me taken the interrogatories and answers thereto as written down, were read

own to the said witnesses and that thereupon the same were signed and sworn to by the said deponents James McLean and Marguerite McLean before me the said oath being administered by me the said Commissioner at the place and on the day and year last aforesaid.

Witness my hand & seal

Jas. Dickson JP

State of Pennsylvania

Lawrence County ss. I John S. Pomeroy, Prothonotary of the Court of Common Pleas of said county, hereby certify that James Dickson before whom the foregoing depositions purport to have been taken, is now and was at the time of the taking of the same, an Acting Justice of the Peace in and for said County, duly elected, Commissioned and sworn that his signature to said certificate is genuine, that full faith and credit and due to all his official acts and that said court is a court of Record. Witness my Hand & the Seal of said court at New-castle this 21st day of Sept. A D 1858.

47
Filed for record
under prior order
of Court May 30 1858
Charles A. K.
Ind. Sec. H. H. H.

~~Which said Depositions Prior to the Trial the Plaintiff had moved to suppress in the words & figures following~~

~~To Wit:~~

And the following Deposition, which in words &c is as follows.

To Wit:

"State of Illinois

"Warren County ss

In Justice Court
Before W. H. W. Boggs Esq.
Justice in & for said County.

Alfred R. Freeman

vs.
Robert Holloway
Henry M. Bogges.

Plata County Court.
Oct. Term 1858.

Deposition of Bond R Lowry of said Warren
County, aged about twenty two years a witness in the above
entitled Cause taken by H W Boggess Esqr. a Justice
of the Peace of the County of Warren and State of Illinois
on the 21st day of September A.D. 1858. at the Office of
Hollaway & Boggess in Monmouth said County
Warren pursuant to the attached Notice on the part of
the said Defendant.

48 Bond R. Lowry being duly sworn according to Law
doth depose and say as follows to wit.

Interrogatory first What is your Name Age Occupation and
Place of Residence -

Answer first - My Name is Bond R Lowry I am
Twenty Two Years of age past - My occupation is that of
Clerking - My Residence is Monmouth Warren County,
State of Illinois

Int 2 Do you know the parties to this Suit or either of
them and which of them and how long have you known
them.

Ans 2nd I am acquainted with the Defendants Hollaway
& Boggess and have known them about two years - I
am not acquainted with Mr Freeman

Int 3 Are you acquainted with John Milham and
if Yea how long have you known him - And where
have you known him.

Ans 3. Yes I am acquainted with John Milham
and have known him nearly two years I became ac-
quainted with and have known him at this place Mon-
mouth and have also known him at Peoria Ills -

Int 1st State, if anything you know of a Sale of Land by said John Mileham, to Holloway & Boggess. All you may know in regard to the same.

Ans 1st On or about the 24th day of April 1857 I was present at the office of W. R. Lord at Monmouth Hancock County, Illinois and John Mileham and Robert Holloway, one of the Defendants aforesaid, were also present. Mileham as Agent for Mr Freeman the Plaintiff aforesaid and for Mr A. C. Hankinson Mr Freeman's partner was selling some land to Mr R. Holloway for the Defendants amongst which was a Tax Title on a quarter of Sec 8 S. 1 N. 4 West I think the North East Quarter of Section 8.

Int 5th How do you know that Mileham was agent for Freeman & Hankinson

Ans 5th Mr Mileham told me he was their agent and I have several times seen him Mileham in their (Freeman & Hankinson's) office at Peoria - employed by them and have received letters from Freeman & Hankinson with their signatures attached by him

Int 6th State if anything you know any representations you heard the said Mileham make to the said Holloway at the time of the Sale above mentioned or at any time thereafter in regard to the said North East Quarter of Sec 8. S. 1 North & four West.

Ans 6th Mr Mileham told me soon after the Sale that he had "roped" Holloway & Boggess in" in the Sale of the said Quarter and further said he would not have done so with Mr Lane the Gentlemen as for whom I was clerking.

Int 7th What did Mileham mean by "roping" Holloway & Boggess in" and what further did he represent.

Ans by From what I gathered from his conversation he had misrepresented the title and situation of the land to Mr Holloway at the time of the Sale to induce him to buy the same -

Int 8 Is there any other Matter or thing in relation to this Sale of Land refused to, that you may recollect: and if so, State what it is?

51
Ans 8 From Conversations that I had with said Milham and from conversations I heard him have with others in Mr Lover's office When I was present. I am clearly of the belief that said Milham intended to and did misrepresent the title and situation of the premises sold to the defendants, but I do not recollect the precise language used by said Milham. And further this deponent saith not.

Bond W. Lowry.

State of Illinois }
Warren County } ss.

I W. H. Boggess a Justice of the Peace of said County - do certify that the foregoing deposition was taken by me at the time and place mentioned in the attached notice, that the said Witness was first duly sworn, and that the same was carefully read to said Witness and signed by him

Dated this 21st day of September A.D. 1858
W. H. Boggess J.P.

Witness Fees \$ 1.00

Justice Fees \$ 3.00

Clerks " \$ 35
\$ 4.35

State of Illinois }

Warren County } ss.

I, E. J. Swinney, Clerk of the County Court in and for said County and State, do hereby certify, that W. H. Boggess, Esq. whose name is subscribed to the foregoing Certificate and Depositions, was

on the day of the date thereof, to-wit, on the 21st day of Sept.
A.D. 1858 a Justice of the Peace in and for said County,
duly elected, commissioned, and sworn, and, as such, duly author-
ized and empowered to administer Oaths for general purposes
to take the acknowledgment of Deeds, and all other Instruments
in writing, and that his signature thereto is genuine.



In Testimony Whereof, I have hereunto sub-
scribed my name, and affixed the Seal of said
County Court, at the City of Monmouth, this
30th day of November A.D. 1858.

Ephraim S. Swinney Clerk.

Opened and filed by
Shirley D. Smith
Jan 21, 1859
Clerk of the Court

Which said Depositions prior to the trial the Plaintiff had moved
to suppress in the Words & Figures following to Wit:

Alfred Sherman } County Court
vs. } November Term 1858.
Holloway & Boggess }

The plaintiff herein moves to quash
the depositions of James McLean, Marguis McLean &
A. G. Kirkpatrick taken herein, for the following reasons

1st The Testimony of said James & Marguis McLean is
for the most part mere hearsay, and for that reason incompetent

2nd Said Testimony is wholly irrelevant & inconclusive

3^d The Testimony of said Kirkpatrick except the Answer to
the first Interrogatory is all incompetent, not being the best
evidence of which the Nature of the case admits.

4th Said Testimony of said Kirkpatrick details only conver-
sations with & declarations of a third party, who is himself
a competent witness

5th Said Depositions are all otherwise defective, informal & insufficient
Cooper for plff.

Alfred Freeman

vs.

Robert Holloway

Henry M. Boggess

County Court January Term A.D. 1859

Said Plaintiff comes & moves the Court to suppress the Deposition of Bond R. Bury taken by Defendants herein.

1st Because Notice was not given to plff.

2nd Because said Deposition was taken at the office of defendants.

3rd Said Deposition is not duly certified

4th Because the Matter of said deposition is wholly incompetent as evidenced in this cause.

5th Because the Officer before whom taken is a near relative of one of the Defs.

Cooper for plff.

Filed Jan 3 1859
Circuit Ct.

And thereupon on the coming on of this Trial, the Court overruled the several motions to suppress said Depositions except the following portions of the Depositions of A. G. Kirkpatrick which portion was suppressed

"He also represented to me that Stanhinson and Freeman and their Grantors had paid the Taxes on these lands regularly. and that there was nothing against them except the plaintiff's title. I cannot recollect whether Mr Holloway was present when this statement was made or not"

"Answer to 4th Interrogatory" "I talked to Milcham about the Sale after it was made. I think I told him that I had a suspicion or believed that he had been down at the land in Henderson County and having failed to effect a sale had come back with the 'bad road' story. I think however he refused to acknowledge that he had been on the land. My recollection is rather vague however on this point. This

occurred on the same day of the Sale to Holloway.

The Court then admitted in evidence said Depositions except said part suppressed as aforesaid and to the rulings of the Court in admitting said Depositions in Evidence the Plaintiff then & then objected & excepted and to the Suppressing of said portion of Kirkpatrick's deposition the defendants then & then objected & excepted.

And the Defendant then further to maintain the issues on his part introduced to the stand John Mileham who being sworn testified as follows.

54 "I know the Parties to this suit. I was the agent of the plaintiff to sell lands in 1856 and in 1857. I sold to defendants "Holloway & Boggess lands as the agent of Plaintiff and "Hankinson. I was the agent of Hankinson & Freeman to sell these lands. The lands I sold to Holloway & Boggess the defendants were the South West Quarter of Section 20 "Nine North (1) One West in Warren County. Also the South West of 32 in Ten North Range three West in Warren County. The North East Quarter of Section Eight in Township "Eight North Range Four West in Henderson County and a quarter on Section 34 in Township 13. North Range two west in Illceux County. Don't recollect which quarter on 34. I executed bonds as the Agent of Hankinson and Freeman to defendants for these lands (Here the Defendants attorney handed the bonds to witness I asked him if those were the bonds alluded to) Witness said - These are the bonds I executed on behalf of Hankinson & Freeman to Defendants on the Sale of said Lands which said Bonds are in words and Figures following To wit.

"Know all men by these presents, That Ambrose O. Hankinson & "Alfred Freeman of Peoria City & County State of Illinois are "held and firmly bound unto Holloway & Boggess of the County "of Warren in the State of Illinois in the penal sum of Two Hundred "and dollars lawful money of the United States, the payment of "which well and truly to be made, we bind ourselves our heirs, "executors, administrators and assigns, firmly by these presents,

55
"Signed with our hands, and sealed with our seal, and dated at
"Monmouth this 24th day of April A.D. eighteen hundred and
"fifty seven. Now the condition of the above Obligation is such,
"That whereas the said Holloway & Boggess hath purchased
"from said Hankinson & Freeman The South West Quarter
"of Section Number Thirty two (32) Township No Ten (10)
"North of the Base line of Range No Three West situate in
"Warren Co. Ills.

"For the sum of Two Hundred dollars and given their notes,
"payable with interest one payable the 15th of May A.D. 1857 for
"Sixty seven dollars & one in one year from date for Sixty Eight
"dollars & one due in two years from date for Sixty five dollars.
"Now Provided said Holloway & Boggess shall well and truly
"pay, or cause to be paid and satisfied, said note as aforesaid, as
"soon as they become due and payable, and also shall pay all
"taxes assessed on said land since the 24th of April A.D. 1857.
"Then shall the said Hankinson & Freeman or their legal rep
"resentatives, make and execute, a Just Claim Deed for said
"land, unto the said Holloway & Boggess, or his assigns.
"Provided said note aforesaid, shall not be paid, as soon as
"they become due and said taxes as above mentioned shall not
"be paid, then this obligation to be forever void in law and equity,
"otherwise to remain in full force and effect.

A. C. Hankinson

Alfred Freeman

By John Mulhand them self

Know all Men by these presents, That Ambrose O'Hank-
inson and Alfred Freeman of Peoria City & County State of
Illinois are held and firmly bound unto Holloway & Boggess
of the County of Warren in the State of Illinois in the penal
sum of Eight Hundred Dollars lawful money of the Un-
ited States, the payment of which, well and truly to be made,
we bind ourselves, our heirs, executors, administrators and assigns,
firmly by these presents, signed with our hand, and sealed with
our seal, and dated at Monmouth this 24th day of April
A.D. eighteen hundred and fifty seven.
Now the condition of the above Obligation is such, That.

" whereas, the said Holloway & Boggess, hath purchased from
" said Hankinson & Freeman the North East Quarter of
" Section Eight (8) Township Eight (8) North Range Four (4)
" West of the Fourth principal meridian in the County of
" Henderson and State of Illinois

" For the Sum of Four Hundred Dollars, and given their three notes
" as follows One hundred and thirty three dollars on the 15th May
" 1857 One hundred and thirty three dollars on the 24th April 1858.
" One hundred and thirty four dollars on the 24th April 1859 the
" last two payments with interest at 6 per cent.
" Now Provided, said Holloway & Boggess shall well and
" truly pay, or cause to be paid and satisfied, said notes as aforesaid
" as soon as they become due and payable, and shall pay all taxes
" assessed on said land since the first day of January 1857
" 56 Then shall the said Hankinson & Freeman or their legal rep-
" resentatives, make and execute, their deed conveying all their
" right, title & Interest to said tract of land the same to be
" the Tax Title to said land, unto the said Holloway & Boggess
" or their assigns. Provided said Notes aforesaid shall not be
" paid, as soon as they become due and said taxes as above.
" mentioned, shall not be paid, then this obligation to be for-
" ever void in law and equity, otherwise to remain in full
" force and effect

" A.C. Hankinson E
" Alfred Freeman E
By John Mulholland their atty E

The defendants counsel then asked the Witness to state if
the Note then shown him on which this suit is brought,
is the Note or one of the Notes executed at said sale by
defendants on the purchase of said Lands?
The Plaintiff objected to the Questions being answered by
the Witness and the Court sustained the objection &
refused to let the Witness answer the Question. To all of
which the Defendants attorney then & then accepted &
objected. The Defendants Counsel then asked the wit-
ness the following Question to wit
What representations did you as the Agent of Plaintiff

at said sale make to the defendants relative to the lands or
title thereto so sold by you to them To the Answering of
which Question the Plaintiffs counsel objected and the Court
sustained the Objection to which the defendants by their counsel
then & there excepted & objected

The Parties then Closed the Case The foregoing was all the
evidence in the case. The jury then retired and returned into
Court the following Verdict.

Freeman

vs
"Holloway Boggess } We the jury find Issues for the Plaintiff
"and assess the damages at four Hundred & forty four
57 "Dollars & ten cents "John B Warner
Freeman

The defendants then moved for a new trial for the following
reasons.

- 1 The Verdict is contrary to law
- 2 It is contrary to evidence
3. The Court refused proper evidence offered on the part of
the defendant to go to the jury.

But the Court overruled the
motion for a new trial & rendered judgment on the Verdict
for the sum of \$ 444.10 dollars & costs of suit

To all of which the defendants then & there excepted & objected
& prayed this Court to sign & seal this bill of exceptions

Wellington Loucks E
County Judge.

And afterwards To wit on the 21st February A.D. 1859.
there was filed in the office aforesaid. An appeal Bond
which in words and figures is as follows

To Wit:

"Know all Men by these presents that We Robert Holloway
"Henry M Boggess and A. G. Kirkpatrick are held and
"firmly bound unto Alfred Freeman in the penal sum
"of Nine hundred dollars for the payment of which well
"and truly to be made We bind ourselves our heirs executors

And administrators jointly & severally, by these presents.
Witness our hands & seals this 15th day of February A.D. 1859
The condition of the above obligation is such that whereas
the above named Alfred Freeman did at the February
Term of the County Court in & for the County of Peoria Ill-
inois recover a judgment against the above bounden Rob-
ert Holloway and Henry M. Boggess. for the sum of four
hundred and forty four dollars and Ten Cents and Costs of
Suit from which said judgment the said Holloway &
Boggess then and there prayed an appeal to the Supreme
Court of the State of Illinois
Now if the said Holloway & Boggess shall prosecute
their said appeal with effect and without delay and
shall well and truly pay all judgments. costs. interests
and damages in case the said judgment shall be aff-
irmed in the Supreme Court then the above obligation
to be void otherwise to be and remain in full force
and virtue in Law.

Robt. Holloway. *Seal*
Henry M. Boggess *Seal*
A. G. Kirkpatrick *Seal*

State of Illinois }
County of Peoria } ss.

Clerk's office.

I, Charles Kettillo Clerk of the
County Court of said County of Peoria and State of
Illinois do hereby certify that the foregoing is a
full true and perfect Transcript from the files and
Records in my office of the proceedings in a certain
Cause in said Court. to-wit:

Alfred Greenman is Plaintiff
and
Robert Holloway,
Henry M. Rogers are Defendants.

Witness my Hand and the Seal
of office of said County Court at Peoria
this 6th of April 1859.

Charles Kettillo
Clerk

Fee \$22.75. paid by depts attorney

Rec'd H. M. Wead (\$22.75) Seventy Two and 75/100
dollars for this transcript.

Chas Kettillo
per H. M. Wead

Robert H. Holloway
Henry M. Boggs }
vs.

Alfred Freeman } Appeal from Boone Co. Ct. =

- On behalf of the appellee I submit the following sug-
gestions upon the points made in printed brief.
1. The motion of ~~plea~~ below to strike from
the files the motion of ~~plea~~ to dismiss the writ, ex-
pressly refers to the rules numbered 4 & 7 of the Court
and makes the same part of the motion: These rules
are not copied into the Record, and this Court,
I take it, will, in such case, presume, that the Court
below had sufficient reason, under said rules, for its
action in ~~striking~~ the motion to dismiss from
the files:

Sec. 2 of the Act extending the juris-
diction of the County Court, Purp. Stat. 2. 1260,
is referred to, to show the authority of that Court to
establish rules of practice covering cases of this
kind:

2. The object sought could not, in a case of this sort,
be raised by motion: I am aware this Court has de-
cided, in general terms, that questions of this nature may
be raised by plea in abatement or Motion to dismiss.
But I suppose this distinction to exist: that where it
is apparent upon the face of the papers that the writ
has imprudently issued, there a motion to dismiss is
proper: But where the irregularity does not appear
upon the papers, but has to be shown by matter
behind the Record, as was the case here, there,
I conceive, it can only be done by plea in abate-
ment; otherwise, I see not how an issue of fact could
be formed & a trial ^{by jury} had, upon such extrinsic matter.

which the p^{ty} is certainly entitled to, but which he would be cut off from, if the question can arise on Motion = Where however the matter appears on the face of the Record, then, it is for the Court to determine, from inspection, and a Motion is proper. And the cases in 18 Ills. 292 & 13 Ills. 432, do not, I think, necessarily conflict with this view =

In regard to the plea in abatement, I remark.

1. The Suit is against Robert H. Holloway & Henry M. Boggs and they ^{afterwards} appear & plead to the action by those names. But this plea is signed Robert Holloway, H. M. Boggs = Robert Holloway & Robert H. Holloway, are not necessarily the same person =
2. This plea & the mat attached showed alterations & fillings, after ~~the~~ the same was shown to, as stated in the Motion, - This, the Record in no way shows. And this Court cannot know, but that sufficient reason for striking the plea from the file existed on that account = possibly however, as it is not apparent ~~that~~ from the Record that such alteration was made it may be held to have been the duty of the appellee to have the Record amended, if he wished to avail himself of it. And if so, this point will not be further insisted on =
3. This plea was not filed in apt time: It is purely a matter of privilege - see 13 Ills. 449-450 - and unless insisted on in apt time is deemed to be waived = Pleas of this kind, & in Abatement generally, are not favored = they are merely dilatory & must be interposed at the earliest opportunity: This was not done =
4. By pleading in Bar & going to trial on the merits said plea in abatement has been waived, and the propriety or otherwise of striking it from the

files cannot now be raised in this Court =

This Court, I am aware, has decided, that pleading over after demurrer sustained to a plea in Abatement does not preclude the deft from affirming Error on the decision sustaining the demurrer: But the reason is, that the judgment of the Court, in such case, being respondens ouster, the subsequent pleading is but complying with the order of the Court: That reason does not obtain here - And certainly the general rule is, that a plea in bar waives the plea in Abatement: Besides, this being in the nature of a plea to the jurisdiction of the Court over the person of the defendant, it is not easy to conceive how, an appearance & plea to the action on its merits, does not admit the jurisdiction, and the propriety of calling upon the party to answer in that Court: And it is understood to be a rule, in the order of pleading, well settled, that, whenever a defendant, by his own act, permits himself to occupy a position on the record, which, from its nature, admits that there is no good foundation for some plea, prior in point of time, there he is precluded from filing such ^{prior} plea, if he has not already done so, and if he has, he is deemed to have waived it, by the filing of such subsequent plea.

The Authorities are believed to be so uniform on this subject, that a special reference is deemed unnecessary.

Upon the 3^d & 4th points made by Appellants, I desire, in addition to the suggestions under the 4th head in my printed Brief, to ask the attention of the Court to the showing of the Record on pages 54 to 57 inclusive - from which it will be seen, that the oral testimony deposed to be called out from the Witnesses, was in direct contradiction to the written Evidence which they themselves had introduced - The note sued on is for \$401, payable in one year from the 24th of April 1857 - The dfto/procured by the Witness, Nicholam, and introduced in Evidence, as executed by A. C. Hankinson & Alfred Greenman two Bonds ^{dated April 24/57,} for deeds, or contracts under Seal, for the conveyance of certain lands by said Hankinson & Greenman to dfto - One of which Bonds described the consideration of the lands therein sold to be \$200, for which three notes were given - One for \$67, payable May 15/57 - one for \$65, payable in one year from date & one for \$68, payable in two years from date - The other Bond sets out a consideration of \$400 - payable by three notes - one for \$133, due May 15/57 - one for \$133, due April 24/58, & one for \$134, due April 24/59 - Now, the Witness was asked whether the note sued on was the note or one of the notes, given at said

sale for the purchase of said lands - Which, in
this posture of the opts' own proof, objection was
made, & the objection sustained. And, I think, rightly.
Here, no fraud or mistake in the execution of the note sued
on, or in the description of the notes set out in the ti-
tle Bonds, is pretended. And surely, after having them
admitted introduced evidence of this kind, that the notes actually given
in at this sale, were drawn in favor of two persons, for total-
ly different amounts and payable at different times
from the note sued on, they are not to be permitted to
turn round and contradict the whole, & that by parol,
in the manner proposed =

Where a contract is reduced to writing, the
law intends that it contains the meaning of the parties.
And, except in cases of fraud, mistake or trust, parol
proof is not admissible to show otherwise = 1 Ala. 60 =
320 = 12 Tenn. 353 = &c. &c.

If the position above assumed be correct,
then, of course, the ^{objection to the} other question asked the witness
Mildham, was properly sustained. The answer, if
given, must have been wholly irrelevant =

J. K. Cooper
for Appellees

203—
Halloway & Bagge⁹²
ms. =

Greenman =

Argument of Appellee =

Filed May 8. 1859
L. Leland
Clerk

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION,

APRIL TERM, A. D. 1859.

HOLLOWAY and BOGGES vs. ALFRED FREEMAN.

PLAINTIFFS' BRIEF, BY H. M. WEAD.

1. The Practice Act, Sec. 2, page 820, Purple's Statutes, provides: "It shall not be lawful to sue a defendant out of the County where he resides or may be found, except in cases where the debt, contract, or cause of action accrued in the county of the plaintiff, or is specifically made payable there."

The motion to dismiss was filed on the 2d day of the Term, to which the summons was returnable, and was stricken from the files.

The plea in abatement was filed on the 3d day of the Term, and met with the same melancholy and disastrous fate.

Both the motion and plea were in apt season, and amply sufficient.

2. I know not what the rules of the Court were, but no Court has power to prevent a party from filing a plea or making a defence in apt season.

3. The defence in this case, under the agreement *that all matters might be given in evidence the same as if specially plead*, was fraudulent representations as to the title and occupancy of the land sold. The agent of plaintiff below, Miliham, was placed upon the stand, and the Court refused to let him state what *representations he did make* when he sold the land.

4. The Court also refused to let the defendant below show that the note was given in consideration of the value of the land.

For all these obvious errors, the judgment below ought to be reversed.

H. M. WEAD,
For Plaintiff.

203-92

Holloway et al vs Freeman

Plffs. Brief

Robert H. Holloway	}	In the Supreme Court =
Henry M. Boggess		3 ^d Grand division
vs.		April Term A.D. 1859
Alfred Freeman	}	Appeal from Peoria Co. Ct. =

Alfred Freeman, the Appellee herein, comes & moves the Court to direct the Clerk of this Court, not to tax as costs herein, so much of the Record in this Cause as embraces the special pleas ^{filed by} of the defendants below and the demurrers of the plff thereto, being all that part of said Record, commencing on page 8, after the plea of the general issue & running to the foot of page 22. For the reason that said pleadings were withdrawn by the parties, and said Cause tried on the general issue alone, as shown by the agreement of parties entered on page 23, of said Record =

Cooper
for appellee

203-72
Hollaway & Boggs
as =
Alfred Freeman
Motion

Filed April 30. 1889
L. Leland
Clk.

SUPREME COURT OF ILLINOIS,

Third Division—April Term, 1859.

ROBERT H. HOLLOWAY, }
HENRY M. BOGGESS, } *Appeal from Peoria County Court.*
vs.
ALFRED FREEMAN. }

APPELLEE'S BRIEF.

1st. The action of the county Court in striking the motion of defendants below from the files, cannot be raised in this court; because the rules in the county court, referred to and made part of the cross-motion, not being set out in the record, this court cannot know but that the action of said court was proper; and because by pleading in abatement and afterwards in bar, said motion is waived. *Cobb vs. Ingalls, Bruce 180*

2d. The object sought by said motion could not be reached in that way.

3d. For the reasons assigned in the motion, the plea in abatement was properly stricken from the files. But whether this be so or not, by pleading in bar, said plea in abatement is waived, and the question cannot now be raised in this court.

Pennsylvania State Report, 26, ⁴⁶²~~202~~.

4th. The objections of plaintiff below to the questions put to the witness, Mileham, were properly sustained. The testimony desired to be elicited, if relevant to the issue, could only be so by contradicting the note sued on, and the written instruments offered in evidence by the defendants.

The exceptions to the ruling of the court in suppressing a portion of the depositions taken by defendants, are not understood to be now insisted on,

COOPER,
For Appellant.

Sept moves to strike from the Record, in the taxation of costs by the clerk, from middle of page 8 to end of page 22 = motion in writ filed =

203-92

Hollaway vs Freeman

Appellus Brief

Filed April 30.

H. Leland

Clerk

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION,

APRIL TERM, A. D. 1859.

HOLLOWAY and BOGGES vs. ALFRED FREEMAN.

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For all these obvious errors, the judgment below ought to be reversed.

H. M. WEAD,
For Plaintiff.

20B-72

Halloway et al vs Freeman

Plffs. brief

Filed April 27, 1889
L. Leland
clerk

Paper