

14382


No. _____

Supreme Court of Illinois

Barton

vs.

Moss

71641  7

STATE OF ILLINOIS

SUPREME COURT,

Third Grand Division

14382

No. 2

Easton

1863

Mason

75

Simon Burton
vs
William S. Moss }
both parties plaintiffs in error } Supreme Court
of Illinois
Apr 2. 1863

A. S. Merriam being first
dearly sworn deposes & says that
William S. Moss the above named
defendant in error is a now
resident of the State of Illinois
Subscribed & sworn

to before me the Clerk } A. S. Merriam
of the Circuit Court }
of Illinois being sworn }
my hand & seal of office }
this 20th day of July 1863 }
Enoch Spear, Clerk

102
Samuel Barton stat,
of
M^r S. Cross.
aff^t. of non-residence

Filed Feb. 13. 1860.
Leland
Clk.

STATE OF ILLINOIS, }
SUPREME COURT, }

ss. The People of the State of Illinois,

To the Clerk of the Circuit Court for the County Peoria Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Circuit Courts of Peoria County, before the Judge thereof, between

Samuel Barton, Jonathan Barton and
Simon Barton ————— Complainants &
plaintiffs, and

William S. Moos —————

defendant....., it is said manifest error hath intervened, to the injury of the aforesaid Samuel Barton, Jonathan Barton
and Simon Barton —————

as we are informed by Stave complaints ————— and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgments thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this thirteenth day of February in the Year of Our Lord One Thousand Eight Hundred and Sixty three.

L. Leland
Clerk of the Supreme Court.

Samuel Barton & others

No.

vs.

William S. Hoops

WRIT OF ERROR.

FILED *February 13th* A. D. 1863

L. Uland

Clerk.

SUPREME COURT OF ILLINOIS.

APRIL TERM, 1863.

POINTS AND BRIEF OF PLAINTIFFS IN ERROR.

SAMUEL BARTON,
JONATHAN BARTON,
SIMEON BARTON,
Plaintiffs in Error, }
vs.
WILLIAM S. MOSS,
Defendant in Error. }

This case turns upon questions of fact—the fact whether there is an agency or trust established between the parties.

The complainants and one William C. H. Barton, their brother, owned a tract of land—the N. $\frac{1}{2}$ of the S. W. 14, 9 N. 8 E., in Peoria County. In the year 1839, Wm. C. H. Barton sold his interest (virtually) to complainant Simeon Barton, and afterwards executed a deed therefor. He was paid at the time of the sale \$100, through defendant, for whom Simeon was then working as a laborer.

At the time of this sale to Simeon in 1839, Moss undertook to keep the taxes paid on the land for Simeon as long as Simeon worked for him, or until they had a settlement. The witness is uncertain which expression was used, but I apprehend it is immaterial which. Simeon worked for Moss from about the year 1836 till October 1842. See deposition of Wm.

C. H. Barton, page 45—50—cross examination. Moss did not pay the taxes of 1842, and at the sale for taxes of that year, Moss bought the land in for said taxes, being \$1,80, upon which he afterwards obtained a deed, and now claims the title by virtue of such sale.

That Moss was largely indebted to Simeon Barton for his wages the evidence clearly shows. The period was six years, but there were intervals that he did not work. Supposing we allow a year for such intervals, which would be largely ample, from the testimony, leaving five years labor, for which the lowest estimate is \$10 per month, total for five years, \$600. The only evidence of payment by Moss is \$100 paid to Wm. C. H. Barton for his interest in this land. So that Moss could not claim that he had no funds in hand belonging to Barton to pay the sum of one dollar and eighty cents, on account of said taxes. His own explanations, however, made subsequently, show that at this time he considered himself acting as the agent of Simeon in the purchase at the tax sale.

Wm. C. H. Barton testifies that he had a conversation with Moss directly after the land had been sold for taxes, and asked Moss what his notion was in letting said land be sold for taxes, and he answered his reason was to strengthen Simeon's title to the land. (See page 50.) The whole course of Moss subsequent to the sale, shows that although he could not deny that he held this tax title in trust for Simeon Barton, or that more properly he had acted as his agent in the matter of such purchase, still he avoided any settlement or arrangement, setting up divers excuses for not having a settlement with Barton. In 1845 he claimed that the understanding between Simeon and himself was, that Aiken & Barton (H. S. Aiken and Wm. C. H. Barton) were to pay the taxes he had advanced. (Page 47.) In 1846 Moss had a settlement with Aiken & Barton, and they proposed to settle the taxes. This he then declined, saying he had a settlement to make with Simeon. (Page 47.) In 1847 Moss was asked what his object was in not settling with Simeon, or not signing over the certificates of purchase, or deeding the land to him. He answered that he wanted a settlement with him first—that he had an account against Simeon for \$25 attorney's fees. (Page 47.) In 1849 Simeon made two attempts to settle with Moss, but failed in so doing.—Moss postponing the matter each time. Other attempts were made but with no success.

Such is a brief statement of the testimony on that branch of the case,

which testimony is in no manner contradicted, rebutted or impeached; and it does seem to me that there never was a case before the Court where the attempt to steal a tract of land for the pitiful sum of one dollar and eighty cents, while acting as agent, and with hundreds of dollars in his hands for the express purpose of paying such taxes, was more clearly made out.

The bill also prays for an account for rents and profits of this land for the period it was held by Moss; but this is a trifling matter, amounting to about \$100.

In estimating the amount of money in Moss' hands, Moss ought also to be charged with the amount of a judgment obtained by Moss vs. Geo. B. Parker, October 20th, 1840, for \$125,40, in the collection of which he was acting as the agent for Simeon Barton, and while holding the judgment purchased in the only piece of property of Parker under a prior execution, with the understanding, as some of the witnesses say, that if Parker redeemed from the sale he should also pay the other judgment, and if not, then this judgment should be considered as satisfied. This agreement, however, is denied. Still if no such agreement was made, a Court of Equity, in consideration of the relations of the parties, would enforce the terms thereof.

Moss, as agent of Barton, had obtained judgment against Parker in his own name, and held a certificate of purchase of property of ample value to pay both judgments. If Parker had redeemed from the first sale, the land could have been sold on the second judgment, and this would be tantamount to the alleged agreement, so far as the redemption was concerned. In order to save the second judgment in case the certificate of purchase had been held by a stranger, it would have been incumbent on the judgment creditor to redeem; but as this was held by Moss, it was not necessary for him to redeem from himself. Yet the Bartons still thinking it might be necessary to redeem, asked advice of Moss on the subject, and he replied that they need have no trouble about it, and as he had control of the judgment he decided to redeem from himself. Under the circumstances, the most he could do in equity would have been to have accounted to Barton for the amount of the judgment less the attorney's fees.— Moss, however, in his true character, after he had obtained the title to the lot, not only refused to account for anything on the judgment, but on the

Barton & others } In the Supreme
 } Court
Wm. S. Mose } Apt. T. 1863.

If there is any error in the decree in this case, I have not been able to discover it.

The parol agreement said to have been made by Mose to pay taxes on the land, by the stipulation of the Complainants expired when Barton quit working for him.

He quit in Oct. 1842. and the Tax Sale under which Mose claimed the land was in June 1843. and the same was not redeemed by Barton. Nor was a deed made to Mose til Aug. 1846. I can not perceive upon what principle it can be contended that this deed to Mose, in Equity should be set aside.

If he owed Barton for his labor he should have resorted to a Court of law to recover it.

A Bill for an account in such case could not be sustained, even if Mose had been Barton's agent to pay taxes on the land.

As to the town Lot in Poria
there could be no question. It was
sold on an execution in favor
of Caldwell & others vs Parker in
which these complainants had no
interest whatever.

Merriam thinks there was
an agreement in writing that if
the lot was not redeemed, both
Judgments were to be satisfied

Parker had no recollection of any
such written contract & says he is
confident no such agreement was
made - either in writing or otherwise
and he attended personally to the
business.

He claims to have this Judg-
ment reversed in State.

The complainants delayed the
prosecution of the writ of Error til
within less than a month of the time
when it would have been barred by
the statute of limitations, and until
after Mop had left the State and
removed to California

Then the writ is sued
out, publication made, in a
paper which he would never
see - The pendency of the suit
discovers by pure accident &

and the whole proceeding looked
much as though the Complainant
designed to revoke the Decree by
Default

If any such contracts as
are stated in the Bill were ever
made - Of which, I insist there
is no sufficient proof - they were
all by parol and Void by the
Statute of Frauds - And besides
if Mop fraudulently obtained the
roy title to the land, Barton could
sue and recover at law in an
action of Ejectment - There was no
occasion or necessity for the
interference of a Court of Chancery
to do complete justice between the
parties, even if all the allegations
in the bill were admitted to be
true.

J. P. S.
for Mop

102
Partow Erab

vs
Wm J. Mose

Argument for
Respondent

Purple

Filed April 29. 1863.
Leland
Clk.

ABSTRACT.

Supreme Court of Illinois, Third Grand Division, to April
Term, A. D. 1863.

SAMUEL BARTON,
JONATHAN BARTON, and
SIMEON BARTON,
Plaintiffs in Error. } Error to Peoria.
vs.
WILLIAM S. MOSS,
Defendant in Error. }

Page of
Record.

This was a bill in chancery filed April 30, 1852 by Plaintiffs in Error, in Peoria Circuit Court, which bill recites that on the 28th December, 1844, complainants and one William C. H. Barton were owners of the following described real estate, situate in the County of Peoria, Illinois, to-wit: the north half of the south west quarter of section fourteen, township nine north, in range eight east. That on the 16th day of February, 1852 William C. H. Barton conveyed his interest by deed to complainant, Simeon Barton, that complainants owned said land as heirs of Vincent Barton, although the title came direct to them, and it was always understood that Simeon was to have this land and the other heirs were to have other portions of the estate of Vincent Barton.

That complainant, Simeon, worked and labored for defendant on his farm during the years of 1842 and 1843 and before and afterwards, in all about three years, Simeon then being a minor, for which labor defendant is indebted to him to about \$450, out of which should be deducted such amounts as defendant has paid in taxes on said land and some other trifling matters, the precise amount unknown to complainants. That sometime in

or about the year 1839 one George B. Parker was indebted to said estate
3 in the sum of \$125, or there abouts, for money received by said Parker
for said estate as Probate Justice of the Peace, and said heirs gave to said
defendant an order on said Parker for the same, which they supposed to
be in hands of said Moss, which order was given for collection merely,
and he had no interest in the same except as agent for said estate and
which Moss collected in the following manner: At the April term, 1840,
of the Peoria Circuit Court, John C. Caldwell, James C. Armstrong and
William Williams assignees of M. & J. A. Neal recovered a judgment
against said Parker for the sum of \$72.03 and costs, on which judgment
an execution issued and was levied on Lot 6, in Block 33, in the City of
Peoria, on the 12th day of January, 1841 and was sold by the Sheriff on
4 4th of February, 1841 to said Moss for \$94.45, the amount of the said
judgment and costs, and the same being unredeemed a deed was executed to
said Moss for said lot on said sale. That on or about the day of said sale said
Parker made an agreement in writing with said Moss acting as the agent
of said estate to the effect that he, said Moss, should bid off and purchase
under said execution for the amount due on said judgment, and that he
would not redeem from said sale without at the same time paying the
amount due on said order to said Moss, under which arrangement said
Moss bid off said property and still holds the same, and the value of said
lot at that time was far greater than the amounts due on said judgment
and order. That it was the understanding between said Parker and Moss,
at the time such agreement was made, that if said Parker would not re-
deem from said sale, it was to be in full satisfaction of said order, and
said Moss has not since attempted to collect the same and refuses to return
5 the same to complainants, or to receive the amount bid on said lot and interest
and convey the lot to complainants, but intends and threatens to retain said
order, keep said lot and not allow said estate anything therefor. And defen-
dant is hereby notified to produce on the hearing the order and deed, and
makes the said judgment and execution and return, &c., part of the bill. That
William C. H. Barton has assigned his interest in said claim to complain-
ants. That Simeon Barton empowered Moss to pay taxes on said first
described tract of land. That Moss accepted such agency as early as 1840
or 1841 and continued to act as such agent during years of 1842 and 1843
and during the time he was acting as such agent and indebted as aforesaid
to said estate and to said Simeon, said Moss neglected to pay the taxes
assessed on said land for the year 1842 for State and County purposes, that
at the May Term of said court, 1843, a judgment was rendered against

6 said land for such taxes and costs, a precept was issued, and on the 13th June, 1843, said land was sold by the Collector under said judgment to said Moss for the amount thereof, \$1.30. That sale remaining unredeemed therefrom, a deed was, on the 7th of August, 1846, made to said Moss, by the Sheriff of said county, defendant is notified to produce the original deed, &c., and the judgment, precept, &c., made part of the bill. That at the time of such sale Moss pretended to have a claim on said land and so represented publicly, and thereby prevented other persons present, or induced them not to bid, by which means the whole tract was sold and struck off to him, which representation was false and untrue, unless he was claiming the same as agent for said heirs. That said purchase was
 7 really made with the funds of said Simeon or said estate, and he, said Moss, being indebted as aforesaid. That Moss now pretends to claim title to said land under said tax sale, and refuses to cancel said deed or convey said tax title to said Simeon or to complainants, and has caused to be cut on said land a large quantity of good and valuable timber, and still continues to cut such timber standing and growing thereon, and threatens to continue so to do, claiming to be the owner thereof under such tax purchase and deed, thereby injuring the said land. The bill charges that Moss should be compelled to pay to Simeon the amount due him for his labor—to said complainants the amount due on said order and surrender to complainants the said tax title and account and pay over to complainants the value of all timber and trees by him cut on said land—surrender said lands to complainants, and in case he does not pay the amount of said
 8 order. That he received the amount of said purchase money for Lot 6, in Block 35, aforesaid and convey to complainants. The prayer corresponds with the charges in the bill.

13 The answer of defendant was filed May 25, 1853, in which the defendant denies all the allegations in the bill, except that he obtained a tax
 15 title on said land at the time mentioned in said bill, but avers that all the proceedings in reference to said judgment, purchase and sale were alike legal and proper and that by virtue of such sale he acquired a legal title to said lands.

17 December 7, 1853, complainants filed an amendment to their bill, stating that defendant has carried or removed from said land a large quantity of rails and the fence on said premises of great value, to-wit: \$200; for which he should be compelled to account to complainants, and also he has cut and removed from said land a large quantity of saw-logs and timber;

worth about \$200. That the said judgment, sale and deed for taxes to said Moss referred to in said answer was void and conveyed no valid title
 18 to said Moss, and that the same ought to be set aside. That Moss has received the rents and profits of said land for about five years, amounting to a large sum of money, for which he should account to complainants. That Vincent Barton died intestate in 1834, leaving complainants and Wm. C. H. Barton, his children and sole heirs-at-law. That said claim against Parker was for money by him received for said estate of Vincent Barton. That all the debts of said estate have long since been fully paid, and complainants are the equitable owners of said claim, and all rights resulting therefrom. That said lot so built upon and sold to Moss would have been redeemed from such sale by said Parker or some one for him, if said
 19 agreement had not been made. That said lot was then the only property of Parker subject to execution and he is now and from that time, has been insolvent. That complainants have offered to pay to Moss the amount necessary to redeem said lot from said sale and receive a conveyance therefore, or to receive from him the amount of said debt of Parker to said estate, which offer they now make, and which Moss has repeatedly refused. Prayer for an account, &c., that Moss be required to surrender all claim to said land and receive amount of redemption and interest as shall be equitable for sale of said Parker lot, and convey said lot to complainants, or pay them the amount of said debt against Parker and interest, &c.

21 Defendant filed an amended answer January 27, 1855, saying that if any contract was ever made between complainants and defendant as charged, it was for the sale of land and was by parol, and that neither the contract nor any note or memorandum thereof was made in writing and signed by respondent. That the said contract was void and in controvention of the statute of frauds, which statute is insisted, and relied upon as a defence to
 22 the relief sought by complainants. Replication was filed December 21, 1857.

EVIDENCE.

23 Patent from United States to Augustus Langworthy for southwest fractional quarter of section fourteen, in township 9 north, of range 5 east. Dated October 10, 1840.

25 Record of the declaration, summons and return thereon, and judgment
 32 rendered in the District Court of the United States of America for Dis-

34 trict of Illinois, December 4, 1837, for \$235.86 and \$29.03, costs of suit
 35 in favor of the United States vs. Augustus Langworthy. Execution on
 36 above judgment issued July 26, 1839 which execution was levied on the
 southwest quarter of section fourteen, township nine north, range eight
 east, and sold October 15, 1839 to William Barton, Seamon Barton, Jona-
 38 than Barton and Simeon Barton and deed from Thomas M. Hope, Marshal
 of the District of Illinois to Samuel Barton, William C. H. Barton, Jona-
 than Barton and Simeon Barton of the same land, dated the 28th day of
 December, 1844.

41 Quit Claim Deed from William C. H. Barton to Simeon Barton con-
 veying his interest in the same land, dated February 16, 1852.

45 DEPOSITION OF WILLIAM C. H. BARTON.—My father was Vincent Barton
 who died in 1833. He had four children, Samuel, Simeon, Jonathan and
 myself. Simeon worked for defendant think in 1836, off and on till 1841;
 46 was away from there three or four months at a time; his wages would
 range from \$12 to \$15 per month. In 1839 I sold my interest in N. $\frac{1}{2}$ of
 s. w. 14, 9 N. 8 E. to Simeon Barton, for which William S. Moss paid me,
 at S. Barton's request, \$100. There was a verbal contract made at the
 time between Simeon Barton and Moss, that Moss was to see to it that
 taxes were paid; no particular understanding for how long Moss was to
 pay the taxes, but I suppose it was understood for so long as Simeon work-
 47 ed for Moss, but no specified time. In 1845 Moss told me there was an
 understanding between him and Simeon that myself and H. S. Aiken
 should pay the taxes he had advanced. In 1846 Moss, Aiken and myself
 had a settlement and proposed to have this come in with the rest, but Moss
 refused and required that Simeon should settle the matter, and that he
 had to make a settlement with Simeon. In 1847 I asked Moss what his
 object was in not settling with Simeon, or not signing over the certificates
 of purchase, or deeding the said land to him, when he answered he want-
 ed a settlement out of him first; that he had been doing some business
 for Simeon; that he had an account against Simeon for \$25, which he had
 paid Purple for prosecuting a suit against Judge Parker on an acceptance
 that Moss told me Simeon had drawn on Parker for \$125 in favor of Moss,
 and that Parker accepted the order, and that he (Moss) sued Parker and
 got judgment, that execution was issued and returned "no property
 48 found," and that he (Moss) had to pay the costs and lawyer fees. Some-
 time between the years 1839 and 1844 I had a conversation with Moss
 about a lot in Peoria which was sold and was property of Parker, the con-

conversation was before the time of redemption had expired ; Moss told me
 this was the last piece of property of Parker, which he owned ; that it had
 been sold on execution. I asked whether it would not be better for
 Simeon to try and raise the means to redeem said lot, so as to save some-
 thing on the judgment which Moss had against Parker, and Moss answer-
 ed that I need have no trouble about it. I had conversations with Moss at
 different times about the subject and tried to get him to settle with Simeon
 because some one of them might die. Moss always said I need not take
 any trouble about it and that it would be all right between Simeon and
 him. In 1849 I came up twice with Simeon to get a settlement with Moss.
 The first day Moss had other business to attend to and appointed another
 day, on which day he was just starting for St. Louis and said he had to
 49 start—could not settle it at the time, but would settle at some other time.
 About a year ago Moss and myself had another conversation about the
 subject, in which he proposed to buy out the interest of Simeon and my
 brothers and myself in said s. w. 14, 9, 8, and offered \$1,000. We were
 trying to compromise, but I did not feel inclined to take the offer and
 asked him \$1,600, which he declined. Moss told me that Simeon gave
 him an order on Parker for \$125 to collect, but that he could not collect
 50 it and had to pay the expenses of prosecution. Moss is in possession of
 the land and has been for probably five years ; the use of it worth about
 \$12 per year. I had a conversation with Moss directly after the land
 had been sold for taxes to said Moss and in which I asked him what his
 notion was in letting said land be sold for taxes and he told me his reason
 was to strengthen Simeon's title to the land—that his title was of no
 account.

CROSS-EXAMINED.—Simeon is about 37 or 38 years old now(1855) ; quit
 working for Moss about October, 1842 ; do not think he worked for Moss
 again after that time.

INT. 4. In 1839, when you say that there was an understanding be-
 tween Moss and Simeon Barton and Moss was to pay taxes on the land,
 what did Moss say ?

Ans. Moss said I will attend to it.

INT. 5. Did he say anything else about paying taxes at that time ?

51 Ans. He said he would keep the taxes paid on the land as long as

Simeon worked for him. I could not say whether it was as long as he worked for him or until they had a settlement.

INT. 6. What did Simeon say at the same time ?

ANS. He told Moss he wanted him to keep the taxes paid on the land.

Do not think Simeon's health was very good when he first went to hire with defendant; have no recollection of seeing order drawn by Simeon on Parker. No personal knowledge how much Simeon worked for defendant.

On re-examination witness stated that Simeon was unwell from two weeks to a month when he first went to live with Moss.

55 DEPOSITION OF GEORGE B. PARKER.—Was Probate Justice in Peoria County in 1839; Minny Rynearson, Administrator of Vincent Barton's estate paid me money, think about \$125, for the heirs of Vincent Barton. Moss claimed the money, saying he was guardian or agent of the heirs. One of the heirs informed me not to pay to Moss. Moss informed me not to pay to the heirs. Moss brought suit and obtained judgment for the amount claimed. Moss held another judgment against me for from 60 to 70 dollars in favor of the assignees of M. L. & J. A. Neal and levied on lot 6, block 33 in Peoria, and had it advertised for sale. It was the understanding between me and Moss that he was to let the judgment of \$125 and costs be included with the judgment he held in favor of the
56 assignees of the Neals, that he was to bid off the lot including both judgments and that I was released of all further responsibility and discharged of both judgments, provided I never redeemed the lot. This agreement may or may not have not been reduced to writing, but if it was it has escaped my recollection. The lot was worth \$300.

CROSS-EXAMINATION.—Don't recollect when the sale was, but think it was between 1839 and 1841. Don't know how much the lot was sold for. Don't recollect about any order being presented to me by Moss; it was my understanding that Moss was agent to bid off the lot for the amount of both judgments, think he called on me at one time for the money and represented himself to be guardian or agent for the heirs or some one of them, and that I refused to let him have it in consequence of having been requested to do so by one of the heirs. Don't recollect that the contract
58 about the purchase of said lot was reduced to writing.

58 JOHN STRINGER—DEPOSITION.—Have seen Simeon Barton at work on Moss' farm about 1836 or 1837, for about two or three years. Don't recollect how long. Don't recollect the wages he was to receive, but Moss said he was to pay more in summer than in winter. Was worth about \$10 per
60 month in summer. Not so much in winter. I was not present when the order from Simeon Barton to Moss was written; I was in the room; Moss came in to the room with an order in his hands together with Barton and wanted me sign the same as witness. Don't know whom the order was to; the order was given by Simeon Barton in favor of said Moss to draw money from some person; don't recollect whom from. It was at the time Simeon Barton was at work for Moss. Don't know what the money was to be applied to.

61 JOHN CLIFTON—DEPOSITION.—Simeon Barton worked for Moss on his farm in Peoria county between the years 1834 and 1838. I guess about two or three years; perhaps more, perhaps less; think common wages then worth \$12 to \$15 per month the year around. I paid \$18 per month to a young man 17 years old.

62 CROSS-EXAMINED —Simeon was about 18 years old.

JOEL THURSTON—DEPOSITION.—Know a certain tract of land said to belong Vincent Barton's heirs. Have had the care of it about four years. Moss claims the north fifty acres. The land is on the Illinois river east of the so-called Moran farm; had possession under Moss; think I cut twenty saw-logs and about twenty cords wood for Moss; did not make any rails; hauled off four or five loads of rails and replaced them by other rails from the same place; don't know the value of the logs; wood worth \$1.75 per cord; rails worth from \$2.00 to \$2.50 per hundred. I paid Moss as rent one-third of proceeds from grain and one half of the
64 apples. The cash value would not be more than \$10 per year.

CROSS-EXAMINATION.—Don't know the range, township or quarter. Moss said the land belonged to him and he rented it to me; the saw-logs not worth more than 50 to 75 cents standing. The rails I took away worth about \$1.50 per hundred.

65 MARK M. AIKEN—DEPOSITION.—Was present at tax sales in 1843 for taxes of 1842 in Peoria county. To my best recollection Moss was present

66 at that sale. The N. $\frac{1}{2}$ of s. w. 14, 9 N. 8 E. was sold at that sale; I think 50 acres of it; it was sold to Wm. S. Moss; all the land offered for sale was purchased by said Moss for said taxes.

INT. 6. What was the custom among purchasers at said sale in relation to tracts of land offered for sale for taxes desired by them?

ANS. The words used by purchasers when they desired to purchase a tract was to cry out "claim and taxes," when by common consent it was stricken off to the person claiming the same, unless there is some person claiming adversely.

INT. 7. Was this the custom pursued by said Moss in relation to purchases made by him?

ANS. He practiced it as often as others; it was a common use with persons attending such sales when they desired to purchase a tract.

70 HALSEY O. MERRIMAN—DEPOSITION.—In the latter part of the winter of 1840, and 1841 at the time of the sale of a lot of Geo. B. Parkes on an execution mentioned in the bill filed in this cause, Capt. Moss was present, making some arrangements with Parker about a claim of the estate of Vincent Barton, amount not recollected, against said Parker, and said Moss stated that he was authorized to receive the money on the claim. That he had an order for it. Don't recollect that he stated who signed the order. From the conversation I judged he was acting for the heirs or
71 administrator of the estate. My recollection is that the agreement (hereafter referred to) was made after the sale. It may have been made before sale and reduced to writing afterwards. I was not at sale; Capt. Moss bought the property sold. Moss, Parker, Purple and myself were in the office of Purple & Merriman, we then being in practice of law and attorneys for plaintiffs in the judgment. An agreement was then and there made by said Moss and said Parker to avoid the expense of a suit on the claim in favor Barton's estate, that Parker was not to redeem the property from said sale without paying both the redemption money on said sale, and also the amount of said claim due Barton's estate, and unless Parker paid the whole of those claims the sale to be absolute, as it was understood that Parker had no other property subject to execution. The agreement was reduced to writing and signed by Parker and, I suppose, Moss, embodying, as I suppose, the agreement. Think the agreement was left with

72 P. & M. for safe keeping. Since Purple and myself dissolved co-partnership I have never seen the agreement. I have looked where it ought to be among all papers where it could be, if in my office, and cannot find it; what became of it I cannot say. I understood that if Parker did not redeem, the lot sold was to be in full satisfaction of the judgment and the claim in favor of Barton's estate.

73 William S. Moss vs. George B. Parker. Declaration in cause, and copy
76 cause of action as follows:

PEORIA, January 26, 1840.

GEO. B. PARKER, Esq.:

You will please pay to Simeon Barton one hundred and twenty dollars, the amount in your haads, belonging to the estate of Vincent Barton, deceased.

Yours, &c,

MINNY RYNEARSON,

Administrator of the estate of Vincent Barton, deceased.

(Endorsed.) I acknowledge the within to be correct and will pay the same August 7, 1840.

GEO. B. PARKER.

Pay the within to Wm. S. Moss.

His
SIMEON X BARTON.
Mark.

[Attest] JOHN STRINGER.

77 Summons dated September 25, 1840.

79 Judgment October 20, 1840, \$125.40.

80 Execution dated December 15, 1840.

81 Returned "no property found."

82 John C. Caldwell, James C. Armstrong, William Williams, assignees of M. & J. A. Neal vs. George B. Parker. Judgment April 13, 1840,
83 \$72.03 and costs. Execution and return showing sale of lot 6, block 34, Peoria to Wm. S. Moss for \$96.45, February 4, 1841.

86 N. H. Purple testified, on hearing that my recollection as to the contract with Parker is the same as stated in the deposition of H. O. Merri- man, except that I am confident there was no agreement that in case Parker did not redeem that there was to be any satisfaction of the judgment in favor of Moss vs. Parker. I attended to the business personally;

think I did all the writing in the matter, but of this am not certain. I believe I bid off the lot myself for Moss, and Moss settled with me for the purchase money. I was attorney for both plaintiffs in the case when the sale was made. It was supposed by all parties that the lot would be redeemed from the sale. It was Moss' intention at the time of the sale, in case any one bid against him on the lot, to bid up to the amount of both judgments. Don't know whether Moss was present at the sale or not; think the lot at the time was worth \$300. Don't know that Parker at the time of the sale owned any other property; believe he was insolvent.

92 Decree of Peoria Circuit Court on hearing of said cause, dismissing complainant's bill, rendered March 19, 1858.

ASSIGNMENT OF ERRORS.

- 1 The Court erred in dismissing said bill.
- 2 The Court erred in not granting the relief prayed for in said bill and amended bill.
- 3 The Court erred in not decreeing a conveyance by defendant to complainants of the land in the bill described.
- 4 The Court erred in refusing to take and state an account between said complainant Simeon Barton and said defendant.
- 5 The Court erred in not decreeing to complainant Simeon Barton the said town lot.
- 6 The Court erred generally.

A. L. MERRIMAN,
Attorney for Plaintiffs in Error.

23 102
Boston & al
as
Mass.

Abstracts

Given Apr 29, 1863,
L. L. Cooke
M

1 Pleas before the circuit court, on the Chau-
cery side thereof, within and for the County
of Peoria, and state of Illinois, on the nine-
teenth day of March, in the year of our Lord
one thousand eight hundred and fifty-eight.

Be it Remembered that heretofore to wit:-
on the 30th day of April, A.D. 1852, there was filed
in the office of the clerk of the circuit court
in and for said county and state, a "Bill for
Relief," with precipe and Decd attached, which
said Bill, precipe and Decd, are in words and
figures following, to wit:-

To the Hon. Wm. Kellogg, judge of the
10th Judicial circuit of the state
of Illinois:-

Complainants, Lemuel Barton, Jonathan
Barton and Simeon Barton, respectfully rep-
resent unto your Honor that on the 28th day
of December A.D. 1844, said complainants and
one William C. A. Barton were the owners in
fee simple of the following described land
situate in the county of Peoria and state
Illinois to wit:- The north half of the south west
quarter of section No. fourteen (14) in Township No.
Nine North in Range No. eight (8) east of the fourth
principal meridian and said William C. A. Barton
and his wife conveyed their interest in said
land to said Simeon Barton, as will more
fully appear by their deed dated the 16th day of

2 February 1852, a copy of which is herewith at-
tached marked A. and the original is made
part herof - so that said complainants are
the owners of same. Complainants further
state that said land really belongs to said
complainants, and said Wm. C. H. Barton as
heir of the estate of their father Vincent Barton
who died in the year 1834 intestate, though the
title came direct to them - and it was always
an understanding between them that said Sim-
on Barton was to have the said land, and
the other take other portions of the estate, but
no writings to that effect were ever executed
except the said deed above referred to.

Complainants further state, that said Sim-
on Barton worked & labored for William S.
Moss on his farm as a hired hand during
the year 1842 & 1843 & before & afterwards in all
about three years, said Simson then being
a minor under the age of Twenty one years,
and for which labor and services said Moss
is now indebted to said Simson amounting to about
the sum of four hundred and fifty dollars, out
of which should be deducted, such amounts as
said Moss has paid in Taxes on said land and some
other trifling matters the precise amount of which
is unknown to complainants.

Complainants further state that sometime
in or about the year 1839 one George B. Parker
was justly indebted to said estate in the sum of

3

One Hundred & Seventy five dollars or thereabouts for money by said Parker received about that time for said estate, he said Parker then being probate justice of the peace of said county, and the said heirs gave to said Moss an order on said Parker for the same which they supposed is in the hands of said Moss, which order was given for the purpose of collection only & said Moss had & has no interest therein except as agent for said estate, and which said Moss has collected from said Parker in the following manner to wit - At and during the April term of the circuit court of said county A.D. 1840. John C. Caldwell, James C. Armstrong & William Williams, assignees of M. & J. A. Neal, recovered a judgment of said court against said Parker for the sum of seventy two dollars & three cents besides costs of suit - upon which judgment a writ of execution was duly issued to the sheriff of said county for the collection of said judgment, and the same was duly levied on lot No. six (6) in Block No Thirty-three (33) in the city of Peoria in said county on the 12th day of January A.D. 1841, and which was sold by said sheriff on the 4th day of February A.D. 1841 as the law directs & said Moss became the purchaser thereof for the sum of ninety six ⁷⁵/₁₀₀ dollars, the amount of Debt interest and costs then due on said judgment, and has

41 subsequently, the same not having been redeemed from said sale, received a deed on said sale, whereby said Moss became the owner of said lot, and still holds the same and is the owner thereof and became such owner in manner aforesaid.

Complainants further state that on or about the day of said sale, said Parker made an agreement in writing with said Moss, acting really as the agent of said estate to the effect that he said Moss should bid off & purchase said lot under said execution for the amount due on said judgment, and that he would not redeem from said sale without at the same time paying the amount due on said order & to said estate - Under which arrangement the said Moss, bid off said property and still holds the same, and the value of said lot at that time was far greater than the amounts due on said judgment & order. Complainants further state that it was the understanding between said Moss and said Parker at the time said agreement was so made, that if said Parker would not redeem from said sale, it was to be in full satisfaction of said order and said Moss has not since attempted to collect the same and refuses to return the same to complainants, or to receive the amount bid on said lot & interest & convey said lot to complainants but intends & threatens to retain said order

5- Keep the said lot, and not allow said estate anything therefor, and Complainants hereby notify said Moss to produce with his answer hereto the said order and sheriff's deed, or copies thereof, to be read on the hearing of this Bill, And they also make the said Judgment, execution, levy and return of the sheriff still remaining in the office of the clerk of said court said deed & order, when produced exhibits & part of this Bill.

Complainants further state that said William C. S. Barton has assigned his interest in said claim on said Parker to said complainants.

Complainants further state that said Simeon Barton empowered said Moss to pay taxes on said tract of land first above described, and said Moss accepted such agency as early as 1840 or 1841 & said Moss continued to act as such agent during the years 1842 & 1843 & during the time he was acting as such agent and indebted as aforesaid to said estate and to said Simeon he said Moss neglected to pay the taxes assessed on said tract of land for the year 1842 for state & county purposes, and at & during the May term of said Court A.D. 1843, a judgment was rendered in favor of the People of the State of Illinois against said tract of land for the taxes & costs due thereon, for the said year 1842, on which Judgment a precept was issued on the

6 day of 1843 to the collector of said county as required by law, and on the 13th day of June A.D. 1843 said collector sold said tract of land to said Moss under said judgment & precept for said taxes & costs amounting to one dollar & eighty cents, and on the 7th day of August A.D. 1846 said lands not having been redeemed from said sale, Smith Foye, the then Sheriff of said county executed and delivered to said Moss a deed based on said sale conveying said land to said Moss, which said deed is in the possession of said Moss, and he is notified to produce the same on the hearing of this bill, and said complainants refer to and make part hereof, the said judgment, precept, and all other documents in the office of the clerk of said court pertaining to said judgment & sale.

Complainants further state that at the time of said sale the said Moss pretended to have a claim on said land and so represented publicly, and thereby prevented other persons present, or induced them not to bid on said land, by which means the whole tract was struck off & sold to said Moss, which representation was false & untrue and fraudulent, unless said Moss was claiming the same as agent for said heirs - of which complainants are not informed.

Complainants further state that said purchase for taxes was really made with the

7 funds of said Lincou on said estate he said Moss being indebted as aforesaid.

Complainants further state that said Moss now pretends to claim title to said land under said tax purchase & deed thereon and refuses to cancel said deed or convey the said tax title to said Lincou or the said complainants and has caused to be cut on said land a large quantity of good and valuable timber, and still does continue to cut the timber standing & growing on said land and threatens to continue so to do, claiming to be the owner thereof under such tax purchase & deed thereby injuring the said land, all which actings and doings on the part & behalf of said Moss are contrary to equity and good conscience.

Complainants thereupon charge that said Moss should be compelled to pay to said Lincou the amount due him for his labor and services aforesaid & to said complainants the amount due on said order with the interests thereon & surrender to complainants the said tax title and account for & pay over to complainants the value of all timber and trees he has cut on said tract of land or caused to be cut thereon, & surrender said lands to complainant and also that he be compelled in case he does not pay said order to complainants

8. to receive the amount of said purchase money for lot 6 in Block No thirty-three (33) and convey said lot to complainants.

Inasmuch therefore as the said complainants are remedies at common law and can only have relief in equity when matters of this nature are cognizable & relievable they pray this Hon. Court to take their case under consideration, and that a summons may be issued as required by law against said William J. Moss & he be made defendant hereto, and compelled to answer this bill, but not on oath, his oath thereto being expressly waived pursuant to the statute in such case made and provided - And that upon a final hearing of this Bill a decree may be rendered (after an account shall be had) for the amount due said Simeon; that said Moss convey to complainants his pretended title to said tract of land and that he pay to complainants the value of all timber he has caused or shall cause to be cut before such accounting on said land And that he also pay complainants the sum of one hundred and twenty five dollars (the amount of said order) and the interest thereon or that he credit on such sums as shall be proved due

9 from said Moss by reason of the promises the amount of said judgment against said Parker & the interest & costs due thereon, on the amount of said sale & interest thereon, or that he be decreed to receive the same from complainants (which they hereby offer to pay) and that said Moss be decreed to convey said lot No. Six in Block No. Thirty-three (33) to complainants = And for such other or further order or decree as to your Honor shall seem meet & proper upon a consideration of the premises. And as in duty bound they will ever pray.

N.O. & A.L. Merriman

Sols for Compts.

Samuel Barton }
Jonathan Barton } Peoria Circuit Court
Lincoln Barton } To May Term 1852
" " } In Chancery
William S. Moss }

The clerk will please issue
Summons in above cause
Returnable to said Term.

N.O. & A.L. Merriman

Sols for Compts.

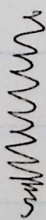
Schedule "A"

This Indenture, made this sixteenth day of Febr in the year of our Lord one thousand eight hundred and fifty-two, between William C. A. Barton and Mary A. Barton of the county of Peoria and state of Illinois parties of the first part, and Lincoln Barton of the

county and state aforesaid party of the second part, witnesseth, that the said parties of the first part, for and in consideration of the sum of one hundred dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the enrolling and delivery of these presents, the receipt whereof is hereby acknowledged, hath remise, released, sold and forever quit claimed, and by these presents doth remise, release, sell and forever quit claim unto the said party of the second part, and to his heirs and assigns forever, All their right, title, interest in and to the following described land to-wit. the north half of the south west fractional quarter of section No. fourteen (14) in township No. nine (9) north of Range No. eight (8) East of the fourth principal meridian situated in the county of Peoria and state of Illinois - To have and to hold the above described premises, with all the privileges and appurtenances thereto belonging, to him the party of the second part, his heirs and assigns forever. In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered

in presence of

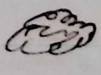


William C. N. Barton (24)

May Ann Barton (25)

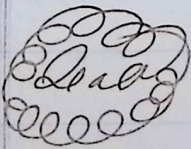
11 State of Illinois }
Peoria County }

I, John Noel a Justice of the Peace for said County, do certify, that on this day personally appeared before me William C. H. Barton & Mary A. his wife, whose name appear subscribed to the foregoing deed of conveyance as having executed the same, and who are personally known to me to be the real person who and in whose name the acknowledgment is proposed to be made, and acknowledged the execution thereof as their voluntary act and deed for the uses and purposes therein expressed. And Mary A. Barton wife of the said W. C. H. Barton having been by me made acquainted with the contents of the said deed, and by me examined separate and apart from her said husband, whether she had executed the same and relinquished her dower to the lands and tenements therein mentioned, acknowledged that she had done so, voluntarily and freely and without compulsion of her said husband, and does not wish to retract. Given under my hand and seal of office at Peoria this eighteenth day of February A.D. 1852.

John Noel, J.P. 

And afterwards, to-wit:- but on the day and date of the filing of the foregoing Bill in Chancery, there was issued from said clerks office a Summons in words and figures following to-wit:-

Summons)
 The People of the State of Illinois, To the Sheriff of Peoria County, Greeting. We command you to summon William J. Mass, if he may be found in your county, to appear before our circuit court on the first day of the term thereof, to be held at Peoria, within and for the said County of Peoria, on the 2nd Monday of May next, then and there, in our said court to answer the matters and things contained in a certain bill of complaint exhibited against him in our said court on the Chancery side thereof by Lemuel Barton, Jonathan Barton and Lincoln Barton complainants, and make return of this writ, with an endorsement of the time and manner of serving the same, on or before the first day of the term of the said court to be held as aforesaid. Witness, Jacob Gale, clerk of our said court, and the seal thereof, at Peoria, this 30th day of April in the Year of our Lord one thousand eight hundred and fifty two.
 Jacob Gale, Clerk.



13

Which said summons, was afterwards returned into said clerks office, endorsed as follows to wit

Return

State of Illinois }
Peoria County }^{es}

Served on William J. Moss, by reading to him this writ and giving him a copy of the same, May 1st 1852

James L. Riggs, Sheriff
By D. D. Hous, deputy.

And afterwards to wit - on the 25th day of May A.D. 1853, there was filed in said clerks office an "Answer of Defendant" in words and figures following to wit: -

Answer

Samuel Barton
Jonathan Barton
Jameson Barton
vs
Wm. J. Moss

In the Circuit Court
of Peoria County
May Term A.D. 1852.

The answer of William J. Moss, to the complainants bill of complaint in the above cause. Said defendant saving & Reserving all exceptions &c to said bill for answer thereto saith. That said complainants never were owners in fee simple or otherwise of the South west quarter of section (14) in T. N. & E of the 4th Principal Meridian. He denies that William C. H. Barton & wife conveyed their interest in said

14 land to Simeon Barton as stated in said bill.

He denies that the land ever belonged to complainants & Wm. C. D. Barton as heirs of Vincents Barton or that there was any such understanding among said heirs as is stated in said bill.

He denies that Simeon Barton ever worked for him on his farm the time stated in said bill and he has paid and overpaid said Barton for all the work he has ever done. That during most of the time said Simeon was living with this dependant he was sick and unable to labor and required Medical attendance and services for all which this dependant paid for said Simeon.

Dependant denies that about the year 1839 George B. Parker was indebted to said estate (what estate?) in any sum whatever or that said minor or any of them ever gave dependant any order on said Parker to collect or so receive the same or that he has collected the same or any such money, or in any manner received the same in manner and form as stated in complainants bill.

He denies that he ever made any such contract or had any such understanding or agreement with George B. Parker as is stated in complainants Bill.

15- And insists that if he has done so it would afford no evidence that he had received any money belonging to the complainants or either of them. And that if such allegation were true the complainants have a perfect remedy at law for the same. Defendant denies that he has any such order or sheriff's deed as is mentioned in said bill.

He denies that Wm. C. W. Barton has assigned his interests in said supposed claim to complainants.

He denies that he was ever employed or ever acted as agent for Lincoln Barton at any time, or that he ever paid any taxes on said land at any time before he became the purchaser of the same for taxes in the year 1843.

He admits that a judgment for taxes against said land was rendered by the Circuit Court of Peoria County at the time in said bill alleged that a precept was issued and a sale made of said land in due form of law to this defendant and that the same remaining unsold he received a deed therefor from the sheriff of Peoria County at the time in said bill mentioned and he avers that all the proceedings under the said sale and previous thereto re-

16 lating to said sale were in all respects strictly legal & proper, and that all the provisions of the law in that respect in advertising said land, entering up said judgment & making said sale were strictly and technically correct, and that he this dependant under said sale acquired a valid legal title to said land; that he did not at the time of said purchase of said land pretend to have any claim or title or right to the same nor do any thing to prevent other persons from bidding at said tax sale. He denies expressly that said land was purchased with the money of said Lincson or with the money of any other person except himself.

He denies that he has ever cut any timber on said land, so as to injure the same in any manner whatever.

All other matters and things contained and stated in said complainant's bill not herein admitted traversed or denied said dependant says are wholly and totally false and untrue and he distinctly denies the same and every part thereof & having fully answered he prays to be dismissed with his costs.

Purple & Sanger

May 25, 1853 =

Depts atty,

Amended 17
Bill

And afterwards to wit - on the 7th day of December A.D. 1853, there was filed in the office of the clerk aforesaid, an "Amended Bill" in words and figures following to wit:-

Lemuel Barton	}	Peoria Circuit Court
Simon Barton		
Johnathan Barton		
		Nov. T. 1853
^{vs} Wm. S. Moss	}	In Chancery

Complainants by way of Amendment to their said Bill, by leave of the court first had and obtained further state.

That said Moss has carried or caused to be carried or removed from said land described in said bill a large quantity of Rails and the fence then being on said premises of great value, to wit - at least two hundred dollars, and for which he should be compelled to account to complainants - And also said Moss caused to be cut & removed from said land a large quantity of saw logs & timber worth about two hundred dollars.

Complainants further state, that they are informed & believe that the said judgment, sale & deed for Taxes to said Moss referred to in said Answer on file herein are void and convey no valid title to said land to said Moss, and that the same should

18 be set aside.

Complainant further states that said Moss has been in possession of and receiving the rents and profits of said land for about five years as complainant has been informed & believes, which rents and profits amount in the aggregate to a large sum of money & for which he ought to account to complainants

Complainants further state that Vincent Barton died intestate in the Year 1834, leaving complainants & William C. H. Barton his children & sole heirs at law, and that said claim against said George B. Parker was for money by him received for said estate of said Vincent Barton deceased, and that all the debts of said estate have long since been fully paid and complainants are the equitable owners of said claim and all rights resulting therefrom - Complainants further state that said lot so levied upon by the Sheriff of said Peoria County and sold to said Moss as alleged in said original Bill would have been redeemed from such sale by said Parker or some one ^{for} ~~from~~ him, if the said agreement referred to in said original Bill had

19

had not been made & if he had not supposed that by the said agreement the said debt in favor of said estate was cancelled & satisfied in full. And complainants state that said lot was then the only property of said Parker subject to execution and he is now & from that time has been insolvent. Complainants further state that they have offered to pay to said Moss the amount necessary to redeem said lot from said sale & all interest thereon & receive a conveyance therefor, or to receive from him the amount of said indebtedness of said Parker to said estate which offer they now make, and which said Moss has repeatedly refused - Complainants therefore pray that an account may under the direction of this court be taken & that said Moss may be required to surrender all claim to said land and to receive the amount of redemption money & interest as shall be equitable for sale of said lot on said judgment against said Parker, and convey said lot to complainants, or pay to them the amount of said debt, against said Parker, and the interest account thereon - and for the relief prayed in said original Bill, and for such other and

20 further relief as to your Honor shall seem meet
& proper = And as in duty bound will ever pray
H.
H.O. & A.L. Merriman
Sols. for Compt.

State of Illinois }
County of Peoria } ss.

William C. H. Barton being first
duly sworn deposes and says that the fore-
going amended & supplemental Bill is true
except as to the matters therein stated to be
on information & belief & as to those mat-
ters he believes it to be true. Deponent
further states that he is agent for the
complainants, and that the reason that
said amended supplemental bill has not
been sooner filed is on account of the
sickness of the solicitor of complain-
ants H. O. Merriman who prepared the
original bill as well as the foregoing
supplemental bill.

Subscribed & sworn to 3 W. C. H. Barton
before me this 3^d day
of December AD 1853
Jacob Gale, Clerk

Amended
Answer

And afterwards to-wit- on the 27th day of
January AD 1855, there was filed in said
clerk's office, an amended answer
in words and figures following
to-wit:-

2, Lemuel Barton
Jonathan Barton
Lincoln Barton

19
William J. Moss

And now comes the said de-
pendant William J. Moss by his at-
torneys Purple & Sanger and by leave of
the court for that purpose first had
and obtained Amends his original an-
swer to the said complainants bill of
complaint filed herein as follows:

This respondent says that if any
contract was ever made between
said complainants and this respondent
as charged in said complainants Bill -
that the said contract was for the
sale of land and was by parol and
that neither the said contract nor any
note or memorandum thereof was made
in writing and signed by this respondent
or by any person thereunto by him
lawfully authorized - and that the
said contract if any such was made
is void and of no effect being in
contravention of the statute of frauds
and perjuries of the state of Illinois.

And this respondent insists and relies
upon the said statute of Frauds and Per-
juries as a defense to the relief sought
by said complainant by their said

22 Bill - And respondent having fully answered pray to be discharged with his costs &c. Purple Hanger
Solicitor for Resp't.

Replication And afterwards to wit = By order of court December 21st AD 1857, a replication was filed in this cause, in said clarks office, in words and figures following to wit:-

State of Illinois }
County of Peoria }

Peoria Circuit Court,

November Term AD 1857.

Samuel Barton & als }

vs
William S. Moss }

This replication of said complainants to the answer of said defendant in said cause.

The repliants now and forever saving and reserving all right of exception to said answers and each of them for replication to said answers say that the same are uncertain, evasive and insufficient and that the same are untrue except so far as they admit the allegations in said bill and that they will prove their bill to be true wheresoever said court shall direct & pray as above. Manning & Merriman for Compts

Presumption 23

The United States of America.

Certificate

To all to whom these Presents shall come. Greeting:

No. 2152

Whereas Augustus Langworthy of Peoria County Illinois has deposited in the General Land Office of the United States, a certificate of the Register of the Land office at Quincy whereby it appears that full payment has been made by the said Augustus Langworthy according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An Act Making further provision for the sale of public Lands," for the South west fractional quarter of section fourteen, in Township nine north of Range eight east in the district of Lands subject to sale at Quincy, Illinois, containing ninety nine Acres, and sixty one hundredths of an Acre, according to the official plat of the survey of the said Lands, returned to the General Land office by the Surveyor General, which said tract has been purchased by the said Augustus Langworthy - Now Know Ye, That the United States of America, in consideration of the premises, and in conformity with the several acts of Congress, in such case made and provided, have given and Granted and by these presents do give and grant, unto the said Augustus Langworthy and to his heirs, the said

24 tract above described - To have and
to hold the same, together with all
the rights, privileges, immunities, and
appurtenances of whatsoever nature,
theresunto belonging, unto the said Au-
gustus Langworthy, ^{and to his heirs and assigns forever.} In testimony
whereof, I, Martin Van Buren, President
of the United States of America, have
caused these letters to be made Patent,
and the seal of the General Land
office to be theresunto affixed.

Given under my hand, at the
city of Washington, the tenth day
of October in the year of our
Lord one thousand eight
hundred and forty and
of the Independence of the
United States the sixty fifth

By the President: Martin Van Buren

By J. N. Van Buren, Jr. Secy

Joseph J. Wilson, Acting Recorder of the
General Land office

ad interim

Recorded Vol. 5, page 161.

Manuscript
of Judgment
in
Northern Dist.
Illinois

25-

United States of America }
Northern District of Illinois } ss.

Pleas in the district court of the United States for the District of Illinois, held at the town of Vandalia in and for the District aforesaid before the Hon. Nathaniel Pope, Judge of said court on Monday the 4th day of December of the term of December in the year of our Lord one thousand eight hundred and thirty seven and of the Independence of the United States the 62 year.

James F. Oving, Clerk

The United States of America

vs

Augustus Laypworth

District of Illinois - S.S.

The United States of America put in their place Daniel J. Baker, District Attorney, against Augustus Laypworth, in a plea of Trespass on the case upon promises. District of Illinois, S.S. Be it Remembered that on the 22^d day of February in the year of our Lord one thousand eight hundred and thirty seven - the United States of America by David J. Baker their attorney came unto the clerks office of the District Court of the United States, for the district of Illinois, and filed a declaration against

26 Augustus Langworthy a citizen of the State of Illinois in the words following to wit = In the District Court of the United States for the District of Illinois of the May Term of said Court in the year of our Lord, one thousand eight hundred and thirty Seven.

State and District of Illinois, S. S.

The United States of America plaintiffs in this suit complain of Augustus Langworthy defendant in this suit custody &c. of a plea of Trespass on the case upon promises - For that whereas heretofore to wit: on the first day of February in the year of our Lord one thousand eight hundred and thirty Seven at Alton in the county of Madison and within the state and district of Illinois, and within the jurisdiction of this Court the said defendant was indebted to the said plaintiffs in the sum of three hundred dollars of money of currency of the United States of America for so much money before that time had and received by the said defendant as post Master at Alton aforesaid to and for the use of the said plaintiffs, and also in the further sum of three hundred dollars of like money as aforesaid, for so much mo=

27

may by the said dependant before that time had and received to and for the use of said plaintiffs and being so indebted he the said dependant in consideration thereof afterwards to wit - on the day and in the year aforesaid, at the place aforesaid and within the jurisdiction of this court undertook and then and there faithfully promised the said plaintiffs to pay them the said several sums of money in this court mentioned when he the said dependant should be thereunto afterwards requested - Yet the said dependant altho' often requested so to do hath not as yet paid to the said plaintiffs the said sums of money or either of them or any part thereof: but to pay to them the same or either or any part thereof he the said dependant hath hitherto wholly refused and still refuses so to do to the damage of the said plaintiffs of three hundred dollars and therefore they sue

Copy of Account sued on.

Dr = Augustus Langworthy late Postmaster Alton Ill. Paid with the Genl Post office - Cr

		1820 May 4		
To Balance on his Post office acct			By cash	5 00
From Jan 1 st to April 1 st 1820	5 27		By draft in favor of E. B. Clemons	60 00
" April 1 st to July 1 st "	16 32		do do ditto	48 20
" July 1 st to Oct 1 st "	13 78		By cash paid C. W. Hunter Jan 1 st	2
" Oct 1 st to Dec 31 st "	10 12		By do E. Harper	4
" Jan 1 st to April 1 st 1821	13 56		By do George W. Britton	2
" April 1 st to July 1 st "	17 16		Balance	128 36
" July 1 st to Oct 1 st "	17 87			
" Oct 1 st to Dec 31 st "	14 87			
" Jan 1 st to April 1 st 1822	13 09			
" April 1 st to July 1 st "	13 67			
" July 1 st to Oct 1 st "	11 42			
" Oct 1 st to Dec 31 st "	9 91			
Jan 1 st to April 1 st 1823	11 82			
April 1 st to July 1 st "	10 95			
July 1 st to Oct 1 st "	11 14			
Oct 1 st to Dec 15 th "	10 41			
To draft in favor of E. B. Clemons returned unpaid	48 20			
	249 50			249 50
To Balance due G.P. office	128 36			

Post office Dept.

I certify that the account of Augustus Langworthy late Post Master at Alton, Ill., has been examined and adjusted at this office and that the foregoing is a true statement thereof from the books of said office.

20

29 Witness the seal of the department and my signature hereunto subscribed this 14th day of May eighteen hundred and twenty-five.



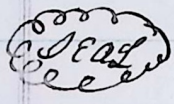
Abm. Bradley
ass. Post M. Genl

Dr. = Augustus Langworthy late Post Master at Alton, Ill. in a/c with the United States - Cr

To Balance due the United States			By cash	5 00
on his quarterly returns as Post				
Master viz				
From Jan 1 to April 1 1820	5 27	1820	May 4, 1822	
" April 1 to July 1 "	16 32	"	Sept 17, 1823	Draft in favor of E. B. Clemons 60 00
" July 1 to Oct 1 "	13 78	"	April, 1823	" do " ditto 48 20
" Oct 1 to Dec 31 "	10 12	"	June 2,	Cash paid C. W. Hunter 1 Jay 2 00
" Jan 1 to April 1 1821	13 56	1821	" do "	C. Harper 4 00
" April 1 " July 1 "	17 16	"	" do "	G. W. Britton 2 00
" July 1 " Oct 1 "	17 87	"		
" Oct 1 " Dec 31 "	14 87	"		
" Jan 1 " April 1, 1822	13 09	1822		
" April 1 " July 1, "	13 67	"		
" July 1 " Oct 1, "	11 42	"		
" Oct 1 " Dec 31, "	9 91	"		
" Jan 1 " April 1 1823	11 82	1823		
" April 1 " July 1 "	10 95	"		
" July 1 " Oct 1, "	11 14	"		
" Oct 1 " Dec 19, "	10 41	"		
To draft in favor of E. B. Clemons				
of April 1, 1823, returned unpaid	48 20			
Dollars	249 56			
To Balance	128 36			128 36

Auditors office - Post office Department

I do hereby certify that the accounts of Augustus Langworthy, late Post Master at Alton, Ill., have been examined and adjusted at this office and that the foregoing is a true statement thereof from the books of said office. Witness the seal of this office and my signature hereunto.

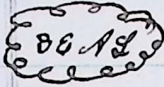
 to subscribed this 30th day of June eighteen hundred and thirty seven

C. K. Gardner, Auditor P.O. Dept

Whereupon was issued the following Summons:
 United States of America }
 District of Illinois } set

The United States of America, to
 the Marshall of the District of Illinois.
 Greeting:-

We command you that you summon Augustus Langworthy if he be found in your ~~County~~ District, to be and appear before our Judge of our District Court of the United States for the district of Illinois, at the next term thereof, to be holden at Vandalia in the district aforesaid, on the fourth Monday of May next, to answer unto the United States of America in a plea of trespass on the case upon promises to their damage of three hundred dollars, And have you then there this writ:-

31 Witness the Hon. Nathaniel Pope, judge of
our said Court at Vandalia this 22^d
 day of February in the year of our
Lord one thousand eight hundred
and thirty seven and of our Independ-
ence the 61st year

James F. Owings, Clerk

And now at this day - to wit - the 23^d of
May eighteen hundred and thirty seven
come the United States of America by
their attorney, their attorney aforesaid
and the said Marshall returns upon
the summons to him directed that
he has summoned the said Augustus
Langworthy to appear, as by said writ
he was directed - And the said defendant
being thrice solemnly called comes not
neither does he say any thing in bar or
preclusion of the said actions of the
said plaintiffs - whereby the said plain-
tiffs remain herein wholly undefended
against the said defendant, It is there-
fore ordered that defendant's default
be entered for not pleading - It is
further ordered that a Vinere issue,
in this cause returnable at the next
term of this court. And now at
this day come to wit the 4th day of De-
cember of the term of December in the

Year of our Lord eighteen thirty seven the jurors of a jury of whom mention is made at a former day of this court, to wit: Moses Phillips, James Galloway, Gholson Stapf, Harrison Thomson, R. K. McLaughlin, John M. Brown, Wm. L. Graves, John Trapp, Edward Smith, Geo. F. Hollis, Lion K. Green, Andrew Bowlin, who being chosen, tried and sworn say upon their oath that the said Augustus Langworthy did undertake and promise in manner and form as the said United States of America have complained against him, and they assess the damages of the said United States to two hundred and thirty five dollars and eighty six cents - Therefore it is considered by the court that the said United States do recover against the said Augustus Langworthy their said damages aforesaid by the jury aforesaid assessed to two hundred and thirty five dollars and eighty six cents, as well as twenty nine dollars and three cents the costs and charges by them about this suit in this behalf expended and that they have execution &c. Which said damages, costs and charges in the whole amount to two hundred

33. & Sixty four dollars and Eighty-nine cents.
And the dependant in Mercy &c.

James F. Owings, Clerk

Northern District of Illinois, S.S.

I, William A. Bradley, Clerk
of the District Court of the United States
for said Northern District of Illinois
do hereby certify the foregoing trans-
cript to be a true and correct from
the final judgment Record of the Dis-
trict Court of the United States for the
late district of Illinois of the De-
cember Term thereof AD 1837, in
the case of the United States of Amer-
ica against Augustus Langworthy
now in my office.

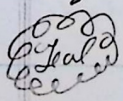
In testimony whereof
I have hereunto set my hand
and affixed the seal of said
court at my office in Chicago
in said Northern District this 20th
day of November AD 1857

Wm H. Bradley, Clerk

United States of America }
District of Illinois } 20

The United States of America

To the Marshal of the District of Illinois -
We command you that of the goods and chattels, lands and tenements of Augustus Langworthy, in your district, you cause to be made, two hundred and sixty four dollars & Eighty nine cents, which The United States of America lately in our district court of the United States for the district of Illinois, before the Judge thereof at Vandalia, in the district aforesaid recovered against him as well for their damages sustained on occasion of the non-performance of certain promises & undertakings as for their costs and charges by them about their suit in this behalf expended: whereof the said defendant is convicted as appears to us of record. And have you that money at the clerks office of our said court in Ninety days from the date hereof to render to the said plaintiff for their damages aforesaid, and this writ:

 Witness the Hon. Nathaniel Pope, Judge of our said court at Springfield aforesaid this 26th day of July in the Year of our Lord one thousand eight hundred and thirty

55~ nine and of our Independence the Sixty
fourth year - James F. Owings, clerk
(Endorsements by the Clerk)

No 85

Dist Ct U.S.A. Dist Illinois
The United States of America

vs

Augustus Langworthy

al fi fa Dam 235 86

Costs 2903

\$ 264 89

Paid costs \$2903

Cash 1860

4763

on Ex

For

" al fi fa

4763

\$ 217 26

150

110

\$ 219 92

9365

12627

Judgt rend Dec^r 4, 1837

James F. Owings, Clerk

(Endorsements by the Marshall)

The within fi fa. Rend by me this 3^d day of August
1839

A. Wilton, Marshal

by A. M. Hunt, Dep

By virtue of the within Fi Fa to
me directed, I have levied on the fol-
lowing property viz - the South west
fractional Section No. Fourteen

Township nine north range eight east
no other property belonging to defendant
having been found wheredu to levy

H. Wilton, Marshal

By A. M. Hunt, Dep. M.

Peoria, August 3rd 1839.

On the 15th day of October 1839, pur=
suant to public notice I proceeded
to sell the above described property
at public vendue at the court house
in Peoria County when the follow=
ing named persons became the joint
purchasers, vis. William Barton, Sea=
man Barton, Jonathan Barton & Lincoln
Barton for the sum of one hundred
and ten dollars,

H. Wilton, Marshal

By A. M. Hunt, Dep. Mar.

Marshals Fees

Mileage to levy	\$4 00
do to sell	4 00
Laying pi pa	2 00
Percentage on \$110	5 50
Advertising	3 3/4
Returning pi pa	12 1/2
	<hr/>
	15 95 3/4

Certificate

Amount sold

50
<hr/>
10 45 3/4
110 00
<hr/>
93.55

Rec^d of A. M. Hunt Dep. Marshal the

amt of the within sale

H. Wilton

Dec 12th 1839 =

Marshal

(Endorsed by the Clerk)

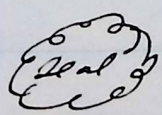
Filed March 14th 1840.

37

Owings, Clerk

Northern District of Illinois, S.S.

I, William A. Bradley, Clerk of the District Court of the United States for said Northern District of Illinois do hereby certify the foregoing transcript to be a true, full & correct copy of a writ of fieri facias, together with the endorsements & returns thereon which was issued out of the district court of the United States for the district of Illinois on the 26th day of July A.D. 1839 in the cause of the United States of America against Augustus Langworthy, judgment wherein was rendered against said defendant on the fourth day of December A.D. 1837 in said district court for district of Illinois as the original now appears in my office.



In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Chicago in said Northern District of Illinois this 24th day of December A.D. 1857

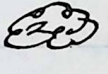
Wm. A. Bradley, Clerk

Marshalls
Decd 38

Know all men by these presents, That whereas at the December term of the District Court of the United States for the District of Illinois, in the year of our Lord one thousand eight hundred and thirty-seven, the United States of America by the consideration and judgment of said court, did recover a judgment against Augustus Langworthy for the sum of two hundred and sixty four $89/100$ dollars damages and costs of suit upon which judgment a writ of Alias fieri facias was issued, dated on the twenty sixth day of July in the year of our Lord one thousand eight hundred and thirty-nine directed to the Marshall of the District of Illinois to execute in due form of law; and by virtue of said execution, Harry Wilton, the said Marshall after the delivery of the same to him, and before the return day thereof, levied upon the lands hereinafter described; and afterwards, on the fifteenth day of October in the year of our Lord one thousand eight hundred and thirty-nine, at the court house door in Peoria county, in the state aforesaid, exposed the said lands for sale at public auction, and the same were struck off and sold to Lemuel Barton, William C. H. Barton, Jonathan Barton & Simeon Barton, for the sum of one hundred and ten dollars,

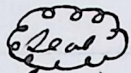
39 he being the highest and best bidder there-
for, the time and place of sale having been
first duly advertised according to law;

And whereas, after the said sale and before
the execution of a deed in pursuance thereof
to the said purchaser, the said Harry Wil-
ton was removed from his said office
of Marshall as aforesaid and Thomas
M. Hope, has succeeded to the said office
of Marshall, and whereas the said court
at the December term thereof in the
year 1844 made an order, that the said
Thomas M. Hope, Marshall of the said
district as aforesaid execute and deliver
to the said Lemuel Barton, William C. H. Bar-
ton, Jonathan Barton and Lincoln Barton
a deed for the said lands: Now, therefore,
know all men by these presents that Thomas
M. Hope, Marshall of the district of
Illinois, in consideration of the premises
have granted, bargained and sold, and
do hereby grant, bargain and sell and
convey to the said Lemuel Barton,
William C. H. Barton, Jonathan Bar-
ton and Lincoln Barton, and to their
heirs & assigns the following des-
cribed tracts or parcels of land, to-
wit- The south west fractional quar-
ter of section No. fourteen (14) in town-
ship nine north of range eight (8) east

40 of the fourth principal Meridian, situated
in the county of Peoria and state of Illinois,
To have and to hold the premises, with all
the appurtenances thereto belonging, to the
said Lemuel, William C.H., Jonathan &
Jinson Barton, their heirs and assigns
forever - Witness my hand and seal
on this 28th day of December in the year
of our Lord one thousand eight hun-
dred and forty four Thos. M. Hope 
signed sealed & delivered } Marshall of the District of Illinois
in presence of }

United States of America }
District of Illinois }^{ss}

Be it remembered that on the
twenty eighth day of December in the
year of our Lord eighteen hundred
and forty four, personally appeared
before me, William Pope, Clerk of
the district court of the United States
for the district of Illinois, Thomas
M. Hope, Marshall of the district
of Illinois, who is known to me
to be the person who subscribed
the foregoing instrument in writing
and acknowledged that he executed
the same for the uses and purposes
therein expressed, and that the same
is his free act and deed.

411  In testimony whereof I have hereunto affixed the seal of said court and subscribed my name this 28th day of December AD 1844, and of our Independence the 69th Year -


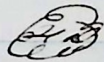
Wm. Pope, Clerk

Deed from
Barton
to
Barton

This Indenture, made this Sixteenth day of Febr. in the year of our Lord one thousand eight hundred and fifty two between William C. A. Barton and Mary A. Barton of the county of Peoria and state of Illinois, parties of the first part, and Simeon Barton of the county and state aforesaid party of the second part: Witnesseth, That the said parties of the first part, for and in consideration of the sum of one hundred dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the en sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath remise, released, sold and forever quit-claimed, and by these presents doth remise, release, sell and forever quit claim, unto the said party of the second part, and to

his heirs and assigns forever, All their right, title, interest in and to the following described lands to-wit: The North half of the Southwest fractional quarter of section No. fourteen (14) in township No. nine (9) north of Range No. Eight (8) east of the fourth principle Meridian situated in the county of Peoria, and State of Illinois = To Have and to Hold the above described premises, with all the privileges and appurtenances thereunto belonging to him the party of the second part, his heirs and assigns forever.


In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered } William C. H. Barton 
in presence of } Mary Ann Barton 

State of Illinois }
Peoria County }

I, John Noel, a justice of the peace for said county, do certify, that on this day personally appeared before me William C. H. Barton & Mary A. his wife whose name appear subscribed to the foregoing deed of conveyance as having executed the same, and who are personally known to me to be the real person who and in whose name the acknowledgment is proposed to be made and acknowl-

43 edged the execution thereof as their voluntary act and deed for the uses and purposes therein expressed. And Mary A. Barton wife of the said W. C. H. Barton having been by me made acquainted with the contents of the said Deed, and by me examined separate and apart from her said husband, whether she had executed the same and relinquished her dower to the lands and tenements therein mentioned, acknowledged that she had done so, voluntarily and freely and without compulsion of her said husband, and does not wish to retract. Given under my hand and seal of office, at Peoria this eighteenth day of February AD 1852.

John Neal  J.P.

At the Special term of the circuit court of said county & State, held in September AD 1856, by order of said court there was opened and filed in this cause, a deposition in words and figures following to wit:-

Deposition

Samuel Barton & als } Peoria Circuit Court
" } In Chancery
William J. Moss }

Take notice that on the 24th day of January instant between the hours of eight o'clock in the forenoon and six o'clock in the afternoon and from

44 day to day until concluded, we will at the of-
fice of Manning and Merriman in the city
of Peoria and state of Illinois, and before
J. G. Lueder, a notary Public take the depo-
sitions of William C. H. Barton, Charles Sutton,
John King and Louis Moss, to be used in evi-
dence on the hearing of this cause on part
of complainants, when and where you can
appear and cross-examine said witness
if you deem proper.

Yours etc

Manning & Merriman

Dated, Peoria, Jan'y 12th 1855 Dals for corups
To Purple & Sanger, Depts sol

Received a copy of the above notice
Jan'y 12th 1855 Purple & Sanger

State of Illinois }
Peoria County }^{ss}

Depositions of witnesses ta-
ken on the 24th day of January A.D. 1855
between the hours of 8 o'clock in the
forenoon and six o'clock in the af-
ternoon of said day at the office of
Messrs. Manning & Merriman, Peoria, in
said county and state before J. G. Lueder,
Notary Public in said city, in evidence
of a certain suit now pending in
the circuit court of Peoria County
and state of Illinois, wherein Samuel

45- Barton, Jonathan Barton and Simeon Barton are complainants and Wm. S. Moss is dependant in pursuance of a notice hereto attached.

William C. H. Barton, being first duly sworn doth depose and say in answer to the several interrogatories as follows - to wit:-

Int. 1. What is your residence, age &c.

Ans. I live in Peoria county - my age is 36 years.

Int. 2. Are you acquainted with the parties in this suit? and are you not related to either of them, and if so, to whom and in what manner?

Ans. I am acquainted with the parties; I am a brother of complainants

Int. 3. What is your father's name?

Ans. Vincent Barton, who died in the latter part of the year 1833; he had four children, Samuel Barton, Samuel^{Jr} Barton Jonathan Barton and myself.

Int. 4. Do you or not know whether Simeon Barton worked for dependant? if so, for how long, when did he commence and what were his wages reasonably worth

Ans. I know that Simeon Barton did work for dependant and I am under the impression that it was in 1836; he worked for dependant off and on

46 Until 1841; he probably was away from there three or four months at a time; his wages on the farm would range from twelve to fifteen dollars per month

Qut 5. Do you or not know, whether dependant during that time or afterwards acted as agent for said Simeon Barton in the payment of taxes and taking charge of certain lands; and if so for what land in particular? and to what did his agency extend; and your means of knowledge.

Ans In 1839 I sold my interest in the North half of the South west quarter of section fourteen, township nine North eight east of the 4th Pr. Meridian to Simeon Barton, for which Wm. S. Moss paid me at S. Barton's request the sum of one Hundred Dollars; there was a verbal contract made at the time between Simeon Barton & Moss, that Wm. S. Moss was to see to it that taxes were being paid; there was no particular understanding for how long a time said Wm. S. Moss was to pay such taxes, but I suppose, it was understood for so long a time as said S. Barton worked for said Moss, but no specified time set. In 1845 Capt. Moss told me there was an understanding between

47 himself and Simeon Barton, that myself and Harry S. Aiken should pay taxes on said land, which said Moss had advanced on said land. In 1846 Capt. Moss, H. S. Aiken & myself had a settlement and we proposed to have this come in with the rest, but Capt. Moss refused and required that S. Barton should settle the matter and that he had to make a settlement with said Simeon Barton. In 1847 I asked Capt. Moss what his object was in not settling with Simeon Barton or not signing over the certificates of purchase or deeding said land to him, when he answered that he wanted a settlement out of him first, that he had been doing some business for Simeon Barton, and that he had an account against S. Barton of twenty-five dollars which he paid to Judge Purple for prosecuting suit against Judge Parker upon an acceptance Wm. S. Moss told me that Simeon Barton had drawn an order against Judge Parker for one hundred and twenty-five dollars in favor of Wm. S. Moss and that Judge Parker accepted said order, and that he Wm. S. Moss sued said Parker on it and got a judgment against him, when the execution was

418 returned "no property found," that he said Moss had to pay the costs and lawyers fees. Sometime between 1839 and 1844 I had a conversation with Wm. S. Moss about a lot in the town of Peoria which was sold here and was the property of said Parker. Said conversation was before the time of redemption had expired; Wm. S. Moss told me that this was the last piece of property of Parker's which he owned, that it had been sold on execution. I asked him whether it would not be better for S. Barton to try and raise the ^{means} money to redeem said lot, so as to save something on the judgment which Moss had against Parker, whereupon Moss answered that I need not have any trouble about it. I had conversations with Wm. S. Moss at different times about the subject, and tried to get him to settle with Simeon Barton because some one of them might die, whereupon Wm. S. Moss always said that I need not take any trouble about it and that it would be all right between Simeon and himself. In 1849 I came up twice with Simeon to get a settlement with Wm. S. Moss, the first day Wm. S. Moss had other business to attend to and appointed another

49 day, on which day he was just starting for St. Louis and said that he had to start, could not settle at the time, but that he would settle at some other time. About a year ago William J. Moss and myself had another conversation about the subject, in which he proposed to buy out Ginson and my brother and myself of their interest in said South west fractional quarter of Section fourteen Township nine north range eight east of the 4th Pr. Mer. and offered one thousand dollars for the same. We were trying to compromise but I did not feel inclined to take the offer and asked him sixteen hundred dollars, which he declined.

Int 6 Do you or not know what was the consideration of the said order on Parker given to Wm. J. Moss, If so, what was it and your means of knowledge?

Ans. Wm. J. Moss told me, that Ginson gave him an order on Parker of one hundred and twenty-five dollars to collect, but that he could not collect it and had to pay the expenses of the prosecution.

Int. 7 Has or not said Moss been in possession of the said land or any part of it for any length of time; and if so, for how long?

570
Ans.

He is in possession of the land and has been in the possession of it probably five years, the use of which was worth about twelve dollars a year. I had a conversation with Wm. S. Moss directly after said lands had been sold for taxes to said Moss, in which I asked him what his notion was in letting said land be sold for taxes and he told me his reason was to strengthen Lincoln's title to the land, that his title was of no account.

Cross-Examination

Int 1. How old is Lincoln Barton?

Ans. Something over 37 years, 38 years I think.

Int 2. How old was he in 1849?

Ans. He probably was about 22 years old.

Int 3. What time did he quit working for Wm. S. Moss?

Ans. About October 1842 - I do not think he worked for Moss again after that time.

Int 4. In 1839, when you say, that there was an understanding between Moss & Lincoln Barton and Moss was to pay taxes on the land, what did Moss say?

Ans. Moss said, "I will attend to it."

Int 5. Did he say anything else about paying taxes at that time?

Ans. He said he would keep the taxes paid

5-1 on the land as long as Sineon worked for him; I could not say whether it was as long as he worked for him or until they had a settlement.

Int. 6. What did Sineon say at the same time?

Ans. He told Wm. S. Moss that he wanted him to keep the taxes paid on his land.

Int. 7. What was the health of Sineon Barton, when he first went to live with dependant?

Ans. I do not think it was very good.

Int. 8. Did you ever see the order that you say was drawn by Sineon Barton on Parker?

Ans. I have no recollection of ever having seen it.

Int. 9. Have you any personal knowledge how much time Sineon actually worked for the dependant?

Ans. No, Sir.

Re-Examination.

Int. 1. How long did Sineon remain unwell after he went to live with Wm. S. Moss.

Ans. I can not positively ~~say~~ say - probably from two weeks to a month.

Int. 2. Was his (Sineon's) health ever good during the whole time he lived with Wm. S. Moss?

Ans. I think it was, as much as I am able to judge.

W. C. A. Barton.

I, Julius G. Luoder, a Notary Public in the city of Peoria, county of Peoria and state of Illinois, do hereby certify that W. C. H. Barton, the deponent, whose place of residence is in the county of Peoria and state of Illinois, was by me sworn to testify the whole truth of his knowledge touching the matter in controversy in the cause aforesaid; that deponent was examined and his examination reduced to writing and subscribed by said deponent in my presence, on the 24th day of January A.D. 1855, between the hours of 8 o'clock of the forenoon and 6 o'clock of the afternoon, at Peoria, in the county of Peoria, in the state of Illinois

Given and certified the 17th day of December A.D. 1855.

J. G. Luoder, Notary
Public in the city
of Peoria

And at the said September term of said court, there was by order of said court opened and filed in this cause, depositions in words and figures following to-wit:

Lemuel Barton and vs } Peoria circuit

vs

Court

William J. Moss } In Chancery

53

Take notice that on the eleventh day of August next at the office of Manning & Merriman, in the city and county of Peoria and state of Illinois and before J. G. Lender Notary Public or some other person authorized by law to take depositions We shall take the depositions of the following named witnesses viz = William C. H. Barton, John Stringer, John Clifton, George B. Parker, Joel Thurston, J. Dickinson, Charles Sutton, John King, Lewis Ross Mark M. Aiken on the part of complainants, when and where you can appear and cross-examine said witnesses if you deem proper.

Said depositions to be taken between the hours of 8 o'clock in the forenoon and six o'clock in the afternoon and to be continued from day to day until concluded

To Messrs Purple & Angus }
 Depts Atty }
 Manning & Merriman }
 Atty for Compt }

Dated Aug. 1, 1854

Recd copy of within notice
 this 1st day of August 1854
 N. H. Purple

5-4 State of Illinois }
Peoria County } 4

Depositions of witnesses taken on the 11th day of August A.D. 1854 between the hours of 8 o'clock A.M. and six o'clock P.M. of said day at the office of Messrs Manning & Merriman in Peoria in said county and state before J. G. Lueder, Notary Public in said city, in evidence of a certain suit now pending in the circuit court of Peoria county and state of Illinois, wherein Samuel Barton, Jonathan Barton and Simon Barton are complainants and Wm. S.ellos dependant, in pursuance of a notice hereto attached.

The said George B. Parker being first duly sworn doth depose and say in answer to the several interrogatories as follows, to wit:-

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

Ans. I am 45 years, live in Peoria and am Book Keeper.

Int. 2- Were you or not indebted to the estate of Vincent Barton about the year 1839, if yes for what amount and state whether or not any arrangements was made for the satisfaction of the same, if so, what was such arrangements, who were the parties thereto?

Mrs. 5-5-

I was probate Justice of the Peace in Peoria County in the year 1839 - Minney Rymearson was administrator of the estate of Vincent Barton and paid me an amount of money as probate justice, the precise amount I do not recollect, but think about one hundred and twenty or one hundred and twenty-five dollars, stating to me that it belonged to the heirs of Vincent Barton. Wm. S. Moss claimed the money of me, saying that he was guardian or agent of the heirs - I was informed by one of the heirs not to pay the money to Wm. S. Moss; Wm. S. Moss informed me not to pay it to the heirs; after holding on to the money for some time Wm. S. Moss brought suit against me and attained judgment in the circuit court of Peoria County for the amount claimed - Wm. S. Moss held another judgment against me of the amount of from 60. to 70 dollars or near such amount in favor of the assignees of Moses L. and James A. Seal and levied on lot six (6) or block thirty three (33) in the city of Peoria and had it advertised for sale to satisfy the judgment. It was the understanding between me and Wm. S. Moss, that he was to let the judgment which he held against me of the amount of \$125⁰⁰ and costs &c. be included with the judgment which he held in favor of the assignees

56 of Moses L. and James A. Neal, that he was to bid the lot in including both judgments and that I was released of all further responsibility and discharged of both judgments provided that I never redeemed the lot

Int. 3 Was this agreement reduced to writing?

Ans. It may or may not have been, but if it was, it escaped my recollection.

Int. 4 What was the value of said lot at the time of the sale?

Ans. I would not have taken three hundred dollars for it, if I could have kept it, it was worth every dollar of it.

Cross-Examination

Int 1- What time was the sale of said lot?

Ans. I do not recollect, but think it was between 1839 and 1848.

Int 2 Why did the lot not sell for more than it did sell, if it was worth three hundred dollars?

Ans. I think or suppose there was no person who had money to bid higher.

Int 3 Do you know how much it did sell for?

Ans. I do not - but I always thought that it sold for enough to cover the amount of both judgments.

Int. 4⁵⁷ Do you recollect whether Wm. S. Moss ever presented to you an order for the money upon which he attained a judgment against you.

Ans. He might have done so, but if he did the order will show for itself if it is in existence - I do not recollect anything about his presenting the order or my accepting the same.

Int. 5. Have you any distinct recollection of any of the circumstances of this case?

Ans. My recollection so far as the purchase of the lot to satisfy the two judgments by said Wm. S. Moss are pretty clear.

Int. 6. Are you pretty confident that Wm. S. Moss agreed to bid off the lot for both the judgments mentioned?

Ans. Such was certainly my understanding.

Int. 7. Did Wm. S. Moss sue you in his own name for the money in your hands?

Ans. I do not recollect how the suit was commenced.

Int. 8. Have you any distinct recollection that Wm. S. Moss ever did anything more than to present to you an order for that money, for which judgment was rendered against you, except to sue you and recover judgment on the order accepted by you?

Ans. I do not recollect that he ever presented an order; about my accepting it, it is

5-8 as before stated, but I think ^{that} he called on me at one time for the money and represented himself to be guardian or agent for the heirs or some one of them, and that I refused to let him have it in consequence of being requested to do so by one of the heirs.

Int. 9. Was you Probate Justice of the Peace at the time?

Ans. I was.

Int. 10. Did you not know whether he was guardian for the heirs or not?

Ans. I did not in consequence of the loose way in which the business had been done before I came into office.

Int. 11. Did you ask him to exhibit any evidence, that he was guardian or agent?

Ans. I did not that I recollect of.

Int. 12. Was not a contract between you and Moss that Moss should bid off ~~xxx~~ the lot for the amount of the execution in favor of John C. Caldwell, James C. Armstrong, Wm. Williams assignees of Moses L. and James A. Neal, against you and that, if you redeem the same from such sale, that you would also pay the amount due on the order drawn by Barton's heirs on you in favor of said Moss and was not that contract reduced to writing?

Ans. I do not recollect the existence of any such a Contract.
Geo. B. Parker.

59 John Stringer being first duly sworn doth depose and say in answer to the several Interrogatories as follows to wit:-

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

Ans. I am 48 years, reside in Peoria County and am farmer.

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

Ans. I am acquainted with them.

Int. 3. State whether or not the complainant Gideon Barton worked for defendant Wm. S. Moss, if year, when, where, in what capacity and how long?

Ans. I have seen him at work on Moss's farm in Peoria County about 1836 or 1837 for about two or three years I do not recollect how long.

Int. 4. What wages did said Barton receive for his work?

Ans. I do not recollect, but Moss said he was to pay him more in summer as in winter.

Int. 5. What was the labor of said Barton worth per month during the time that he worked for said Moss?

Ans. I think it was worth about \$10.00 per month in summer, but not so much in winter.

Int. 6.

Was you present at the time Simeon Barton gave said Moss an order for money on Parker, Probate Justice, if yea, when was this and state whether or not said Barton was working for said Moss at the time and what was the object for which said order was given?

Ans.

I was not present when the order was written, I was in the room, Moss came into the room with an order in his hand together with Barton, and wanted me to sign the same as witness - do not know whom the order was to - the order was one given by Simeon Barton in favor of said Moss to draw money from some person, I do not recollect whom from - It was at the time that Simeon Barton was at work for said Moss - I do not know what the money was to be applied for.

John Stringer.

John Clifton being first duly sworn doth depose and say in answer to the several interrogations as follows, to wit: . . .

Int. 1-

What is your age, residence and occupation.

Ans.

I am 44 years old, live in Peoria County

61 And am farmer

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

Ans. I am acquainted with them.

Int. 3. Do you know whether or not complainant Simeon Barton worked for defendant Wm. S. Moss at any time and if yes, when, where, in what capacity and how long?

Ans. I know that Simeon Barton did work for said Moss on Moss's farm in Peoria County as a hired man, between the years 1834 and 1838 at one time, when he left Moss but I think he went back again - I guess he worked there about two or three years, perhaps more or perhaps less.

Int. 4. What was the labor of Simeon Barton worth by the month during the time he worked for Wm. S. Moss.

Ans. I do not know about the prices of labor at that time, but I had to pay \$18.00 per month to a young man of about 17 years, but would not have paid it the year around, I think common wages were from \$12.00 to \$15.00 per month at that time the year around.

— Cross-Examination —

Int 1 How old was Jameson Barton at the time
time he worked for Wm. S. Moss.

Ans. I think he was about 18 years.
John Clifton.

Joel Thurston, being first duly sworn
doth depose and say in answer to the
several interrogations, as follows, to-wit:

Int. 1- What is your age, residence and occupa-
tion?

Ans. I am 50 years old, live in Richard
township in Peoria county and am
farmer.

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

Ans. I am only acquainted with Wm. S. Moss
defendant.

Int. 3. Are you acquainted with the North half
of the South west quarter of section four-
teen in Township 9 North in Range
8 east from the fourth principal
meridian.

Ans I know a certain tract of land said
to belong to Vincent Barton's heirs, I have
had the care of it for about four years.
Wm. S. Moss claims the northern 50 acres of
the same. The land lies on the Illinois
river east of the so-called Moran farm

Int 4. Under whom have you had possession

63 of said land during the said four years.

Ans. Under Wm. S. Moss.

Int. 5. State whether or not said Wm. S. Moss had any timber, rails or wood cut or taken from said land, if so how much.

Ans. I think I cut about 20 saw logs on it, and about 20 cords of wood for Wm. S. Moss, did not make any rails, there was a lot of logs cut when I came to the place, but I do not know how many, there were sometimes four five loads of rails hauled off by said Moss, which I replaced by other rails laying on the same place or lower part of the same to keep the place in repair.

Int. 6. What was the value of said saw logs rails and wood?

Ans. I do not know the value of the saw logs; the wood was worth that time one dollar and seventy five cents per cord. Rails were worth from \$2.00 to \$2.50 per hundred.

Int 7. What rent have you paid to said Moss for the use of said land?

Ans. I paid him one third of the proceeds from the grain and the one half of the apple crop.

Int 8. What would be the cash value of the rent for said land during the time

you occupied the same?

Ans. I could not say very well, I would not give more than ten dollars a year for it.

— Cross-Examination —

Int 1- What is the description of the land you were speaking of?

Ans. I do not know the range, township or quarter. It is east of the so-called Moran Farm. Moss said that the said land belonged to him and rented it to me. The land is situated in Peoria county. Saw logs that I cut were not more worth than 50 cents or 75 cents, standing timber had been culled before I cut the logs. Rails which said Moss took away were worth about \$1.50 per hundred. I have no personal knowledge of any person having any title to the said land.

Joel Hurston

Not being able to complete the taking of said depositions by reason that the witnesses could not be found, and by agreement of the parties, I adjourn the further taking of the same till the

65- 2nd day of September AD 1854, then to be continued at the same place and between the same hours mentioned in the annexed notice

J. B. Lueder, S. P.

Pursuant to the adjournment as above stated on the 2^d day of September in the year eighteen hundred and fifty-four between the hours of 8 o'clock in the forenoon and 6 o'clock in the afternoon, at the office of Manning & Merriman, I continued the taking of said depositions as follows, viz:-

Mark M. Aiken - being first duly sworn doth depose and say in answer to the several interrogatories as follows:

Int. 1- Are you acquainted with the parties to this suit?

Ans. Yes, I am.

Int 2. Were you or not present at the sale of land for taxes due the state of Illinois and county of Peoria in June 1843 for the taxes of 1842.

Ans. - Yes, I was present

Int 3 Was or not Wm. S. Moss present at that sale?

Ans To my best recollection he was present.

Qut 4- Do you recollect whether the north half of the south west quarter of section fourteen in Township nine north range 8 east of the fourth principal meridian was sold for taxes at said sale, if yea, who was the purchaser thereof?

Ans. It was sold at the said sale, I think fifty acres of it. It was sold to Wm. S. Moss.

Qut 5. Was all the land offered for sale at said time purchased by said Moss for the taxes due on the same?

Ans. Yes it was.

Qut. 6. What was the custom among purchasers at said sale in relation to tracts of land offered for sale for taxes desired by them.

Ans. The words used by purchasers when they desired to purchase a tract was to cry out "claim and Taxes" when by common consent it is stricken off to the persons claiming the same unless there is some person claiming adversely.

Qut 7. Was this the custom pursued by said Moss in relation to purchases made by him.

Ans. He practised it as often as others, it was a common use with persons attending such sales when they desired to purchase a tract Mark M. Aiken

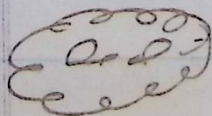
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I, Julius G. Lueder, a Notary Public in the city of Peoria, County of Peoria, and State of Illinois, do certify that in pursuance of the annexed notice came before me at the office of Manning & Merriam, in the city of Peoria, County of Peoria, and State of Illinois, George B. Parker, John Stringer, John Clifton, Joel Thurston and Mark M. Aiken whose places of residence are either in the city or in the County of Peoria, in the State of Illinois, who were then and there by me sworn to testify severally the whole truth of their knowledge touching the matter in controversy in the cause aforesaid; that deponents were examined severally, and such examinations reduced to writing, and subscribed by them, respectively in my presence on the 11th day of August A.D. 1854 partly, and after adjournment recommenced and concluded on the 2^d day of September A.D. 1854, in the city of Peoria, County of Peoria, and State of Illinois.

Given and certified at Peoria, in the County of Peoria, and State of Illinois on the 17th day of December A.D. 1855.

J. G. Lueder,

Notary Public



Samuel Bouton & Co }
 4 } Peoria circuit
 William G. Moss } Court

Take notice that on the 9th day of March AD 1854, between the hours of 9 A.M. and 6 P.M. of that day, at the residence of Halsey O. Merriman in the city of Peoria county of Peoria and state of Illinois, before John A. McCoy J.P. or some other person, duly authorized by law to take depositions, the deposition of Halsey O. Merriman a resident of said county will be taken to be read in evidence, on the trial of the above entitled cause, on behalf of the complainants when and where you can appear and cross-examine said witness if you deem proper

John & Manning & Merriman
 To Purple & Sanger } attorney for Compt
 attorney for deft }
 Feb. 25, 1854.

Recd copy of within
 Feby 27, 1854

Can't agree to attend to it during court
 N. H. Purple.

Deposition of Halsey O. Merriman taken on this 9th day of March AD 1854 between the hours 9 o'clock in the fore-

69 noon and six o'clock in the afternoon at the residence of said Halsey O. Merriman in the city of Peoria, county of Peoria and State of Illinois, on behalf of the complainants in a certain suit pending in the circuit court of the county of Peoria and state of Illinois on the chancery side thereof, wherein Lemuel Barton, Jonathan Barton and Gineon Barton are complainants, and William S. Moss is defendant, on the part of complainants in pursuance of the notice hereto attached.

Halsey O. Merriman being first duly sworn deposes & says as follows in answer to the interrogatories propounded:

Int 1- Are you acquainted with the parties to this suit or either of them - if yes with which of them

Ans I think I know them all - some slightly.

Int-2- Do you or not know of said complainants or either of them giving an order to said defendant upon Geo. B. Parker. If yes, by whom was said order given, in what capacity, for what purpose, when and for what amount.

Ans. 70

In the latter part of the winter of 1840-1841 at the time of the sale of a lot of Geo. B. Parker an execution mentioned in the bill filed in this cause Capt. Moss was present, and making some arrangements with said Parker about a claim of the estate of Vincent Barton, amount not recollected, against said Parker and said Moss stated that he was authorized to receive the money on the claim, that he had an order for it - I do not recollect that he stated who signed the order - From the conversation I judged he was acting for the heir or admin of the estate - I do not recollect anything further about the order

Do you or not know of any agreement made at or about the time of the said sale of George B. Parker spoken of in your answer to the last interrogatory between said Parker and said dependant in relation to the amount to be bid upon said lot - If yes, state when such agreement was made, between whom, and also whether or not reduced to writing, and what

71 was the substance thereof.

Ans.


My recollection is that the agreement was made after the sale - It may have been made before sale & reduced to writing afterwards - I was not at sale - Capt. Wm. S. Moss bought the property sold. Moss, Parker, N. H. Purple & myself were in the office of Purple & Merriman, we then being partners in the practice of law, and for the plaintiffs in the judgment - An agreement was then and there made by said Moss and said Parker to avoid the expense of a suit on the claim in favor of Barton's estate that said Parker was not to redeem the property from said sale without paying both the redemption money on said sale and also the amount of the said claim due Barton's estate, and unless Parker paid the whole of those claims the sale was to be absolute - as it was understood that Parker had no other property subject to execution - The agreement was reduced to writing signed by Parker and I suppose Moss embodying as I suppose the agreement. I think the agreement was left with us P. & M. for safe keeping - Since Mr. Purple & myself dissolved our co-part:

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nership I have never seen the agree-
ment - I have looked at where it ought
to be and among all papers where it could
be if in my office & cannot find it, what
become of it I cannot tell - I under-
stood that if said Parker did not
redeem, the lot sold was to be in full
satisfaction of the judgment and the
claim in favor of Barton's estate.

A. O. Merriman

State of Illinois }
County of Peoria }^{ss}

I, John A. McCoy an acting
Justice of the Peace, within and for
said county, do hereby certify, that on
this day the foregoing deposition
was taken before me at the resi-
dence of Halsey O. Merriman in the
city of Peoria, county of Peoria
and state of Illinois & between the
hours of nine o'clock in the fore-
noon and six o'clock in the after-
noon and that said deposition was
sworn to and signed by said depo-
nent before me at the said time
and place - Witness my hand and seal
this ninth day of March A. D. 1854

J. A. McCoy, J. P. 

In the Ninth Judicial Circuit
Court of the state of Illinois, Oct.
Term A.D. 1840.

State of Illinois }
Peoria County, Ill. }

William J. Moss complains
of George B. Parker of a plea of Tres-
pass on the case upon promises -
For that whereas heretofore to wit
on the twenty sixth day of January
at Peoria in the county of Peoria
one Mirney Rymanson, adminis-
trator of the estate of Vincent Barton
deceased made then and there his
certain order in writing bearing
date the day and year aforesaid
and then and there directed the same
to the said dependant George B. Parker
and thereby then and there requested
the said dependant to pay to one
Simeon Barton the sum of one
hundred and twenty dollars, the
amount of money in the hands of
the said dependant belonging to the
estate of the said Vincent Barton, de-
ceased, and then and there delivered
the said order in writing to the said
Simeon Barton - which said order
in writing the said dependant af-

74 towards to wit, on the seventh day of August AD 1840 at Peoria aforesaid on sight thereof accepted in the words and figures following to-wit: - I acknowledge the within to be correct and will pay the same August 7/1840,
Geo. B. Parker..

And the said Simeon Barton to whom the payment of the said sum of money in the said order in writing was to be made after the making of the same and before the payment of the said sum of money therein specified to wit - on the day and year last aforesaid at the county aforesaid indorsed the said order in writing by which said indorsement he the said Simeon Barton then and there ordered and appointed the said sum of money in the said order in writing specified to be paid to the said plaintiff & then and there delivered the same order in writing so indorsed as aforesaid to the said plaintiff - By means whereof and by force of the statute in such cases made and provided the said defendant became liable to pay to the said plaintiff the said

75- sum of money in the said order in writing specified when thereto afterwards he should be required. -

And for that whereas also on the first day of September AD 1840, at the county aforesaid the said defendant was indebted to the said Plaintiff in the sum of one hundred and fifty dollars good and lawful money of the United States for so much money by the said defendant to and for the use of the said Plaintiff by him the said defendant before that time had and received.

And being so indebted to the said defendant in consideration thereof on the day and year last aforesaid at the county aforesaid understood and promised the said Plaintiff to pay him the same when thereto afterwards he should be required.

Yet the said defendant although often requested has not paid the said several sums of money before specified nor any part thereof, but the same to do has hitherto refused & still refuses to the damage of the said Plaintiff one hundred and fifty dollars

70 and therefore he sues H.

Purple & Merriman

for plff

William S. Moss }
George B. Parker } In the circuit Court
of Peoria County of
October Term A.D. 1840.

Issue sum in assumpsit
to next October Term - Damage not
exceeding \$150.00

Purple & Merriman

Mr. Mitchell, Esq. clerk }
Sept 25th 1840 } for plff

Copy of Order

"Peoria Jan'y 26th 1840

Geo. B. Parker, Esq.

You will please pay to
Simon Barton one hundred
and twenty dollars, the amount
in your hands belonging to the
estate of Vincent Barton, dec'd.

Yours H

Mirney Pyneason,

Adm. of the estate of

Vincent Barton, dec'd."

Indorsed =

"I acknowledge the within to be correct
and will pay the same, August 7, 1840.

Geo. B. Parker."

78 thousand eight hundred and forty:

William Mitchell, clerk

Return

Served the within summons by read-
ing the same to the within named
George B. Parker this 28th day of Sep-
tember 1840.

Serving Summons 50

1 mile travel 6¹/₄

return

$\frac{12\frac{1}{2}}{68\frac{3}{4}}$

Christopher Orr,

Shff. P. C.

At a circuit court began and held
at the Court house in the town and
county of Peoria and state of Illi-
nois on the second Tuesday in
October in the year of our Lord
one thousand eight hundred
and forty, being the thirteenth
day of the same month - Present
the Honorable Thomas Ford, Judge
of the ninth Judicial circuit, Norman
M. Purple, states attorney, Christopher
Orr, Sheriff & William Mitchell, clerk.

Monday, October 19th 1840.

William J. Moss

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Assumpsit

George B. Parker

This day came the plaintiff

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by Purple & Merriman his attorneys and
enter a rule upon the defendant
to plead by to-morrow morning.

Tuesday, October 20th 1840.

William S. Moss

vs

Assumpsit

George B. Parker

This day came the plaintiff by Purple
Merriman his attorneys, and the said
defendant having failed to appear and
plead according to a rule of this court here-
inbefore entered and being three times
solemnly called came not nor any
person for him it is considered that
the said plaintiff ought to recover his
damages against the defendant, but
because the court know not what
damages the said plaintiff hath sus-
tained the clerk is directed to make an
assessment thereof and report the same
to the court which is accordingly done
and reported to the court at the sum of
one hundred and twenty-five dollars and
forty cents which report is approved by
the court and ordered to be filed. There-
fore it is considered that the said plain-
tiff have and recover of the said defend-
ant the said sum of one hundred
and twenty-five dollars and forty

cents damages aforesaid in form aforesaid assessed together with his costs and charges by him about his suit in this behalf expended and that execution issue therefor.

Execution

The People of the State of Illinois,
 To the Sheriff of Peoria County - Greeting:
 Whereas by the consideration of our circuit court, held at Peoria, in and for the county of Peoria, on the 20th day of October, in the year of our Lord one thousand eight hundred and forty William J. Moss recovered judgment against George B. Parker for the sum of one hundred and twenty five dollars and forty cents, damages, which the said William J. Moss had sustained by reason of the non-performance of certain promises made to him by the said George B. Parker and also for the further sum of eight dollars and 68³/₄ cents, costs of suit, as appears of record: We therefore Command you, that of the Goods & chattels lands and tenements of the said George B. Parker you cause to be

82 at a circuit court began and held
at the court house in the town of Peoria
in the county of Peoria and state of Illinois
on the second Monday of April in the
year of our Lord one thousand
eight hundred and forty, being the thir-
teenth day of the same month. Pres-
ent the Honorable Thomas Ford, Judge
of the ninth Judicial circuit, Nor-
man H. Purple, State attorney:

Friday April 17th 1840.

John C. Caldwell
James C. Armstrong
William Williams

assignee of
M & J. N. Neal

^{vs} ^{appell}
George B. Parker, ^{appelle}.

This day came the plaintiffs by
their attorney but the defendant al-
though three times solemnly called
came not but made default,
therefore it is considered that the
said plaintiffs ought to recover
their damages, but because the
court know not what damages
the plaintiffs have sustained, and
it appearing that this action was

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brought upon a promissory note for money, the clerk is directed to make an assessment thereof and report the same to the court which is accordingly done and reported to the court at the sum of Seventy-two dollars and three cents, which report is approved by the court and ordered to be filed. Therefore it is considered by the court that the said plaintiffs recover of the said defendant the said sum of Seventy-two dollars and three cents together with their costs and charges by them about their suit in this behalf expended as well in this court as in the court below and that execution issue therefor.

Execution

The People of the state of Illinois,
To the Sheriff of Peoria County - Greeting
Whereas by the consideration of our circuit court, held at Peoria, in and for the county of Peoria, on the 17th day of April in the year of our Lord one thousand eight hundred and forty, John C. Caldwell James C. Armstrong & William Williams assignee of M & J. A. Neal, recovered

84 Judgment against George B. Parker
for the sum of Seventy-two dollars and
three cents damages, which the said Cald-
well & others had sustained by reason of
the non-performance of certain promi-
ses made to them by the said Parker and
also for the further sum of Seven
dollars and eighty seven $\frac{1}{2}$ cents, costs
of suit as appears of record. We
therefore command you, as heretofore
we have commanded you, that
of the goods and chattels, lands
and tenements of the said George
B. Parker, you cause to be made
the aforesaid sums of money,
together with interest on said
Judgment at the rate of six per
centum per annum from the time
of recovering the same as aforesaid
until paid, and that you have the
same ready, as soon as may be,
to send unto the said Caldwell
& others, according to law. Here-
of fail not and make return
of this writ, with your doings
ninety days after the date hereof.

Witness, William Mitchell, clerk
of our said court, and the seal

(Seal)

85 thereof, at Peoria, this Eleventh day of
January in the year of our Lord one
thousand eight hundred and forty
one. William Mitchell, clerk

Read this Ex. the 11th Jan. 1841 - 5 o'clock P.M.

Return

Endorsed =

Executed the within writ by Levy-
ing the same, January 12-1841 on Lot six in
Block thirty three in the town of Peoria
and the same day advertised the same
by putting up written notices in
three of the most public places
in my county stating the place and
time of sale and the property to be
sold which was according to said
advertisement offered at public
on the 4th day of February instant and
sold the same, at the court house
in Peoria to William S. Moss for
the sum of Ninety six dollars and,
forty-five cents.

Christopher Orr, Sheriff, Peoria Co.

By W. Orr, dep. S. P. C.

February 17-1841

Sheriff Fees on the within writ =

For advertisement, 25 cts; Commission on sale 4.80 cts; 2
certificates of purchase 50, returning 12 cts =

Amount

5.67½

86 Recd. Peoria, Feby 4, 1841 of William S.
Moss the full amount of the within
Debt and interest N. H. Purple

Peffs atty

Sheriffs return made & filed Feb. 18, 1841.

William Mitchell, Clerk

Purple's Dep.

N. H. Purple sworn deposes & says
That my recollection as to the contract
with Parker, is the same as stated in
the deposition of N. C. Merriman,
except that I am confident there was
no agreement that in case Parker
did not redeem that there was to be
any satisfaction of the judgment
in favor of Moss against Parker.
I attended to the business person-
ally. I think I did all the writing in
the matter but of this I am not cer-
tain. I believe I bid off the lot my-
self for Moss and Moss settled with
me for the purchase money. I was
the attorney for the plaintiffs in the
case on which the sale was made.
It was supposed by all parties at the
time that the lot would be redeemed
from the sale. It was Moss' in-
tention at the time of the sale in case

87 any one bid against him on the lot to bid up to the amount of both judgments - Do not know whether Moss was present at the sale or not - I think the lot at the time it was sold on the judgment against Parker was worth \$300 - I do not know that Parker at the time of sale owned any other property I believe he was insolvent.

The foregoing testimony of N. H. Purple was taken in open court and was reduced to writing by me and is a part of the record in said cause.

B. N. Powell.

Proceedings in Chancery before the circuit court at a term thereof begun and held at the court house in the city of Peoria in and for the county of Peoria in the state of Illinois on Monday the twenty first day of November in the year of our Lord one thousand eight hundred and fifty three - The Honorable Ouslow Peters, Judge of the sixteenth Judicial Circuit in the state of Illinois - presiding to wit:

Tuesday, December 6th A.D. 1853.

Lemuel Barton,
Jonathan Barton, &
Lincoln Barton

vs

For conveyance

William S. Moss

The complainants by Merriman their solicitor enter a motion for leave to file amended and supplemental bill, for reasons on file.

Wednesday, December 7th A.D. 1853.

Jonathan Barton,
Lemuel Barton &
Lincoln Barton

vs

For conveyance

William S. Moss

This day came on to be heard the complainants motion for leave to file an amended and supplemental Bill herein, on consideration whereof the court allowed said motion at the costs of the complainants to this time. Therefore it is considered and decreed, that the said William S. Moss have and recover of the complainants his costs and charges by him about his defense in this behalf expended in this cause hitherto and that execution issue therefor as on judgments at law.

89 Proceedings in Chancery before the Circuit
Court at a term thereof begun and held
at the court house in the city of Peo-
ria, in and for the County of Peoria,
in the state of Illinois on the third
Monday in November in the year
of our Lord one thousand eight
hundred and fifty four, it being
the twentieth day of said month.
The Honorable Onslow Peters, Judge
of the sixteenth Judicial circuit
in said state, presiding, to wit:-

Friday, December 15th AD 1854

Samuel Barton,

Jonathan Barton

Lincoln Barton

v

for Relief

William S. Moss

On motion of the the cause
is continued at costs. Ordered that
the pay all costs, which have ac-
crued in this cause, since last
term of this court.

Proceedings in Chancery before the circuit
court at a special term thereof begun
and held at the court house in the
city of Peoria, in and for the county
of Peoria in the state of Illinois on

90 The first Monday in February in the year of our Lord one thousand eight hundred and fifty-five, it being the fifth day of said month. The Honorable Ouslow Peters, Judge of the sixteenth Judicial circuit in said state, presiding, to-wit.

Monday, February 5th A.D. 1855.

Lemuel Barton
Jonathan Barton
Girson Barton

vs for Relief
William J. Moss

This day came the defendant by Norman H. Purple his solicitor and on his motion it is ordered, that the defendants amendment to his answer filed in this cause on the 27th day of January last stand as a part of the defendants answer to the complainants bill of complaint. By agreement of parties this cause is continued to next term of court.

Proceedings in Chancery in the circuit court at a special term thereof begun and held at the court house in the city of Peoria, in and for the county

91 of Peoria in the state of Illinois on the first Monday in the month of September in the year of our Lord one thousand eight hundred and fifty six, it being the first day of the said month. The Honorable Jacob Gale Judge of the sixteenth Judicial Circuit in the state of Illinois, presiding, to wit:-

Monday, September 1st 1856

Samuel Barton

Jonathan Barton

Lincoln Barton

“

for Relief

William F. Moss

By the agreement of parties this cause is continued to the next November Term of this court.

Proceedings in Chancery in the circuit court at a term thereof began and held at the court house in the city of Peoria, in and for the County of Peoria and state of Illinois on the first Monday of the month of March in the year of our Lord one thousand eight hundred and fifty eight (it being on the first day of said month) The Honorable Oliver N. Powell, Judge of the sixteenth Judicial Circuit of said state presiding, to wit:-

Friday, March 19th 1858.

Samuel Barton

Jonathan Barton

Simeon Barton

vs

for Relief

William S. Moss

This day came the parties by their respective solicitors and this cause having been heard by the court, and being now sufficiently advised in the premises do order that the said complainants bill be dismissed. It is therefore considered by the court that the said William S. Moss do have and recover from the said Samuel Barton, Jonathan Barton & Simeon Barton his costs and charges by him about his defense in this behalf expended and that execution issue therefor.

State of Illinois
Peoria County

J. Brock Floan, clerk of the
circuit court in and for said
county and state, do hereby
certify that the foregoing
is a full, true and complete
~~record~~ transcript of the papers
filed in the cause wherein Lem-
uel Barton & Co are complainants
and William J. Moss is defendant,
and of the proceedings of said
court appertaining thereto, as
the same remains on file and
appears of record in my office.

Given under my hand
and seal of said court
this 1st day of December
A.D. 1862.

Brock Floan, Clerk



Samuel Boston } Supreme Court of
 Jonathan Boston } Mexico
 Simeon Boston } 3rd Division
 Wm J. Cross }
 left in error

- And said plaintiffs in error
 come say there is manifest
 error in the written record &
 proceedings & assign the following
 special causes of error
- 1 The court erred in dismissing
 said Bill -
 - 2 The court erred in not granting
 the relief prayed for in said
 Bill & amended Bill
 - 3 The court erred in not allowing
 a conveyance of ~~conveyance~~ ~~defendant~~
 to complainant of the kind in said
 Bill described -
 - 4 The court erred in refusing to
 take & state an account between
 said complainant Simeon
 Boston said defendant
 - 5 The court erred in not allowing
 to complainant Simeon Boston
 the said town lot

6 The court said generally
Ad. Newman
at the first session

There is no error in trial
Record

M. P. S. P.
for left in Eng

102
Journal Boston
William J. Cross -

Leonard & Evans

Filed Feb. 13, 1863,
Walden
C.H.

Recd of W. C. H. Barton the sum of
twenty two dollars, my fees for making
this record.
J. J. Loan, clh