

11975

No. _____

Supreme Court of Illinois

Kemp.

vs.

Humphreys.

71641  7

Bureau

Edward D. Kemp

Hiram Humphreys

31

11975

1852

Prepared

Eduard D Kemp

vs
Hiram Hampshire

Bill in Chancery
Supreme Court -
June Term 1852

And the said Eduard D Kemp now comes and says that in the record and proceedings aforesaid there is manifest error in this to wit -

- 1st - That the Contract to convey is void for uncertainty
 - 2^d That it is void for want of mutuality
 - 3^d Said Contract precludes the parties from a Specific Performance -
 - 4th - Said Contract was rescinded by default of ^{Complainant} ~~plff~~
 - 5th - Parol agreement is void -
 - 6th - Proof does not sustain the bill
 - 7th - Proof does not locate the premises & vacant from the bill -
 - 8th - Said decree is Contrary to Law & Equity -
 - 9th - Said decree is Contrary to the evidence -
 - 10th - Said ^{Decree} ~~Indgment~~ was given in favor of the ^{Complainant} ~~plaintiff~~ when it should have been in favor of the defendant -
- wherefore the said Kemp prays that said ^{& Decree} Indgment may be reversed, annulled & held for nothing -

Milton S Peters
atty for Kemp

Bureau
(Supreme Court)

E. D. Kemper

vs

H. Humphreys

Assignment of Errors

Filed June 30th 1852.
H. Ireland Clk.
Wm J. Ireland Drk.

Pleas before the Hon^{ble} Theophilus L. Dickey Judge of the
ninth judicial circuit of the State of Illinois at the April Term of the
said circuit court in and for the county of Bureau, begun and held at the
court house in Princeton in said county on Tuesday the fourteenth day of
October in the Year of our Lord, One Thousand Eight hundred and fifty
one. - In Chancery sitting.

Present Hon^{ble} Theophilus L. Dickey Judge
Justin H. Olds, Clerk.
Edward M. Fisher

Hiram Humphreys

v.s.

Edward D. Kemp

Bill in Chancery

(Filed Sept 20th 1851)

State of Illinois }
Bureau County }

In Circuit Court of said County
October Term A.D. 1851.

To the Honorable Theophilus L. Dickey, Judge of the
ninth Judicial Circuit, of the State of Illinois, at a Circuit Court
to be begun and held for said County of Bureau at the Court house thereof
in Princeton on the second Tuesday in the month of October in the year of
our Lord one Thousand Eight hundred & fifty one.

Your orator Hiram Humphreys humbly complaining wote
respectfully shew unto your honor, that on or about the twelfth day of
April one Thousand Eight hundred & fifty one, he bargained with one
Edward D. Kemp of said Bureau County for the purchase of the West
half of the South West quarter of Section Number twenty four (24) in
Township Number sixteen, North of range Number six, East of the fourth
principal meridian, said land being situated in said Bureau County then
claimed & owned by said Edward D. Kemp, That the said Edward D.
Kemp and your orator then entered into a written agreement for the sale
and purchase of said land, that by the terms of said written agreement,
the said Edward D. Kemp, agreed to make unto your orator his heirs
or assigns a good and sufficient Deed for the tract of land above described
& intended to be sold at the end of three months from the date of said
agreement or sooner if the payment of the sum of one hundred & ten
Dollars with Interest at ten per cent from this date of said agreement,
should be made to said Edward D. Kemp before the end of said three months,
and your orator was to make the said payment of one hundred & ten
Dollars with Interest at the rate of ten per cent from the date of said
agreement until paid to the said Edward D. Kemp as the purchase money
for said tract of land, which said sum of money with Interest yeas
above stated, your orator agreed to pay to the said Edward D. Kemp on
or before the end of three months from the date of said written agreement
and on the non performance of said written agreement on the part of your
orator at the date fixed for his performance, that then and in that case
said written agreement was to be null and void, and the non performance
on the part of said Kemp of his part of said agreement was to be the Dam-
ages to be paid to your orator, which said agreement was signed & sealed by

the said Edward O. Kemp & your orator a copy of which said agreement is here referred to, and prayed to be taken and considered as a part of this Bill marked Exhibit A. Your orator states that he went to the said Edward O. Kemp a few days before the day fixed for the conveyance of said land to your orator and represented to said Edward O. Kemp that it would put your orator to some inconvenience and sacrifice to raise said sum of one hundred & ten Dollars & Interest so as to have the sum ready to pay over to the said Edward O. Kemp on the day fixed in said agreement for conveying said land to your orator. And your orator at the same time asked the said Edward O. Kemp to prolong the time of the payment of said sum of one hundred & ten Dollars & Interest aforesaid for one month beyond the time fixed in said written agreement for the conveyance of said land, your orator offering at the same time to pay said Edward O. Kemp Interest on said sum of money at ten per cent until the same was paid, your orator also stating at the same time that he was expecting money from the East daily and would pay said sum of money & Interest sooner than one month if his money should come on in time to do so. Your orator charges that the said Edward O. Kemp did then assent and agree to all the said propositions of your orator, and agreed with your orator to prolong the time for the payment of the said sum of money & Interest, for one month beyond the time fixed for the conveying of said land by said written agreement with the privilege of paying the same sooner if his money came on, and said Kemp assured your orator that no advantage whatever would be taken by him of your orator on account of your orator's not paying said sum of money on the day fixed by said written agreement for making the conveyance of said land to your orator. Your orator states that fully confiding in this arrangement with the said Edward O. Kemp he made no provision to raise said money & Interest ^{as to} so as to have the same in readiness to pay over to said Edward O. Kemp on the day fixed for making the deed for said land by said written agreement, But suffered said day to pass without making a tender of said money and Interest to said Edward O. Kemp, and that said Kemp made no tender of a Deed on said day nor offer to convey said lands either on the day fixed by said written agreement for conveying said lands nor at any time before or since said day.

Your orator states that on or about the 6th day of Aug. A.D. 1831 (after the time fixed for conveying said land & before the expiration of said month for which the payment of said sum had been prolonged) your orator having received his money from the East called upon the said Edward O. Kemp and tendered and offered to the said Edward O. Kemp the sum of one hundred & ten Dollars Debt, & \$3 & 30^c Interest making \$113, 30 in all in full satisfaction and payment of said sum of One hundred & ten Dollars & Interest at ten per cent from the date of said written agreement up to that time said Interest amounting to about the sum of \$3 & 30 cents, your orator stating at the same time the amount Due to said Kemp as being \$113 & 30 cents, but tendered to said Kemp the sum of \$115⁰⁰ (not having the exact change) and told said Kemp that he had no change by him but that Kemp might make the difference in the amt tendered & the amt Due if convenient and for him to do so if not your orator would then procure the change.

Your orator states that said Edward O. Kemp made no objection to said sum of money on account of having to make the change, nor did he said Kemp claim that more of the said sum of \$113 & 50^c was then due him. But positively refused to receive said sum of \$115.00 so tendered or any part thereof, your orator at the same time demanded of said Kemp a good & sufficient Deed for said tract of land, in pursuance to said agreement, But the said Edward O. Kemp positively refused to make to your orator a good and sufficient Deed for said land as by the terms of said written agreement he said Kemp agreed to do, but positively and openly declared that he would receive no money of your orator, and that he would not convey the said land to your orator, your orator then placed the said sum of \$115.00 into the hands of one Peter Thompson, in the presence of said Edward O. Kemp, with directions to said Thompson to pay over the ^{said} sum of \$110.00 Interest to said Kemp upon his said Kemp's executing to your orator a Deed in pursuance to said agreement, that said sum of money has so remained in the hands of said Thompson ever since & yet your orator charges that that said Kemp still refuses to receive said money & Interest, that said Kemp made no objection at the time of the making said tender to the sufficiency of the amount of the same either as being inadequate or excessive, but refused to receive the same stating that he would not convey said lands to your orator and would not receive the money for the same, that said Edward O. Kemp has always heretofore, and still utterly refuses to make & execute to your orator a Deed for said tract of land, altho your orator states that he is ready to pay the said Edward O. Kemp the said sum of \$113 & 50^c & has been ready to make said payment ever since the time of making the tender to said Kemp as aforesaid and would have been ready to have made said payment on the day fixed by said written agreement for the conveyance of said land to your orator had not said Kemp dispensed with said payment on that day by prolonging the time of said payment for one month as above stated, and your orator now brings here into Court the said sum of \$110.00 Debt & the sum of \$3 & 50^c interest on said sum up to the time of making said tender and again offers and tenders the same to the said Edward O. Kemp in discharge of said written agreement on his part, your orator states that he entered upon & took possession of said land and made valuable improvements upon the same on the faith of said written agreement, and that he still has possession of the same, your orator being without remedy at law prays for the interposition of your honor in the premises, that the said Edward O. Kemp may be made a Defendant herein & that he be compelled to answer all and singular the allegations herein contained, And that upon a final hearing of all the matters herein, that your honor will order that the said Edward O. Kemp be required by a certain day to be fixed by your honor to convey said lands to your Orator and that in default of his conveying said lands to your orator by said day that your honor will appoint a Commissioner to execute said conveyance for said Edward O. Kemp, and that you will decree and order that the said Edward O. Kemp be required to pay to your orator all the Damages, costs and charges which your orator has sustained & incurred by reason of the nonperformance of the said Edward

D. Kemp of his part of said agreement. That your honor will Decease
and order such other and further relief as to Justice & equity may seem
Just and proper and to which your orator may seem entitled, and as
in duty bound he will ever pray &c. Elinor Humphreys

The complt. waives the necessity of the Defendants answer to this Bill
being made under oath By Taylor & Richmond his solicitor
Sept. 26, 1831.

Exhibit A.

This Article of Agreement made and entered into this Twelfth day of
April One Thousand Eight hundred and fifty one by and between E. D.
Kemp of the one part and Elinor Humphreys of the other part Witness-
eth, that the said Kemp does agree to make unto said Humphreys his heirs
or assigns a good and sufficient deed of the west half of the south west
quarter of section twenty four at the end of three months from this date or
sooner if the payment shall be made of One hundred and ten Dollars and
the interest thereof from this date of ten per cent. And in compliance on
the part of said Humphreys at said date this shall null this article and
the nonperformance on part of said Kemp shall be the damages to be paid to
said Humphreys.

In witness our hands and seal the year and day above,
John T. Reed Edward D. Kemp (Seal)
John Cain Elinor Humphreys

State of Illinois }
Bureau County } Be it remembered that on the Twelfth day of August
A.D. 1831. before me the subscriber, Clerk of the Circuit Court in and
for said county, appeared John T. Reed personally known to me to be the
real person whose name is subscribed to the within instrument of
writing as a subscribing witness thereof, and being duly sworn says
that he is personally acquainted with Edward D. Kemp whose name
appears to the said instrument of writing as having executed the same
and that he subscribed his name as a witness thereto in the presence
and at the request of said Kemp which to me is satisfactory proof of
the due execution of the same.

ESB

Witness my hand and the seal of said court at
Princeton this 12th day of August, 1831.
Justin H. Olds

Clerk.

Presdee

State of Illinois }
Bureau County } In Circuit Court of said County
October Term A.D. 1831.

Simon Humphreys }
vs
Edward D. Kemp }

In Chancery

(Filed Sept 20th 1851)

The Clerk of the Circuit Court will please issue a
pro. in chq. or summons in the above entitled cause directed to the
sheriff of said County to summon the above named Defendant as
the Law in such cases provides, returnable to the first day of the
next term of said Court to answer a Bill in chancery filed against
him by the above named complt.

Princeton September 20th 1851.

Jaylor of Richmond
Sd. for Complt.

Summons

State of Illinois,
Bureau County,

} The People of the State of Illinois

Do the Sheriff of Bureau County, Greeting:

We Command You to summon Edward D. Kemp if he shall be found
in your County, to be and appear before our Circuit Court for said
County, on the first day of the next term thereof, to be held in the
town of Princeton, on the second Tuesday of October next, to answer
to a certain bill of complaint filed in said Circuit Court, on the Chan-
cery side thereof, against him by Simon Humphreys and further to do
and receive whatever our said Court shall then and there consider in
that behalf; and this you shall in no wise omit. Hereof fail not, and
make due return of this writ, with an endorsement of the manner
in which you execute the same.

LS

Witness, Justin H. Olds, Clerk of our said Court, and
the seal thereof, at Princeton, this 20th day of September
in the year of our Lord one thousand eight hundred and fifty one
Justin H. Olds,

Clerk

(Which is returned, endorsed as follows)

Sheriff's return

Served the within writ on this 29th day of September A.D. 1851.
by delivering to the within named Edward D. Kemp a certified Copy
of the within writ

E. M. Fisher

Sheriff Bu. Co. Ills.

(So writ on the first day of said Term)

Simon Humphreys

vs

Bill in chancery

Edward D. Kemp

This day comes the said defendant by M. J. Peters
his solicitor and filed his demurrer to said complainant's bill of complaint
herein in the words and figures following to wit:

State of Illinois }
Bureau County }

Circuit Court
October Term 1851,

Eliam Humphreys }
vs
Edward D. Kemp }

Bill for Specific
Performance
(Filed Oct 15. 1851)

The demurrer of Edward D. Kemp defendant to the bill of complaint of Eliam Humphreys. Compl. This defendant by protestation, not confessing or acknowledging all or any of the matters or things in and by said bill set forth and complained of to be true in manner and form as the same are therein alleged and set forth, saith that he is advised by his counsel that there is no matter or thing in said bill contained good and sufficient in law to call this defendant in question in this honorable Court for the same, but there is good cause of demurrer thereto and therefore this defendant saith that the said complainant's said bill in case the allegations therein contained were true, which this defendant doth not in any sort admit, contains not any matter of equity wherein this Court can grant a decree or give the complainant any relief or assistance against him the said defendant, wherefore for divers other errors and imperfections in said bill appearing this defendant doth demur in law thereunto and humbly demands the judgment of this honorable court whether he shall be compelled to put in any other or further answer to the said bill, and humbly prays to be hence dismissed with his reasonable costs in this behalf most wrongfully sustained

Peters J. Nichols
Solicitors for Deft.

(So writ on the fourth day of said Term)

Eliam Humphreys

vs

Bill in chancery

Edward D. Kemp

This day the complainant came by Dayles his solicitor and the defendant by Peters his solicitor and this cause comes up for hearing on the said defendant's demurrer to said complainant's bill filed herein and after argument of counsel and the court being fully advised in the premises. It is considered by the court that said demurrer be sustained.

Whereupon the complainant by his said solicitor, enters his motion herein for leave to amend his said bill of complaint. And the court considers that said motion be sustained, and that said complainant have leave to file his amended bill herein by the first day of Dec. next, and by agreement of said parties it is further considered by the court that the said defendant shall file his answer to said amended bill by the first day of January next, that said complainant shall file his replication thereto by the 10th day of January next and that this cause be continued to the next term of this court.

Austin H. Elds, Clerk,
Edward M. Fisher, Sheriff,

Bill in Chancery

(Amended Bill Filed Nov 29th 1851)

British County I

In Circuit Court of said County
October Term

Your orator Eliram C. Humphreys, humbly complaining would respectfully show unto your honor that on or about the twelfth day of April one thousand eight hundred & fifty one he bargained with one Edward D. Kemp of said Bureau County for the purchase of the West half of the South West quarter of Section Number Twenty four (24) in Township Number sixteen North of Range Number Six East of the fourth principal meridian, said land being situated in said Bureau County then claimed & owned by said Edward D. Kemp. That the said Edward D. Kemp and your orator then entered into a written agreement for the sale and purchase of said land.

That said Edward D. Kemp drew up said written agreement, and that in describing the said land in said agreement the said land was described as being the "west half of the South West quarter of Section Twenty four," without stating the Number of the Township and range in which said land is situated. That the words "Township No. sixteen North of range Number six East of the 4 principal meridian," was omitted by mistake of the parties & left out of said agreement, that it was the intention of the parties to have described said land in said agreement as being the West half of the South West quarter of Section Number 24, Township Number 16, North of Range Number six East of the fourth principal meridian, that this description covers the same land and none other, that was intended by the parties to be sold by said written agreement and that the said parties executed said agreement with the full belief & understanding that said land last above described and was bargained and sold by the terms of said written agreement but that the Number of the Township & range was through mistake of the parties left out and omitted to be inserted in said agreement as above stated. That by the terms of the said written agreement, The said Edward D. Kemp agreed to make unto your orator his heirs or assigns, a good and sufficient Deed ^{that of land} for the above described & intended to be sold, at the end of three months from the date of said

agreement or sooner if the payment of the sum of one hundred & ten Dollars with Interest at ten per cent from the date of said agreement, should be made to said Edward D. Kemp before the end of said three months. And your orator was to make the said payment of one hundred & ten Dollars with Interest at the rate of ten per cent from the date of said agreement until paid to the said Edward D. Kemp as the purchase money for said tract of land, which said sum of money with Interest was as above stated. Your orator agreed to pay to the said Edward D. Kemp, on or before the end of three months from the date of said written agreement and on the non performance of said written agreement on the part of your orator at the date fixed for his performance, that then and in that case said written agreement was to be null and void, and the non performance on the part of said Kemp of his part of said agreement was to be the Damages to be paid to your orator, which said agreement is here referred to and prayed to be taken and considered as a part of this Bill marked Exhibit A

Your orator states that he went to the said Edward D. Kemp a few days before the day fixed for the the conveyance of said land to your orator, and represented to said Edward D. Kemp, that it would put your orator to some inconvenience and sacrifice to raise said sum of one hundred & ten Dollars & Interest so as to have the same ready to pay over to the said Edward D. Kemp on the day fixed in said agreement for conveying said land to your orator. And your orator at the same time asked the said Edward D. Kemp to prolong the time of the payment of said sum of one hundred & ten Dollars & Interest aforesaid for one month beyond the time fixed in said written agreement for the conveyance of said land. Your orator offering at the same time to pay said Edward D. Kemp Interest on said sum of money at ten per cent until the same was paid. Your orator also stating at the same time that he was expecting money from the East daily, and would pay said sum of money & Interest, sooner than one month, if his money should come on in time to do so. Your orator charged that the said Edward D. Kemp, did then assent and agree to all the said propositions of your orator and agreed with your orator to prolong the time for the payment of the said sum of money & Interest, for one month beyond the time fixed for the conveying of said land by said written agreement with the privilege of paying the same sooner if his money came on, and said Kemp assented your orator that no advantage whatever would be taken by him of your orator on account of your orator's not paying said sum of money on the day fixed by said written agreement for making the conveyance of said land to your orator, your orator states that fully confiding in this arrangement with the said Edward D. Kemp he made no exertion to raise said money & Interest, so as to have the same in readiness to pay over to said Edward D. Kemp on the day fixed for making the Deed for said land by said written agreement. But suffered said day to pass without making a tender of said money & Interest to said Edward D. Kemp, And that said Kemp made ^{no offer to convey said land neither on the day} no tender of a Deed on said day fixed by said written agreement for conveying said land nor at any time before or since said day.

Your orator states that on or about the 6th day of Aug. A.D. 1851, (after the time fixed for conveying said land & before the expiration of said month for which the payment of said sum had been prolonged) your orator having received his money from the East called upon the said Edward D. Kemp, and tendered and offered to the said Edward D. Kemp the sum of One hundred & ten Dollars

Debt of \$3. p 50 Interest making \$113.50 in all in full satisfaction and payment of said sum of One hundred p Ten Dollars p Interest at ten per cent from the date of said written agreement up to that time. said Interest amounting to about the sum of \$3 p 50 cents, your orator stating at the same time the amount due to said Bemp as being \$113 p 50 cents But tendered to said Bemp the Sum of \$113.00 (not having the exact change) and told said Bemp that he had no change by him but that he Bemp might make the difference in the amt. tendered p the amt Due if convenient for him to do so p if not your orator would then procure the change, your orator states that said Edward D. Bemp, made no objection to said sum of money on account of having to make the change, nor did he said Bemp claim that more than the said sum of \$113 p 50 was then due him, But positively refused to receive said sum of \$113.00 so tendered or any part thereof, your orator at the same time demanded of said Bemp a good & sufficient Deed for said tract of land, in pursuance to said agreement. But the said Edward D. Bemp positively refused to make to your orator a good and sufficient Deed for said land as by the terms of said written agreement he said Bemp agreed to do, but positively and openly declared that he would receive no money of your orator, and that he would not convey the said land to your orator. your orator then placed the said sum of \$113.00 into the hands of one Peter Thompson, in the presence of said Edward D. Bemp with directions to said Thompson to pay over the said sum of \$113 p Interest to said Bemp upon his said Bemp's executing to your orator a Deed in pursuance to said agreement. That said sum of money has so remained in the hands of said Thompson ever since p yet your orator charges that that said Bemp still refuses to receive said money p Interest that said Bemp made no objection at the time of the making said tender to the sufficiency of the amount of the same either as being inadequate or excessive but refused to receive the same stating that he would not convey said lands to your orator p would not receive the money for the same. Your orator states that said Edward D. Bemp has always heretofore, and still utterly refuses to make p execute to your orator a Deed for said tract of land. Altho your orator states that he is ready to pay the said Edward D. Bemp the said sum of \$113 p 50 p has been ready to make said payment ever since the time of making the tender to said Bemp as aforesaid and would have been ready to have made said payment on the day fixed by said written agreement for the conveyance of said land to your orator, had not the said Bemp dispensed with said payment on that day by prolonging the time of said payment for one month as above stated. And your orator now brings here into Court the said sum of \$113 Debt p the sum of \$3 p 50 interest on said sum up to the time of making said tender and again offers and tenders the same to the said Edward D. Bemp in discharge of said written agreement on his part. your orator states that he entered upon p took possession of said land and made valuable improvements upon the same on the faith of said written agreement and that he still has possession of the same. Your orator being without remedy at law prays for the interposition of your honor in the premises. That the said Edward D. Bemp may be made a Defendant herein p that he be compelled to answer all and singular the allegations herein contained. And that

upon a final hearing of all the matters herein, that your honor will order that the said Edward D. Kemp be required by a certain day to be fixed by your honor to convey said lands to your Orator, and that in default of his conveying said lands to your orator, by said day; That your honor will appoint a Commissioner to execute said conveyance for said Edward D. Kemp, and that your honor will Decease and order that the said Edward D. Kemp be required to pay to your orator all the Damages, costs and charges which your orator has sustained & incurred by reason of the nonperformance of the said Edward D. Kemp of his part of said agreement, That your honor will Decease and order such other and further relief as to Justice & equity may seem Just and proper, and to which your orator may seem entitled and as in duty bound he will ever pray you.

Witness my hand
By Taylor & Richmond

Exhibit A

This Article of Agreement made and entered into this twelfth day of April One Thousand Eight hundred and fifty one by and between E. D. Kemp of the one part and Eliram Humphreys of the other part, Alldwesseth, that the said Kemp does agree to make unto said Humphreys his heirs or assigns a good and sufficient deed of the west half of the south west quarter of section twenty four at the end of Three months from this date or sooner if the payment shall be made of One hundred and ten Dollars and the the interest thereof from this date of ten per cent, An non compliance on the part of said Humphreys at said date, this shall null this article, and the nonperformance on part of said Kemp shall be the damages to be paid to said Humphreys

In witness our hands and seals the year and day above.

John G. Reed

John Cain

Edward D. Kemp (Seal)
Eliram Humphreys

State of Illinois

Bureau County Be it remembered that on the twelfth day of August A.D. 1851, before me the subscriber, clerk of the circuit court in and for said county appeared John G. Reed personally known to me to be the real person whose name is subscribed to the within instrument of writing as a subscribing witness thereof, and being duly sworn says that he is personally acquainted with Edward D. Kemp whose name appears to the said instrument of writing as having executed the same, and that he subscribed his name as a witness thereto in the presence and at the request of said Kemp which to me is satisfactory proof of the due execution of the same.

Witness my hand and the seal of said court at Princeton
this 12th day of August 1851. Justin H. Olds,

Clerk

LSJ

It was on the 3^d day of said Term
William Humphreys }
vs } Bill in Chancery
Edward D. Kemp }

Now comes the said defendant by M^r. Peters his solicitor and files his demurrer to the amended bill of said complainant which is in the words & figures following to wit

William Humphreys } Bureau Circuit Court
vs } December Special Term. 1851
Edward D. Kemp } Bill in Chancery

The demurrer of defendant to complainant's bill of complaint

Said defendant by protestation, not confessing or acknowledging all or any of the matters or things in said bill contained to be true, says he is advised by counsel, that there is no matter or thing in said bill good and sufficient in law to call this defendant in question in this honorable court. But that there is good cause of demurrer, and therefore this defendant says that even if the allegations in said bill contained, were true, (which this defendant does not by any means admit) yet said bill contains no sufficient grounds of equity to ground any decree against this defendant in this court, or afford any relief to complainant - wherefore, and for divers other good reasons this defendant doth demur in law to said bill, and humbly sheweth the Judgment of this honorable court whether this defendant shall be required to put in any other or further answer to said bill, and prays to be dismissed hence with his reasonable costs.

Causes of demurrer

- 1st The written agreement is void for uncertainty in description of the land to be conveyed.
- 2nd The Parcel enlargement of the term is within the Statute of frauds.
- 3^d There is no mutuality in said written agreement.
- 4th Said written agreement is void because the Complainant did not pay on the day specified.
- 5th The Parcel contract is void for want of Consideration.
- 6th The parties have stipulated that defendant shall not be compelled to a Specific performance.
- 7th The written instrument is no contract, but a mere proposition to which only one party has bound himself.
- 8th The mistake relied upon is not stated with definite clearness.
- 9th This bill is not brought for a correction of the mistake - but asks a Specific performance without asking to decree a correction of the mistake.
- 10 The copy of the agreement annexed does not sustain the allegations of the bill.
- 11 The written agreement is void for uncertainty in its terms & divers other causes.
- 12 Parcel agreement without consideration insufficient as the parties have made time the essence of the contract.

Milton S. Peters
Atty for Kemp

So, wit on the third day of said Term
Eliram Humphreys
vs
Edward D. Kemp.
Bill in Chancery

Now come the said parties by their said solicitors, and this cause comes up for hearing on the said demurrer to said complainant's amended bill. And after argument of counsel and the Court being fully advised in the premises, It is considered by the court that said demurrer be sustained as to the form of the prayer of said Bill. Whereupon the said complainant by his said solicitor enters his motion for leave to amend his said bill, which motion is sustained by the court, and leave is given to said complainant to file his amended bill herein by the first day of January next.

It is also considered by the court that this cause be continued to the next term of this court.

So wit on the 4th day of said Term

Now comes the complainant and files his amended bill herein which is in the words & figures following, to wit:

State of Illinois }
Bureau County } In Circuit Court

Decr. Term A.D. 1831.

To the Hon. J. S. Dickey, Judge of said Court,

The amended Bill of Eliram Humphreys to an original Bill in Chancery & amendment thereto heretofore filed by said Eliram Humphreys in said Court against Edward D. Kemp and now pending in said Court,

Your orator Eliram Humphreys by leave of the Court, for amendment to said original Bill & amendment thereto, humbly prays that your honor will correct the article of agreement mentioned in said original Bill so that the description of the lands named in said article of agreement may read as the said parties to said agreement intended it to read at the time the same was executed, to wit, to read as the west half of the south west quarter of Section twenty four, in township Number sixteen (16) North of range Number six (6) East &c being the description of the land intended by the parties to have been described in said agreement, and that after ^{the} said agreement is so corrected by your honor, that your honor will decree & order a specific performance of said agreement according to the effect of said agreement & the prayer of your orator in his original Bill, And as in duty bound he will ever pray &c. Eliram Humphreys.

By J. S. Taylor his sol.

Pleas before the Hon^{ble}. Theophilus S. Dickey, Judge of the
ninth judicial circuit of the State of Illinois at the March Term of
the said circuit court in & for the county of Bureau, begun and held
at the court house in Princeton in said county on Tuesday the 16th day of
March in the year of our Lord One Thousand Eight hundred and fifty two

In Chancery Sitting

Present Hon^{ble}. Theophilus S. Dickey Judge

And also H. C. Elds, Clerk

Edward M. Fisher, Sheriff

William Humphreys

vs

Bill in Chancery

Edward D. Kemp

(Defendants Answer) (Filed Dec 31st 1851)

State of Illinois }

Circuit Court

Bureau County }

Dec. Term 1851.

William Humphreys }

vs

Bill in Chancery

Edward D. Kemp }

The defendant now and at all times hereafter saving to himself, all
and all manner of benefit and advantage, of exception or otherwise, that can
or may be had or taken to the many errors, uncertainties and insufficiencies
and imperfections, in the said bill contained, for answer thereto or to so much
as this defendant is advised it is material or necessary for him to make
answer to, answering with, that said complainant and defendant did make
such a written agreement as described in the copy marked A. and annexed to
the plaintiffs bill, but which said agreement is incorrectly described in the said
bill, but this defendant utterly denies that there was any such veritable agree-
ment as complainant alleges in his bill. And says that the written agreement
contains all that the parties designed to have inserted and that said writ-
ten agreement is as perfect as the parties made it, or intended to make it
this defendant further answering with that no such verbal agreement was
made as stated in complainants bill between complainant and this defendant
but on the contrary this defendant absolutely refused to make such an ar-
rangement, and both parties understood that no such contract was com-
pleted as specified, and even if there had been any such verbal agreement,
(which this defendant expressly denies) said defendant alleges that by a
certain statute of the people of the State of Illinois, approved March 3^d 1846
for the prevention of frauds and perjuries, and commonly called the Statute
of frauds, all contracts and agreements relating to lands except therein
specified (of which the above is not one) are required to be reduced to writing
and signed by the parties to be bound thereby - and that the said agreement
in said Bill mentioned was not reduced to writing and executed pursuant
to the said Statute, and therefore this defendant insists that the same is
void against this defendant, and that he cannot be affected thereby, and this
defendant claims the same benefit as if he had pleaded the same statute in
this cause, and for this reason defendant is advised and believes for this reason
that said plaintiff is not entitled to any relief because of such verbal agreement
and further this defendant alleges that there never was the slightest consider-

ation for such an agreement, and this defendant further answering with that complainant made no such tender to this defendant as he has alleged in his bill, nor has complainant at that time or any other made a tender of the purchase money to defendant, and as complainant did not pay the purchase money on the day specified in the agreement, the said Contract in writing has become null and void as it respects this defendant, as the said agreement stipulates, and further this defendant says there is no mutuality in such agreement but it was a mere proposition of sale on the part of Defendant to Complainant if he (complainant) performed certain conditions - without the Complainant being bound in any way to perform these conditions, and further the agreement itself specified that this defendant was not to be compelled to a specific performance, all of which is specified in the agreement, and was so understood, without this that there is any other matter or thing in the said bill specified, mentioned or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed and avoided or denied, is true to the knowledge and belief of this defendant, all of which things & matters this defendant is ready and willing to aver, maintain and prove as this honorable court shall direct, and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained,

Milton J. Peters

Att for defendant

Replication

(Filed Jan 12th 1832)

State of Illinois
Bureau County

In Circuit Court of said County
March Term A.D. 1832.

Abiram Humphreys }
vs }
Edward O. Kemp }

In Chancery
Bill for Specific performance,

The Replication of Abiram Humphreys the complainant in the above cause to the Answer of Edward O. Kemp the Defendant in the above cause, filed by said Defendant in said cause on the 31st day of December A.D. 1831, in vacation.

This Repliant saving and reserving to himself now and at all times hereafter, all and all manner of benefit, and advantage of exception which may be had or taken to the manifest insufficiencies of the said answer, for replication thereto, says that he will aver, maintain & prove his Bill of Complaint to be true, certain & sufficient in the Law, to be answered unto, and that the said answer of the said Defendant, is uncertain, untrue and insufficient to be replied unto by this repliant without this, that any other matter or thing whatsoever in the said answer contained, material or essential in the Law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true, all which matters and things this repliant is and will be ready to aver, maintain and prove as this honorable Court shall direct, and humbly prays, as in and by his said Bill he has already prayed. J. J. Taylor, Sol. for Comp^t

Copy of Depositions taken for and in behalf of Complainant.

Notice to Take Depositions.

State of Illinois }
Bureau County } In Circuit Court of said County
March Term, A.D. 1852.

Elizah Humphreys }
vs } In Chancery
Edward D. Kemp } Bill for Conveyance.

The above Defendant (Edward D. Kemp) will take notice that on the 6th day of March next between the hours of nine O'clock A. M. to 6 O'clock P. M. of said day before Mr. Ballen Esp. (a Justice of the Peace of said County) at his office in Princeton, in said County I will proceed to take the Depositions of John C. Reed, James Reed, John Cain, Peter Thompson, Jonathan Thompson & Aspas Kemp, & William Carver of said County to be read as evidence on the part of the above complainant on the trial of the above entitled cause, if the taking of said Depositions are not completed on the above mentioned day the same will be continued from day to day until the taking of said Depositions are fully completed. Yours &c. Elizah Humphreys
Princeton, Ill. Feby. 21, 1852. By S. J. Taylor his Sol.

Serv.

Served the within by reading & delivering a Copy of the same to Edward D. Kemp on 21 Feby, 1852. S. J. Taylor.

The Deposition of John C. Reed of the County of Bureau and State of Illinois, a witness produced, sworn & examined before Martin Ballen a Justice of the Peace in and for the said County & State, on the 6th day of March A.D. 1852 at the office of said Justice in Princeton in said County, in pursuance of a written notice, to be read as evidence on the trial of a certain suit in Chancery now pending and undetermined in the Circuit Court of said County of Bureau, wherein Elizah Humphreys is Complainant, and Edward D. Kemp is defendant, on the part and behalf of said Complainant. The said John C. Reed being first duly affirmed according to law, deposes and says, in answer to the several interrogations propounded, on the part of said Complainant, as follows, to wit:
Question 1st What is your age, occupation, and Residence?

Answer I am forty two years of age next July, am a farmer by occupation, and reside in Bureau County Illinois.

Question 2^d Are you acquainted with the Complainant and Defendant in this cause, & if so, state how long you have been acquainted with them.

Answer I have known Mr. Kemp for the space of ten years or more, and have known Mr. Humphreys somewhere about eighteen months.

Question 3^d State all you know if any thing, in regard to said Kemp's having sold to said Humphreys a tract of land? and state what lands were so sold, when, and the terms of such sale?

Answer About the first of April 1831, or between the 1st and the middle of April, Mr. Elmhurst came to my house, and we went up to Mr. Kemp's, and Mr. Elmhurst told Kemp he had come to get that piece of land, and Kemp agreed to let him have it for One hundred and ten Dollars, three months to pay it in at ten per cent interest, it was the West half of the South West quarter of Section twenty four, Township Sixteen, Range Six East.

Question 4th State whether or not said Kemp and Elmhurst at the time of which you speak reduced their agreement about the sale of said land to writing?

Answer They Did.

Question 5th Will you examine the writing marked "Exhibit A" and state whether the same is the writing executed by the parties for the purchase or sale of said land?

Answer After having examined said writing, It is the same writing.

Question 6th State who drew up said instrument of writing?

Answer Mr. Kemp drew it up.

Question 7th Did you hear the writing read over before it was executed? if so, by whom was it read?

Answer Mr. Kemp read it first, in the hearing of all that were by.

Question 8th Was said writing read more than once?

Answer I think not more than once.

Question 9th State whether Mr. Elmhurst read said writing before he executed the same and if he did not, state what was the reason?

Answer He did not read it, and the reason was, that he could not see with Mr. Kemp's glasses, he having sore eyes at the time.

Question 10th State whether when said writing was read over by Mr. Kemp you discovered the omission of the Township or Range in said agreement in describing said land?

Answer I did not, I did not discover any omission of the Township or Range.

Question 11th State whether you were acquainted with the land intended to be sold by the terms of said agreement or if so in what Township or Range were said lands situated?

Answer I was acquainted with said lands, and it was situated in Township Sixteen North, Range Six East.

Question 12th State whether, if you knew, it was the intention of said parties to have ~~Exhibit A~~ described said land as being situated in said Township or Range mentioned ~~in your last answer?~~

Answer I supposed it was their intention, as there was nothing said.

Question 13th State whether previous to the time of the execution of said writing you ever heard Mr. Kemp say anything about selling to said Elmhurst a tract of land, and if so, state where and what land?

Answer In the last of February or first of March, A.D. 1831, Mr. Kemp came to my house to borrow money to enter the West half of the South West quarter of Section twenty four in Township Sixteen North, Range Six East. I let him have twenty dollars with the understanding with said Kemp, that he Kemp, would let said Elmhurst have said land in case Elmhurst wanted it.

Question 14th Do you know whether said Kemp entered said lands, if so, when?

Answer He did, I believe it was at the time he came to me for the money, he was then on his way to Dixon as near as I can recollect, He afterwards told me he had entered it.

Question 15th State if you know whether Elumphreys had made any improvement on the lands so entered by said Kemp, and if so, what improvements?

Answer He had put up a log Cabin ready to put the covering on, it was cubbed off ready for ^{the} covering, and had put up five or six tons of hay on the land.

Question 16th State whether at the time the writing referred to by you in your former answers was executed, whether Kemp at that time was the owner of any tract of land situated on any section numbered twenty four in Barren County?

Answer No, not as I know of, but I have not searched the records to ascertain.

Question 17th State all you know if any thing, about Kemp's prolonging the time of the payment of the purchase money for the lands intended to be sold by the writing which has been exhibited to you on this examination?

Answer About the 12th day of July A.D. 1851, Kemp was at my house, I asked Mr. Kemp "how he & Mr. Elumphreys was getting along with their affairs" or "was he going to wait on Mr. Elumphreys", Kemp said he was going to wait, but did not say how long he was going to wait.

Question 18th What did you mean at the time of the conversation with Kemp by the object to by ^{the} word "affairs", and State whether Kemp apprehended your meaning of said word as you intended it?

Answer I had reference to an agreement between Kemp and Elumphreys as to the prolonging the time of payment for the land, I having previously learned from Mr. Elumphreys and others (but ^{not} from Kemp) that an arrangement had been made previous to that time by which Kemp was to extend the time of payment on said land. I think Mr. Kemp understood my meaning in this way.

Question 19th State whether the answer of said Kemp to your inquiry to him of the affairs between him & Elumphreys would have been intelligible or applicable to any other affairs within your knowledge then existing between said Kemp and Elumphreys?

Answer I think not, I did not know of any other affairs existing between them.

Question 20th State what you meant by the words "was he going to wait on Mr. Elumphreys" said words being in your answer to the 17th Question on this Examination.

Answer My meaning was this, was he Kemp going to wait on Mr. Elumphreys for the purchase money of said land beyond the time fixed by the instrument of writing above referred to.

Question 21st ^{Objected to by Expts Counsel.} Do you know whether Kemp understood the meaning of said words in the same in which you explain them in your last answer.

Answer I think he did.

Question 22^d Did you know at the time of said conversation with Kemp of any other indebtedness existing from said Elumphreys to said Kemp?

Answer I did not.

Question 23^d How near did you then live to Mr. Kemp's and how near to Mr. Elumphreys?

Answer I lived one mile from Mr. Kemp's and about three quarters of a mile from Mr. Elumphreys.

Question 24th State who lives on the lands mentioned in the instrument of writing above referred to.

Answer Mr. Elumphreys lives on it.

Question 25th State how long Mr. Elumphreys has lived on it? and State what improvements Mr. Elumphreys has made on the land since he has occupied it?

Answer. He has lived on the land about a year or say eleven months. He has broken I suppose ten acres certain, has fenced two acres of it by the looks of it, he has put up some stabling on it, and put up an addition to the house. Elmonphreys lived upon the land before the instrument of writing above referred to was executed. John C. Reed.

State of Illinois } ss.

Bureau County, } I do hereby Certify that the above Deposition of John C. Reed was affirmed to, and signed by the deponent, before me, and in my presence and that the said deposition was taken by me, and by me reduced to writing on the Sixth day of March A.D. 1832, at my office in Princeton in said County of Bureau, between the hours of O'clock in the morning, and Six O'clock in the evening of said day. Given under my hand and seal this 6th day of March A.D. 1832.

Martin Ballen
Justice of the Peace

"Exhibit A."

This article of agreement made and entered into on this twelfth day of April one thousand eight hundred and fifty one, by and between E. D. Kemp of the one part and Elmonphreys of the other part, Witnesseth that the said Kemp does agree to make unto said Elmonphreys his heirs or assigns a good and sufficient set of the West half of the South West quarter of Section twenty four at the end of three months from this date or sooner if the payment shall be made of one hundred and ten dollars and the interest thereof from this date of ten per cent, in full compliance on the part of said Elmonphreys at said date shall null this article, and the non performance on part of said Kemp shall be the damages to be paid to the said Elmonphreys.

In Witness our hands and seals, the year and day above

John C. Reed

John Cain

Edward D. Kemp

Elmonphreys

State of Illinois)

Bureau County, } Be it remembered that on the twelfth day of August, A.D. 1851, before me the subscriber, Clerk of the circuit court in and for said county appeared John C. Reed personally known to me to be the person whose name is subscribed to the within instrument of writing as a subscribing witness thereof and being duly sworn says that he is personally acquainted with Edward D. Kemp whose name appears to the said instrument of writing as having executed the same, and that he subscribed his name as a witness thereto in the presence and at the request of the said Kemp which to me is satisfactory proof of the execution of the same. Witness my hand and the Seal of said court at Princeton

L S E

this 12th day of Aug. 1851. Justin E. Closs, Clerk.

The Deposition of James Reed of the County of Bureau and State of Illinois, a Witness produced, sworn & examined before Martin Ballou a Justice of the Peace in and for said County and State, on the 6th day of March A.D. 1852 at the office of said Justice in Princeton in said County in pursuance of a written notice, to be read as evidence on the trial of a certain suit in chancery now pending and undetermined in the Circuit Court of said County of Bureau, wherein Thomas Humphreys is Complainant and Edward O. Kemp is Defendant, on the part and behalf of said Complainant.

The said James Reed being first duly sworn according to law, deposes and says, in answer to the several interrogatories propounded, on the part of said Complainant, as follows, to wit,

Question 1st What is your age, occupation, and Residence?

Answer I was nineteen years old last August, a farmer by occupation, and reside in Bureau County, Illinois.

Question 2nd Are you acquainted with the parties Complainant and Defendant in the above entitled suit, if so, how long have you known them?

Answer I have known Mr. Kemp about ten years, and have known Mr. Humphreys about fifteen months.

Question 3rd State whether you ever heard Kemp say anything about his having sold to Humphreys a tract of land, and if so, state when, and what land did he refer to?

Answer I heard Mr. Kemp say he had sold a lot of land to Mr. Humphreys, this was in July last in the early part of that month, he did not name the land, but I suppose he knew that I knew where the land was; I understood it to be the land Mr. Humphreys was living on at that time; but nothing was said in that conversation to designate the tract of land.

Question 4th What did Kemp then say, if any thing, about the sale of said land to said Humphreys as to the payment?

Answer Kemp told me at this time that he Kemp had agreed to wait on the old man but did not say how long.

Question 5th What did Kemp mean or what did you understand from Kemp's remarks that he "agreed to wait on the old man", wait on him for what? and what old man was referred to?

Answer I supposed he meant that he had agreed to wait for the purchase money of said land, with Humphreys, who I suppose was meant by the words "old man" but I have no recollection that any thing was said other than what I have stated in my answer to Interrogatory 4th.

Cross Examination by Defendant.

Question 6th Where did this conversation occur?

Answer I can not say where it occurred.

James T. Reed

State of Illinois, } ss.

Bureau County) I do hereby certify, that the above Deposition of James Reed was sworn to, and signed by the deponent before me and in my presence and that the said deposition was taken by me, and by me reduced to writing on the sixth day of March A.D. 1852, at my office in Princeton in said County of Bureau, between the hours of o'clock in the morning, and six

Given in the evening of said day. Given under my hand and seal this 6th
day of March, A.D. 1832.

Martin Bollen *Just*
Justice of the Peace,

The Deposition of Peter Thompson of the County of Bureau and State of Illinois, a witness produced, sworn & examined before Martin Bollen, a Justice of the Peace, in and for the said County and State, on the 6th day of March A.D. 1832 at the office of said Justice, in Princeton in said County & State in pursuance of a written notice, to be read as evidence on the trial of a certain suit in chancery, now pending and undetermined in the Circuit Court of the County of Bureau and State of Illinois, wherein Eliram Humphreys is Complainant, and Edward D. Kemp is Defendant, on the part and behalf of said Complainant, as follows, to wit,

Interrogatory 1st What is your age, occupation, and Residence?

Answer I am forty years of age, a farmer by occupation, and reside in Bureau County, Illinois.

Question 2^d Are you acquainted with the parties Complainant and Defendant in the suit?

Yes, how long have you known them?

Answer I am acquainted with them, have known Mr. Humphreys the Complainant some over one year, and have known Mr. Kemp the Defendant some six years past.

Question 3^d State whether you ever heard the Defendant say anything in regard to his having sold a tract of land to the Complainant? and if so, when, and what did the Defendant say?

Answer I think it was about the month of June A.D. 1831. Defendant said he had sold a tract of Eighty acres to Humphreys for a hundred and ten Dollars.

Question 4th State whether Defendant in that conversation stated what lands he had sold to Complainant?

Answer He did not describe the numbers of the land, but said it was land he had entered at Dixon, he said he had sold the land he had been and entered.

Question 5th State all you know, if any thing, in regard to Humphreys having tendered to Kemp the purchase money for a tract of land?

Answer Mr. Humphreys called on me on the 6th day of August, 1831 and requested me to go with him to see Kemp, that he wanted to tender to Kemp the purchase money for the tract of land he had bought of Kemp. I went with him to Kemp's house and found Kemp at home. Humphreys said to Kemp he had come to tender him the money for that piece of land. Mr. Kemp said nothing for a bit, then Humphreys asked him if he would take it, Kemp said he. Humphreys then said something that he would like to have it settled, and Kemp if I mind right, said he had nothing to do only as the article said. Humphreys then gave me the money, counted it to my hand in gold. Humphreys saying there was one hundred and thirteen dollars and some cents. I do not remember how many cents, coming to Kemp, there being some interest, and told me to take care of it and hold it as a tender.

Question 6th State whether Kemp made any objection to the amount tendered, or the time of the tender.

Answer He, Kemp, made no answer, didn't say anything

Question 7th What did you do with said tender?

Answer I kept it until the October term of the Circuit Court and I then gave it to Mr. Humphreys.

Question 8th Do you know how many tracts of land Kemp had entered?

This question is objected to by the defendant, but the Court is of opinion that there is no ground for the objection, as the fact of Kemp's entry is not in dispute.

Answer One tract, an Eighty acre lot, is all I know of.

Question 9th What is the description of said lot?

Answer The West half of the South West quarter of Section twenty four, Township Sixteen, Range 23d, though I never heard Mr. Kemp say anything about but heard others say so. I know it was in the deed Mr. Humphreys wanted Mr. Kemp to sign.

Question 10th Who occupied said tract of land at the time said tender was made, and who now occupies it?

Answer Mr. Humphreys.

Question 11th Do you know of Kemp's going to Dixon in the Spring of A.D. 1851 to enter lands, and if so, about what time?

Answer I can't tell the time, but he had gone up to enter, I heard them talk about it, and don't know whether it was some of Kemp's family or Mr. Reed told me about it, after it was entered, Mr. Kemp told me he had entered it.

Cross Interrogatories by Defendant.

Question 1st At the supposed tender mentioned by the witness in interrogatory 5th by Complainant, did Humphreys offer the money to Kemp?

Answer He did not go right up to him, nor count the money to him, he was sitting a little way off. I don't remember that he held it out to him, but he, Humphreys took it out in his hand, and asked Kemp if he would take it, Kemp replied no, Humphreys counted it into my hand.

Question 2nd Did Humphreys name the tract of land on which he tendered the money?

Answer He did not mention the numbers but said for that piece of land, this was all of the description at the time given of the land.

Question 3rd Do you know of Kemp's entering more than one tract of land?

Answer I ^{don't} know of any, except another forty south of him, which was before this I think all of two years ago the latter was entered.

Question 4th State how you know the numbers of the Eighty acre lot spoken of?

Answer I know it by the deed Mr. Humphreys got made out for Mr. Kemp and I know it by the number of the section.

Question 5th How do you know Kemp ever entered that eighty acre lot at Dixon?

Answer All I know is by what I have heard.

Re Examination by Complainant.

Question 12th How far do you reside from Mr. Kemp, and how long have you there resided?

Answer I live not quite half a mile, about six hundred yards distant, I have lived there five years this last winter.

Question 13th State whether you have lived during that time on intimate terms with Mr. Kemp, and whether, if he had entered other lands than the said Eighty and forty acre lots, you would likely have known it?

Answer Yes we have always been sociable and neighborly and if he had entered other lands I should been likely to have known it, being there in the neighborhood.

Cross Examination to Piffs de examination.

Questionth Has Kemp been in the habit of telling you his business generally?

Answer No, not as I know of, though he has been in the habit of telling me about his farming business gen., but not about his other business generally.

Questionth Have you ever examined the Records of the Land Office to see what lands Kemp had entered?

Answer No, I never did.

Questionth Have you ever seen any patents or certificates of entry in Kemp's possession?

Answer No, I never did. I believe, either Patents or certificates.

Peter Thompson

State of Illinois, ss.

Bureau County } I do hereby certify, that the above Deposition of Peter Thompson, was sworn to, and signed by the deponent, before me, and in my presence, and that the said deposition was taken by me, and by me reduced to writing, on the Sixth day of March A.D. 1852, at my office in Princeton in the said County of Bureau, between the hours of Eight in the morning and six o'clock in the afternoon of said day. Given under my hand and seal this 6th day of March A.D. 1852.

Martin Dallen Seal
Justice of the Peace

The Deposition of Jonathan Thompson of the County of Bureau and State of Illinois, a witness produced, sworn and examined before Martin Dallen, a Justice of the Peace in and for said County and State, on the 8th day of March A.D. 1852 at the office of said Justice, in Princeton, in said County, in pursuance of a written notice, to be read as evidence on the trial of a certain suit in Chancery now pending and undetermined in the Circuit Court of said County of Bureau, wherein Eliram Humphreys is Complainant and Edward C. Kemp is Defendant, on the part and behalf of said Complainant.

The said Jonathan Thompson being first duly sworn according to law, deposes and says in answer to the several interrogatories propounded on the part of said complainant as follows, to wit,

Interrogatoryst What is your age, occupation and Residence?

Answer I am twenty years of age, and am a farmer by occupation, and reside in Bureau County, Illinois.

Question 2^d Are you acquainted with the parties to this suit, if so, how long have you known them respectively.

Answer I have known Mr. Kemp, the Defendant five years, and have known Mr. Humphreys about eighteen months.

Question 3^d Do you know any thing about Mr. Humphreys having tendered money to Mr. Kemp for a tract of land, and if so, state when, and where, and what amount was tendered, and for what land, state all you know on the subject.

Answer I know of his tendering money, it was in August 1851, I do not remember at what time in that month, myself and my brother Peter Thompson was called on by Mr. Humphreys to go with him to Mr. Kemp's house to see him make a tender of the money to Mr. Kemp for the land he

sister on, myself and Brother went with him and found Mr. Kemp at home. Mr. Humphreys said to Mr. Kemp, that he had come to make him a tender of the money for the land which he Humphreys was then living on. Humphreys then counted the money over and asked Mr. Kemp if he would take or receive it. Humphreys had the money in gold in his hand, did I remember that I saw him extend his hand with money to Kemp, Mr. Kemp told him he would not take it. Mr. Humphreys handed one hundred and fifteen Dollars. Humphreys then counted the money over to Peter Thompson, and requested Peter Thompson to count it to me. Peter Thompson then holding it, counted it over in my presence and it amounted to one hundred and fifteen Dollars.

Question 4th State whether Mr. Kemp made any objection to the amount tendered?

Answer He made no objection. He said nothing as I remember.

Question 5th What remarks did Mr. Humphreys make when he passed the money to the hands of Peter Thompson?

Answer I don't remember that any thing was said, he might have said something but I don't remember.

Question 6th What did Humphreys finally do with said money?

Answer He placed it in the hands of Peter Thompson in the presence of Kemp and Peter Thompson lived the same house with him.

Cross Interrogatories by Defendant.

Question 1st Are you sure that Humphreys said to Kemp that he had come to tender the money for the land on which Humphreys lived, or that land?

Answer He said, for the land which he lived on.

Question 2^d How far off did Kemp sit from Humphreys, and was Kemp's face directed towards Humphreys at the time the purported tender was made?

Answer I don't remember how far off he was, I have no recollection about it. I can't recollect the distance, and tell whether it was one or ten feet, Kemp's face at the time was not directed towards Humphreys.

Question 3^d Can you say whether, at the time this purported tender was made, whether Kemp was one or ten feet, or any intermediate distance from Humphreys or whether it was near the house or not?

Answer I cannot.

Question 4th Do you of your own knowledge, know that one hundred and fifteen Dollars was tendered; or is your information alone derived from others?

Answer My Brother counted over the money, I did not count it, I only know from what my Brother said.

Question 5th Was Humphreys in the same room with Kemp at the time of the above purported tender?

Answer He was.

Question 6th Was you in the same room at that time?

Answer I was.

Question 7th Did Kemp see the money at the time Humphreys made the tender?

Answer Not as I know of.

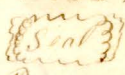
Jonathan Thompson

State of Illinois, ss.

Bureau County, I do hereby certify that the above Deposition of Jonathan Thompson was sworn to, and signed by the deponent before me, and in my presence.

and that the said deposition was taken by me, and by me reduced to writing on Eighth day of March, A.D. 1852, at my office in Princeton in said county of Bureau, between the hours of eleven in the morning and six o'clock in the evening of said day.

Given under my hand and seal this 8th day of March, A.D. 1852.

Martin Ballen 
Justice of the Peace.

The Deposition of Gaspar Kemp of the County of Bureau, and State of Illinois, a witness produced, sworn and examined before Martin Ballen a Justice of the Peace, in and for said County and State, on the 8th day of March A.D. 1852, at the office of said Justice, in Princeton, in said county in pursuance of a written notice, to be read as evidence on the trial of a certain suit in Chancery now pending and undetermined in the Circuit Court of said County of Bureau, wherein Eliazar Humphreys is complainant and Edward G. Kemp is Defendant, on the part and behalf of said Complainant. The said Gaspar Kemp being first duly sworn, according to law deposes and says, in answer to the several interrogatories propounded on the part of said Complainant, as follows, to wit:

Interrogatory 1st What is your age, occupation, and Residence?

Answer I am fifteen years old, by occupation a farmer, reside in Bureau County, Illinois.

Question 2^d Are you acquainted with the parties Complainant and Defendant in this suit, if so, how long have you known them respectively?

Answer I have known Mr. Humphreys about eighteen months, and am a son of the Defendant.

Question 3^d State all you know, if any thing, about an arrangement being made between Humphreys & Kemp by which Kemp was to prolong the time of the payment of the purchase money of a certain tract of land? and state when and where, and what land, if you know, and all the conversation had between the parties?

Answer. In the latter part of June, A.D. 1851, Mr. Humphreys came to Mr. Kemp's house, and said he had not got the money for that land, he did not say what land, but said that land, he said he had about fifteen days on the article, he said he had a son in law East, and he would write that day to him for the money. He said it would take about fifteen days for a letter to go to him, and the same time for it to come back, it would take about a month to get it. he said he would not wait another moment or hour after it returned. Mr. Humphreys said it would accommodate him very much, Mr. Kemp said he did not think he would, and if he should, it would not avail any thing unless it was entered upon the article, Mr. Humphreys said, of course not, then Mr. Humphreys went off.

Question 4th State whether or not in that conversation between said parties, that said Kemp said he would wait on Humphreys for said money beyond

the time fixed for the payment of the same in said article.

Answer He did not say he would wait.

Question^{5th} Did he say he would not wait?

Answer He did not.

Question^{6th} State whether or not said Kemp said to Humphreys before he left there that he Kemp would take no advantage of him Humphreys if the money was not paid on the day specified for the payment of the same in the article?

Answer I don't remember that I heard any such statement.

Question^{7th} Do you know whether Mr. Kemp & Mr. Humphreys had any conversation after this time on this subject?

Answer Not as I know of.

Cross examination by Defendant.

Question^{8th} Can you state whether Humphreys said to Kemp in the conversation, that he would not wait another moment after the time or month expired, or whether it was after the latter returned.

Answer He said he would not wait another moment or hour after that time.

Re-examination by Complainant.

Question^{9th} Did you know at the time that Humphreys came to Kemp's as mentioned
etc. to be by Def.
instead because
it was not called
out by Defendant
in your answer to the 3^d interrogatory what land Humphreys meant when he said "that land"?

Answer I did not know what land he meant.

Question^{9th} Had you any idea what land it was?

Answer No, Sir.

Question^{10th} Did you know at this time that your Father owned the land where Humphreys was then residing?

Answer No Sir.

Question^{11th} Did you know that your Father had any claim on said land at that time?

Answer No Sir.

Question^{12th} How long was Mr. Humphreys at your Father's, at the time of which you speak.

Answer I do not know exactly, I suspect it was an hour.

Question^{13th} Where were the parties during the time above referred to?

Answer In my Father's yard.

Question^{14th} What were you and your Father doing at that time?

Answer Drawing a Shop.

Question^{15th} What was you then doing.

Answer I was boring with an auger.

Question^{16th} Did you hear any when Mr. Humphreys was there?

Answer I did.

Question^{17th} How long did you work during the time Humphreys was there?

Answer I should think half of the time.

Question^{18th} How far was you from your Father during the time Mr. Humphreys was there?

Answer I should think a yard or two, perhaps sometimes more.

Question^{19th} Did your Father ever ask you what you recollect of about the conversation between Kemp and Humphreys above spoken of.

Answer No.

Aspar Kemp

State of Illinois &c.

Bureau County, } I do hereby certify that the above Deposition of Aspar
Bemp was sworn to, and signed by the deponent before me, and in my presence
and that the said deposition was taken by me, and by me reduced to writing
on the Eighth day of March, A.D. 1832, at my office in Princeton, in said
County of Bureau, between the hours of ^{eight} o'clock in the morning, and six
o'clock in the evening of said day. Given under my hand and seal this 8th day
of March, A.D. 1832.

Martin Bollen ^{Seal}
Justice of the Peace

The Deposition of William H. Croser of the County of Bureau and
State of Illinois, a witness produced, sworn and examined before Martin Bollen
a Justice of the Peace in and for the County and State aforesaid, on the 6th day
of March A.D. 1832 at the Office of said Justice in Princeton in said County
and State, in pursuance of a written notice, to be read as evidence on the trial
of a certain suit in chancery now pending and not terminated in the Circuit Court
of the County of Bureau and State of Illinois, wherein Eliza Humphreys
is Complainant, and Edward O. Bemp is Defendant, on the part and behalf
of said Complainant.

The said William H. Croser being first duly sworn according to law
deposes and says, in answer to the several interrogatories propounded, on the part
of said Complainant, as follows, to wit,

Question^{1st} What is your age, occupation, and Residence?

Answer I am twenty seven years old, a farmer by occupation, and reside in Bureau
County, Illinois.

Question^{2^d} Are you acquainted with the parties Complainant and Defendant in this
cause, if so how long have you known them?

Answer I have known Mr. Bemp four years, and have known Mr. Humphreys
about eighteen months.

Question^{3^d} In what township and Range do the parties in the above cause reside, and
have resided since you first knew them?

Answer The name of the town is Mineral and it is in Township Sixteen, Range Six
East.

Question^{4th} State whether you have had any conversation with Mr. Bemp since the
commencement of the above cause in relation to the land in controversy in
said suit, and if so, what did he say about his having sold said land to said
Humphreys?

Answer He stated he would not take five hundred dollars for that lot of land if
he had it here, or could get it back. He stated that he would be mesuifut
to Mr. Humphreys if that he would give him a lease of the land which he
Humphreys first upon until he could get on his own.

Question^{5th} What land did you understand Bemp to refer to when he said he would
not take five hundred dollars for that lot of land as stated in the first
part of your answer to the previous question?

Answer I supposed from the conversation we had that it was the land that Mr.

lived on: I have no doubt of that: but at the same time we were talking about other lands.

Questionth What lands were you and said Kemp talking about immediately preceding the amendment that said Kemp made the remark about getting said land back?

Answer The last conversation before said remark was made by said Kemp, we were talking about the lot where Humphreys lives, and was what he Kemp meant, as we were in conversation about that lot, we were during the same interview talking about other lands.

Cross examination by Defendant.

Questionth In the above conversation where Kemp spoke of giving Humphreys a lease of the premises in dispute until he Humphreys could go on his own land, what was the last mentioned land referred to by Kemp?

Answer It certain lands which Kemp supposed Humphreys had laid fleets or land warrants on

William H. Carsson.

State of Illinois }
Bureau County }

I do hereby certify that the above deposition of William H. Carsson was sworn to and signed by the deponent before me, and in my presence; and that the said deposition was taken by me, and by me reduced to writing, on the Sixth day of March A.D. 1852, at my office in Princeton in said County of Bureau, between the hours of eleven in the morning and six o'clock in the evening of said day Given under my hand and seal this 6th day of March, A.D. 1852.

Martin Ballen 
Justice of the Peace.

Deceit

State of Illinois }
Bureau County }

In Circuit Court of said County
March Term A.D. 1852.

Edward D. Kemp }
vs. }
Hiram Humphreys }

Bill for Specific Performance

Edward D. Kemp }

This day came the complainant by his solicitor, and the Defendant by his solicitor appearing. The above cause came on for trial upon the Bill and the amendment thereto, the answer, Exhibits, and the Depositions filed in said cause and the Court having fully examined the same, and heard the arguments of counsel, and the Court having fully considered said cause. It is decreed and ordered by the Court, that the prayer of the complainant in his original & amended bills filed herein be granted, that the article of agreement mentioned in the complainant's Bill & filed in the above cause be carried out and referred so as to describe the land mentioned in said article of agreement as being the "West half of the South West quarter of Section Number Twenty four (24) in Township Number sixteen (16) North of range Number six East of the fourth principal meridian, in Bureau Co. Illinois" It is also ordered that the said Edward D. Kemp make, execute & deliver to the said Hiram Humphreys a good and

sufficient Deed for the above described lands, on or before the fourth day of July, A.D. 1852. And that in case of the Default of said Edward D. Kemp in making said Deed by that time, that then the Master in Chancery of this court proceed to execute & deliver a Deed for the said Kemp to the said Eliam Humphreys for the said lands above described, conveying all the right title & interest of the said Kemp in & to said lands to the said Eliam Humphreys, and it appearing to the Court that the purchase money for said land is now on deposit with the Clerk of this Court, It is ordered that the Clerk pay the same over to the said Kemp, whenever he shall call for the same. It is also further decreed and ordered that each of the parties in the above cause pay the costs made by him in the above cause.

And the said defendant comes by his said attorney and enters his motion for an appeal to the supreme Court. And the Court here considers that an appeal be allowed herein on condition that the said defendant file his appeal bond in the sum of One hundred Dollars with security to be approved by the Clerk of this Court within twenty days from the last day of the present term of this Court.

Appeal Bond

(Filed March 27 1852)

Born all men by these presents that we Edward D. Kemp and David C. Stevens of the county of Bureau and State of Illinois are held and firmly bound unto Eliam Humphreys also of the same county and State in the penal sum of One hundred Dollars current money of the United States for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly, severally, and firmly by these presents. Witness our hands and seals this twenty seventh day of March, A.D. 1852

The condition of the above obligation is such that whereas the said Eliam Humphreys did on the 20th day of March, A.D. 1852, in the circuit court in and for the county and state aforesaid, recover a certain order or decree in Chancery against the said Edward D. Kemp requiring him to convey by a good and sufficient deed a certain tract of Land in Bureau County to wit: The N^W 1/4 Sec. 24, Town 16 North 6 East, from which said order or decree of the said circuit court, the said Edward D. Kemp has prayed for and obtained an appeal to the supreme court of said State. Now if the said Edward D. Kemp shall prosecute his said appeal with effect, and shall moreover pay the amount of the judgment, costs, interest and damages, rendered against him in case the said judgment shall be affirmed in the said Supreme court, then the above obligation to be void, otherwise to remain in full force and virtue.

E. D. Kemp (Seal)

D. C. Stevens (Seal)

Witness and approved before me
at my office, in Princeton this
27th day of March, A.D. 1852.

Justin H. Olds

State of Illinois 3
Bureau County 3

I Justice H. Olds clerk of the Circuit Court in and for said county do hereby certify that the foregoing transcript is truly copied, and is a full and complete record of all the proceedings in said cause as the same appear of record and on file in my Office.

Witness my hand and the Seal of said Court hereunto affixed at my Office in Princeton in said County this fifth day of Jan in the year of our Lord One Thousand Eight hundred & fifty two
Justice H. Olds Clerk

Clerks Fees

Copy of Record	157 folios	15.70
Cert & Seal		35
		\$16.05

Wm. Humphreys
ats.
Edmund D. Munk

Copy of Record



Filed June 12. 1882
A. Ireland Clerk.

122020

Princeton June 10th 1852
S. Leland Esq

Dear Sir, Enclosed I send
you the \$5.00 fee to file the
transcript of the case of
Edward D Kemp vs Herman
Humphreys an appeal
from Bureau.

Milton T. Peters
att'y for Kemp