

12469

No. _____

Supreme Court of Illinois

Gordon

vs.

Downing

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George S. Darwin
vs

Thompson Gordon

1857

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1857

12469

X

Be it Remembered that on the 10th day of
December A.D. 1855: Milo Wendall Esq. Attorney for
George S. Downing- came into the office of the Clerk
of the Circuit Court. within and for the County of
Bureau and State of Illinois and filed in said
Clerks office the following Bill of Complaint & prayer
for process- in the words and figures following
to wit.

Copy of Bill

To the honorable the Judge of the
ninth judicial Circuit Court. and
presiding Judge for the Bureau
County Circuit Court for the State of
Illinois in Chancery Sitting &
Complaining sheweth unto your honor of ~~George S. Downing~~
George S. Downing of the County of Lyon and State
of Iowa that on the twentieth day of October A.D.
1854, at the County of Bureau and State of
Illinois your orator being then in possession of the
North East quarter of Section No twenty three (23)
in Township No fourteen (14) North of Range No
Eight (8) East of the 4th principal meridian in said
County. and being then the owner of certain real
permanent and valuable improvements on said
premises. On the day aforesaid sold the said im-
provements and all the right title and interest
of your orator in said premises to one Thompson Gallow.

then of the County of Peoria, in Said State of Illinois,
 but now a resident of Said Bureau County, in Said
 State of Illinois - for the sum of Two Thousand dollars,
 and your Orator then and there agreed with said
 Gordon, in consideration of said sum of Two Thousand
 dollars to Quit Claim and release unto said Gordon
 and his heirs & assigns all the right title and
 Interest of your Orator in said premises - and
 said Gordon - in consideration of such release
 and Quit Claim, then and there agreed to pay
 your Orator the said sum of Two Thousand dollars,
 And in pursuance of said agreement, your Orator
 and said Gordon on the day aforesaid applied to
 one Allen J. Kerith Esqr. then a Justice of the
 peace of said Bureau County, to make out and
 prepare a suitable quit claim deed, to be executed
 acknowledged and delivered by your Orator and
 Caroline his wife to the said Thompson Gordon,
 releasing to said Gordon his heirs and assigns the
 right title and interest then owned in the said
 premises by your Orator, without any covenants
 of Warranty, or any covenants at all whereby
 your Orator could by any possibility be made
 accountable or liable for defect of title, either to
 said Gordon or his heirs or assigns. That on the day
 aforesaid the said Allen J. Kerith, in the presence
 of said Gordon, and your Orator being requested by
 your Orator and said Gordon, to make and

prepare a quit claim deed without covenants
as aforesaid. made and prepared a deed
for your Orator to sign. and which your
Orator supposed was a quit claim deed without
covenants as was understood and agreed upon
as aforesaid. and your Orator then and there
signed the same and acknowledged and delivered
the said deed before the said Justice Allen J. Smith.
and Caroline wife of your Orator also then and
there signed and acknowledged the said deed
before the said Justice in due form of law for
relinquishing her dower in the premises aforesaid.
that the said deed so executed acknowledged and
delivered by your Orator to said Gordon was a
warranty deed. with covenants of warranty of title
in the said premises. Contrary to the understanding
and agreement between your Orator and said Gordon.
And was so drawn framed and prepared wholly by
mistake. and was not intended to be a warranty
deed either by your Orator or by said Gordon.
your Orator shows that he was ignorant of the
nature and character of the deed at the time. and
supposed it to be merely a quit claim & release as
aforesaid until about the 26th day of October 1855.
when your Orator for the first time ascertained
that the said conveyance was a warranty deed instead
of a quit claim as aforesaid. Your Orator shows that the
There was seventy acres parcel of said quarter section

at the time of Said Sale and Conveyance under a good fence and in a good state of Cultivation. And there was erected on Said premises a dwelling house and certain other improvements —

Your orator further Shows that at the time of the said Sale and Conveyance, it was well known and understood by your orator and by Said Gordon — that your orators title was extremely doubtful, and most likely not good to at least an undivided half of Said premises, and that the title to the other undivided half was also precarious and uncertain and that for the reason that your orators title was doubtful and uncertain your orator refused to warrant the title to Said premises, and sold the same to Said Gordon at a much lower price, and much less money on account of the special agreement to convey by a quit claim deed as aforesaid, all of which was well known to Said Gordon, at the time of said Sale and conveyance —

Your orator Shows that his title to said quarter section of land was derived in the following way and manner to wit. In 1842 said quarter section was sold for Sale, by the Sheriff of said Bureau County and afterwards on the 21st day of March 1844, conveyed by a deed executed by Stephen Smith then Sheriff of said County in his official capacity to Solomon Melvin of the City of New York — Solomon Melvin of the City of New York conveyed

the same by a quit claim deed, September 18th 1846, to Schuyler W. Mattison, also of the City of New York. October 10th 1846, Schuyler W. Mattison conveyed the same by a quit claim deed to Ammon Sheldon then of Bureau County aforesaid. January 25th 1848, Ammon W. Sheldon conveyed the same by a quit claim deed to your orator — Your orator further shows that at the December Term 1846 of the United States Circuit Court for the District of Illinois. One Peter L. Elmendorf recovered a judgment in said Court against Cornelius W. Timison and Henry Timison, for four hundred and fifty dollars debt and one hundred and seventy three $\frac{39}{100}$ dollars damages and costs of suit. upon which judgment was issued a certain writ of Execution dated April 26th 1851, directed to the Marshal for said District of Illinois to execute, that by virtue of the said Execution, Benjamin Bond, then Marshal for said District of Illinois, and before the return day of said Execution levied upon the undivided half of the said quarter Section, as the property of the said Cornelius W. and Henry Timison, and afterwards to wit, on the 18th day of July 1851, sold the same at Public Vendue to One Thomas Lewis, and afterwards to wit, on the 6th day of April 1852 conveyed the same by his official deed as Marshal aforesaid to said Thomas Lewis, and on the 23^d day of April 1852, said Thomas Lewis conveyed the said undivided half of said quarter Section to your orator, by a deed of quit claim.

and the title so derived is all the title your orator had or claimed to have at the time of your orators sale and conveyance to Said Gordon. All of which was well known to Said Gordon, at the time of said sale and conveyance to him. Your orator shows that at the time of the sale and conveyance last aforesaid it was well understood by your orator & Said Gordon, that your orators title was or might prove defective, and that other person or persons then unknown to your orator might and probably would claim the premises by a better and permanent title, and in consideration thereof your orator sold for a less price and stipulated or agreed expressly with Said Gordon to convey only by a quit claim deed, instead of a Warranty deed. Your orator shows that some person or persons unknown to your orator are now claiming the land by title adverse to your orators title as conveyed to Said Gordon, but the particulars as to their claims or as to their title your orator is not informed and cannot state. Your orator shows that he has none of the deeds in his possession none whereby title in him is derived, but that the same are all in the possession of Said Gordon. Your orator also shows that the deed of conveyance by your orator to Said Gordon, is in the possession of Said Gordon, and cannot be produced by your orator, but that the same is recorded in the records office of Said Bureau County, and a copy thereof marked "A." is hereto attached and made

a part of this bill. Your orator further shows that since he learned of the deed being by mistake made a warranty instead of a quit claim, your Orator immediately applied to said Gordon to rectify said mistake by having the said deed in some way canceled, and having a quit claim executed by your Orator according to the agreement, or by a release discharging your orator from all covenants of title in said deed. but said Gordon utterly refused and still refuses to release your orator from the covenants in said deed, but threatens to hold your Orator liable & responsible for all deficiency of title in said premises. Your Orator further shows that said Gordon has not as yet conveyed the said premises or any part thereof to any other person or persons. Your Orator therefore prays that said Thompson Gordon be made party defendant to this Bill. that he be summoned to answer all and singular the allegations herein contained fully, ^{which is hereby expressly waived} without Oath, that he be required to produce in Court all the deeds of conveyance in his possession or control relating to said premises. that he be enjoined from conveying said premises or any part thereof to any other person or persons to the prejudice of your Orator before the final termination of this suit. And that upon the final hearing of this Cause that said Court will decree the said conveyance by your Orator to said Gordon his heirs and assigns to be wholly set aside and canceled, and that

your orator be allowed by the decree to convey the said premises by a quit claim deed or release without covenants. merely conveying to said Gordon his heirs and assigns all such right title and interest in the said premises as your orator had at the time of making the aforesaid sale and conveyance, or that said Gordon be decreed to execute and acknowledge a valid and sufficient release, releasing and discharging your orator his heirs executors & administrators from all liability present and future on account of the covenants or any of them contained in the aforesaid conveyance - and such other and further general relief in the premises as to equity and justice appertain, and your orator will ever pray &c.

George S. Downing
by M. Wendell his solicitor

Copy of Exhibit marked "A" in the Bill.

This indenture made this Twentieth day of October in the year of our Lord one thousand eight hundred and fifty four. Between George S. Downing and Caroline Downing his wife of the county of Bureau and State of Illinois, of the first part, and Thompson Gordon, of Peoria County, and State aforesaid of the second part, witnesseth, that the said parties of the first part for and in consideration of the sum of Two Thousand dollars

paid by the said party of the second part, the receipt
of which is hereby acknowledged. hath granted bar-
gained, sold and conveyed, and by these presents
do grant bargain sell and confirm unto the said
party of the second part, and to his heirs and assigns
forever a certain tract or parcel of land, situated
in the County of Bureau and State of Illinois, to-wit:
The North East quarter of Section No Twenty three
(23) in Township No Fourteen (14) North of Range
No Eight (8) east of the fourth principal meridian
containing One hundred and sixty acres more or
less. Together with all and singular the heredit-
aments rights privileges and appurtenances thereto
belonging, or in any wise appertaining. To have
and to hold the said premises as above described
with the appurtenances, to the said party of the
second part his heirs and assigns forever, and the
said George S. Downing for himself and his heirs
executors and administrators do hereby covenant to
and with the said party of the second part his
heirs executors administrators and assigns that he is
well seized of the premises above conveyed, as of
a good and indefeasible estate in fee simple
and hath good right to sell and convey the same
in manner and form as aforesaid - That they are
free from all incumbrance, and that the above
bargained premises in the and peaceable possession
of the said party of the second part, his heirs or

assigns against the claim of all persons whomsoever
In witness whereof the said party of the first party
hath hereunto set their hands and seals the day
and year first above written

Signed sealed and delivered

in presence of

Peter J. Fleming.

George S. Downing (Seal)

Caroline Downing (Seal)

State of Illinois

Bureau County

On this day personally appeared
before me George S. Downing and
Caroline Downing his wife who is to personally known
to be the persons whose names is subscribed to the
above deed as having executed the same, and the
said George S. Downing acknowledged that he had
freely executed the same for the uses and purposes
therein expressed. And the said Caroline Downing
wife of the said George S. Downing, after having
been by me made acquainted with the contents of said
deed, and examined separate and apart from her
said husband, whether she executed the said
deed and relinquished her dower to the lands and
tenements therein mentioned voluntarily and
freely, and without compulsion of her said husband
acknowledged that she executed the same and
relinquished her dower in the lands and tenem-
-ents therein, mentioned voluntarily and freely
and without the compulsion of her said

husband. Given, under my hand and seal at
Milo this 20th day of October AD 1854.

Allen J. Nevitt (Seal)
Justice of the Peace,

Copy of Precipie

Clerk please issue summons as above prayed
for. directed to Sheriff of Bureau to serve, on
filing this bill & the security for costs &c

Mo Kendall

Sal for Compt.

And on the same date To wit December 13th
1855. Process issued herein in the words and figures
following to wit:

State of Illinois

Bureau County

The People of the State of Illinois

To the Sheriff of Bureau County Greeting-

We Command you to summon Thompson Gordon
if he shall be found in your County, to be and
appear before our Circuit Court for said County, on the
first day of the next term thereof, to be held in
the Town of Princeton on the second Monday of
January next, to answer to a certain bill of Com-
plaint filed in our said Circuit Court, on the
Chancery side thereof against him by George S.
Downing, and further to do and receive whatever
our said Court shall then and there consider in

that behalf, and this you shall in no wise omit. Hereof fare not and make due return of this writ, with an endorsement of the manner in which you execute the same.



Witness Edward M. Fisher Clerk of our
Said Court, and the Seal thereof at
Princeton this 13th day of December
in the year of our Lord One thousand
Eight hundred and fifty five

Edward M. Fisher

Sheriff's Return on said process -

Clerk

Served by giving copy to Thompson Gordon the
1st day of January 1856.

Stephen G. Paddock

Sheriff Bu Co Ads by
William Jones Dy -

Pleas before the Hon^{ble} Mr. E. Wallister Judge
of the Ninth Judicial Circuit, of the Circuit Court
of the State of Illinois, at the January Term of said
Circuit Court, within and for the County of Bureau.
Begun and held at the Court House in Princeton
within and for said County, on Tuesday the fifteenth
day of January in the year of our Lord One thousand
Eight hundred and fifty six -

Present Hon^{ble} Mr. E. Wallister Judge

To wit on the first day of said Term

George S. Downing

vs

Bill in Chancery

Thompson Gordon

Now comes the said Respondent Thompson Gordon by Peters and Farwell his solicitors and files his answer to said Complainant's bill of Complaint in the words and figures following to wit,

The answer of the said Defendant to Complainant's bill: this Defendant saving and reserving to himself all manner of advantage or exception that may be had or taken to the many uncertainties, errors and insufficiencies in said bill contained, for answer thereto, or to so much, as he is advised is material or necessary to make answer unto, answering says, that It is true that on the 20th October AD 1854, he bought of the said Complainant the North East Quarter of Section Twenty three in Township fourteen North of Range Number Eight East of the 4th P.M., for two Thousand dollars, and that the said Complainant was then in possession of the same or a part of it, and that he had some fifty acres under improvement, and a log cabin on the same. but this Defendant utterly denies that he was advised by the Complainant his title to the one half was most probably defective and his title to the other half uncertain and

precursors. and this deft. denies ^{that} the agreement
 was that this defendant was to pay the Compt.
 two thousand dollars for his (Compt.) interest
 in the premises without any covenants of warranty
 and that the price was so fixed at less than
 Compt. asked because of the probable defects in his
 title, but this defendant expressly states that the
 Compt. represented to him before and at the time of
 the said purchase that his title was perfect, and
 this deft. would never have paid two thousand
 dollars for the title of Compt. if he had represented
 his title was so unreliable as before stated, that
 he would not have paid him half that amount,
 and that it would not have brought half of that
 amount in the market, that two thousand dollars
 was the full value of the quarter with a perfect
 title conveyed with full covenants of warranty, this
 defendant utterly denies that he together with the
 Compt. called upon Allen of Nevitt Esqr. to prepare a
 quit claim deed without any covenant of warranty,
 but that this defendant fully believed and expected
 all the time that he was to receive a warranty deed
 and said Nevitt presented a warranty deed for ex-
 ecution and which the deft. read over and expressed
 himself satisfied, as that it was a warranty deed, and
 thereupon Compt. said he would not give a warranty
 and accordingly struck out the words warranty and
 defend in the body of the deed, and the word

warrantee at the head of the deed, and then expressed himself satisfied with the deed after reading it, and thereupon defendant remonstrating with the Compt. asked him if he did not represent his title to be good, and if it was, why did he object to give a warranty deed, and thereupon the Compt. said his title was good, but as he had not a warranty deed he would not give one, and this defendant again read and examined the deed after it had been altered as aforesaid, and then expressed himself satisfied with the deed as it was then written, and it was executed in that form by defendant and his wife they both knowing what the content of the deed was, and after defendant had just read the deed and every word in it, and if he was mistaken in anything, he was mistaken as regards its legal effect, and was not mistaken in regard to the contents of the instrument. This defendant further answering says, that the title of the said Compt. to the undivided one half of the said premises was void, which the said Compt. well knew at the time he sold it to this defendant, and his object was to palm off on him a title that he knew that was not good. This defendant was at the Oct Term 1855 of the Circuit Court of Bureau County Illinois sued by Milton S. Petrus who held the legal title to the undivided half of the said premises by Bill in Chancery for Partition, and this defendant was compelled to and

did pay said Peters four hundred dollars in Cash
 to release his interest to this defendant and withdraw
 the Suit. This defendant had before the Commence-
 ment of this Suit sold the said premises to one
 Thomas Stringer who is still the Owner. This defendant
 denies that at the time of the purchase of said land
 by this deft of Complt. that he the defendant knew
 that the title set out in Complt's bill was all the
 title which Complt had. but this deft believed as
 Complt had represented that Complt had the full
 patent title to the whole quarter as well as the
 tax title set out in Complt's bill. This defendant
 says it is utterly false that the Complt sold said
 premises to him at a much less price in consequence
 of his agreeing to accept a quit claim instead of
 a warranty. This defendant denies that Complt
 ever made any such demand upon him as stated
 in his bill. and says that he never made any
 demand of the kind. this defendant admits that the
 copy annexed to said bill is a true copy of the deed
 from Complt to him said deft. and that said deed
 does not contain one word more or less than what
 Complt & his wife was aware of at the time they ex-
 -ecuted it. that Complt. is a good Scholar and that
 he carefully read it over just before signing it.
 That this defendant was no Judge of land titles
 and Confided in Complt's representations that his title
 was good. and was not until afterwards that he

learned that his Compts title was not good, and
that Compt knew it was not and intended to cheat
and defraud this defendant. All the other matters
and things in said bill are denied and proof called
for. This deft having answered asks that he may be
dismissed and receive his costs &c.

Peters & Farwell

Defts Atty

To wit on the 4th day of said Term

Now Comes the said Complainant by Milo
Hendall his Solicitor and files his replication
to the answer of the said defendant herein in the
words and figures following To wit.

George S Downing

vs

Thompson Gordon

Bureau Circuit Court
January T. 1886.

The replication of Complainant
to the answer of deft. in this cause. The complain-
ant for Replication to the defendants answer Says
that the said answer so far as it denies any of the
material allegations of said Bill, is untrue in fact.
Complainant admits that he may have told defend-
ant at the time of the trade that he did not have
a warranty deed, and would not give one, and
would give such title as complainant had and

none other, but that Complainant ever agreed or ever
 intended to give a deed with Covenants such as
 are contained in the said deed of conveyance
 between this Complainant & the defendant of the
 aforesaid lands. Complainant utterly denies, and also
 denies that he ever read or knew of the Covenants
 being in the said deed at any time before the 26th
 of October 1855. Complainant may have read the
 description of land in the deed at the time, but as
 to this Complainant does not admit, but having called
 for a quit claim deed and having told defendant
 that he would give no other, and the said justice
 having made the deed a quit claim as Complainant
 supposed, and as the said justice said he had done,
 this Complainant did not examine or read the
 covenants therein, but supposed the deed a quit claim,
 and it was the intention of both Compt & Deft &
 said justice to make the deed a quit claim deed.
 as to all the allegations of the answer not admit-
 ted herein Complainant denies, and says that
 his bill is in all respects true, and the answer
 of defendant in all respects untrue —

Wendall for Compt.

Pleas before the Hon^{ble} M^r E Keallister Judge
of the ninth Judicial Circuit of the Circuit Court of
the State of Illinois. at a term of said Circuit
Court for the County of Bureau. begun and held
at the Court House in Princeton within and for
said County. on the Twenty fourth day of March
in the year of our Lord One Thousand Eight
Hundred and fifty six.

Present Hon^{ble} M^r E Keallister Judge

Copy of the Stipulation of Parties -

Circuit Court Bureau County Ill.
March Term 1856.

George S Downing

vs

Bill in Chancery

Thompson Gordon

It is hereby agreed that the above
Cause shall be submitted to the Circuit Judge of
9th Judicial Circuit of State of Illinois. upon the
pleadings & proofs and the authorities & points
cited by Counsel. and said Judge shall make his
decision and transmit the same to the Clerk of
said Court and the same shall be entered of Record
as decided at the March Term 1856. and either
party shall have the right of appealing from said
decision. by filing a bond with security to be

approved by said Clerk in the sum of \$100 —
within 30 days after the filing of said decree

M. J. Peters for Plaintiff

Geo W Steph for Counsel,

Copy of Complainant's depositions

The deposition of Joseph Sutherland of the County
of Bureau & State of Illinois, a witness produced &
sworn & examined before W. M. Geuring a notary
public in and for the Town of Princeton in the County
of Bureau and State of Illinois on the 20th day
of March A.D. 1856. at my office in said County, in
pursuance of the foregoing and hereto appended
notice bearing date the 20th day of March A.D. 1856
and to the said Notary Public directed to be read
as evidence on the trial of a certain suit in Chan-
cery now pending and undetermined in the Bureau
County Circuit Court in the State of Illinois, wherein
George S. Downing is Complainant and Thompson
Gordon is defendant on the part and behalf of said
Complainant as follows.

Interrog 1st What is your name, age, occupation and place of
residence?

Ans Joseph Sutherland — I am a little over thirty three
years of age — I am a farmer — I reside in Town of
Milo, Bureau County, State of Illinois —

Interrog 2^d Do you know the parties Complainant and defendant in this Cause & if so how long have you known them respectively—

Ans I do know the parties to this Suit. I have known Mr Downing for twenty years past, and the other for over a year.

Interrog 3^d Do you know anything about the Complainant having sold to the defendant the North east quarter of Section Twenty three in Township fourteen North of Range Eight east of the fourth principal meridian.

Ans Yes Sir. I know it by the say so of the parties.

Interrog 4th About what time was that Sale made.

Ans I think a year ago last fall as near as I recollect.

Interrog 5th Did you hear any conversation between the parties Complainant and defendant at the time they were negotiating for the Sale of the said land, & in relation to said land, if you did state that conversation fully.

Ans I did hear conversation—the conversation was about this.—Mr Gordon asked Mr Downing if he wished to sell his farm. Mr Downing told Mr Gordon he would sell his farm if he could get his price for the same. Mr Gordon then asked Mr. Downing what his price was—Mr Downing told him he would take

Twenty five Hundred dollars for his farm crop. some hogs. (perhaps 15 or 20 hogs) and one cow. Mr Gordon then asked Mr Downing what his title was. Mr Downing told him he had the Tare title on the whole quarter and the patent title calling for the undivided half. Mr Gordon then asked him what kind of a title he would give provided they would make a trade. Mr Downing told him he would make a quit claim deed, and no other. Mr Gordon told him he would go down & look at it as he never liked to buy a pig in a poke - This conversation happened at my house - they then got into the buggy & went off & this was all I heard at that time & I never saw the parties together afterwards to talk about it.

Interrog 6th Do you know when the deed was made. if you do - how long was this conversation you have related before making the deed.

Ans The deed was made the same day - the conversation took place - The conversation was had about 8 or 9 o'clock A.M. & the deed was made about 5 or 6 o'clock P.M. of the same day. -

Propo examination on the part of the defendant.

Interrog 1st Did Gordon ask Downing if his title was good.

Ans He asked him what kind of a title he had

and Mr Downing told him what kind of a title he had & that he could be his own judge -

Interrog 2^d Was this the only inquiry made by Gordon to Downing as to the validity of his title -

Ans It is all the question he asked him in my presence.

Interrog 3^d Did Downing not state that his title was good.

Ans. Mr Downing told Mr Gordon that he did not claim to have a perfect title.

Interrog 4th Was that all that Downing said about his title

Ans Yes sir. that was all that was said in my presence at that time.

Interrog 5th Were you present when the deed was made.

Ans I was not.

Interrog 6th Are you related to either of the Parties

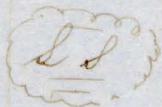
Ans I am a Cousin of Downing.

Joseph Sutherland

Town of Princeton
Pineau County
State of Illinois

ss. I do hereby certify that the above deposition of Joseph Sutherland was sworn to and signed by the deponent before me and in my presence and that the said

deposition was taken by me on the 20th day of March A.D. 1856. at my office in the said Town of Princeton agreeably & pursuant to the foregoing notice for taking of the above deposition. Given under my hand and seal notarial at Princeton this 20th day of March A.D. 1856.



W. M. Zeining
Notary Public

The deposition of Allen J. Heritt of the County of Bureau & State of Illinois, a witness produced and sworn & examined before W. M. Zeining a notary Public in and for the Town of Princeton in the County of Bureau & State of Illinois on the 20th day of March A.D. 1856 at my office in said County in pursuance of the foregoing & hereto appended notice bearing date the 20th day of March A.D. 1856. & to the said Notary public directed to be read as evidence on the trial of a certain suit in Chancery now pending & undetermined in the Bureau County Circuit Court in the State of Illinois wherein George S. Downing, is Complainant, and Thompson Gordon is defendant, on the part and behalf of the said Complainant, as follows.

Interrog 1st What is your name, age, Occupation and place of residence,

Ans my name is Allen J. Heritt, age about thirty five my Occupation is that of a farmer. Reside in the Town of Milo, Bureau County Illinois —

Interrog 2^d Are you acquainted with the parties Complainant & defendant in this Cause. if so how long have you known them respectively —

Ans I am acquainted with the Complainant & defendant I have known Mr Gorgon somewhere near two years I suppose I was acquainted with Mr Downing some six years —

Interrog 3^d Do you know any thing about a Sale by the Complainant to the defendant of the North east quarter of Section Twenty three in Township Fourteen North of Range Eight East of the fourth principal meridian. If so state all you know about it.

Ans. I know more particularly about the making out of the deed. Mr Downing came to my house and enquired if I had any Quit Claim deeds. I told him I had not any on hand at that time, but I had warranty deeds, and then he told me he had sold his place and wanted me to go down and make out a deed for him — I think he asked me if I could make a quit claim deed out of a warranty, and I told him I could. then I went on home with him — and then I made out the deed — what I supposed to be a Quit Claim deed. Mr Downing gave his reasons why he would not make a warranty deed. he either said he had not all the title or not a good title — after the deed was made out Mr Gordon first looked at the deed. I do not know whether he read it or not, then Mr Downing looked at the deed and signed it. I think

I drew a note or some notes for the parties, which Mr Gordon gave to Mr Downing. I took the acknowledgment of the deed.

Interrog 4th Was Gordon present at the time Downing gave his reasons why he would not give anything but a quit claim deed, if he was - did he say anything - & if so what.

Ans Gordon was present - I do not know as he said any thing or replied to it at all

Interrog 5 Did Downing read the deed.

Ans - He looked at the deed I could not say whether he read it or not.

Interrog 6th When you had finished making out the deed, what kind of a deed did you believe it to be.

Ans I believed it to be a quit claim deed or to answer in the place of a quit claim deed -

Interrog 7th What kind of a blank was the deed before it was filled up

Ans It was a covenanted blank deed.

Interrog 8th Did you make any alterations in the blank other than filling it up in order to make it as you supposed a quit claim deed, and if you did what.

Ans I think I scratched out the words warrant & defend. I do not recollect whether I scratched out any other words or not.

Interrog 9th Did Downing & Gordon know that you had made alterations in the blanks or did either of them.

Ans I think both of them must have known of alterations in that warrant & defend were scratched out.

Interrog 10th Did Gordon know that by making the alterations you intended to make the deed a quit claim instead of a warranty.

Ans I do not know whether he did or not. I believe Mr Gordon expected it to a quit claim deed.

Interrog 11th Was anything said by Downing or Gordon, either at the time of making out the deed, about the kind of deed it was to be, except what you have stated that Downing said.

Ans I do not know that there was.

Interrog 12th Were you an acting Justice of the Peace at that time in this County.

Ans I was.

Cross examination by the defendant.

Interrog 1st Did Gordon accompany Downing when he came after you to make the deed.

Ans He did not

Interrog 2^d Did Downing when he came after you to make the deed assign any reasons why he wished the deed to be made out a quit claim instead of a warranty.

Ans He said he had had some trouble with the land or had bought the land twice before and did not calculate to give a warranty deed. That is as near as I can recollect.

Interrog 3^d Where did you and Mr Downing after that first see Gordon.

Ans at or near Downings house.

Interrog 4th Where was it that Downing assigned these other reasons for making a quit claim deed.

Ans It was at his own house

Interrog 5th Who was present when he assigned those other reasons to which you have testified

Ans I do not know that any person was present other than Mr Gordon & Mr Downing & his wife —

Interrog 6th How long was this before the deed was executed

Ans It was but a short time before.

Interrog 7th Were those reasons addressed to you or to Gordon.

Ans I should think they were addressed to Gordon.

Interrog 8th In what part of the house was Gordon at the time Downing assigned those reasons.

Ans I should think he was pretty near the center of the house

Interrog 9th How close was Gordon to Downing at the time.

Ans Not more than ten or twelve feet.

Interrog 10th Do you swear that no one was present but you, Gordon & Downing & Downings wife at the time of the execution of this deed

Ans I do not.

Interrog 11th Who was present.

Ans Mr Fleming was there at the time of the execution of the deed, but I do not know if he was in the house or not at the time of the deed being executed. And there was another man there, I think it was a Mr Gordon.

Interrog 12th when had they come

Ans I do not know.

Interrog 13th was it before or after the time that Downing stated to Gordon that he had not all the title or that his title was not good.

Ans They were on the place before that time

Interrog 14th where were they at the time

Ans I do not Recollect.

Interrog 15th what were you doing at the time

Ans I think I was a writing -

Interrog 16th How did this conversation come up. between Gordon and Downing as to Downing not having all the title or his title not good

Ans. Well I do not recollect now.

Interrog 17th do you swear that Gordon the defendant was in the house at all while you were writing that deed?

Ans. He might not have come in till I had finished the deed.

Interrog 18th What were you writing then at the time this conversation took place.

Ans. If I were writing at all I was writing at the deed

Interrog 19th Where were the parties standing at the time this conversation took place.

Ans. They were both in the house. I do not recollect how the parties stood.

Interrog 20th Did Gordon the defendant recognize the remark Downing made at the time he made it.

Ans. I do not know whether he did or not

Interrog 21st What makes you suppose that either party knew of the alterations in the deed.

Ans. I suppose so from the words warranty & defend being struck out & not having any orders to make any but a quit claim deed.

Interrog 22^d Who gave you ^{the} orders to make that deed.

Ans. Mr. Downing.

Interrog 23^d How long was Downing engaged in examining the deed before he executed it.

Ans. I do not think he was over a minute and a half

Interrog 24th How long was Gordon examining it

I think he was about the same time as Downing was.

Interrog 25th Will either of the parties make any objection to the deed as you had prepared it.

Ans. I think not.

Interrog 26th Could Downing Read writing.

Ans. Yes he could.

Direct examination resumed by Complainant

Interrog 1st Do you know whether Mr Gordon, not the defendant, of whom you speak was present or not, at the time Downing told Gordon the defendant, that he would not make a quit claim deed, either because his title was not good or that he had not all the title.

Ans. I do not know whether he was or not.

Inter 2^d Have you any recollection at all as to whether he was or not.

Allen J. Smith.

Ans. I have not.

Town of Princeton

Bureau County } ss. I do hereby certify that the above deposition of Allen J. Smith, was sworn to and signed by the deponent before me and in my presence, and that the said deposition was taken by me on the 20th day of March A.D. 1856 at my office in the said Town of Princeton, agreeably & pursuant to the foregoing notice for taking of the above deposition.

E. L. D.

Given under my hand and Seal
Notarial at Princeton this 20th day
of March A.D. 1856

W. M. Gearing
Notary Public

The deposition of John W Brown of the County of Bureau & State of Illinois a witness produced & sworn & examined before W. M. Fearing a Notary public in & for the Town of Princeton in the County of Bureau & State of Illinois on the 20th day of March AD 1856 at my office in said County in pursuance of the foregoing and hereto appended notice. bearing date 20th day of March AD 1856. and to the said Notary public directed to be read as evidence on the trial of a certain suit in Chancery now pending & undetermined in the Bureau County Circuit Court in the State of Illinois. wherein George S. Downing is Complainant and Thompson Gordon is defendant on the part and behalf of said Complainant as follows.

Interrog 1st What is your name, age, residence and occupation

Ans. John W. Brown. I am fifty two years of age - reside in Bureau County State of Illinois. my occupation is that of a farmer.

Interrog 2^d State whether Gordon at any time borrowed money of you to pay Downing for the land he bought of Downing - If so - How much money did he borrow.

Ans. He borrowed Two Hundred dollars to pay on the note. I suppose the note was given for land.

Interrog 3^d Was there any conversation at that time between Downing and Gordon about the payment of any more money or about any land or land title, and if there was what was that conversation.

Ans. There was a conversation at that time about the

payment of more money. that he should leave the note at the grove & he would pay it in a week or two. There was nothing said about land or land title.

Interrog 4th Did you see the note

Ans. It strikes me I did. I think I wrote on the note.

Interrog 5th What time was that.

Ans. The arrest was on — I think in July or August. it was 1855.

Interrog 6th Is the note marked Exhibit "A" & hereto attached the note on which the two hundred dollars were paid

Ans. Yes it is the note of the credit of

Interrog 7th In whose handwriting is the endorsement of two hundred dollars on the back of the note.

Ans. It is in my hand writing.

Cross Examination by Defendant

Interrog 1st Did Downing ever offer to sell you this land if so when & what did he offer it to you for

Ans. He offered it to me over once. he offered it to me about four years ago. I could not state what sum he offered it for.

Direct Examination resumed by Complainant

Interrog 1st When Downing offered you his land, did he say anything about the title. & if he did what

Ans. He said he got one half of it & I think he said he knew where he could get the other half.

John W Brown

Copy of Exhibit "A"

\$ 1075. On or before the first day of April Next I
I promise to pay George S. Downing or bearer One
Thousand and Seventy five Dollars for value
Received of him this 20th day of October A D 1854.
Thompson Gordon

Thompson Gordon

Note

April 30th 1855,

Received on the within note
five hundred and ten
dollars —

July 12th 1855. Received on
the within note two

Hundred dollars

Town of Princeton }
Bureau County }
State of Illinois }

I do hereby certify that the above
deposition of John W. Brown, was sworn to and
signed by the deponent, before me and in my presence
and that the said deposition was taken by me
on the 20th day of March AD 1856 at my office
in the said Town of Princeton, agreeably & in pur-
suance to the foregoing notice for taking of the
above deposition. Given under my hand & seal
notarial at Princeton this 20th day of March
1856 W. M. Zearing

E. S. Z.

Notary Public

The deposition of Isaac Sutherland of the
County of Bureau and State of Illinois a witness
produced and sworn & examined before W. M.
Zearing a Notary Public in & for the Town
of Princeton in the County of Bureau & State
of Illinois, on the 20th day of March AD 1856
at my office in said County in pursuance of
the foregoing & hereto appended notice bearing date
the 20th day of March AD 1856 & to the said
Notary Public directed to be read as evidence
on the trial of a certain suit in Chancery now
pending & undetermined in the Bureau County
Circuit Court in the State of Illinois wherein
George S. Downing is Complainant and Thompson
Gordon is defendant, on the part and behalf

of said Complainant as follows.

Interrog 1st What is your name, age, Occupation & place of Residence

Ans. My name is Isaac Sutherland my age is fifty four last February. I follow farming. I reside in Town of Milo Bureau County, State of Illinois.

Interrog 2^d State whether you were present at any time when Gordon made a payment to Downing on a note - If so - State the time when, and what was said, and all that took place.

Ans. I saw Gordon make a payment to Downing on a note - It was in April AD 1855. I saw Downing endorse it on the note Gordon had the money in his hand & said it was in gold - it was wrapped in paper. Gordon said it was five hundred dollars & for Downing to give him credit for five hundred & Ten on the note he said he would pay him the balance in two weeks & would send him a draft.

Isaac Sutherland

Town of Princeton
Bureau County
State of Illinois

I do hereby certify that the above deposition of Isaac Sutherland was sworn to and signed by the deponent, before me and in my presence, and that the said deposition was taken by me on the 20th day of March AD 1856. at my office in the said Town of Princeton agreeably and pursuant to the foregoing notice for taking of the above deposition. Given under my hand and seal at Princeton this 20th day of March AD 1856

W. M.

W. M. Jerning Notary Public

The deposition of William Gordon of the County of Peoria and State of Illinois, a witness produced and sworn & examined before W. M. Fearing a Notary Public in and for the Town of Princeton, in the County of Bureau and State of Illinois on the 20th day of March AD 1856. at my office in Said County pursuant to agreement of attorneys for Complainant & defendant, to be read as evidence on the trial of a certain suit in Chancery now pending & undetermined in the Bureau County Circuit Court in the State of Illinois, wherein George Downing is Complainant, and Thompson Gordon is Defendant on the part and behalf of said defendant, as follows:

Interrog 1st What is your name, age, residence & Occupation
Ans. William Gordon - I will be about Twenty Eight next May - I reside in Peoria County, State of Illinois I am a laborer buying and selling horses & Threshing and so on.

Interrog 2^d Do you know the parties to this suit.
Ans. I know Gordon, and have only seen Downing a few times.

Interrog 3^d State what you know if any thing about the Sale and Conveyance, by the Complainant, to the defendant of the North east quarter of Section Twenty Three in Township 14 North of the base line of Range Eight East of the 4th Principal meridian

Ans. I was along with this man Gordon, when he bargained for this place and me and this man Gordon

were together & went to Mr. Downings house & Mr. Downing was not at home but was up to the Grove - and we went up as I understood since to Sutherland where Downing was at work & we introduced this matter about the land & he said he wanted to sell. this man Gordon enquired into what kind of title he had & he told him it was perfect. & this man Sutherland (if that was his name) spoke up and said it was just as good as uncle Sam could make & we asked the terms & this man Gordon then proposed to him to go down & look at the land & we did so - & they came to terms on which they traded. Downing went off to get the magistrate to make the deed - I forget how it came round - but my Brother asked him if he was not going to make a warranty deed. & Downing replied that he was not - as he had not a warranty deed and would make the same kind he had - & he said not as he would be a forced to, but that he would just make the same title as he had.

Interrog 4th Will you see the deed executed.

Ans. Yes Sir.

Interrog 5th Will the parties read the deed before it was executed

Ans. I could not tell whether they did or not - each one looked at it.

Interrog 6th Will Downing look at the deed long enough to have read it.

Ans. I should think he did - that is if he could

read writing

Interrog 7th About how long did Downing look at the deed before signing.

Ans. I suppose some three or five minutes - I am not certain

Interrog 8th Did Downing say anything about some or any part of the deed he could not read or understand

Ans. He did not not that I heard.

Interrog 9th Were you present all the time that Downing was examining the deed.

Ans. I was.

Interrog 10th Was either of the party dissatisfied with the deed as it had been prepared by Esquire Nevitt.

Ans. My Brother said he would take it. That he was satisfied with that deed & Downing said he was.

Interrog 11th Where was the defendant while Esquire Nevitt was preparing the deed.

Ans. He was in the house

Interrog 12th Where was you while Nevitt was filling the deed. I was not in the house but went in before it was signed.

Interrog 13th Where was Peter Flemming.

Ans. Peter Flemming was with me just out of the door under a shade tree

Interrog 14th Where was Flemming when Downing examined and signed the deed.

Ans. He was in the house I think or near the house.

Interrog 15th Were you with the defendant all the time while

he was at Sutherlands with Downing.

Ans. I was or very near it. I might have been a few rods off.

Interrog 16th Did you hear Downing say to the defendant that he had only a patent title to the half and a tax title to the whole & would not give any but a quit Claim deed.

Ans. I heard him say he had a tax title on the start and since that he had bought the rest of the title.

Cross examination on the part of the Complainant.

Interrog 1st Are you a brother of the defendant

Ans. We pass for Brothers.

Interrog 2^d Where did you go from Sutherlands to see the land

Ans. We walked.

Interrog 3^d Did the defendant and Downing walk.

Ans. I am not positive whether Downing walked. I think my brother walked.

Interrog 4th Did not Downing and your Brother go in a buggy.

Ans. I think I was a little mistaken a bit ago. Since you spoke of the buggy. I think Fleming - Downing my Brother & myself went down in a buggy.

Interrog 5th When Downing said he would not give a warranty deed but would give the same kind of a deed he had - what sort of a deed did he say that was.

Ans. I don't mind as he said what kind I suppose there are only two kinds of a deed they give & I suppose he meant a quit Claim deed.

11

Interrog 6th Was the Sutherland you speak of the one who testified here to day.

Ans. I was not here only when the Old man testified & he was not the one.

Interrog 7th How many Sutherlands have you seen here to day.

Ans. I have seen only one that I know who said his name was Sutherland.

Interrog 8th Are you acquainted with Joseph Sutherland

Ans. I am not.

Interrog 9th What is your recollection as to it being Joseph Sutherlands house you went to.

Ans. If I do not mistake Downings wife said it was Joseph Sutherlands.

Interrog 10th While you were at Sutherlands did you not hear Downing Tell your brother when your Brother asked him what kind of title he had, that he had a patent title on the half of it and a tail title on the whole and that he must judge for himself

Ans. Not that I recollect.

William Gordon

Town of Princeton
Bureau County
State of Illinois

3rd. I do hereby certify that the above deposition of William Gordon was sworn to, and signed by the deponent, before me, and in my presence, and that the said deposition was taken by me on the 20th day of March A.D. 1856. at my office in the said Town of Princeton, pursuant to agreement of attorneys for complainants and defendant. Given under my hand & seal

Notaried at Princeton this 20th day of March
A.D. 1886.

W. M. Zearing

W. M. Zearing
Notary Public

The deposition of Peter Fleming of the County of Bureau and State of Illinois a witness produced and sworn & examined before W. M. Zearing a Notary Public in & for the Town of Princeton in the County of Bureau & State of Illinois on the 20th day of March A.D. 1886 at my office in said County pursuant to agreement of attorneys for Complainant & defendant to be read as evidence on the trial of a certain suit in Chancery now pending & undetermined in the Bureau County Circuit Court in the State of Illinois. wherein George S. Downing is Complainant and Thnapson Gordon is defendant, on the part and behalf of said defendant as follows.

Interrog 1st What is your name, age, residence, & Occupation

Ans. Peter Fleming. I am past twenty nine years of age. I reside in Bureau County, State of Illinois. I follow farming —

Interrog 2^d Are you acquainted with the parties to this suit.

Ans. I am acquainted with both.

Interrog 3^d State what you ^{know} if any thing about the Sale & conveyance from the Complainant to the defendant, of the North east quarter of Section Twenty Three in Township fourteen north of Range Eight east of the 4th principal meridian.

Ans. I was present when Mr Gordon went to Mr Downings
& went with him & from there to Mr Joseph Suther-
lands - They talked the trade over there, at least
he told him he had his place for sale - we all went
back to Mr Downings & up to that time and until
he went to Esqr. Nevitt there was not any thing
said as to what kind of a deed he was to give him,
they traded - he was to give him Two Thousand dollars
& after coming back with Esquire Nevitt he told him
Esquire had not any quit claim found, but that he would
make a warranty form answer the purpose - Mr
Gordon expressed a surprise at that - as he thought
he was going to get a warranty, and I do not
recollect what happened after that, they both
went to the house. I am not certain whether I was
in the house when the deed was written or signed,

Interrog 4th Did you see either of the parties examine the deed
after Nevitt had prepared it for execution.

Ans. As well as I can judge both parties examined it &
appeared satisfied.

Interrog 5th How long was Downing examining the deed before sign-
ing it.

Ans. Long enough I should think to understand it.

Interrog 6th Did he make any objection to any part of it.

Ans. as well as I can recollect some alteration was
made, as blotting out something like - warranty deed
& then he was satisfied.

Interrog 7th When Downing told Gordon Nevitt had no form

for quit Claim deeds what did Gordon say,

Ans he said he wanted a warranty.

Interrog 8th What further was said on that subject by both parties.

Ans Downing said he would give him a quit Claim, & then they passed to the house, and were passing while conversing.

Interrog 9th When you went to see Gordon about the purchase of this land at Joseph Sutherlands, did you hear the defendant ask Downing what kind of Title he had if so what was his reply.

Ans. I do not know that I did exactly.

Interrog 10th What was said on that subject at that time between the parties.

Ans Downing said he had bought some Claims against the land and Mr Gordon supposed he got all that was against the land at that time.

Interrog 11th Do you recollect about Downing saying anything about having a title from the United States Marshall

Ans There was something said about it. I cannot recollect what it was.

Interrog 12th Did you hear Downing say to Gordon that Gordon would have to be a judge of his title.

Ans Not to my recollection

Interrog 13th Did Downing say in that conversation that he would not give anything but a quit Claim deeds.

Ans There was nothing said about it, till he came back to the house with Esquire Bennett as I recollect.

Interrog 14th Did you hear Joseph Sutherland say anything

about the title in Downings presence.

Ans Whether he meant the entire title or not I cant say. but he remarked that it was as good as one from uncle Sam.

Cross Examination by Complainant.

Interrog 1st Are you related to the defendant.

Ans I am not.

Interrog 2^d When Downing and Gordon passed to the house after Downing came back from Nevitts where did you go.

Ans. I remained Out side of the house between the house and shade trees.

Interrog 3^d who was with you

Ans William Gordon

Interrog 4th were you in the house at all while the deed was written or signed.

Ans I do not know as I saw either of them signing.

Interrog 5th Were you in the house at all while the deed was being written or signed.

Ans. I have no recollection whether I was or not.

Interrog 6th do you not have a recollection that you were Out of the house until after the deed was signed -

Ans I think I was Out side.

Interrog 7th Do you pretend that you heard the conversation which took place in the house before the deed was signed and delivered.

Ans No Sir I have no recollection of it.

Interrog 8th Where was Downing at the time he looked at the deed

Ans In the house

Interrog 9th How do you know.

Ans I could see him from the Outside.

Interrog 10th Did you have any conversation with William Gordon while Gordon the defendant, & Downing were in the house fixing up the deed.

Ans None that I recollect of.

Interrog 11th Did you not have something to say to William Gordon

Ans All that I recollect is his saying that his brother was paying all the place was worth.

Interrog 12th What did you judge from that both parties were satisfied with the deed.

Ans That they understood each other in their transactions

Interrog 13th What made you judge that they understood each other in their transactions.

Ans from the appearance of Both parties.

Interrog 14th From their appearance at what time

Ans. Just the time I speak of. while they were in the house.

Interrog 15th If you did not hear the conversation what other appearance do you allude to

Ans. The manner of doing business the taking of his note note for the balance & so on.

Interrog 16th Did not you understand from the parties or from Sutherland or from some one while you were with the parties that Downing had a patent title on only half

half of the land and a Sax till on the whole or
that in substance

Ans I do not recollect.

Interrog 17th Which went into the house first you or William
Gordon

Ans I Cannot recollect.

Interrog 18th Do not you recollect that neither neither of you
went in.

Ans No Sir I do not recollect. how it was.

Interrog 19th Do you Recollect of being out of the house alone

Ans I May have but I Cannot recollect none.

Interrog 20th Cant you safely say that your recollection is not
clear with regard to any of the facts about which you
have testified

Ans Some of them I am pretty certain of Others I thought
the deed would show for itself I did not bear it in
mind much.

Interrog 21st How happened you to be there that day.

Ans I happened to mention Mr Downings name to Mr Gordon
& he said he was an old acquaintance of Mrs. Downings
in Indiana & would go to see her, he did not go
there to buy the place. I told him this place was
for Sale. afterwards and he said he would go & see
Mr Downing.

Interrog 22^d Had you ever seen Gordon before that time.

Ans Yes Sir.

Interrog 23^d When & Where

Ans In Peoria County

Interrog 24th Had you lived in Peoria County

Ans. Yes.
 Int 25th Were you acquainted with Gordon there. (answer Yes)

Interrog 26th How long have you known him.

Ans I have known him since I have been in the County
 about 8 years -

Interrog 27th Where did he live during this time that you have known him

Ans. In Hickapoo. Peoria County

Interrog 28th Did you live there during all that time yourself.

Ans No Sir I have lived there about two years

Interrog 29th Where have you lived during the time you have lived in this County.

Ans In Town of Saratoga Marshall County & Milo in
 Bureau County & in Paducah in Peoria County.

Interrog 30th Where were you born & of what Nation are you

Ans I was born in Ireland.

Interrog 31st State whether Gordon requested you to go with him
 at the time of this purchase

Ans. Not to Hownings - he did not - he wanted me to go
 out & take him up on to the rail road.

Int 32nd Do you own a farm in this County

Ans Yes Sir. in Milo.

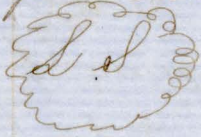
Interrog 33rd Did you or William Gordon have any interest in the
 bargain.

Ans I did not

Peter Fleming.

Town of Princeton
Bureau County
State of Illinois

SS. I do hereby certify, that the above deposition
of Peter Fleming was sworn to and signed by the
deponent, before me and in my presence, and that
the said deposition was taken by me on the 20th day
of March AD 1856 at my office in the said Town of
Princeton, pursuant to agreement of attorneys for Com-
plainant & defendant.



Given under my hand & seal
notarial at Princeton this 20th
day of March AD 1856

W M Fleming
Notary Public

Copy of the decree
State of Illinois } Bureau Circuit Court of
Bureau County } the March Term 1856.

George S. Downing }

vs

Thompson Gordon }

This day this Cause coming
on to be heard upon the bill of Complaint, answer
of the defendant Replication of Complainant to the
answer of the defendant, and the evidence proofs ex-
hibits & depositions on file in this Cause, and it appear-
ing to the Court from the evidence herein that the
Warranty deed executed by the Complainant, and

his wife Caroline to the defendant, bearing date October twentieth 1854, conveying to the defendant, his heirs and assigns the north East quarter of section No Twenty three (23) in Township No Fourteen (14) North of Range No Eight (8) East of the 4th principal meridian in Said County, as set forth in Complainant's bill and the exhibit marked "A" thereto attached and made part of the said bill, was intended by the parties Complainant and defendant, at the time of the execution of the Same to have been made a quit claim deed merely, conveying only such right and title to said premises as the said Complainant then had in and to the Same without Covenants of Warranty of Title, and that said deed of Conveyance was made with covenants of Warranty of title, contrary to the agreement and understanding of the said parties and by mistake made at the time of preparing and executing the Same - which said Warranty deed was on the day of its date only acknowledged before one Allen J. Hewitt, Esquire a justice of the peace of Said County and the said deed is in the words and figures following to wit.

" This Indenture made this twentieth day of October
 " in the year of Our Lord one Thousand Eight hundred
 " and fifty four, between George S. Downing and Caroline
 " Downing his wife, of the County of Bureau and
 " State of Illinois of the first part, and Thompson
 " Gordon of Peoria County and State aforesaid

" of the second part. witnesseth that the said
" parties of the first part for and in consideration
" of the sum of Two Thousand dollars. paid by the
" party of the second part the receipt of which is hereby
" acknowledged. hath Granted bargained sold
" and Conveyed, and by these presents do grant
" bargain sell, and confirm, unto the said party of
" the second part, and to his heirs and assigns
" forever, a certain tract or parcel of land situated in
" the County of Bureau and State of Illinois. To wit,
" The North East quarter of Section No twenty three
" (23) in Township No Fourteen (14) North of Range
" No Eight (8) East of the fourth principal meridian
" containing one hundred and sixty acres, more or
" less. Together with all and singular the heredit
" aments, rights privileges and appurtenances there
" unto belonging or in anywise appertaining. To have
" and to hold the said premises as above described
" with the appurtenances to the said party of the second
" part his heirs and assigns forever. And the said
" George S Downing for himself and his heirs executors
" and administrators do hereby Covenant to and with
" the said party of the second part his heirs executors
" and assigns that he is well seized of the premises
" above conveyed as of a good and indefeasible estate
" in fee simple, and hath good right to sell and
" convey the same in manner and form as aforesaid
" that they are free from all incumbrance and

" that the above bargained premises in the and per-
 -able possession of the said party of the second part
 " his heirs or assigns against the claim of all persons
 " whomsoever - In witness whereof the said party
 " of the first party hath hereunto set their hands
 " and seals the day and year first above written
 " signed sealed and delivered
 " in presence of (Signed) "George S Downing (Seal)
 " Peter S Fleming " Caroline Downing (Seal)

Now Therefore It is ordered and
 decreed by the Court, that said warranty deed herein
 above described and set forth as having been executed
 by said George S. Downing and Caroline his wife
 to the said Thompson Gordon his heirs and assigns of
 the aforesaid premises, be and the same is hereby wholly
 set aside, cancelled and annulled and that said
 defendant Thompson Gordon his heirs and assigns
 take nothing thereby - and further that said com-
 -plainant George S. Downing, convey the said premises
 to the defendant Thompson Gordon his heirs and
 assigns by a deed of Quit Claim releasing and con-
 -veying to said defendant his heirs and assigns all
 such right title interest and estate in said prem-
 -ises as the said complainant had in the same at the
 time of executing the aforesaid warranty deed, and
 that such quit claim deed be executed on or before
 the first day of the next term of this Court.

and that said Complainant pay the Costs of this
Suit.

And the said defendant by Peters & Farnwell
his attorneys prays an appeal herein to the
Supreme Court of this State, according to the stip-
ulation herein, which is allowed by the Court
upon the defendants filing Bond herein in the
sum of One hundred dollars with Security to be
approved of by the Clerk of this Court within
thirty days after the filing said decree.

Copy of appeal Bond

Honour all men by these presents that we Thompson
Gordon and Milton S. Peters of the County of Bureau
and State of Illinois, are held and firmly bound
unto George S. Downing, in the penal sum of One
Hundred dollars lawful money of the United States,
for the payment of which well and truly to be
made we, bind ourselves our heirs executors and
administrators jointly severally and firmly by these
presents. Witness our hands and seals this 24th day
of May A.D. 1856.

The Condition of the above obligation
is such that whereas the said George S. Downing did
on the 5th day of April 1856, in the Circuit Court in and
for the County and State aforesaid obtain or recover
a decree ^{or order of Court} against the above named Thompson Gordon
that a certain Warranty deed, described in and made

a part of Complainant bill of Complaint, and described and set out in said decree, & set forth as having been executed by said George S. Downing, and Caroline his wife to the said Thompson Gordon his heirs and assigns for the North East quarter of Section No Twenty Three (23) in Township No fourteen (14) North Range No Eight (8) East 4th Tlle. be set aside cancelled and annulled, and that said defendant Thompson Gordon his heirs and assigns take nothing thereby, and further that said Complainant George S. Downing convey the said premises to the defendants Thompson Gordon his heirs and assigns, all such right title interest and estate in said premises, as the said Complainant had in the same at the time of executing the aforesaid warranty deed, and that such quit claim deed be executed on or before the first day of the next term of this Court, from which said decree or order of the said Circuit Court. The said Thompson Gordon has prayed for and obtained an appeal to the Supreme Court of said State. And if the said Thompson Gordon shall duly prosecute his said appeal with effect, and shall moreover pay, whatever judgment, ^{and costs that} may be obtained against him in case said decree shall be affirmed in the Supreme Court. Then the above obligation to be void, otherwise to be in full force and effect.

Taken and approved before me

This 24th day of May A.D. 1856.

Edw. Fisher Clerk

Thompson Gordon *(initials)*

Milton J. Peters *(initials)*

State of Illinois }
Bureau County ss. } I Edward M. Fisher Clerk of the
Circuit Court within and for the
said County in the State aforesaid do hereby Certify
that the foregoing is a full and perfect copy of the
Record in the foregoing entitled Cause as per the record
and files thereof now in my office.



In Testimony whereof I have hereunto attached
my name and the Seal of said Court at
my office in Princeton in said County this
9th day of June A.D. 1856

Edward M. Fisher (Clerk)

Clerk's fees

Copy of Record	\$ 13 50
appeal Bond	50
Cert & Seal	35
postage	50
	<hr/>
	\$ 14 85

And now comes the said appellant of Glover
& Cook and says that in the record & proceedings
aforesaid and in the rendition of the Judgment

43

George S. Lanning

vs

Thompson Gordon

Record

Filed June 11, 1856

W. Leland
Clerk

Thomas Gordon
vs
George S. Dowling } Appeal from Bureau

In this case the Bill alleges that Complainant sold Deft a certain tract of land, and agreed to convey the same by quit claim deed, and that by mistake a warrant deed was given.

The Answer (oath waived) denies that the agreement was for a quit claim deed, but insists that he paid full price for the land and was to have a good title, that Complainant never said anything about a quit claim deed until the time the deed was written when Complainant struck out the words "warrant and defend" Deft read the deed after it had been thus altered and expressed himself satisfied with it as it then was, that complainant had read it and knew the contents.

Page 4 of Abstract.

I make two points for Appellant

1st The evidence does not show that any mistake was made in the deed

2^d If complainant made any mistake

in the deed it was not as to what was in the deed but as to the legal effect of the language used, & was a mistake of law & not of fact, against which equity will ^{not} relieve.

As to the first Point. The Evidence is of Joseph Sutherland & see Abs. Page 5 & Neville Abs. page 6.

The evidence of these two witnesses are all that bear upon this point for the Compt. And the Evidence of the last witness is all that tends to show any mistake in the deed and the evidence shows that the Complainant could read writing and did read this deed before he signed it, he was not mistaken as to what was in the deed taking the case upon Compt. testimony alone, if there was a mistake it was as to the effect of the language used.

The Testimony of Wm Gordon (Abs. page 8) fully sustains this view of the case. Compt. said he was satisfied with that deed.

This view of the case is sustained by the testimony of Peter Fleming, the decided preponderance of proof is that deft never agreed to take a quit claim deed, but when the deed was about to be drawn Compt. spoke of a quit claim deed, deft expressed

surprise and then the deed was altered
Compt offered to sign that deed, and
deft said he would take it, and
that was all the negotiation -
at no period of the negotiation did
deft ever agree to take a quit claim
deed, he only agreed to take that
deed as it was written -

A Court of
Equity will not interfere to correct a
mistake at all unless the mistake is
admitted or most clearly & satisfac-
torily proved - Selby & Gains 12 Dec 71 -

Broadwell & Broadwell 1 Silm 608 -

1. Storys Equity Juris. Sec 110. 151. 152. 153 & 157 -
In this case nothing is proved except
that one party claimed that he was
to give a quit claim deed, the other
expressed surprise & then Complainant
said he had such a deed & that was
all he would give, and then with-
out any agreement on the part of the
deft to take a quit claim deed having
been made, Compt says he will give
this deed which Deft agrees to take -
Can the Court say from the proof that
Deft would have consented to take
a quit claim deed if this had not
been offered him, no fraud is charged
in the Bill, and the mistake, to jus-
tify the decree must have been the
mistake of both parties of which there
is no pretence, Courts will not relieve
when mistake is made as to the

over,

Legal effect of an instrument

Broadwell v Broadwell 1 Kilm 606.7.8-

In Beebe v Smartwout 3 Kilm 178- this court say in a mistake of law when legal counsel could readily have been procured the rule is that ignorance of the law is always fatal-

This case can not be distinguished in principle from the case of Sharpe v Davis 13 Ill- 395- when relief was denied

A contract drawn up and deliberately read over by the parties will not be reformed upon the ground that the witnesses present understood its effect to be different from the legal one being is Taylor 16 Ill 457-

Compts read this deed we may concede that he made the same mistake, that despite the justice made which was a mistake in supposing that the deed with the words "warrant and defend" stricken out was a quit claim deed - Yet this does not justify the decree -

Ruffner v Mc Connell 21 Ill 212-

Blacks

of course for
Appellant

43
Thomas Gordon

George S. Downing

Argument

Book -

Filed May 19. 1857

L. L. Lund
Clerk

Thomas Gordon Appellant

vs.

George S. Downing, Appellee }

Appeal from Bureau.

There is no principle of equity jurisprudence better settled than this —
That where an instrument is drawn and executed, which is intended to carry into execution an agreement previously entered into by the parties, but which, by mistake of the draftsman, either as to law or fact, does not contain what the parties had agreed on, but violates it, Equity will correct the mistake, so as to produce a conformity to the instrument. 1 Pet. Sup. C. R. 13-17

1 Story Equ. Jur. § 115.

mutual misapprehension of rights, as well as of the effect of instruments properly furnishes a ground for relief in equity. 1 Story Equ. Jur. § 123.

16 Ves. 81. 82. 85.

So relief will be granted, where there is mutual mistake as to the extent of the thing sold. 1 Story Equ. Jur. § 144.

Equity always reforms the instrument and restrains it to the purposes of the bargain. 1 Story Equ. Jur. 145.

It will never disappoint their intentions where there is a mutual error.

When the proofs are sufficiently satisfactory, Equity will always interfere in cases of written agreements, where there has been an innocent omission or insertion of a material stipulation, contrary to the intention of both parties and under a mutual mistake to allow it to prevail in such case, would be to work a surprise, or fraud upon both parties, and certainly upon the one who is the sufferer.

A Court of equity would be of little value, if it would leave mutual mistakes, innocently made, to work intolerable mischiefs, contrary to the intentions of the parties.

It would be to allow an act, originating in innocence, to operate ultimately as a fraud, by enabling the party, who receives the benefit of the mistake, to resist the claims of justice, under the shelter of a rule framed to promote it. 1 Story Equiv. Jur. § 155. 156.

Upon this law as applied to the case shows in this Record, the Appellee makes the following points.

- 1st The proof shows that both Gordon and Downing, before the deed was drawn by Squire Steville, had agreed for a quit-claim deed only.

Joseph Sutherland Swears, that before the deed was drawn and executed, and on the same day, and whilst the parties were negotiating, Downing told Gordon that "he (Downing) did not claim to have a perfect title," and that he would make to Gordon, a quit claim deed and no other". Page 5 & 6 of Abstract.

Esq. Neville, who drew the deed, and was in that respect the mutual agent of both parties, and whose mistakes, as such mutual agent was chargeable on both parties alike. Swears, that Downing, on the same day the deed was executed, asked him if he could make a quit-claim deed out of a warranty, and then gave Neville his reasons why he would not make a warranty-deed, which were the same substantially as he had previously given to Gordon. And Gordon was present when these reasons were given to Neville, and in hearing, & addressed to him. Neville believed the deed to be a quit-claim. Both Gordon & Downing knew of the alterations made in striking out the word "warrant and defend".
p. 6, 7, 8, 9, of abstract.

It is evident that Downing thought he was giving, and Gordon thought he was receiving only a quit-claim deed.

William Gordon, the plaintiff in error
our brother, although evidently strongly
biased, swears, "that his brother asked
Downing if he was not going to give
a warranty deed, and that Downing
replied that he was not, as he had
not a warranty deed himself".

See his Answer to 3^d Int. Page 10 of Abstract
William Gordon swears that Downing
only claimed to have had a tax title
at first, and had afterwards bought
in some other title. Page 11. of Abs.

The testimony of Peter Fleming, the
Irishman is colored evidently, with
that kind of exaggeration so common
and peculiar to some of that race.
gifted with fine imaginative powers
usually.

The clear preponderance of proof shows
that through the mistake of Creville, who,
as draftsman, was the agent of both
parties, (and for whose mistake, both are
mutually and equally responsible) a
deed was drawn, the legal effect of which
was, unintentionally, to make a different
instrument from that intended by the parties
and understood in their bargain, and
the Court below did right to reform
the deed according to the intent of the
parties.

Oloverb. Gray,
Atty. for Appellee.

43.

Thomas Gordon
vs.
George S. Downing

Argument of
Oliver C. Emory
for Appellee.

Filed May 28, 1857

L. Leland
Clerk

State of Illinois---Supreme Court, 3d G. D.

APRIL TERM, 1857.

THOMAS GORDON
VS.
GEORGE S. DOWNING, } APPEAL FROM BUREAU.

ABSTRACT.

1 Complainant Downing filed his bill in this cause on the 13th day of December, 1855, in the Circuit Court of said county, alledging

1st. That on the 20th day of October, 1854, he was in possession of the N. E. $\frac{1}{4}$ Section 23, Town 14, north of Range 8, E. 4 meredian, Bureau county; that complainant was then the owner of valuable improvements on said land, that he sold said improvements and all his
2 right, title and interest in said land to Gordon for the sum of two thousand dollars, that complainant then agreed with said Gordon in consideration of said sum to quit claim and release unto said Gordon, his heirs and assigns, all the right title and interest of complainant in said premises. And said Gordon in consideration of such release and quit claim, then and there agreed to pay the complainant said sum.

2d. That in pursuance of such agreement complainant and said Gordon on the day aforesaid, applied to one Allen I. Nevitt, J. P. of said county, to make out a suitable quit-claim deed to be executed, acknowledged and delivered by complainant and his wife to Gordon, releasing
2 to said Gordon his heirs and assigns, the right, title and interest then owned in said premises by complainant without any covenants of warranty or any covenants at all, whereby complainant could by any possibility be made accountable or liable for defect of title, either to said Gordon or his heirs or assigns; that on said day said Justice in the presence of the parties and at their request to make and prepare a quit-claim deed without covenants as aforesaid, made and prepared a deed for complainant to sign, which complainant supposed was a quit-claim deed without covenants, as was understood and agreed upon as aforesaid; that complainant then and there signed the same and acknowledged and delivered said deed before said Justice; that complainant's wife then and
3 there signed and acknowledged said deed before said Justice, in due form of law for relinquishing her dower in the premises aforesaid. That said deed was a warranty deed with covenants of warranty of title in said premises contrary to the understanding and agreement between the parties, and was so drawn, framed and prepared wholly by mistake, and

was not intended to be a warranty deed either by complainant or by said Gordon.

Complainant avers that he was ignorant of the nature and character of the deed at the time and supposed it to be merely a quit-claim and release as aforesaid, until about the 26th day of October, 1855, when complainant for the first time ascertained that said conveyance was a warranty deed instead of a quit-claim as aforesaid.

Complainant alleges that 70 acres of said land at the time of conveyance was farmed and in a good state of cultivation, that there was erected on said land a dwelling house and certain other improvements.

Complainant further alleges that at the time of the sale and conveyance it was well known and understood by the parties that complainants title was extremely doubtful and most likely not good to at least an undivided half of said premises, and that the title to the other undivided half was also precarious and uncertain, and that for the reason complainants title was doubtful and uncertain, complainant refused to warrant the title to said premises, and sold the same to Gordon at a much lower price on account of the special agreement to convey by a quit-claim deed as aforesaid, all of which was well known to the said Gordon at the time of said sale and conveyance.

Complainants title was derived as follows, to wit: In 1842 said land was sold for taxes, and on May 21st, 1845, was conveyed by Sheriff's deed to Solomon Melvin of the city of New York. Solomon Melville conveyed the same by quit-claim deed, September 18th, 1846, to Schuyler H. Mattison, also of the city of New York, October 10th, 1846. Schuyler H. Mattison conveyed the same by quit-claim deed to Amnor Sheldon then of Bureau county aforesaid, Jan. 25th, 1848. Amnor M. Sheldon conveyed the same by a quit-claim deed to complainant. In 1846 at the December term of the United States Circuit Court for the district of Illinois, one Peter L. Elmendorf, recovered a judgment against Cornelius H. Tunison and Henry Tunison for four hundred and fifty dollars debt, and one hundred and seventy-three 39-100 dollars damages and costs. Writ of execution issued upon said judgment dated April 26th, 1851, by virtue of which the Marshal levied upon the undivided half of said quarter section, as the property of said Cornelius H. and Henry Tunison, and on the 18th day of July, 1851, conveyed the same to Thomas Lewis, and on the 6th day of April, 1852, conveyed the same by his official deed to said Thomas Lewis. April 23d, 1852, said Lewis sold the undivided half of said quarter section to complainant by quit-claim deed, and the title so derived is all complainant had or claimed to have at the time of his sale to said Gordon, which was well known to said Gordon at the time of the sale to him.

Complainant shows that at the time of the sale last aforesaid, it was well understood by complainant and said Gordon that complainants title was or might prove defective, and that other person or persons then unknown to complainant, might and probably would claim the premises by a better and permanent title, and that in consideration thereof, complainant sold for a less price, and stipulated expressly with said Gordon to convey only with a quit-claim deed.

Complainant further shows that some person or persons unknown to him are now claiming the land by title adverse to complainant's title as conveyed to Gordon, but as to the particulars of their claims or as to their titles, complainant is not informed and cannot state. Complainant shows that he is not now possessed of any of the deeds by which

title in him is derived, but that the same are all in the possession of Gordon.

Complainant also shows that the deed by him to said Gordon, is in the possession of Gordon, and cannot be produced by complainant, but that the same is recorded in the Recorder's office of said Bureau county, a copy of which marked "A" is hereto attached and made a part of this bill. Complainant shows that since he learned of the deed being a warranty instead of a quit-claim, he immediately applied to said Gordon to have the mistake rectified by having the deed cancelled in some way and a quit-claim given by complainant according to the agreement, or by a release discharging complainant from all covenants of title in said deed.

But Gordon utterly refuses to release complainant from the covenants of the deed, but threatens to hold him liable and responsible for all deficiency of title in the premises.

Complainant shows that Gordon has not conveyed the premises, or any part thereof, to any other person or persons.

Complainant prays that said Thompson Gordon be made party defendant to this bill; that he be summoned to answer the allegations herein, fully without oath, which is waived; that he be required to produce in Court all the deeds of conveyance in his possession or control relating to said premises, that he be enjoined from conveying said premises or any part thereof to any other person or persons, to the prejudice of complainant before the final termination of this suit, and that upon the final hearing of this cause that said Court will decree the conveyance by complainant to Gordon to be wholly set aside and cancelled, and that complainant be allowed by the decree to convey the premises by a quit-claim deed or release without covenants, merely conveying to Gordon such title in the premises, as complainant had at the time of making the conveyance aforesaid, or that Gordon be decreed to execute and acknowledge a valid and sufficient release discharging complainant, his heirs, executors and administrators from all liability on account of covenants contained in the aforesaid conveyance.

GEORGE S. DOWNING,
By M. HENDALL, his Solicitor.

Covenants in Exhibit marked A, in Bill.

8 Together with all and singular, the hereditaments, rights, privileges, and appurtenances thereunto belonging or in anywise appertaining, to have and to hold the said premises as above described, with the appurtenances, to the said party of the second part, his heirs and assigns, forever; and the said George S. Downing, for himself, his heirs, executors and administrators, does hereby covenant to and with the said party of the second part, his heirs, executors, administrators and assigns, that he is well seized of the premises above conveyed, as of a good and indefeasible estate in fee simple, and hath good right to sell and convey the same in manner and form as aforesaid. That they are free from all incumbrance, and that the above bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against the claims of all persons whomsoever.

GEORGE S. DOWNING.
CAROLINE DOWNING.

Respondent, in his answers, admits that he bought of Complainant the land specified in his bill; that he paid two thousand dollars for the same, and that Complainant was in possession of said land or a part of

it; that he [complainant] had some fifty acres under improvement, and a log cabin on the same; but Respondent utterly denies that he was advised by Complainant that his title to the one-half was, most probably, defective, and his title to the other half uncertain and precarious.

Respondent further denies that the agreement was that he was to pay the Complainant two thousand dollars for his interest in the premises,
14 without any covenants of warranty; and that the price was so fixed at less than Complainant asked, because of the probable defect in his title.

But Respondent, in his answer, expressly alleges that Complainant represented to him, before and at the time of the said purchase, that his title was perfect; that he would never have paid two thousand dollars for the title of Complainant, if he had represented his title to have been so unsalable as stated in his bill; that two thousand dollars was the full value of the premises, with a perfect title.

Respondent, in his answer, denies that he, together with Complainant, called upon Nevitt to propose a Quit-Claim deed; but alleges that he fully believed and expected all the time to receive a Warranty deed, and that said Nevitt presented a Warranty deed for execution, which he, Respondent, examined and expressed himself satisfied, as it was a Warranty deed; and that thereupon Complainant refused to give a Warranty deed, and accordingly struck out the words "Warrant and defend,"
15 in the body of the deed, and the word "Warranty," at the head of the deed; and thereupon he, Respondent, asked Complainant if he did not represent his title to be good; and if so, why he objected to giving a Warranty deed; that Complainant said that his title was good, but as he had not a Warranty deed, he would not give one.

Respondent further alleges that he read the deed after it had been thus altered, and expressed himself satisfied with the Deed as it was then written; that the deed was executed in that form by Complainant and his wife, they both knowing the contents of said deed; that Complainant had just read the deed, and every word in it; and that if Complainant was mistaken in anything, it was in regard to its legal effect, and not in regard to its contents.

Respondent further alleges that the title of the said Complainant to the undivided one-half of the said premises was void, which said Complainant well knew at the time he sold the same to Respondent; that Respondent was, at the Oct. Term of the Circuit Court of Bureau Co., sued by Milton T. Peters, who held the legal title to the undivided half of said premises by Bill in Chancery for Partition; and that Respondent
16 was compelled to, and did pay said Peters four hundred dollars to release his interest and withdraw the suit.

Respondent further alleges that he had, before the commencement of this suit, sold the said premises to one Thomas Stringer, who is still the owner. Respondent denies that, at the time of his purchase of said premises of Complainant, he, Respondent, knew that the title set out in Complainant's bill, was all the title which Complainant had in said premises, but believed that Complainant had the full patent title to the whole quarter, as well as the tax title set out in Complainant's bill; Respondent denies that Complainant sold him said premises at a much less price because of his agreeing to take a Quit Claim instead of a Warranty; denies that Complainant ever made any such demand upon him as stated in his bill; admits that the copy of the bill annexed to said bill is a true copy of the deed from complainant to him; Respondent alleges that Complainant is a good scholar, and that he read the deed carefully

17 before signing it, and that he, Respondent, was no judge of land titles, and confided in Complainant's representations that his title was good, and that it was not until afterwards that he learned that Complainant's title was bad, and that Complainant at the time knew it to be so.

Complainant filed a replication to the above answer, in which he alleges that said answer, so far as it denies the material allegations of his said bill, is untrue in fact; admits that he, Complainant, may have told Respondent that he, Complainant, did not have a Warranty deed, and would not give one, but would give only such title as he, Complainant had; denies that he ever intended to give respondent a deed with covenants such
18 as are contained in the said deed between Complainant and Respondent, of the aforesaid lands; denies that he ever read or knew of the covenants in said deed, before the 26th of October, 1855; but that, having told Respondent that he would give no other than a Quit Claim deed, and having called upon the Justice for a Quit Claim deed, and the said Justice having told him that the deed was a Quit Claim, he, Complainant, did not read or examine the covenants therein, but supposed the deed a Quit Claim; alleges that it was the intention of both Complainant and Respondent, and of the Justice, to make the deed a Quit Claim deed.—All other allegations in Respondent's answer, except those above admitted, are denied by Complainant.

19 It was agreed between the parties that the above cause should be submitted to the Court, and that the decision of said Court should be entered of record, as decided at the March Term, 1856; and that either party should have the right of appealing from said decision by filing bond, &c.

Copy of Complainant's Depositions.

20 The depositions of Joseph Sutherland, of the county of Bureau, state of Illinois.

Witness sworn and depositions taken March 20th, 1856.

Int. 1st—What is your name, age, occupation, and place of residence.

Ans.—Joseph Sutherland; I am a little over thirty-three years of age; I am a farmer; I reside in the town of Milo, Bureau, county, state of Illinois.

Int. 2—Do you know the parties in this cause, and if so, how long have
21 you known them respectively.

Ans.—I do know the parties to this suit; I have known Mr. Downing for twenty years past, and the other for over a year.

Int. 3d—Do you know anything about the complainant having sold to the defendant the north east quarter of section twenty-three in township fourteen, north of range eight, east of the fourth principal meridian?

Ans.—I know it by the say so of the parties.

Int. 4th—About what time was that sale made?

Ans.—I think a year ago last fall, as near as I can recollect.

Int. 5th—Did you hear any conversation between the parties at the time they were negotiating for the sale of the land, and in relation to
22 the land, if you did, state that conversation fully.

Ans.—I did hear the conversation; the conversation was about this: Mr. Gordon asked Mr. Downing if he wished to sell his farm; Downing told him he would sell his farm if he could get his price for it. Gordon then asked Downing what his price was; Downing told him he would take twenty-five hundred dollars for his farm, crop, some hogs (perhaps 15 or 20 hogs,) and one cow; Gordon then asked Downing

what his title was. Downing told him he had the tax title on the whole quarter, and the patent title calling for the undivided half; Gordon then asked him what kind of a title he would give if they could make a trade; Downing told him he would make a quit-claim deed and no other; Gordon told him he would go down and look at it; this conversation happened at my house; I never heard them talk about it afterwards.

Int. 6th—Do you know when the deed was made, if you do, how long was this conversation you have related before making the deed?

Ans.—The deed was made the same day the conversation took place. The conversation was had about 8 or 9 o'clock A. M. and the deed was made about 5 or 6 o'clock P. M. of the same day.

Cross-Examination.

Int. 1st—Did Gordon ask Downing if his title was good?

23 He asked him what kind of a title he had, and Downing told him what kind of a title he had, and that he could be his own judge.

Int. 2d—Was this the only inquiry made by Gordon to Downing as to the validity of his title?

Ans.—All the question he asked him in my presence.

Int. 3d—Did Downing not state that his title was good?

Ans.—Downing told Gordon that he did not claim to have a perfect title.

Int. 4th—Was that all that Downing said about his title?

Ans.—Yes, all he said in my presence at that time.

Int. 5th—Were you present when the deed was made?

Ans.—No.

Int. 6th—Are you related to either of the parties?

Ans.—I am cousin of Downing's.

The deposition of Allen J. Nevitt of Bureau county, Illinois, taken
24 March 20th, 1846, in behalf of complainant.

Int. 1st—What is your age, name, occupation and place of residence?

Ans.—My name is Allen J. Nevitt; age about 35; I am a farmer, and live in the town of Milo, Bureau county, Ill.

Int. 2d—Are you acquainted with the parties in this cause, and how long have you known them?

25 Ans.—I am acquainted with complainant and defendant; I have known Gordon near two years; I suppose I was acquainted with Downing some six years.

Int. 3d—Do you know anything about a sale by complainant to the defendant of the north east quarter of section twenty-three, in township fourteen, north of range eight, east of the fourth principal meridian; if so, state all you know about it?

Ans. I know more particularly about the making out of the deed. Mr. Downing came to my house and inquired if I had any quit-claim deeds. I told him I had not any on hand at that time, but I had warranty deeds, and then he told me he had sold his place, and wanted me to go down and make out a deed for him.

I think he asked me if I could make a quit-claim deed out of a warranty. I told him I could. Then I went on home with him, and then I made out the deed—what I supposed to be a quit-claim deed. Downing gave his reasons why he would not make a warranty deed; he either said he had not all the title, or not a good title; after the deed was made out, Gordon first looked at it. I do not know whether he read it

or not. Then Downing looked at it and signed it. I think I drew a
26 note, or some notes for the parties, which Gordon gave to Downing. I
took the acknowledgement of the deed.

Int. 4th. Was Gordon present when Downing gave his reasons why
he would not give anything but a quit-claim deed; if he was, did he say
anything, and if so, what?

Ans. Gordon was present. I do not know as he said anything or re-
plied to it at all.

Int. 5th. Did Downing read the deed?

Ans. He looked at the deed. I could not say whether he read it or not.

Int. 6th. When you had finished the deed, what kind of a deed did
you believe it to be?

Ans. I believed it to be a quit-claim deed, or to answer in the place
of a quit-claim deed.

Int. 7th. What kind of a blank was the deed before it was filled up?

Ans. It was a warranty blank deed.

Int. 8th. Did you make any alterations in the blank other than fill-
ing it up in order to make it a Quit Claim deed, as you supposed? and
if you did, what?

Ans. I think I scratched out the words warrant and defend. I don't
27 recollect whether I scratched any other words or not.

Int. 9th. Did Downing and Gordon know that you had made altera-
tions in the blank, or did either of them.

Ans. I think both of them must have known of alterations in that
warrant and defend were scratched out.

Int. 10th. Did Gordon know that by making the alterations you in-
tended to make the deed a quit-claim instead of a warranty?

Ans. I do not know whether he did or not. I believe Gordon expect-
ed it to be a quit-claim deed.

Int. 11th. Was anything said by Downing or Gordon at the time of
making out the deed about the kind of deed it was to be, except what
you have stated that Downing said.

Ans. I do not know that there was.

Int. 12th. Were you an acting Justice of the Peace at that time in
this county?

Ans. I was.

Cross-Examination.

Int. 1st. Did Gordon accompany Downing when he came after you
28 to make the deed.

Ans. He did not.

Int. 2d. Did Downing when he came after you to make the deed, as-
sign any reason why he wished the deed to be made out a quit-claim in-
stead of a warranty?

Ans. He said he had had some trouble with the land or had bought
the land twice before, and did not calculate to give a warranty deed;
that is as near as I can recollect.

Int. 3d. Where did you and Downing after that first see Gordon?

Ans. At or near Downing's house.

Int. 4th. Where was it that Downing assigned these other reasons
for making a quit-claim deed?

Ans. It was at his own house.

Int. 5th. Who was present when he assigned those other reasons to
which you have testified?

Ans. I do not know that any person was present other than Mr. Gordon and Downing and his wife.

29 Int. 6th. How long was this before the deed was executed?

Ans. It was but a short time before.

Int. 7th. Were those reasons addressed to you or to Gordon?

Ans. I should think they were addressed to Gordon.

Int. 8th. In what part of the house was Gordon at the time Downing assigned those reasons?

Ans. I should think he was pretty near the centre of the house.

Int. 9th. How close was Gordon to Downing at the time?

Ans. Not more than ten or twelve feet.

Int. 10th. Do you swear that no one was present but you, Gordon and Downing and Downing's wife, at the time of the execution of this deed.

Ans. I do not.

Int. 11th. Who was present?

Ans. Mr. Fleming was there, but I do not know if he was in the house or not at the time of the deed being executed; and there was another man there. I should think it was a Mr. Gordon.

Int. 12th—When had they come.

Ans.—I do not know.

Int. 13th—Was it before or after Downing stated to Gordon that he had not all the title or that his title was not good?

Ans.—They were on the place before that time.

Int. 14th—Where were they at the time?

Ans.—I do not recollect.

Int. 15th—What were you doing at the time?

Ans.—I think I was writing.

Int. 16th—How did this conversation come up between Gordon and Downing, as to Downing not having all the title, or his title not good?

Ans.—Well, I do not recollect now.

Int. 17th—Do you swear that Gordon, the def't, was in the house at all while you were writing that deed?

Ans.—He might not have come in till I had finished the deed.

Int. 18th—What were you writing then at the time this conversation
31 took place?

Ans.—If I were writing at all, I was writing at the deed.

Int. 19th—How were the parties standing at the time this conversation took place?

Ans.—They were both in the house; I do not recollect how they stood.

Int. 20th—Did Gordon, the def't, recognize the remark Downing made at the time he made it?

Ans.—I do not know whether he did or not.

Int. 21st—What makes you suppose that either party knew of the alterations in the deed?

Ans.—I suppose so, from the words warrant and defend being struck out and not having any orders to make any but a quit claim deed.

Int. 22d—Who gave you the orders to make that deed?

Ans.—Downing.

Int. 23d—How long was Downing engaged in examining the deed before he executed it?

Ans.—I do not think he was over a minute and a half.

Int. 24th.—How long was Gordon examining it?

Ans.—I think he was about the same time as Downing was.

Int. 25th—Did either of the parties make any objection to the deed
32 as you had prepared it?

Ans.—I think not.

Int. 26th—Could Downing read writing?

Ans.—Yes.

Direct Examination resumed by complainant.

Int. 1st—Do you know whether Mr. Gordon, not the defendant, of whom you speak, was present or not at the time Downing told Gordon, the defendant, that he would not make a quit claim deed, either because his title was not good, or that he had not all the title?

Ans.—I do not know whether he was or not.

Int. 2d—Have you any recollection at all as to whether he was or not?

Ans.—I have not.

ALLEN J. NEVITT.

33 *The Deposition of John W. Brown, taken March 20th, 1856, in behalf of Complainant.*

Int. 1st.—What is your name, age, residence and occupation?

Ans.—John W. Brown; I am fifty-two years of age; a farmer, and live in Bureau County.

Int. 2d.—State whether Gordon at any time borrowed money of you, to pay Downing for land he bought of him? If so: How much money did he borrow?

Ans.—He borrowed two hundred dollars to pay on the note. I suppose the note was given for land.

Int. 3d.—Was there any conversation at that time between Downing and Gordon, about the payment of any more money, or about any land or land title?

Ans.—There was a conversation at that time about the payment of
34 more money; that he should leave the note at the grove and he would pay it in a week or two; there was nothing said about land or land title.

Int. 4th.—Did you see the note?

Ans.—It strikes me I did. I think I wrote on the note.

Int. 5th.—What time was that?

Ans.—Harvest was on; I think in July or August, 1855.

Copy of Exhibit "A."

Note from Gordon to Downing, for \$1075 00.

Int. 6th.—Is the note marked Exhibit "A," and hereunto attached, the note on which the two hundred dollars were paid?

Ans.—Yes.

Int. 7th.—In whose hand writing is the endorsement of two hundred
34 dollars on the back of the note.

Ans.—My own.

Cross-Examination by Defendant.

Int. 1st. Did Downing ever offer to sell you this land; if so, when and what did he offer it to you for?

Ans. He offered it to me once; he offered it to me about four years ago. I cannot tell what he offered to take for it.

Examination Resumed by Complainant:

Int. 1st. When Downing offered to sell you his lands did he say anything about the title, and if so what?

Ans. He said he got one-half of it, and I think he said he knew where he could get the other half.

JOHN W. BROWN.

The Deposition of Isaac Sutherland, taken March 20th, 1856, in behalf of Complainant.

36 Int. 1st. What is your name, age, occupation and place of residence?

Ans. My name is Isaac Sutherland; my age fifty-four; I follow farming, and live in the town of Milo, Bureau County, Ill.

Int. 2d. Were you present at any time when Gordon made a payment to Downing on a note. If so, state the time when, and what was said, and all that took place.

Ans. I saw Gordon make a payment to Downing on a note, in April, 1855. I saw Downing endorse it on the note. Gordon had the money in his hand and said it was in gold; it was wrapped in paper. Gordon said it was five hundred dollars, and for Downing to give him credit for five hundred and ten on the note; he said he would pay him the balance in two weeks, and would send him a draft.

ISAAC SUTHERLAND.

37 *The Deposition of William Gordon, in behalf of Defendant:*

Int. 1st. What is your name, age, residence and occupation?

Ans. I will be about twenty-eight next May; I reside in Peoria County, Ill.; I am a laborer, buying and selling horses, and threshing and so on.

Int. 2d. Do you know the parties to this suit?

Ans. I know Gordon, and have only seen Downing a few times.

Int. 3d. What do you know about the sale and conveyance, by Downing to Gordon, of the N. E. qr. 23, 14, 8, E. 4. P. M.

38 Ans. I was along with this man Gordon when he bargained for this place, and me and this man Gordon, were together and went to Downing's house, and Downing was not at home but was up to the grove—and we went up as I understood since, to Sutherland's, where Downing was at work and we introduced this matter about the land, and he said he wanted to sell. This man Gordon inquired into what kind of a title he had and he told him it was perfect, and this man Sutherland (if that was his name) spoke up and said it was just as good as uncle Sam could make, and we asked the terms and this man Gordon then proposed to him to go down and look at the land and we did so—and they came to terms on which they traded.

Downing went off to get the magistrate to make the deed. I forget how it came round—but my brother asked him if he was not going to make a warranty deed, and Downing replied that he was not, as he had not a warranty deed, and would make the same kind he had—and he said not as he would be afeared to, but that he would just make the same title as he had.

Int. 4th. Did you see the deed executed?

Ans. Yes.

Int. 5th. Did the parties read the deed before it was executed?

Ans. I could not tell whether they did or not—each one looked at it.

Int. 6th. Did Downing look at the deed long enough to have read it?

Ans. I should think he did, that is if he could read writing.

Int. 7th. About how long did Downing look at the deed before signing?

Ans. I suppose some three or five minutes ; I am not certain.

Int. 8th. Did Downing say any thing about some or any part of the deed he could not read or understand.

Ans. He did not that I heard.

Int. 9th. Were you present all the time that Downing was examining the deed ?

Ans. Yes.

Int. 10th. Was either of the party dissatisfied with the deed as it had been prepared by Esquire Nevitt ?

Ans. My brother said that he would take it—that he was satisfied with that deed, and Downing said he was.

Int. 11th. Where was defendant while Nevitt was preparing the deed?

Ans. He was in the house.

Int. 12th. Where was you while Nevitt was filling the deed ?

Ans. I was not in the house, but went in before it was signed.

Int. 13th. Where was Peter Fleming ?

Ans. He was with me, just out of the door, under a shade tree.

Int. 14th. Where was Fleming when Downing examined and signed the deed ?

Ans. He was in the house, I think, or near the house.

Int. 15th. Were you with defendant all the time he was at Sutherland's with Downing.

Ans. I was, or very near it. I might have been a few rods off.

Int. 16th. Did you hear Downing say to defendant that he had only a patent title to the half, and a tax title to the whole, and would not give any but a quit-claim deed.

Ans. I heard him say he had a tax title, on the start, and since that he had bought the rest of the title.

Cross-Examination by complainant.

Int. 1st—Are you a brother of the defendant ?

Ans.—We pass for brothers.

Int. 2d—How did you go from Sutherland's to see the land ?

Ans.—We walked.

Int. 3d—Did the def't and Dowling walk ?

Ans.—I am not positive whether Downing walked ; I think my brother walked.

Int. 4th—Did not Downing and your brother go in a buggy ?

Ans.—I think I was a little mistaken a bit ago, since you spoke of the buggy ; I think Fleming, Downing, my brother and myself went down in a buggy.

Int. 5th—When Downing said he would not give a warranty deed but would give the same kind of a deed he had, what sort of a deed did he say that was ?

Ans.—I don't mind as he said what kind ; I suppose there are only two kinds of a deed they give, and I suppose he meant a quit-claim deed.

Int. 6th—Was the Sutherland you speak of the one who testified here
41 to-day ?

Ans.—I was not here only when the old man testified, and he was not the one.

Int. 7th—How many Sutherland's have you seen here to-day.

Ans.—I have seen only one that I know, who said his name was Sutherland.

Int. 8th.—Are you acquainted with Joseph Sutherland?

Ans.—No.

Int. 9th.—What is your recollection as to it being Joseph Sutherland's house you went to?

If I do not mistake, Downing's wife said it was Joseph Sutherland's.

Int. 10th. While you were at Sutherland's did you not hear Downing tell your brother, when your brother asked him what kind of a title he had, that he had a patent title to half of it, and a tax title on the whole, and that he must judge for himself?

Ans. Not that I recollect.

WILLIAM GORDON.

The Deposition of Peter Fleming, taken March 20th, 1856, in behalf of Defendant:

42 Int. 1st. What is your name, age, residence and occupation?

Ans. Peter Fleming; I am past twenty-nine years of age; I reside in Bureau County, Ill.; I follow farming.

Int. 2d. Are you acquainted with the parties to this suit?

Ans. I am acquainted with both.

Int. 3d. State what you know, if anything, about the sale and conveyance from the Complainant to Defendant, of the N. E. qr. Sec. 23, in Township 14, North of Range 8, East of the 4th P. M.?

43 Ans. I was present when Gordon went to Downing, and went with him, and from there to J. Sutherland's—they talked the trade over there, at least he told him he had his place for sale; we all went back to Downing's, and up to that time and until he went to Esqr. Nevitt, there was not anything said as to what kind of a deed he was to give him; they traded; he was to give him two thousand dollars, and after coming back with Esqr. Nevitt he told him Esquire had not any quit claim forms, but that he would make a warranty form answer the purpose.—Gordon expressed a surprise at that as he thought he was going to get a warranty, and I do not recollect what happened after that. They both went to the house. I am not certain whether I was in the house when the deed was written or signed.

Int. 4th. Did you see either of the parties examine the deed after Nevitt had prepared it for execution?

Ans. As well as I can judge, both parties examined it and appeared satisfied.

Int. 5. How long was Downing examining the deed before signing it?

Ans. Long enough I should think to understand it?

Int. 6th. Did he object to any part of it?

Ans. As well as I can recollect some alteration was made, as blotting out something like "warranty deed" and then he was satisfied.

Int. 7th. When Downing told Gordon Nevitt had no form for quit-
44 claim deeds, what did Gordon say?

Ans. He said he wanted a warranty.

Int. 8th. What further was said on that subject by both parties?

Ans. Downing said he would give him a quit-claim and then they passed to the house, and were passing while conversing.

Int. 9th. When you went to see Gordon about the purchase of this land at Joseph Sutherland's, did you here the defendant ask Downing what kind of title he had; if so, what was his reply?

Ans. I do not know that I did exactly.

Int. 10th. What was said on that subject at that time, between the parties ?

Ans. Downing said he had bought some claims against the land and Gordon supposed he got all that was against the land at that time.

Int. 11th. Do you recollect about Downing saying anything about having a title from the U. S. Marshall?

Ans. There was something said about it ; I can't recollect what it was.

Int. 12th. Did you hear Downing say to Gordon that he would have to judge of the title ?

Ans. Not to my recollection.

Int. 13th. Did Downing say in that conversation that he would not give anything but a quit claim deed ?

Ans. There was nothing said about it until he came back to the house with Esqr. Nevitt, as I recollect.

45 Int. 14th. Did you hear Joseph Sutherland say anything about the title in Downing's presence ?

Ans. Whether he meant the entire title or not I can't say ; but he remarked that it was as good as came from Uncle Sam.

Cross-Examination by complainant.

Int. 1st. Are you related to the defendant ?

Ans. I am not.

Int. 2d. When Downing and Gordon passed to the house, after Downing came back from Nevitt's, where did you go ?

Ans. I remained outside of the house between the house and shade trees.

Int. 3d. Who was with you ?

Ans. William Gordon.

Int. 4th. Were you in the house at all, while the deed was written or signed ?

Ans. I do not know as I saw either of them signing.

Int. 5th. Were you in the house at all while the deed was being written or signed ?

Ans. I have no recollection whether I was or not.

Int. 6th. Do you not have a recollection that you were out of the house until after the deed was signed ?

Ans. I think I was outside.

Int. 7th. Do you pretend that you heard the conversation which took place in the house before the deed was signed and delivered ?

Ans. No, sir ; I have no recollection of it.

46 Int. 8th. Where was Downing at the time he looked at the deed ?

Ans. In the house.

Int. 9th. How do you know ?

Ans. I could see him from the outside.

Int. 10th. Did you have any conversation with Wm. Gordon while the Defendant and Downing were in the house fixing up the deed ?

Ans. None that I recollect of.

Int. 11th. Did you not have something to say to Wm. Gordon ?

Ans. All that I recollect is his saying that his brother was paying all the place was worth.

Int. 12th. What did you judge from that both parties were satisfied with the deed ?

Ans. That they understood each other in their transactions.

Int. 13th. What made you judge that they understood each other in their transactions?

Ans. From the appearance of both parties.

Int. 14th. From their appearance at what time?

Ans. Just the time I speak of; while they were in the house.

Int. 15th. If you did not hear the conversation, what other appearance do you allude to?

Ans. The manner of doing business; the taking of his note for the balance, and so on.

Int. 16th. Did not you understand from the parties, or from Sutherland, or from some one, while you were with the parties, that Downing
47 had a patent title on only half of the land, and a tax title on the whole, or that in substance.

Ans. I do not recollect.

Int. 17th. Which went into the house first, you, or Wm. Gordon.

Ans. I cannot recollect.

Int. 18th. Don't you recollect that neither of you went in?

Ans. No, sir; I do not recollect how it was.

Int. 19th. Do you recollect of being house alone?

Ans. I may have, but I cannot recollect now.

Int. 20th. Can't you safely say that your recollection is not clear with regard to any of the facts about which you have testified?

Ans. Some of them I am pretty certain of; others I thought the deed would show for itself; I did not bear it mind much.

Int. 21. How happened you to be there that day?

Ans.—I happened to mention Wm. Downing's name to Gordon and he said he was an old acquaintance of Mrs. Downing's in Indiana, and would go to see her; he did not go there to buy the place; I told him this place [was for sale afterwards, and he said he would go and see Downing.

Int. 22d—Had you ever seen Gordon before that time?

Ans.—Yes.

Int. 23d—When and where?

Ans.—In Peoria county.

Int. 24th—Had you lived in Peoria county?

48 Ans.—Yes.

Int. 25th—Were you acquainted with Gordon there?

Ans.—Yes.

Int 26th—How long have known him?

Ans.—I have known him since I have been in the county; about 8 years.

Int 27th—Where did he live during this time you have known him?

Ans. In Kickapoo, Peoria county.

Int. 28th. Did you live there all that time yourself?

Ans. No sir, I have lived there about 2 years.

Int. 29th. Where have you lived during the time you have lived in this country?

Ans. In the town of Saratoga, Marshall county, and Milo, in Bureau county, and in Reedner in Peoria county.

Int. 30. Where were you born and of what nation are you?

Ans. I was born in Ireland.

Int. 31. State whether Gordon requested you to go with him at the time of this purchase?

Ans. Not to Downings he did not; he wanted me to go out and take

him up to the Railroad.

Int. 32. Do you own a farm in this county?

Ans. Yes sir, in Milo.

Int. 33. Did you or Wm. Gordon have any interest in the bargain?

Ans. I did not.

PETER FLEMMING.

DECREE.

That Downing's deed to Gordon be set aside, and that Downing convey the premises to Gordon by a quit-claim deed.

[Faint handwritten notes and signatures in the right margin, including the word "Hundred" and some numbers.]

43
Gordon
v
Downing

Abstract

CO-1-3 recy the business to Gordon & v dist-cum Good.

That Downing's deed to Gordon be set aside and that Downing con-

veyed.

Ans. I did not.

BEFORE REMAINING.

Int. 83. Did you or Mr. Gordon have any interest in the bargain?

Ans. Yes sir, in mine.

Int. 83. Do you own a farm in this county?
Ans. Yes to the Bellows.