

12015

No.

Supreme Court of Illinois

School Trustees, T. 33.

vs.

Wright, et al.

71641 7

La Salle County
School Trustees T. 33
vs
Jno. S. Wright et al.

12015

1850

State of Illinois
Cass County

Plas before the Honorable
John S. Catton one of the Justices of the Supreme
Court of the State of Illinois assigned
Judge of the ninth Judicial Circuit of
Said State at a circuit Court Commencing
and held in for the County of Cass
at the Court House in Ottawa on Friday
the twentieth day of November A.D. 1845 The
same being the twentieth Year of the Independence
of the United States of America

Plas

The Hon. John S. Catton
Presiding Judge

Be it remembered that heretofore to wit on
the 27th day of October A.D. 1845. The Masters of
Schools in Township 33 North, three north of
range number five East of the Third principal
meridian by Hrs. Cotton & Delaney their Solicitors
Filed a Bill in Chancery against John P. Compe
William Cotton & Co. Royal Stewart. Louis Goodrich
John S. Wright, ~~John P. Compe~~ Amasa Wright
Abner Webster & Andrew Spring, in words and
figures following to wit
On Chancery

To the Honorable John S. Catton
one of the Justices of the Supreme Court of the
State of Illinois assigned to hold court in the
ninth Judicial circuit
Complaining Show unto Your honor Your
orators the Masters of Schools in Township

Number Thirty three north of Range number
 five East of the third principal Meridian in the
 County of Cassia that on or about the first day of
 May one thousand eight hundred and thirty
 five David Pett was the Commissioner and
 agent for the inhabitants of the said County
 of Cassia appointed by the County Commissioners
 of said County and came in pursuance
 of an act "entitled" an act authorizing
 the sale of sections numbered sixteen seven
 eight as may be granted in time thereof
 to the inhabitants of such townships for the use
 of school" and that the said David Pett as
 such Commissioner and agent on or about the
 first day of May 1835 upon the petition of the
 inhabitants of said township that they were desirous
 to sell and dispose of section sixteen representing that
 they were of opinion that their interest would
 be promoted by selling said section on a credit
 and after having duly advertised the said land
 for sale sold the same at public vendue upon
 a credit of one two and three years and executed
 and delivered to the purchasers certificates of sale
 and receipts of the monies taken for the purchase
 money stating the land sold and the purchasers
 names that afterwards on or about the ninth
 day of June 1835 the said School Commissioner
 made his report in writing to the Commissioners
 Court of said County of Cassia of all the lands so
 by him sold when said report is in the
 words and figures following to wit
 "The School Comr of Cassia County We beg leave to
 submit to the Honorable common Court of said County
 the following report having received the petition

of the inhabitants of township 33 north of range 5 East
 dated the 13 day of February 1835 praying for
 the sale of section 16 in said township on a
 credit of one two & three years the said petition
 being accompanied with a plot & an appraisement
 of said land & therefore proceeded to advertise and
 on the first day of May 1835 made the following sale

John S. Temple	Lot 1001	containing 40 acres	at \$4. ⁵⁰ per acre
Same	" " 2	" 40 "	" 4. ⁰⁰ "
Same	" " 3	" 40 "	" 3. ¹⁰ "
Same	" " 4	" 40 "	" 3. ¹⁰ "
A. S. Burgen	" " 5	" 40 "	" 4. ⁰⁰ "
John S. Temple	" " 6	" 40 "	" 5. ⁰⁰ "
Same	" " 7	" 40 "	" 6. ³¹ "
Same	" " 8	" 40 "	" 6. ⁰⁰ "
Samuel S. Bullock	" " 9	" 80 "	" 7. ⁹⁵ "
John S. Temple	" " 10	" 80 "	" 7. ⁸⁵ "
Same	" " 11	" 80 "	" 9. ⁰⁰ "
Same	" " 12	" 80 "	" 5. ⁷⁵ "

for which several sums of money were received their notes
 which furnish security which is herewith respectfully
 submitted for the inspection of P^{re} Hon^{ble} Court
 June 9th 1835

David Little School Comm^r
 for LaSalle County Ill

"On the conditions I made previous to the sale of the within
 named sections I made it the duty of the purchasers
 to pay the expenses of said sale advertising &c
 over and above the price bid for the lands which was
 done by the purchasers to the amount of fifty two dollars

David Little School Comm^r LaSalle County

To which Your orator prays leave to refer may
 more fully appear. Your orator further shews
 that on the said first day of May 1835 and immediately
 after the said sale the said School commissioner

Executed and delivered to the said John D. Gimple
 a certificate in the words and figures following
 To wit County of Adams 1st May 1835. This is to
 certify that John D. Gimple did on the 1st day
 of May 1835 purchase at public Auction Lot one
 two three four six seven eight Ten Eleven and
 twelve being part of Section Sixteen in township
 thirty three north ^{range} five east of the third
 principal Meridian and containing five hundred
 and twenty acres for the sum of \$302.40 for
 which said Gimple has given his obligations in
 compliance with the advertisement

David Pettit com. of School
 James for Adams County

as by the said certificate when pronounced will
 more fully and at large appear
 Your Obedient servant I shew that the said notes
 given by the said John D. Gimple to the said school
 commissioners for the purchase money for the
 Lot of lands by him bid off are in the words
 and figures following to wit Ottawa May 1st 1835
 County of Adams Where months after date we
 promise to pay to David Pettit or to his successor
 in office the sum of one thousand and thirty
 four dollars \$1034 without interest being the first payment
 on the date of Lot No 1. 2. 3. 4. 6. 7. 10. 11. 9 more
 containing five hundred and twenty acres
 and being part of Section Sixteen in township
 thirty three north of range five east of the third
 principal Meridian In witness whereof we have
 hereunto set our names and affixed our seals
 of the day and date aforesaid

5. The lot or lots as exhibited by
the commissioner on a plot at the sale
and numbered as above beginning at
the north east corner and numbering 1, 2, 3, 4
on the west line to the extent of eight hundred
of forty acres each John Bascom

Wm. Y. Temple
Royal Smart
Grant Goodrich



Ottawa Casale County Illinois May 1st 1835
Years after date we promise to pay to David Pittsboro
School Commissioner for the County of Casale
the sum of one thousand thirty four dollars
80/100 without interest being the second payment
for the lot one, two, three, four, six, seven,
eight ten eleven and twelve containing five
hundred and twenty acres and being
part of Section sixteen in township thirty
three north range five east of the third
principal meridian On witness whereof
we have hereunto affixed our seals and
set our hands this 1st May 1835
Witness John Bascom

Wm. Y. Temple
Royal Smart
Grant Goodrich



Ottawa Casale County Ill May 1st 1835
Years after date we promise to pay to David
Pittsboro or to his successor in office the sum
of one thousand and thirty four dollars 80/100
without interest being the third and last payment for the purchase
of lot one, two, three, four, six, seven, eight ten, eleven and twelve
and being part of Section sixteen in township thirty three
north range five east of the third principal Meridian
On witness whereof we have hereunto set our names and
affixed our seals this 1st May 1835 John Y. Temple
Witness John Bascom

John Y. Temple
Royal Smart
Grant Goodrich



Your Orators further show that the said notes immediately after the execution thereof were delivered by the said John. J. Simple to the said School commissioners and by him delivered over to the treasurer of the said Township and now remain with him and belong to the said Township. Your Orators further show that at the time of the said Sale nor at any time since has the said purchaser John. J. Simple given a mortgage upon any or either of the lots of land so bid off by him to secure the payment of the purchase money for the same. Your Orators further show that but a small portion of the purchase money agreed to be paid by the said John. J. Simple for the said Lots of Land bid off by him as herein before stated has been paid and that there now remains due the sum of Three thousand and five hundred Dollars.

Your Orators further show that since the Sale of the said Lots of Land and on or about the twenty first day of May one thousand eight hundred and thirty eight patents bearing date respectively on that day were executed to the said John. J. Simple for the same and are now in the hands of the treasurer of the said Township number thirty three north range five east in the said County of Lac Seul as by the said patents to which Your Orators pray leave if necessary to refer will more fully appear.

Your Orators further show that there has been no improvement made upon the said Lots of Land so sold to said Simple or any or either

7.

of them and that there has not been any person
in the actual possession of either of them —
either previous to or since the date of the sale thereof
by the said School Commissioners.

Your Orators further show that the said John
S. Wright together with Elizabeth his wife on or
about the twenty sixth day of September one thousand
Eight hundred and forty by their ands bearing
date on that day conveyed to John S. Wright the
lot number one two three four seven and eight
hereinbefore mentioned and described to which
deeds when produced Your Orators pray leave
for greater certainty & particularity to refer
And Your Orators further show that prior
to the execution and delivery of said last
mentioned deeds the said John S. Wright knew
or was fully informed that the whole or a
considerable portion of the purchase money
for the lands described in said deeds remained
due and unpaid to Your orators.

Your Orators further show that the said John
S. Wright on or about the twenty seventh day
of October one thousand Eight hundred and
thirty seven was and for a long time prior thereto
has been indebted to Amasa Wright ^{junr} Asa Webster
and Orrinick Fleming or to one or more of them
in various sums of money to a large amount
that being so indebted he the said John S. Wright
for the purpose of securing the payment of the moneys
so owing by him sold and assigned to them all
his right title and interest in and to the
last mentioned lots of land and ^{on} or about
the day last aforesaid for the purpose aforesaid
he executed and delivered to the said

8. Amasa Wright a conveyance of the one undivided
third part of the said Lots of land bearing date
the said thirty first day of October 1837
And for the like purpose on the same day
he executed and delivered to the said
Wm. Webster a conveyance bearing date
of that day for one undivided third part
of said Lots of land and on the same day
for the like purpose he executed and
delivered to the said Mariah Dunning
a conveyance bearing date of that day for
the remaining one undivided third part
of said Lots of land which said conveyances
have been recorded in the records office
of the said County of Dubuque to which said
conveyances were produced or to certify
copies thereof Your Orator prays leave to refer
will more fully and at large appear
Your Orator further shew that the said
John V. Temple since the execution of
~~the execution~~ of said notes upon his petition to
the district Court of the United States in and
for the State of Illinois has been declared
a bankrupt and discharged from the payment
of his debts and that William Sutton Hall
is the assignee of the said John V. Temple and
claims some interest in the land herefor
described or some of them
Your Orator further shew that the said Royal
Armist and Grant Goodrich have become
insolvent and are wholly unable to pay
said purchase money
And Your Orator further shew that the treasurer

9-

of said township has frequently caused upon the
 said John S. Wright, Amasa Wright, Hiram Webster
 and Amos A. Deming to pay to him the money
 due to the said township for the said lots of land
 so sold by the said School Commissioners which
 parts them of as they in equity ought to pay
 And your orators were hopeful that they the said
 John S. Wright, Amasa Wright, Hiram Webster and
 Amos A. Deming would have complied with your
 orators reasonable request

But now so it is may it please your Honor
 that the said John S. Gimple, William Sutton, all
 Royal Stewart, Grant, Goodrich, John S. Wright,
 Amasa Wright, Hiram Webster and Amos A.
 Deming combining and confederating with
 several persons at present unknown to your orators
 whose names when discovered your orators pray
 may be inserted in this their bill of complaint
 with apt words to charge them as parties
 thereto, to injure and aggrieve your orators
 in the premises wholly refuse to pay to your
 orators or to the Treasurer of said township
 the money which is manifestly due upon the
 statement in this your orators bring forth
On your consideration whereof and for as-
 much as your orators are remediless in the
 premises by the strict rules of the Common
 Law and can only obtain relief in this
 Honorable Court where matters of this nature
 are cognizable and triable So the rules therefore
 that the said John S. Gimple, William Sutton, all
 Royal Stewart, Grant, Goodrich, John S. Wright,
 Amasa Wright, Hiram Webster and Amos A.
 Deming and their confederates may upon

10. their several and respective corporal oaths
true full direct and perfect answers make
to all and singular the matters herein before
stated and that as fully and particularly as
if the same were here repeated and they
thrive to borrow and specially interrogated
and that they shall do and may not only
to the best of their several and respective
knowledge and remembrance but also to the
best of their several and respective hearsay
information and belief
And that Your orators may be declared
to be entitled to a charge on the lots of land
herein before described and numbered four
ten eleven and twelve and that they may
be declared to be entitled to a prior charge
on the lots of land herein before described and
numbered one two three six seven and eight
and to be paid the proportion of their said
debts with interest and cost which in Equity
ought to be charged upon the same prior or in
preference to the said Amasa Wright Horra
Webster and Amariah Dunning and that
the said John C. Temple William Sutton and
Royal Stewart and Grant Goodrich may be
ordered by this Honorable Court to come
to a just and fair account with Your
orators for the principal and interest
now due and owing to Your orators upon
the said notes given for the purchase money
of the lots of land herein before ^{hereinafter} described and
that the said John C. Temple and William
Sutton or one of them and the said
Amasa Wright Horra Webster and Amariah

11. Demands may be decreed to pay to Your orators
what may appear to be justly due and owing
to them on the taking of the said account
together with their costs of this suit. And in
default thereof that all and singular the said
lots of land may by the order and decree
of this Honorable Court be sold in such
manner as may seem agreeable to Equity
any out of the money arising from the sale
thereof Your orators may be paid the full
amount of the principal sum due on the said
notes given for the purchase money of said lots
of land and all interest money due and
to become due thereon together with all costs
and charges by Your orators in this behalf
expended and if the money arising from
the sale of the said lots of land shall not
be sufficient to satisfy and pay the said
principal sum due to Your orators and
interest and costs then that Your orators
may be at liberty to prove the remainder
before the assigner of the Estate of the said John
D. Temple and receive dividends upon the
same pari passu with the other and separate
creditors of the said John D. Temple who shall
have proved their debts before the ^{said} assigner
And that Your orators may have such further
or other relief in the premises as may seem
proper and shall be agreeable to Equity
and good conscience.
May it please Your honor to grant unto
Your orators the proper writ of habeas corpus
issuing out of and under the seal of this
Honorable Court directed to the said

John C. Pempke, William Sattenstau Royal
 Stuart Grant Goodrich, John D. Wright
 Amasa Wright, Hosra Webster and Muriel
 Dunning thereby requiring them to appear in
 this Honorable Court on the first day of
 the next term thereof and there to
 answer all and singular the premises contained
 in this your orator's bill of complaint, and
 to stand to and abide by such order and
 decree in the premises as shall seem proper
 And your orators as in duty bound will ever
 pray
 Hov. Cotton, & Ireland
 for Comptg

And on the 24th day of December A.D. 1845
 The Complainants by their attorney filed an
 affidavit in said cause in words and figures
 following (To wit)

State of Illinois }
 Lake County } Circuit Court of said County
 The Trustees of Schools }
 in Township 33 N. R. 5 East }
 vs } On. Chancery

John C. Pempke, Wm Sattenstau
 Royal Stuart Grant Goodrich
 John D. Wright, Amasa Wright
 Hosra Webster and Muriel Dunning

Edwin S. Ireland being duly sworn
 on oath says that he is informed & believes that John C. Pempke
 Royal Stuart, Amasa Wright, Hosra Webster, and Muriel
 Dunning part of the defendants above named are not
 residents of the State of Illinois

Ottawa Dec 24th 1845

Subscribed and sworn to before me Dec 24, 1845
 E. S. Ireland

13. And afterwards to wit at the March Term of
said Court and on the 11th day of April A.D. 1846
the complainants filed the following notice by
publication in words and figures following to wit
State of Illinois Lucas County W. Lucas
Circuit Court March term 1846. The Trustees
of Schools in township 33. N. R. 5. East vs John
G. Empele William Satterstace Royal Stewart
Grant Goodrich John S. Wright Amasa Wright
Habra Webster and Frederick Demming
D. W. Chanenry. It appears by affidavit on file
in the Clerk's Office of the Circuit Court of said
Lucas County in the above entitled cause that
John G. Empele Royal Stewart Amasa Wright
Habra Webster and Frederick Demming five
of the above named Defendants are not
residents of the State of Illinois and without the
reach of the process of this Court and the
said complainants having filed their bill
of complaint serving and a subpoena in
Chancery having been issued herein according
to law. Now You the said Defendants whose
non residence appears as aforesaid are hereby
notified that unless You shall be and appear
before the circuit Court ~~at Ottumwa~~ on
or before the first day of the next Term of
said Court at the Court House in Ottumwa in
said County on Friday the 27th day of March
A.D. 1846 and plead Answer except to or
answer the complainants bill of complaint
according to the rules and practice of said Court
the same be taken for confessed and a decree
made according to the prayer thereof
Hos. Cotton & Prentiss for plaintiffs }
Dec 24th 1846 } J. Delano Clerk

This is to certify that the annexed notice was published for four weeks successively in the Ottawa Free Press a weekly newspaper published at Ottawa, Lusk County and State of Illinois beginning with No 27 dated Dec 26th 1845 and ending with No 30 dated January 16. 1846
 Ottawa April 11. 1846 } W. C. Mann & Co Publishers

And on the same day to wit April 11th 1846 the following proceedings were had in this cause in said Court
 Trustees of Schools in Township 33 N. R. 5. East

vs
 John C. Empe William Sutton
 Royal Stewart Grant Goodrich }
 John D. Wright Amasa Wright Hosea Webster & Francis
 Derrin }

This day came the complainants by Hoos & Cotton their solicitors & made due proof of publication as to the above defendants John C. Empe Royal Stewart Amasa Wright Hosea Webster & Francis Derrin who being three times solemnly called came not but made default & thereupon the complainant Bill was taken for confessed as true & valid summons ordered to be issued for the said William Sutton Grant Goodrich & John D. Wright And afterwards to wit on the 25th day of August A.D. 1846 the said complainants shewed out of said Court a summons against the said William Sutton Grant Goodrich and John D. Wright in words and figures following to wit

State of Illinois. In Said County, ss.
 The People of the State of Illinois to the Sheriff
 of Cook County. Greeting. We command you
 as we have heretofore commanded you to summon
 William Suttonsall, Grant Goodrich & John
 S. Wright impleaded with John J. Temple &
 others if to be found in your County personally
 to be and appear before the Circuit of said
 Cass County on the first day of the next
 Term thereof to be holden at the Court
 House in Ottawa on the sixth day of November
 next to answer to a certain bill of complaint
 filed in our said Circuit Court on the
 Chancery side thereof against them
 by the Trustees of Schools in township 33. N
 R 5 E 3^d P. M. Enaphave you then and
 there this writ and make return thereon
 in what manner you execute the same
 Witness our hand & seal of our said Circuit Court at Ottawa
 this 25th day of August A.D. 1846 and
 the Seal of said Court

JS

L. Deland Clerk

On which summons the Sheriff of said Cook
 County made the following return. To wit
 Executed by reading the within in the presence of
 the within named Grant Goodrich and delivering
 him a true copy thereof on the 26th day of October 1846
 also by reading the within in the presence of John S.
 Wright and William Suttonsall and delivering to
 them a true copy of the within on the 27th day of October 1846
 Fees & services 1.50. 3 Copies 1.50. 4 miles 25. Return 12² 3.33 1/2 Place
 Cook Sheriff Cook County by N. H. Davis Deputy Sheriff.

16. - And at the November Term 1846 on the 5th day
of November the following further proceedings
were had in said Court. To wit

Trustees of Schools T. 33. N. R. 5. E } In Chancery
vs }
John S. Wright William Suttons }
Royal Stewart, Grant Goodrich John S. Wright }
Amasa Wright, Hosea Webster, & Marwick Denning }

On motion of Chumassro Solicitor ordered
that the default herein as to Amasa Wright
Hosea Webster & Marwick Denning be set aside
by their paying the costs occasioned by the
said default & that they have leave to
Answer by the 20th day of January next

And afterwards, on the thirteenth
day of January, AD. 1847, the defendant
John S. Wright, by Chumassro his solicitor
filed his separate answer herein, which
is in the words & figures following, to wit:

"In Chancery
The Trustees of Schools in
T. 33. N. R. 5 E of 3rd P. M.

vs.
John S. Wright impleaded
with Hosea Webster et al. } The separate answer
of John S. Wright, one
of the defendants impleaded & to
the Bill of complaint of said complainants

This defendant, saving & reserving to himself
all advantage and benefit of exception that can
or may be had or taken to the many errors, uncer-
tainties and imperfections in said Bill of

17 - complaint contained, for answer thereto, or unto so much thereof, as he is advised it is material or necessary for him to make answer unto, he answering, says; That he is advised and believes, and therefore admits, that on or about the first day of May A.D., 1835, David Letts was commissioner and agent for the inhabitants of said County of LaSalle, appointed by the County Commissioners of said County, as in said Bill is alledged, and that said Letts on or about the first day of May A.D., 1835 upon the petition of the inhabitants of said Township sold said Section 16, in Township 33 N. R. 5 E of 3rd P. M. at public auction on a credit of one, two & three years, and delivered to the purchasers certificates of sale and receipts of securities taken for the purchase ~~money~~ ^{monies}, stating the Land sold, & the purchasers ~~money~~ ^{names}, and that afterwards on or about the ninth day of June 1835 the said School Commissioner, made his report in writing, to the Commissioners of said County, of the Lands by him sold as follows.

"The School comm^r of LaSalle County, begs leave to submit to the Honorable Court of said County the following report having received the petition of the inhabitants of T. 33 N. R. 5 E dated the 3rd day of February 1835 praying the sale of Sec 16 in said Township on a credit of 1, 2 & 3 years the said petition being accompanied with a plat & an appraisement of said Land, I therefore proceeded to advertise & on the first day of May, made the following sales
John T Temple Lot 1 containing

John T. Temple	Lot 1 containing	40 acres, at \$47.5 per acre	
Same	2	40	440
Same	3	40	310
Same	4	40	310
A. S. Bergen	5	40	400
John T. Temple	6	40	565
Same	7	40	631
Same	8	40	600
Samuel S. Bullock	9	80	795
John T. Temple	10	80	785
Same	11	80	900
Same	12	80	375

for which several sums I have received their notes with personal securities which is herewith respectfully submitted for the inspection of said Hon^l Court.

David Lills School
Com^r for LaSalle County, Ills.

And he is further advised and believes that said John T. Temple became the purchaser at said sale of said Lots 1. 2. 3. 4. 6. 7. 8. 10. 11. & 12 and therefore admits the same, and that said Temple gave his three several promissory notes with Grant Goodrich & Royall Stewart as securities for the payment of said purchase money as is stated in said Bill of complaint. And this defendant is advised & believes and therefore admits that immediately after said sale, the said School Commissioner executed and delivered to said John T. Temple a certificate - as follows. To wit -

" County of LaSalle 1st May 1835. This is to certify that Dr J. T. Temple did on the 1st day of May 1835 purchase at public auction Lots 1. 2. 3.

19 - 4. 6. 7. 8. 10. 11. & 12. being part of Section 16 T. 33 N. R. 5 East of 3rd Principal Meridian containing 520 acres for the sum of \$3104.40 for which said Temple has given his obligations in compliance with the advertisement.

David Letts Comr of School
Lands for LaSalle County.

And this defendant further answering says that he is advised and believes and therefore admits that the promissory notes set out & described in said Bill are the same notes which were given by said Temple for the purchase money of the lots of Land so bid off by him as aforesaid at the said sale, which said notes are under seal and signed by said John T. Temple as principal and Royall Stewart and Grant Goodrich as securities.

And this defendant is also advised and believes and therefore admits that the said notes were immediately after the execution thereof delivered by said John T. Temple to said School Commissioner and by him delivered to the Treasurer of said Township, but with whom said notes now are or to whom they belong this defendant is ignorant and therefore leaves the complainants to prove.

And this defendant also admits that neither at the time nor at any time since has the said purchaser Temple given a mortgage on either or any of the Lots of Land so purchased by him to secure the payment of the purchase money of the same -

And this defendant further answering says

that he does not know nor has he any knowledge or information except from complainants said Bill of Complaint of how much has been paid by said Temple for the Lots so bid off by him as aforesaid nor of how much if any yet remains due and unpaid on said notes, except that a considerable time after he had bought & paid for said Land he heard by rumor that the notes given by the original purchaser were unpaid, but that at that time said Temple & Stewart & Goodrich were responsible, & with due diligence it is believed said notes might have been collected after they became due, and with the further exception that some time in the winter of 1838/9 the Treasurer of said Township unjustly demanded of him part of the amt due on said notes, it being, nearly two years after he had paid in full for said six lots of Land -

And this defendant further answering says that he is advised & believes and therefore admits that on or about the 21 day of May 1838 patents bearing date respectively on that day were executed to said John T. Temple for the same and are now in the hands of the Treasurer of said Township -

And this defendant further answering says that he in company with said Webster, Deming & Amasa Wright employed in the winter of 1836/7 E. S. Prescott an experienced surveyor with a sufficient number of assistants to survey lands

21- belonging to them, and make permanent land marks & take possession for them & in their names among which ~~these~~ said lots of Land were so surveyed & taken possession of & this defendant avers that his right of possession to either or all of these said tracts of Land has never been hitherto called in question by the complainants or any other persons or persons notwithstanding said complainants filed in this court heretofore a similar bill of complaint which they could not sustain -

And this defendant further answering admits that said John T. Temple, together with Elizabeth his wife on or about the 26 day of September A.D. 1840 by their deed bearing date on that day conveyed to this defendant the lots numbers one, two, three ~~four~~, six, seven and eight herein before mentioned and this defendant further says that he paid the consideration for the same in May 1836 & prior to his knowledge that notes instead of cash had been given in the ^{purchase} money at the original sale -

And this defendant, further answering, says that it is not true that at the time of the sale of said premises to him as aforesaid, that he this defendant knew and was fully informed that the whole or a considerable portion of the purchase money was due and unpaid by said Temple for said Lands, but he avers that the said allegation in said Bill contained is utterly false and untrue, and this defendant avers that he was a bona

22. fide purchaser without notice of any Equities of said Complainants, or that they had or pretended to have any lien on said premises, and that he this defendant had paid the consideration money of his purchase of said Lands before he had any notice whatever of said claim of said Complainants; and that, tho' this defendant has good reason to believe that the Treasurer of said Township, & one or more of the Trustees of said Township, who are themselves or their successors complainants in the Bill to which this is an answer, Knew that this defendant had purchased said six lots of Land, yet they never gave him notice that they considered said Lands as held as security for the original purchase money till many months after said notes became due, and this defendant verily believes that said complainants had no intention of holding said Lands as security (but recieved the notes in full payment) till they found that the notes would not be collected.

And this defendant, further answering says that his whole indebtedness to said Webster Deming & Amasa Wright on the 27th day of October 1837, or for a long time prior thereto consisted of two ~~promissory~~ notes of \$1000. each, one payable to said Deming, the other to said Wright which were not to become due till a long time after the execution of the deeds to them of these said six lots of land, which notes have been paid —

And this defendant further answering, admits that on or about the 31st day of

23. October A.D. 1837 he conveyed by deed of that date the undivided third part of said premises to said defendants Amasa Wright, for and in consideration of the sum of five Hundred & fifty Dollars or thereabouts, paid to this defendant by said Wright at and before that time - And that at the same time he also executed and delivered to said Hosea Webster a conveyance bearing date of that day for one undivided third part of said Lots of Land, which conveyance was made by this defendant to said Webster in consideration of the sum of four Hundred & fifty Dollars or thereabouts paid this defendant by said Webster at and before that time.

And that at the same time he also executed and delivered to said Fredrick Deming, a conveyance bearing date of that day for the remaining undivided third part of said Lots of Land, which said conveyance was made for & in consideration of the sum of four Hundred & fifty dollars or thereabouts paid by said Deming to this defendant at and before that time.

And this defendant admits that said deeds have been recorded as stated in said Bill

And this defendant, further answering says that at the time the said several pieces or parcels of Land were sold and conveyed to said defendants Webster, Deming & Wright respectively, he is advised and believes it to be false and untrue that said Hosea

Webster, Fredrick Fleming and Amasa Wright or either of them had any notice whatsoever of the nonpayment of the purchase money by said Temple for the said lots of Land, and he therefore denies the same, And this defendant is advised & believes that said Webster, Fleming & Wright respectively were bona fide purchasers without notice of any Equities of the Complainants

And this defendant further says that he has been informed that said Temple has been declared a Bankrupt and discharged from the payment of his debts as charged in said Bill & he therefore admits the same.

And he further admits that Royal Stewart and Grant Goodrich have become insolvent.

And he denies all combination and confederacy charged against him in said Bill of complaint & without that, that any other matter or thing in said Bill of complaint contained and not herein & hereby well & sufficiently answered unto confessed or avoided, traversed or denied is true to the Knowledge or belief of this defendant.

All which matters and things this defendant is ready to aver prove & maintain as this Honorable Court shall direct, and prays hence to be dismissed with his costs and charges in this behalf sustained.

Wm Chummaso counsel for def. J. No. J. Wright

State of Illinois }
Cook County } p.

On this 8th day of January A.D. 1847,
came before me John S. Wright, who being
duly sworn deposes & says, that he had
heard read the foregoing answers & knows
the contents thereof, that the facts therein
stated as of his own knowledge are true,
and that the facts stated on the inform-
-ation of others he believes to be true

In testimony whereof I have
hereunto set my hand & seal of said
County this 8th day of Jan 1847.
Geo Davis

clerk

C. Com Ct. Cook Co.
J.D.

And on the thirteenth day of January
A.D. 1847, the defendants Keasia Webster
Fredrick Deming, & Amasa Wright, by
Cummings their solicitor filed their
Joint & several answer herein, which
is in the words and figures following; to
wit:—

"In Chancery—
The Trustees of Schools in T.
33. N.R. 5 E. of 3rd T. M.

vs.

Keasia Webster, Fredrick Deming,
Amasa Wright & John S. Wright,
impl^d & with others The Joint
and several answer of

Heasia Webster, Fredrick
 Fleming, and Amasa Wright
 defendants impleaded &c to the
 Bill of complaint of said Complainants

These defendants saving and reserving
 to themselves all benefit and advantage
 of exception that can or may be had or
 taken to the many errors and imperfections
 in said Bill of complaint contained for answer
 thereto, or to so much thereof as they are advised
 it is material for them to make answer
 unto for answer say that they are advised
 and believe and therefore admit that on
 or about the first day of May A.D. 1835 David
 Setts was commissioner and agent for the
 inhabitants of said County of LaSalle, appointed
 by the County Commissioners of said County as in
 said Bill is alledged, and that said Setts
 on or about the first day of May 1835 upon
 the petition of the Inhabitants of said Township
 sold said section sixteen Township 33 R. S. E. at
 public auction on a credit of one, two &
 three years and delivered to the purchasers
 certificates of sale and receipt of securities
 taken for the purchase money stating the
 Land sold and the purchasers names
 And that afterwards ^{or about} on the ninth day
 of June 1835 the said School Commissioner
 made his report in writing to the County
 Commissioners of said County of the Land
 by him sold, as follows:-

"The School Com of LaSalle County begs
 leave to submit ~~the following~~ to the Honora-
 ble Court of said County the following report

27- having received the petition of the inhabitants of T. 33. N. R. 5 E. dated the 3rd day of February 1835. praying the sale of Sec 16 in said Township on a credit of 1. 2. & 3 years the said petition being accompanied with a plat & an appraisement of said Land. I therefore proceeded to advertise and on the first day of May made the following sales -

John T. Temple	Lot 1 containing 40 acres at \$475 price
Same "	" 2 " 40 " 410 "
Same "	" 3 " 40 " 310 "
Same "	" 4 " 40 " 310 "
A. S. Bergen	" 5 " 40 " 400 "
John T. Temple	" 6 " 40 " 505 "
Same	7 " 40 " 631 "
Same	8 " 40 " 600 "
Samuel S. Bullock	9 " 80 " 795 "
John T. Temple	10 " 80 " 785 "
Same	11 " 80 " 900 "
Same	12 " 80 " 575 "

for which several sums I have received their notes with personal security which is herewith respectfully submitted for the inspection of said Honble Court.

June 9. 1835

David Letts School Comr
for LaSalle County, Illinois.

and these defendants are advised and believe that said John T. Temple became the purchaser at said sale of said Lots 1. 2. 3. 4. 6. 7. 8. 10. 11. & 12 and therefore admit the same, and that said Temple gave his three several promissory notes with Grant

Goodrich and Royall Stewart as his securities for the payment of said purchase money as is stated in said Bill, And these defendants are advised and believe & therefore admit that immediately after said sale the said School Commissioner executed and delivered to said John T. Temple a certificate as follows:—

"County of LaSalle 1st May 1835 This is to certify that Dr J. T. Temple did on the 1st day of May 1835 purchase at Public auction Lot 1. 2. 3. 4. 6. 7. 8. 10. 11. & 12 being part of Section 16 T. 33 N. R. 5 East of 3rd principal meridian & containing 520 acres for the sum of \$3104.40 for which said Temple has given his obligations in compliance with the advertisement— David Getts Commissioner of Schools Lands for La Salle County."

And these defendants further answering say they are advised and believe and therefore admit that the promissory notes set forth and described in said Bill are the same notes which were given to said School Commissioner by said Temple for the purchase money of the Lots of Land so by him bid off at said sale, which said notes are under seal and signed by said John T. Temple as principal, and Royal Stewart and Grant Goodrich as securities— and the defendants are further advised and believe and therefore admit that the said notes were immediately

29. after the execution thereof delivered by said John T. Temple to said School commissioner and by him delivered to the Treasurer of said Township, but with whom said notes now are or to whom they belong, the defendants are ignorant, & leave the complainants to make proof—

And they further admit that neither at the time nor at any time since has the said purchaser Temple given a mortgage on any or either of the lots of land so purchased by him to secure the payment of the purchase money for the same.

And these defendants further answering say that they do not know nor have they any knowledge or information except from complainants said Bill of how much has been paid by said Temple for the lots so bid off by him as aforesaid nor ^{of} how much if any yet remains due and unpaid on said notes except that about a year and a half after said lands were bought and paid for ~~by said~~ by these defendants said J. T. might note these defendants that a claim for payment of the balance due from said J. T. Temple had been unjustly made of him by the treasurer of said Township.

And these defendants further answering say they are advised and believe and therefore admit that on or about the 21st day of May 1858 Patents bearing

dal respectively on that day were executing
 To said John E. Temple for the same and
 are now in the hands of the Treasurer
 of said Township. But these defendants
 insist that the same ought to be delivered
 up to them

And these defendants further answering
 say that in the winter of 1836 & 7 they
 employed at large expense in company
 with said John S. Wright a company of
 Surveyors to survey & make permanent
 land marks to these & a large amount
 of other lands belonging to them and
 to take possession of the same for them &
 in their names & they aver that their
 right of possession has never to their knowledge
 been hitherto called in question by the
 complainants or any other person or
 persons notwithstanding said complainants
 filed in this court a similar bill of
 complaint to the one herein answered
 which they were not sustaining

And these defendants admit that said
 John E. Temple together with Elizabeth his wife
 on or about the 26th day of September A.D.
 1840 by their Deed bearing date on that
 day conveyed to John S. Wright the lots
 numbered one, two, three, six, seven & eight
 herein before mentioned, and these defendants
 are advised and believe that said John
 S. Wright paid the consideration money of
 said purchase in money or in 1836 & very
 soon after the purchase of the same by
 him

31- and these defendants answering each
for himself that he is advised & believed
~~and~~ that it is not true that at the
time of the sale of said premises to
said John S. Wright, or that at or prior
to the payment of the same the said
John S. Wright knew and was fully informed
that the whole or a considerable portion
of the purchase money was due and unpaid
by said Cumpson for said Sumner
And these defendants further answering
say that the whole incumbrances of the said John
S. Wright to these defendants or either of them
on the 27th day of October 1837 or for a long time
prior thereto consisted of two promissory notes
for \$1000. each one of which was payable to
Amasa Wright and the other to Samuel
Deming which were not due when said
deeds were executed, and were to become due
three years from the ~~Eight~~ 8th day of
November 1830

and these defendants further answering
admit that on or about the 31st day of
October A.D. 1837 the said John S. Wright
conveyed by deed of that date the one undi-
vided third part of said premises to said
Defendant Amasa Wright for and in consid-
eration of the sum of four hundred &
fifty dollars or thereabouts paid to the said
John S. Wright at and before that time

And that at the same time he also
executed and delivered to said Hobbs
another conveyance bearing date of that day
for one undivided third part of the said

32.

Cost of lance which conveyance was made
by said John. Wright for and in consideration
of the sum of four hundred and fifty
Dollars or thereabouts paid at and before
that time

Issue at that time he also executed
and delivered to said Warner & Mining
a conveyance bearing date of that day
for the ^{remaining} ~~unconveyed~~ ^{unconveyed} third part of said
lot of land which said conveyance was
made for and in consideration of the sum
of four hundred and fifty dollars or
thereabouts paid at & before that time.

Once these defendants admit that said seeds have been received as stated in said Bill

And these Defendants further answering each for himself says that at the time the said several pieces or parcels of land above described were sold and conveyed to them respectively they had no notice or knowledge whatsoever of the non payment of the consideration money by said Temple for the purchase of said lots of land and they insist that they are bona fide purchasers and paid the consideration for the purchase of said lots or pieces of land to said John S. Wright without any notice of the Equities of the complainants. And that said consideration money was paid by these defendants before they had any knowledge notice or information of any kind whatsoever that said complainants claimed to have any Equities in the premises.

33. and these defendants further ~~and say~~ say
Each for himself that he does not know and
has no information whether or not said John C.
Gamble has been declared bankrupt and discharged
from the payment of his debts as is stated in said
Bill and they leave the complainants to make
proof

and they further say that they have
heard that Royal Stuart and Grant Goodrich
have become insolvent but do not know whether
the same is true or not and neither admit
or deny the same but leave the complainants
to make proof

And these defendants humbly
submit & insist that the said parcels of land
and real estate aforesaid ought not to be
made subject to any lien for the payment of
the said consideration mentioned in the said
Bill

And they deny all combination and
conspiracy charged against them in
said Bill of complaint. Without that any
other matter or thing in the said Bill of
complaint contained and not herein and hereby
well and sufficiently answered or
avoided traversed or denied is true to the
knowledge or belief of these defendants. All
which matters and things these defendants
are ready to aver prove and maintain
as this Honorable Court shall direct
& pray to be hence dismissed with their
reasonable costs and charges in that behalf
most wrongfully sustained.
Wm. Chalmers. Sept. 1862

Nora Webster
 Frederick Deming
 Amasa Wright

State of N.Y.

City & County of N.Y.

33

on this 24th of

December 1846 came before me Nora
 Webster Frederick Deming and Amasa
 Wright who being duly sworn depose and
 swear that the above named parties the foregoing
 and nor can they know the contents thereof
 that the facts therein stated as of their
 own knowledge are true & that the facts
 stated on the information of others they
 believe to be true

Stanley H. Westwood
 Commissioner for Illinois
 in N.Y.

And afterwards to wit on the 23rd day
 of February 1847. The complainants by
 their attorneys filed the following replications
 On Chancery before the Judge
 of the 9th Judicial Circuit

The replication of
 the trustees of schools in townships 33 north
 range 5 east of 3^d W. M. complainants
 to the separate censurer of John C. Wright
 one of the defendants to the bill of the said complain-
 ants. These replications claiming all advantage of
 exception to the said censurer for replication
 therein say that they will aver and prove their
 said bill to be true certain & sufficient in law

To be answered unto and that the said answer of the said Defendant is uncertain untrue and insufficient to be replied unto by these plaintiffs without this that any other matter or thing whatever in the said answer contains material or effective in the law to be replied unto confessed or avoided traversed or denied is true

Hos. Cotton & Delaney
Jas for Compt

I W^{ch} are emy Before the Judge
of the 9th Judicial Circuit

The replication of the
Trustees of Schools in township 33 N. R. 5. East
complements to the joint answer and
of Amasa Wright Horat Webster and Mariah
Deming Defendants to the bill of Compt
These plaintiffs deriving all advantage of
exception to the said answer for replication
they today that they will now and prove their
said bill to be true certain & sufficient in law
to be answered unto and that the said answer
of the said defendant is uncertain untrue
& insufficient to be replied unto by these
plaintiffs without this that any other matter
or thing whatever in the said answer
contains material or effective in the law
to be replied unto confessed or avoided
traversed or denied is true

Hos. Cotton & Delaney
Jas for Compt

And at the March Term of said Court all
1847 (to wit) on the 29th day of March the
following further proceedings were had in
said cause

Trustees of School No. 33. N. B. 5 & 6

18

vs

On Chancery

John V. Temple William Cotton
Royal Stuart Grant Goodrich John S. Wright
Amasa Wright H. A. Webster & Edmund Downing

This day came the complainants by
Cotton their solicitor & the defendants Cotton
Stall & Goodrich having failed to answer the
Bill being & made default it is ordered that
their default be entered which is done

And at said Term on the 8th day of April
were further proceedings as follows

Trustees of School No. 33. N. B. 5 & 6

18

vs

On Chancery

John V. Temple William Cotton
Royal Stuart Grant Goodrich John S. Wright
Amasa Wright H. A. Webster & Edmund Downing

This day came the complainants by Cotton
& Howard their solicitors & the defendants who
appeared by Chumason their solicitor &
that cause is set down for a hearing &
the proofs & arguments having been heard
is taken under advisement

Same day April 8th all 1847
by their solicitors filed the following exhibits marked
A. B. & C
And on the
the complainants
further proceedings
in said cause at 4 o'clock

Ottawa May 1. 1835

County of Pasqua

Eleven months after date we
promise to pay to David Lett Esquire or to his
successor in office the sum of one thousand
and thirty four dollars \$1,034 without interest
being the first payment on the Sale of Lots
No 1, 3, 3, 4, 6, 7, 8, 10, 11 & 12 containing five
hundred and twenty acres & being part of
Section sixteen in township thirty three
north range five east of the third principal
Meridian

In witness whereof we have hereunto
set our names & affix our seal of the day &
date aforesaid

The Commissioners } John J. Gempie
authorized by the Commission } Royal Stewart
one plat at the Sale of land } Grant Gortch
as above beginning at

The North E. Corner & numbering ~~one~~ 1, 2, 3, 4
on the west line to the extent of eight numbers
of forty acres each John Bascom

On the back of which is Engraved in words
& figures following

Recd of A. Goodwin on the
within two hundred and forty six dollars June 15th
1836 J. H. Woodworth

Recd of C. J. Gempie four hundred & four dollars
on the within June 17th 1836. J. H. Woodworth

July 9. 36. Received of J. J. Gempie two hundred
& twenty four dollars \$224 on the within. J. H. Woodworth
per A. Woodruff

Silas April 8th 1847 L. Island etc

Exhibit B

Monroe Dubuque County, Illinois May 1. 1835

Y^{rs} Ours after date we promise to pay
D. Maria Tott by School Commissioners for the
County of Dubuque the sum of one thousand
thirty four dollars 84/100 without interest being
the second payments for the Tott one, twelve,
four, six, seven, eight, ten, eleven & twelve
Containing five hundred and twenty acres and
being part of section sixteen in Township thirty
three north range five east of the third
principal Meridian

On witness whereof we have
promised to affix our hands & set our hands this
1st May 1835

Witness

John Barcott

John Y. Gemp

James T. Mott

Shant Goodrich

On which exhibit is the following Contract
O. Y. Gemp not due May 1st 1837

Rec^d of S. Goodrich one hundred and
twenty four dollars and six cents in full
for interest due on the within note up to
July 1st 1838

S. W. Jackson, Treasurer

Jan^y 1st 1839 Rec^d fifty ^{one} ~~two~~ Dollars and ^{eight} ~~forty~~ cents
on the within note

S. W. J.

\$240.00 Jan^y 6. 1839 Rec^d fifty two dollars and
forty cents being in full for interest up to Jan^y
1st 1839

Rec^d this day on the within note the full
amount of interest due thereon up to Jan^y
1st 1840. Jan^y 27. 1840. S. W. Jackson, Treasurer
Silas April 8th 1847 L. Island etc

Whitcomb

39. Ottawa & Lusk County Ill. May 1st 1835
Three Years
after date we promise to ^{pay} ~~to~~ ^{for} ~~the~~ ^{to} ~~his~~ ^{to} ~~successor~~ ^{to} in office the sum of one
thousand and thirty four dollars & 100
without interest being the third & last payment
for the purchase of Lot one, two, three, four
six, seven, eight, ten, eleven and twelve &
being part of Section sixteen in township
thirty three north range five east of the
third principal meridian

In witness whereof we have hereunto
set our names & affixed our seals this
1st May 1835
Witness
John Bayern
John C. People
Royal Stewart
Hunt. Gooden

On the back of which Exhibit
is written as follows

Recd of J. Gooden
Twenty four dollars and twenty four cents in
full for interest due on the within note
up to July 1st 1838. G. W. Jackson Treasurer

\$57.74. Perry 1. 1839 Recd fifty one dollars and
twenty four cents being in full for interest up
to this date G. W. J.

July 6th 1839 Recd fifty one dollars and
twenty four cents being in full for
interest up to July 1. 1839

Recd this day on the within note the full
amount of interest due thereon up to Jan^y
1st 1840. Perry 2nd 1840 G. W. Jackson
Treasurer
Also April 8th 1841
G. Deland etc

ends on the following day to wit April 9th
1847. The following further proceedings were
had in said court at the Court aforesaid
to wit

41 Trustees of Schools &c. &c. N. R. S. &c. } On Churnery
John Y. Temple William Sutton &c. }
Royal Stewart Grant Goodrich John S. Wright
Amasa Wright Hiram Webster & Anderson & Deming

The Bill of the complainants having been taken
for Confessure as to John Y. Temple & Royal Stewart
who are guaranties upon proof of publication
having been duly made as required by law and
as to William Sutton & Grant Goodrich upon
the return of the summons by the Sheriff of
Cook County personal service upon them
This cause was brought to a hearing upon the
bill of complaint filed herein and upon the
answers of John S. Wright, Amasa Wright
Hiram Webster and Anderson & Deming &
The replication of the complainants & the proofs
whereupon after hearing the Counsel for the
said complainants and Defendants & due
deliberation being thereupon had it is ordered
advised and decreed that there is now due
to the said complainants upon the notes
set forth in their bill the sum of three
thousand six hundred & fifty Dollars & twenty
nine cents. And it is further ordered and
decreed that the said Grant Goodrich and
Royal Stewart pay to the said complainants
the sum of three thousand six hundred
& fifty Dollars & twenty nine cents above
mentioned & the costs of this suit and
that the said William Sutton take the assignee
in Consignment of the said John Y. Temple
pay the said sum to the said complainants

42. out of the assets of the said Temple which
have come into his hands *pro rata*
It is further ordered and decreed that
The said sum of three thousand six hundred
& fifty dollars & twenty nine cents to be paid
to the complainants with the interest to accrue
thereon on or before the first day of August
next. It is further ordered and decreed
that the complainants are entitled to &
have a charge & lien upon lots in their Bill
mentioned and numbered four, Ten, Eleven
& Twelve for the payment of the money above
decree'd & that in default of the same being
paid at the time & in the manner above stated
for the payment thereof that the said lots
numbered four (4) Ten (10) Eleven (11) & Twelve
(12) by & under the direction of George H. Morris
Esq. a master of this court be sold separately
or so much thereof as shall be sufficient
to raise the amount due to the complainants
& that the said Master give public notice
of the time & place of sale in the manner as
required by law and that the Master
give to the purchaser or purchasers a
certificate or certificates of sale & if the lots sold
shall not be sufficient that he execute and deliver
a deed or deeds to the purchaser or purchasers &
that he make report of his doings to this Court.
And it is further ordered and decreed that
if the said lots numbered four, Ten, Eleven
& Twelve shall not sell for sufficient ^{the amount} to pay
of money and the costs herein decreed to be
paid to the complainants that they have
execution for the balance remaining unpaid

against the goods & chattels Lands Tenements
& real Estate of Royal Stuart & Grant Gordon
And it is further ordered and decreed
that the said complainants are not
entitled to a charge or lien for the payment
of the money due upon the note in their
bill mentioned upon lots one two three six
seven & eight & that so much of said
complainants bill as prays therefor be
dismissed
J. H. Eaton

State of Illinois }
Cass County }
I Philip Lindley Clerk of the
Circuit Court in & for said County do hereby
certify that the foregoing transcript contains
a full and complete copy of the records of
the record & proceedings had in said Court
in the above mentioned Cause of Masters of
Deeds in Township 33 N. R. 5 East vs John J.
Temple William Suttonsau, Royal Stuart Grant
Gordon, John S. Wright, Whata, Wright, Hesse
Wether & Marwick. Appearing as the same appears
of record and on file in my office. It appears
from Memorandum on case docket that an original summons
was issued to Susan & Leon. Counties but none appear
on file.
In testimony whereof I have hereunto set my
hand and affixed the seal of said Court at
Ottawa this 1st day of June A.D. 1849
P. Lindley Clerk

27
United of School
Nov 33 N. K. S. E

Wm. J. Thompson

Received

Filed June 30. 1849.
L. Leland Clerk.

Chas. J. 12120 mms \$21.04
C. J. 12120 mms \$21.04
C. J. 12120 mms \$21.04

IIIrd It is objected that if we were entitled
to no relief sought - we are bound
of our remedy either by limitation
or in reply to this we insist

comes too late

If there is any distinction between them

Sup. Court - 3rd Division

Trustees of Schools

J. B. B. n. R. 5th E

Pepps in Error

vs

John S. Wright

et alii depts in

Error

Term Term 1857

To the Hon

Judges of the said Court -

The complainant Pepps in Error
in this cause respectfully re-
-sents that the bill in this cause
was originally filed in the Circuit
Court of La Salle County to enforce
a vendors lien for the balance
of the purchase money remaining
unpaid, upon a sale of ^{part of} sec. 16
in said Township by David Letts
School Commr to John F. Temple
The complainants are advised by
their Counsel & therefore further
represent that this cause was
argued at the last term of this
court and decided on the last
day of the Term - but that the
written opinion of the Court
was not filed until some time
in vacation ~~after the~~

That the judgment of the Court
is in said opinion placed upon
the ground of laches on the part
of the complainants in asserting
their rights or that the same has
been barred by the usual rules
of limitation known to & recognized
by Courts of Equity.

That the complainants are advised
by their Counsel & therefore insist
that the decision of the Court was
erroneous in this respect:

1st That the question of limitation
or laches not having been in
any way insisted upon by ^{demurrer, plea} ~~the~~
~~pleadings~~ or by Counsel upon the
argument of the Cause the
same even if apparent upon
the record ought not to have
been volunteered by the Court

IIIrd

That there is nothing in the record
to authorize this Court to adjudge
that the right & remedy of the
complainants are barred either
by laches or ~~bar of time~~ ~~or~~
limitation &
Because

1st The rules of limitation
in Equity are not discretionary
but depend either upon analogy
to the rules of limitation at law
or in cases where Courts of
Equity have exclusive jurisdiction
& the subject matter is not cognizable at law
upon known & settled rules
& adjudication

2nd

ordinary
The bar of a purely equitable
right, where there is no
circumstance in the case
it avoids the limitation, is
twenty years

+ The language of the answers in this respect - is
that ~~the language~~ of complaint rather than
of defence

3rd ~~That~~ ^{That} the subject-matter
of this suit is the unpaid
purchase money, evidenced
by the notes of Temple with
Goodrich & Stewart as security

4th That said notes are cognizable
at-law & the rule of
limitation at-law is 16
years

5th ~~That~~ ^{That} when the subject-
matter of the demand
is such that it can be
sued for either at-law or
in Equity courts of Equity
invariably follow and
adopt the rule of limitation
at-law and if there are
~~two~~ ^{or more} remedies at-law
the said different rules
of limitation courts of
Equity adopt & enforce
only the one which gives
to the complainant the
longest ~~period~~ time

6th That ~~based~~ ^{by} the above
principles the rule of
limitation applicable
to this case can not
in any point of view
in which it can be
considered be less than
20¹⁶ years - 19th Vermont
467-

1034
6
6204
68,244
1034
1716.44
2

If this court - has the power
arbitrarily and in their
discretion to bar us of our
right - this is not a case
which calls for the exercise
of such discretion.

Because

1st The period of time which
has elapsed since the last
note became due and
the commencement of the
present suit - is only
seven years & a few months
not sufficient to bar an ordinary
2nd book account -

Intermediate that there a
previous suit had been
brought & dismissed without
prejudice (see the answers
of the defendants) this is fairly
inferred from the language of the
answers & ought to preclude the former
3rd suit in law &

Payment was demanded
of John S. Wright as the
grantor of Temple in the
winter of 1838. 9 and his
grantees were immediately
advised by him that
such payment had been
demanded - (see answers

4th Being so notified that
we intended to look to
the land as security, they
have no reason to com-
plain of delay - If they

In support of the above positions
the following legal propositions and
authorities are submitted

desired to have the membrane
removed they could have
~~removed~~ it by paying the
balance of the purchase
money.

5th The title papers although
constructively ^{dissevered} in the possession
have always been and
are now actually in our
possession.

6th The circumstances & situation
of the immediate parties
remains substantially
without change -
The title is now what
it was placed by J^d
S. Wright in 1837 -
No actual possession has
been taken or improvement
made upon the land.
There is no loss of evidence.
The case stands upon ^{the bill} their
sworn answers & application

7th
J^d S. Wright claims to be
a bona fide purchaser
and to avoid our proof
of actual notice he says
he purchased & paid for
the land in 1836.
It is asked from Temple's books
date in 1840 - What price
did he pay Temple for
the land & what was
the evidence of his title

prior to the deed in 1840
He fails to disclose either
and by so doing has left
his conduct (to say the least)
open to suspicion

8th The insolvency of the sureties
is no answer because they
if they had paid the money
they would clearly have
been entitled to the benefit
of our lien as against Temple
and his grantors

9th The insolvency of Temple
is no answer. We had
a right to rely upon our
lien and it was their duty
upon their purchase
to investigate the title and
take sufficient security
to indemnify them
against the lien for the
purchase money.

The first step in such investiga-
tion would have shown
them that the purchase
money was unpaid.

Plffs new insert
No. 3

The complainants for the reasons
above set forth respectfully
request that the decision of
the court may be reversed
that they may be heard
by their counsel upon the
question of limitation & that
that ~~so much of~~ the decree
of the circuit court defining
the bill as to lots 1, 2, 3, & 6, 7, 8
may be reversed and that they
may be decreed to have a
lien for the balance of the
unpaid purchase money
upon the lands described in
the bill pursuant to the
prayer of the same.

Cotton & Hays
of Counsel
for Plffs in Error

Sup. Court

Foster 33. 5-
vs

J. S. Wright
et al

Points & Brief
Petition for Rehearing

Filed June 11th 1854.
H. Veland Clerk.

The Trustees of School, vs. Wright et al.

This was a bill in Chancery filed in October, 1845, by the Trustees of School, in township thirty three north, of range five East, in La Salle County, against John T Temple, William Salt-
=onstall, Royal Stewart, Grant Goodrich, John S Wright, Amasa Wright, Hosea Webster and Frederick Heming. The bill alleged, that, on the 1st of May, 1835, the school commissioners of La Salle County, in pursuance of the petition of the inhabitants of the township, sold section fifteen at public auction, on a credit of one, two and three years, and that Temple became the purchaser of five hundred and twenty acres thereof, for the aggregate sum of \$3104.40; that, on the same day, Temple made to the commissioners three promissory notes, with Stewart and Goodrich as sureties, for \$1034.80 each, payable respectively in one, two and three years from date, and the commissioners executed and delivered to Temple a certificate of purchase, in these words; "County of La Salle, 1st of May, 1835. This is to certify that Dr. J. T Temple did, on the 1st of May, 1835, purchase at public auction lots one, two, three, four, six, seven, eight, ten, eleven and twelve, being part of section fifteen, in township thirty three north, of range five East of the third principal meridian, and containing five hundred and twenty acres, for the sum of \$3104.40, for which said Temple has given his obligations in compliance with the advertisement. David Setz, Comr. of School Lands for La Salle County"; that, on the 9th of June, 1835, the commissioners reported an account of the sales to the County

Commisarius Court, in which he stated generally, that he had received the notes of the purchaser with personal security; that no mortgage was ever executed by Temple to secure the payment of the purchase money; that the notes were handed over to the treasurer of the township, and are still in his hands, as the property of the township, the greater portion thereof remaining unpaid; that, in May, 1838, patents issued to Temple for the lands, which are in the possession of the treasurer of the township; that there are no improvements on the land, nor has the same been occupied since the sale; that, in September, 1840, Temple conveyed lots one, two, three, six, seven and eight to John S Wright, who, prior to the execution of the deed, was fully informed that the purchase money was unpaid; that, in October, 1837, said Wright was largely indebted to Amasa Wright, Webster and Fleming, and, for the purpose of securing them, conveyed to each of them one undivided third part of said lots; that Temple was afterwards declared a bankrupt, and discharged from the payment of his debts; that Luttonstall was the assignee in bankruptcy, and that Stewart and Goodrich are wholly insolvent; that the Treasurers of the township has often demanded payment of the purchase money of John S Wright and his grantors. The bill prays that the lots may be charged with the payment of the purchase money, and sold for the satisfaction thereof.

John S. Wright, in his answer, admits the sale of the land to Temple, the execution of the certificate and notes, the making of the report, and the issuing of the patents, as charged in the bill; admits that Temple conveyed the lots to him in 1840, but insists that he purchased the same in good faith, and paid therefor in full in May, 1836, without any knowledge, notice or information that the purchase money was unpaid; denies that he had any knowledge that the purchase money was unpaid, until some time after he had purchased and paid for the lots, when he heard that the notes were unpaid, but insists that the matters were then responsible, and the notes might have been collected by proper diligence; admits that, in the winter of 1838 & 9, the trustees of the township called on him and demanded payment of some portion of the notes; admits the conveyance of the lots to his co-defendants, but denies that the same was made to secure the payment of a preexisting indebtedness; alleges that the sale to them was absolute, and in consideration of \$61,350, fully paid by them to him at and before the sale.

Amasa Wright, Webster and Fleming, in a joint answer, admit the sale to Temple, the execution of the certificate and notes, the making of the report, the issuing of the patents, the conveyance to John S. Wright, and the conveyance by him to them, as charged in the bill; they deny that the lots were conveyed

to them to deny the payment of a preexisting indebtedness, but insist that the sale was absolute, and in consideration of \$1,350, fully paid by them before and at the time of the conveyance; they deny that at the time of the conveyance to them, they had any knowledge, notice or information that the purchase money was unpaid, and insist that they were bona fide purchasers for a full consideration.

Replications were filed to these answers. The bill was taken for confessed against Temple, Saltonstall, Stewart and Goodrich. No proof was taken by any of the parties. On the hearing the court decreed that Stewart and Goodrich pay to the complainant, \$3,650.29, - the amount due on the note; that Saltonstall pay the same pro rata out of the appt. of Temple in his hands; that lots four, ten, eleven and twelve be sold to certify the amount found due; and that so much of the bill as claims relief against the remaining lots be dismissed. To reverse this part of the decree, the complainants move for a writ of error.

The issuing of the patents, vested the legal title to the lots in Temple. The State thereby parted with the title, - the delivery of the patents to the School Commissioners, from whom the trustees of the township must have received them, being a valid delivery to the purchaser. See ~~Andover~~ People v. The Auditor, 2 Seamen, 567. The subsequent

conveyance by Temple to John S Wright
inured to the benefit of the grantee of the
latter. Rev. Laws of 1833, page 131, S. 7.

If this was an ordinary case of the sale
of land, there would not be the slightest
justice for insisting that the complainant
had any lien on the lots, for the payment
of the purchase money. The payment of the
price was secured by the joint notes of the
purchaser and two other persons. The principle
is now too well established to require
discussion, that, where the vendor parts with
the legal estate and takes security, other than
the personal liability of the vendor, for the
payment of the purchase money, he thereby
waives his lien on the land. The taking of the
note of the purchaser, secured by a third
person, amounts to an extinguishment
of any implied lien on the land. In such
case, the seller is considered as relying on
the security taken, and not on the land,
for the payment of the consideration. See
Knowles v. Warren, 1 Gilman, 498, and the
cases there cited. But, it is insisted, that this
case is not within the operation of this princi-
ple. It is contended, inasmuch as the school
commissioner was required by statute to take
a mortgage on the premises, to secure the pay-
ment of the purchase money, that he
could not, by omitting to perform that
duty, waive the lien; and consequently that
the purchaser and his grantee, being charg-
able with a knowledge of the law, could
not acquire an indefeasible estate in the

land, until the consideration should be fully paid. The act of January 12th 1833, under which the sale was made, provided that, whenever the inhabitants of a township should represent to the School Commissioners, that their interest would be promoted by selling the school section on a credit, it should "be the duty of the Commissioners to sell said lands, on a credit of one, two and three years, the purchaser giving a mortgage on the lands, and good personal security, for the payment of the purchase money."

Whether it was in the power of the School Commissioners to dispense with the requisition of the Statute, so as to transfer the land to the purchaser divested of any lien for the payment of the purchase money, is a question not now necessary to be determined, as we are inclined to take another view of the case, which, if correct, fully disposes of it. Assuming that the complainants once had the right to assert directly to the land, for the payment of the purchase money, we are of the opinion, that the application to enforce the right comes too late. The whole of the purchase money became due in May, 1838, and no steps were taken to enforce its payment, by proceeding to subject the land to sale, until October, 1845, - more than seven years intervening between the accruing of the right, and the resort to any remedy for the

purpose of enforcing it. These secret liens on real estate, because generally in point of fact - however it may be in legal contemplation - unknown to the parties to be affected by them, are often productive of much injustice, and ought not to be encouraged. Courts should not lend their aid to enforce them, or against third persons, except in clear cases, and where creditors have not been guilty of any laches in asserting them. If a vendor fails to institute proceedings to enforce an implied lien, within a reasonable time after his right to do so attaches, the presumption should be indulged, that he ^{relied exclusively on} ~~used~~ ~~his~~ ~~other~~ ~~remedies~~ to recover the purchase money, and therefore abandoned or waived his lien on the land. After such a lapse of time, as in this case, parties, who become interested in the land subsequent to the original sale, have a right to conclude, and act accordingly, that the vendor was either satisfied with his other security, or had actually received payment. They ought not, after such a length of time has elapsed, without any effort on the part of the vendor to charge the land with the payment of the purchase money, to be molested or disturbed in the enjoyment of property honestly acquired, and for which they have paid a full consideration. There must be a time, when they may repose with some degree of security upon their title. The most serious consequences would

would to creditors and purchasers, if a vendor was to be permitted, after having enjoyed his property for years, to set up and enforce a lien, which had its origin in a mere presumption of the law, and not in virtue of any contract between the parties to the sale. The whole doctrine of implied liens is of very questionable policy. As respects third persons, it ought not in any wise to be extended or enlarged. If vendors are not vigilant in the protection of rights of this character, they do not deserve, nor should they receive, any favor or assistance at the hands of the Court. There is no good reason for allowing them the same period of time in which to enforce an implied lien, that the law gives them in the case of liens created by the express act of the parties. The two classes of liens ought not to be put on the same footing. There is a material distinction between them; and there is a manifest propriety in recognizing the distinction in enforcing them. The one is implied by the law, and rests in parol, and about the existence and content of which parties may well be mistaken; the other originates in positive contract, is evidenced by writing, and free from all doubt and uncertainty. No possible injury can result to the vendor of real estate, in requiring him to enforce an implied lien within a reasonable time. He has the right on the date of the land

to exact security, respecting which no question
can arise. If he neglects to do this, and instead
thrusts ~~it~~ ^{reliance} upon an implied lien, from
the very nature of which creditors and
purchasers are liable to be surprised and
deceived, he cannot complain if the court
refuse him any assistance in enforcing it,
after a reasonable time has been allowed
him to assert his rights. He ~~is~~ ^{is} the cause of the
difficulty in the first instance, and he
should not be permitted to increase it, by
remaining silent and inactive, and
thereby lulling others into a false security.
In the present case, aside from the legal
presumption, it is very evident, that the
parties to the original sale never intended
to reserve any lien on the land, to secure
the payment of the purchase money;
and it is equally evident, that ~~the~~ John
S Wright and the present owners believed
that they were acquiring an indefeasible
estate in the land. We can hardly believe,
that they would have purchased the
land and made full payment therefor,
if they had for one moment supposed
that the original purchase money was
a charge on the land. There is certainly
no equity in compelling them, at this late
day, to pay off that purchase money in
order to have the land. The fault is in the
Complainants in sleeping upon their right.
If they had pursued their remedy ^{against the land} at the
time, Wright and his grantors might have
reimbursed themselves for the loss of the estate,

by proceeding against Temple for a breach
of the covenants contained in his deed. It
may be, that he was then solvent, and
fully able to pay the notes, or respond to
them in damages on his covenant of
warranty. But they would now be without
remedy against him, in consequence of his
discharge from liability by the decree in
bankruptcy. If they were now to pay off
and discharge the claim, a substitution to
the rights of the complainants, if allowable,
would not avail them, for the sureties to the
notes are irresponsible. But this is not as
strong a case as many others that would
arise, if the principle was to be admitted,
that a vendor might pursue his remedy
for the enforcement of an implied lien,
at any time within twenty years, - the
time when the law raises the presumption
that a mortgage has been paid; and the
vendor must be allowed that length of
time to prosecute his remedy, if no distinction
is to be made between express and implied
liens. The rule to be laid down must be
general, and applicable to all cases,
depending on the same principle, although
differing in many of the circumstances
surrounding them. Cases would be very
likely to arise, where parties had purchased
lands and paid a full and adequate
consideration, with notice that the purchase
money of a prior sale was unpaid, but with-
out any actual knowledge that a lien was

assumed or relied on for its payment, and who had gone on in good faith and made valuable improvements, which, together with the land, would be swept away from them at the end of twelve or fifteen years, by the first vendor asserting a lien, of which he, although residing in the immediate vicinity and cognizant of all the facts, had hitherto remained profoundly silent. It is not a sufficient answer to say, that the purchasers were bound to know the law, and it was their own fault if they purchased and improved the land, under such circumstances. In my judgment, it would be far better to overrule the doctrine of implied liens altogether, than to suffer such injustice to be perpetuated, and that through the medium of courts of Equity, which, it is said, delight in ~~the~~ ⁱⁿ justice, and reprobate iniquity. The rules applicable to real estate ought to be clearly defined, and capable of being easily understood, so that there may be some security and stability in the titles to estates. This ought to be ^{the} favorite object of the law. Whatness has a contrary tendency ought to be discountenanced. If estates are to be affected by secret liens, those claiming any benefit under them ought, at least, to be required to be active in making known their rights, and diligent in enforcing them. The complainants know no excuse for the long delay in asserting their claim against the land. It is true, that shortly after the last note became

due, they caused payment to be demanded of John S. Knight, who had previously sold the land and received full payment of the price; but there is no proof, if indeed that would ~~be~~ help this case, that they ever insisted on payment from his grantee, or even notified them that they relied on a lien.

The decree of the circuit court must be affirmed.

Trustees of Lehigh

3

Knight et al.

Opinion.

Heard.

1 Statute of limitations is a good bar to a suit in Equity - as it is at least in matters of Concurrent jurisdiction

Story's Eq. Pl. page 757 & 751

Humbert v. The Rector & of Trinity Church 7 Paige 195

White v. Turner admr. 2 Gratten 502

Sheppard v. Turpin 3 Gratten 374

Hughson v. Mandeville 4 Swan 87

2 A defendant who has answered cannot have the benefit of the Statute of limitations at the hearing unless he has insisted on it in his answer or demurred or pleaded

Harrison v. Brownell 16 Eng. Ch R 382

Story's Eq. Pl. § 484 & 760

Pratt v. Vattie & Peter 415

Oey v. Dunham 2 In. Ch R. 182

3 If an equitable title is not sued upon until after the time within which a legal title of the same nature ought to be sued upon to prevent a bar by the Statute of limitations, Courts of Equity acting by analogy to the Statute will not entertain it -

Story's Eq. Pl. page 763 & 757

2 Story's Com^{on} Equity 735

4 A vendor's lien can only be barred by lapse of twenty years - ~~Molton~~ v. Hariton 1 Blount 491

Elmendorf v. Taylor 10 Wheaton 152 - 6 Cond R. 47

Lingan v. Henderson 1 Blount 236 - 282

Smith v. Ramsey 1 Gil. R. 372

6 Cond. R. 47 -

5 Every Equitable Title must be pursued within
twenty years after it accrues
Howenden v Lord Annesly - 2 Schoals & Leffoy 607
Hayer v Pruyn 7 Paige 465

6 Chancery will not set up lapse of time against
a claim when an action of debt for its recovery
would not be barred by the Statute of limitations
Fahs v Taylor 10, Ohio 104
Grafton Bank v Doct^r 19 Vermont 463

7 As the Court has not Legislative power it cannot
limit the time
Smith v Clay 2 Amblar 647

8 Courts of Equity though not within the words of the Statutes
of limitations (which apply to particular legal remedies)
are within the spirit & meaning of them - Courts of
Equity act not by analogy, but in obedience to the
Statutes of limitations
Howenden v Lord Annesly 2 Schoals & Leffoy 629

Springfield Dec 26th 1857-

Mr Sir.

You will receive herewith in a
separate package, the record and
opinion in the case of the Trustees
of School, v. Wright et al.
Please enter the judgment & record
the opinion. The trustees are
entitled to a judgment for the costs of
this writ of error. Inform the
Clerk of the decision. Mr. Peck
has a copy of the opinion.
Acknowledge receipt of same.
Very truly,

A. H. Treat.

~~L. Del.~~

L. Deland Esq
Ottawa
Ill.

State of Illinois,
 Supreme Court, } SS.

The People of the State of Illinois

TO THE SHERIFF OF *Cook* County.

Because in the record and proceedings, and also in the rendition of the ~~judgment~~ ^{*decree*} of a plea which was in the circuit court of *La Salle* county, before the Judge thereof, between *The Trustees of Schools in Township number thirty three north of Range five East of the third principal meridian, Complainants, & John S. Temple, William Saltonstall, Royal Stewart, Grant Goodrich, John S. Wright, Amasa Wright, Hosea Webster & Frederick Deming* defendants it is said that manifest error hath intervened to the injury of the said Complainants

as we are informed by *their* complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said *William Saltonstall, Royal Stewart, Grant Goodrich & John S. Wright, impleaded with John S. Temple, Amasa Wright, Hosea Webster & Frederick Deming*—

that *they* be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the *second* Monday in *June* next, to hear the records and proceedings aforesaid, and the errors assigned, if *they* shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *Saltonstall, Stewart, Goodrich & Wright*—notice, together with this writ.

WITNESS, the Hon. *Daniel H. Treat*
 Chief Justice of our said Court, and the seal thereof,
 at Ottawa, this *30th* day of *November*
 in the year of our Lord, one thousand eight hundred
 and ~~*fifty*~~ *forty nine*.

C. Deland

Clerk of the Supreme Court.

1364 18
Supreme Court
Trustees of Schools T33 R5.

William Saltonstall
Royal Stewart
Grant Goodrich
John C. Wright -
Impleaders &c.

Sci. Fa. -

To Cook County.

Executed in part by leading
the within in presence Grant
Goodrich and John C Wright
the 12th day of January AD 1850
the other not found in my
County. for 2 decms 1.00
2 mls 10
over \$ 1.20

Isaac Cook Sheriff of Cook County
Ill. by Owen McCarthy Deputy

Filed Jan 7. 16th 1850.
L. Ireland Clk.
A. Does Plffs Counsel

TO THE SHERIFF OF Cook County
The People of the State of Illinois
County, before the Judge thereof, between
the judgment of a plea which was in the circuit court of
Because in the record and proceedings and also in the rendition of

WITNESS the Hon. *James H. Hunt*
Chief Justice of our said Court, and the said thereof,
in the year of our Lord, one thousand eight hundred
at Ottawa, this 30th day of September
notice, together with
order in this behalf, and have you then there the names of those by whom you shall give
notice, if you shall think fit; and further to do and receive what the said Court shall

Clerk of the Supreme Court.

State of Illinois, Ect.

The people of the State of Illinois,

To the Clerk of the circuit court for the county of *La Salle* Greeting :

Superior BECAUSE in the record and proceedings, as also in the rendition of the ~~judgment~~ of a plea which was in the Circuit Court of *La Salle* county, before the Judge thereof, between *the Trustees of Schools of Township* *number thirty three* ^{*North*} *Range five East of the third principal meridian, Complainants & John T. Temple, William Saltmashall, Royal Stewart, Grant Goodrich, John B. Wright, ~~plaintiff and~~ Amasa Wright, Hosea Webster & Frederick Deming*

defendants it is said manifest error hath intervened to the injury of the aforesaid

Complainants

as we are informed by *their* complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment 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 instant~~ *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. *Daniel H. Heat*
 Chief Justice of our said Court, and the
 seal thereof at Ottawa, this *30th* day of
June in the year of our Lord
 one thousand eight hundred and forty-*nine*,

McLeland

Clerk of the Supreme Court.

Trustees of Schomb. Soc N. S.

John S. Wright et al.

Mit of error

Fide June 30. 1849.
Edmund Cook.

Clerk of the Supreme Court

WILLIAM H. DAVIS, Hon. Secy.

one thousand eight hundred and thirty three

1849

we may come to be done (stated) to correct the error, what of right ought to be done according

name, that the record and proceedings, and

to the Supreme Court and the Court of Appeals

and the Court of Appeals, and the Court of Appeals

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and the Court of Appeals, and the Court of Appeals

Trustees of Schools
Town 33 N R 5 E

vs

John T. Temple
et alii

In Sup. Court
3rd Grand Division

In Lake County, Ill
Abraham Hoar

being duly sworn doth depose
& say that Amasa Wright John
Temple Moses Webster & Frederick Deming
reside within the limits of the
State of Illinois as aforesaid
is informed & ^{truly} believes so

Subsed. & sworn to before

A. Hoar

on June 30. 1849.

L. Leland Clk.

Filed June 30. 1849.
A. L. L. L. L. L.

In Supreme Court-

Trustees of Schools
of T. 33rd R 5th E

vs

John S. Wright
et alii

Error to La Salle

The clks will take
notice that on the
first day of the next
term of this Court to be held at the
Court House in Ottawa on Monday
the 9th day of June next or as soon
thereafter as counsel can be heard
a petition will be presented for a
writ of this cause also for
leave to argue the cause upon
the points presented by the Court
in the opinion May 26th 1851

To James H Collins Esq
Att'y for Defs

Yours or
Cotton & Hues
Att'y for Plffs in Error

I admit service of notice of which
the above is a copy this 29th
day of May AD 1851

J. H. Collins Esq Att'y

Trustees of
Schools 33-5-
W

Mr. A. Wright
Chairman

Notice of
Presenting Petition
for reorganizing

M. D. Ogden Esq

Supreme Court

School Trustees T 33. R 5

In: S Wright & Others - }

The School Com^y sold the land in the bill described to Temple on Credit, and gave him a Certificate of purchase showing that the purchase money was to be paid in three equal annual payments, and Temple gave his notes for the purchase money with sureties payable in One, two & three years -

Before the patents for the land were issued Temple sold his Equitable title to In: S Wright, and on the day of 183 before patents were issued he sold his Equitable interest to Wright F Denning & H. Webster -

Murray v Bowman
2 Hill's Rep. 438 -
Murray v Sylburn
2 M. & B. 442

Jones v Lyndal
7 Price, 303

John S Wright & Wright Denning Webster his assignees took the property subject to all the Equities existing between the School Trustees and Temple -

And must perform all the stipulations, that Temple bound himself to perform

~~This is not a case of
Where Vendor does not part with the title
When Temple sold to In: S Wright and he
sold to the other Defts. - no title had been
acquired by Temple - the patents had
not been issued - Temple had but
an Equity and his vendees purchased
from him an Equity - subject to the
claim of the School Trustees~~

Kempell v. Bower
7 Sang's Rem. 64

A purchaser of any thing less than the legal title take it with all its imperfections

21 May 1838
The patents were issued ~~into~~ and sent to School Com. but were never delivered to Temple or his vendee, a Stat. of 1829, authorizes School Com. to deliver the patents to purchaser on presenting & surrendering the Original Certificate of purchase

The land having been sold on credit. Temple the purchaser was bound to comply with the terms of the Certificate and then land and give the mortgage - before he would be entitled to a delivery of the patents -

Bleekman v. Gregory
1 Bro. Ch. R. 420

Envelope Hospital v. Anderson
1 Ves. 266

The patents not having been delivered nor the Consideration money paid ~~the School Trustees~~ have a natural Equity arises for the School ^{Trustees} ~~Com.~~ to be paid ~~the money~~

On a former hearing of this case, the decree of the circuit court was affirmed. For the facts of the case, and the reasons for that conclusion, reference is made to the report of the case in 11 Illinois, 603. A re-hearing has since been allowed, and the case is again submitted for our consideration. The opinion was expressed in the former decision, that an implied lien on land, for the payment of the purchase money, must, as against third persons, be enforced by the vendor, within a reasonable time after his right to do so attaches; and it was by the application of that doctrine to the case, that the decree dismissing the bill was sustained. Upon further reflection, we are still strongly inclined to adhere to the principle then laid down; but we are likewise well satisfied, that the principle ought not to be applied to this case, in the condition in which it is presented by the parties. The defendants do not by their pleadings assume the position, that the complainants are not entitled to the relief sought, because of the lapse of time between the maturity of the notes and the filing of the bill. They claim no advantage by reason of any delay or laches on the part of the complainants. In this respect, the answers are wholly silent. The only questions presented by the answers are, whether the complainants ever had a lien on the lands, and, if so, whether the defendants were purchasers with notice thereof. It is a familiar principle of equity, that a defendant cannot avail himself of the

benefit of the statute of frauds, or of limitations, unless he specially relies thereon by answer, plea, or demurrer. If he fails thus to claim the protection of the statute, he is to be understood as waiving it. He must give the complainant an opportunity to show by averments and proof, that the case is not within the operation of the statute. In the present case, the objection arising from length of time, although not within the statute of limitations, is a defense of a kindred character, and subject to the same rule. The defendants did not raise the objection in their answers, and they must be held to have waived it. If they intended to insist on the hearing, that the complainant were barred by the lapse of time from asserting a lien on the lands, they should have interposed the defense in their answers, or in some other appropriate mode. The complainant might then have amended their bill, by inserting allegations accounting for the delay, and thereby laying a foundation for the introduction of proof to sustain the case against the objection.

As it is, they were not notified that such a defense would be attempted, and consequently they were not called upon to repel or avoid it. It may be, that they could have accounted satisfactorily for the long delay, and have shown that they were still in a situation to enforce the lien. At all events, they ought not to be concluded, until such an opportunity has been afforded them.

We are also well satisfied, that the complainants once had a lien on the lands for the payment of the purchase money, and that the defendants were chargeable with notice of its existence when

they purchased. The statute, under which these lands were sold, required the School Commissioners to take notes with personal security and a mortgage on the premises, to secure the payment of the purchase money. The lands were sold on a credit of one, two and three years, and the notes of the purchases, with sureties, taken for the payment of the several installments, but the Commissioners omitted altogether the taking of a mortgage. Under these circumstances, we think the lien was not waived. The purchaser did not acquire the land divested of a lien, which the law expressly provided should be reserved.* In such a case, there can be no doubt of the right of the trustees of schools to assert a lien as against the purchasers; and we think it equally clear, that the same remedy may be pursued against those claiming under him with notice, if proceedings for this purpose are instituted within a reasonable time after the right to do so accrues. The defendants all purchased before the patents issued, and before the last of the notes became due. The certificates of purchase showed on its face, that the original purchasers had given notes for the consideration; and the same fact appeared in the report of the sale to the County Court. If the defendants had examined the sources of the title, they would at once have discovered that the lands were sold on a credit which had not then expired, and by inquiring at the proper office, they would have ascertained that the notes were still unpaid. They are chargeable with knowledge of every thing appearing on the face of the title papers, and of the events relating to the sale.

The clause of the ancient Court diminishing the bill,

* See *Parsons v. Kettle*,
1 *Greenleaf*, 491.

So far as it tends to enforce a lien against
the lot conveyed by the original ^{to John S. Wright} purchaser, is
removed; and the cause is remanded, with
leave to the parties to amend their pleadings.

Trustee &c. v. Wright.

Opinion.

Recd.

Recorded-

In Sup. Court

Trustees of Schools
in Town 33 N of range
3 E of the 3^d P. M
Plffs in Error

vs

John S. Wright et alii
Defts in Error -

The plffs in Error by Cotton & Neaves come away that in the record & proceedings in this cause and in the order & decree entered herein there is manifest error in this to wit

1st The Court erred in decreeing that the complainants were not entitled to a lien for the payment of the money due upon the notes in their bill mentioned upon lots one two three six seven and eight.

2nd The Court erred in dismissing so much of complainants bill as prays for a lien as aforesaid upon said lots

and praying that so much of said bill the decree of the Circuit Court may for these & other reasons be reversed annulled & set aside

Cotton & Neaves

And the said Defendants by J. H. Mins their
Attorneys say that there is not any error in the record

Proceedings Now as the Reading of the
deeds appears that at the said Court
may be as all things appear in

J. M. Collins

Atty for Deft in Error

[Faint, mostly illegible handwritten text, likely bleed-through from the reverse side of the page.]

18
Chap. Court

Trustee of N. Schuch, 1.33
R. 36

Dr

Wright & Co

Apprentice & Emory

any more

Woe, Scotland
for pen

Filed July 15, 1850.
V. Deland & Co

Sup. Court
Trustees of Schools

J. S. Temple & others

Points-

1st-

The lien of the vendor ~~will~~
^{for the unpaid purchase money}
will be enforced against the
vendor & subsequent
purchasers with notice
unless waived ^{or an intention}
~~appears on~~
~~appears on~~ the part of
the vendor not to rely
upon the lien.

II -

The respondents John S
Wright - Amasa Wright
Frederick Denney and
Hosaa Webster had at
the time they respectively
purchased notice that
the consideration money
was unpaid -

IIIrd

The lien in this case
was not waived nor
does it appear that
there was any intention
on the part of the vendor

not to rely upon the lien
The law required a mortgage
in addition to the personal
security & the taking of
the personal security can
not raise a presumption
of any intent to waive
the lien. The school
corps was not authorized
to waive it.

IVth

The acts under which the
sale was made were
public acts & all the
parties are chargeable
with notice of the
provisions of the same

Points

In Sup. court-

Trustees of Schools
of T. 33rd R 5 E

vs

John S. Wright
et alii

This was a bill filed to enforce a vendors lien for the purchase money upon school lands sold by David L. & Co. Secy. Comm. of Ind. State Co., ^{to John F. Temple} on the first day of May 1835. upon a credit of 12 + 3 years - notes with personal security - even taken but no mortgage was executed.

The bill was taken pro compesso against all of the defts except John S. Wright - Amasa Wright F. V. Rich & Fleming and H. V. & Co. who filed their answers to which the compells filed a general replication.

The case came on to a hearing on bill, answer replication & exhibits. The Circuit ^{Court} dispensed the bill as to all that portion of the lands (also called in the bill) conveyed by Temple to John S. Wright & by him to Amasa Wright - Fleming & Co.

The writ of error is proven-
-ced to reverse this part
of the decree.

In support of the first point made
by the plffs in error it

See in addition to is ~~is~~ considered
cases cited by treat. J. - accompanying to offer any
in Connor vs Warren. - remarks -

Borahley vs Borley - 1. Barlow

C. R. - 125 - 152 -

Palmer et alii app. - 1 Douglass

(Michigan) 422 - 427 -

9 Ames & M. - 122 -

10 do 143 - 56 B. Monroe 67 -

do - 74 - 5 Conn. 468. 472. decisions in the courts

St. v. J. 1. Mason 191 -

15 - Vesey J. 328 -

9 Cowen 316

Winter vs. Lord Anson

3 Prapet 488 (3rd Eng. Chanc. R.)

Hughes vs. Kearney

1 Schwaab & Lefroy 132

3 Sugden on vendors 151.

4 Wheaton 255

17 Ohio R. 530

The extent of the

vendors lien under

the limitations and

restrictions stated ~~has~~

is supported by the

authority of numerous

of the United States &

of England & ~~by the~~

~~decisions of the courts~~

this court in

Connor vs Warren

1 Gillman 498

see also - Dyer vs Martin

4th Scammon - 146 - per

Calvin J. p. 151

*

* The doctrine has been repeatedly
questioned in England & this country on
the ground of inconsistency & impolicy,
but is so clearly ~~settled~~ sustained by
the authority of not only of the cases
cited but of many others to which
the attention of the Court might have
been directed if it had been deemed
necessary that we ~~conclude~~ ^{submit} that
objections on the grounds stated ~~on~~
~~our~~ ~~case~~ would be more properly

In answer to the bill
day of May 1835. upon a
credit of 12 + 3 years. The
with personal security was
taken but no mortgage was
executed.

The bill was taken pro
concesso against all of
the debt except John &
Wright. Amasa Wright
& Richard Manning and
Abner Webster who filed
their answers to which
the Comptee filed a general
replication.

The case came on to
a hearing on bill, answer
replication & exhibits.
The Circuit ^{Court} charged the
bill as to all that portion
of the lands (described in
the bill) conveyed by deed
to John S. Wright & by him
to Amasa Wright Manning
& Webster.

The writ of error is pro-
-ceded to reverse this part
of the decree.

In support of the first point made
by the plffs in error it

See in addition to is ~~repeated~~ considered
cases cited by the J. Amey to offer any
in *Common vs. Wm. Amey*.

Pennington vs. Pennington - 1. *Barlow*

C. R. - 125-152 -

Palmer vs. Allen app. - 180 *Engl.*

(Michigan) 422-427 -

9 *decades* 0 *m.* - 122 -

10 *do* 143 - 56 *B. Moura* 67 -

do - 74 - 5 *Comm.* 5 468-472. *decisions* in the courts

6 *Wing* J. 1. *Mason* 191 -

15 - *Vealey* 328 -

9 *Comm.* 316

Winder vs. *Lord* *Amey*

3 *Reb.* 1 488 (3rd) *cl.* 01 *Comm.* in *Amey*

The extent of the

vendors here under

the limitations and

restrictions stated here

is supported by the

authority of numerous

of the United States &

of England & from the

fact is recognized by the

decisions of the courts

this court in

admitted to the legislative depart-
-ment

+ VII² Notice is clearly made out - not-
withstanding the apparent denial
in the answers -

1 The patents ^{were} ~~were~~ not issued
Record page 6 - until the 21st May 1838 -

2^d. J. S. Wright purchased of
John J. Temple & paid the
consideration money in
May 1836 -

" " 21 - 3^d Webb & A. Wright
purchased of J. S. Wright
" " 31-32 Octo - 31 - 1837. Con. paid
at or before that time
at the time that J. S. Wright
purchased of Temple his only
evidence of title ^{was} consisted
of the certificate issued
to him by the Sch. Com
which states on its face
"that ^{obligations} ~~notes~~ were taken
for the purchase money
in pursuance of the adver-
tisement -

Record page 4 -

The same state of facts
existed when J. S. Wright
conveyed to Webb & Deming
& Wright -

If these subsequent persons
had exercised the ordinary
precaution of enquiring
of Temple for the evidence

Record - pgs. 2, 3.

of his title they would have ascertained that he purchased upon a credit sale - The law had fixed the term time of credit at 1 - 2 & 3 years - It required the Comr to report - to Auditor & Co. Comr Comr & the report to be recorded - That report had been made & showed a sale upon a credit of 1 2 & 3 years - The School Comr was a public officer of the Co. & if further information was required they had the means of obtaining it.

Oyer vs Martin. These enquiries they it was
4 Seam. - 146. Their duty to make

They are in any event
chargeable with notice

Graham vs Day of every fact appearing
4 Gill - 389. 394. upon the face of the
the papers of Temple
under whom they claim

Honore v Baskinell
6 B. Monroe 67
Thornton v Remy
6 B. Monroe 74

A court of equity will
not permit them to close
their eyes, when the road
to the truth lies open and
plain before them and
then insist upon immunity
from liability as "bona

fideli purchases without which
especially when as in
this case the parties to be
injured by their neglect
are beneficiaries of a trust
fund ~~to be~~ ^{actually} ~~deceased by the~~
~~parties to the trust~~ ~~and~~ ~~the~~
~~trustees~~ ~~and~~ ~~the~~ ~~trustees~~ ~~and~~ ~~the~~
to suffer by the misconduct
of a public officer, over
whose appointment and
official acts, after the
initiation of a petition
for a sale, they have
no direct authority or
control

If the subsequent purchases
from Timples are to be
the basis by the enforce-
ment of this lien, the
result will be attributable
to say the least, to their
own culpable carelessness.

III² Was this lien waived.

When & under what circumstances the lien of the vendor will be considered as waived does not appear to be very clearly defined by the adjudged cases.

It has been frequently held that the taking of distinct & independent security for the whole purchase money, in the absence of other circumstances showing an

intention to retain the lien will be held a waiver.

Beyond this we apprehend the rule to be that each case must stand upon the intention of the parties as ~~to be ascertained by the facts and circumstances of the case~~ as evidenced by the facts and circumstances of the case.

The facts of this case present a question, so far as the authority of adjudged cases is concerned (unless

10-5 & M) be an exception)

somewhat anomalous

The sale was made under the authority of a public statute of

See cases cited supra

the provisions, ^{of which} all parties
are ~~has~~ deemed to have been
cognizant.

The authority to sell is
no more plainly expressed
than the duty imposed
to take mortgage security
upon the land.

To hold that the taking of personal security was in this case a waiver of the lien is to hold that the Comr & the Temple intended to violate the law. to substitute a security, which by law he was required to take as a consolidation security, as the sole security for the payment of the purchase money. We think such inference unreasonable but on the contrary that the fair & reasonable conclusion from the facts of this case is that the Comr intended to sell & Temple to purchase subject to the lien for the purchase money imposed by the statute although no mortgage was executed.

Kiddell vs Trustees
5 Gilman 191

But if the intention of the
Comer was otherwise
if he intended to waive
the lien, we deny his
right to do so & the right
of Temple, or his grantee
with notice, to acquire
a title to these lands under
this sale divested of the
lien for the purchase
money. The Statute did
not - not - a dis creation in
in the Comer to dispense
with the mortgage
An arrangement between
Temple & the Comer to take
personal security solely
would have been a fraud
upon the inhabitants
of the Township & neither
Temple or his grantee
with notice would be
permitted to set up such
fraudulent arrangement
in bar of our equitable
claim

The Patents in have
People vs Andros been issued & delivered
2 Decem. 567. & the legal title is vested
in the Dept

They insist in their an-
= swers upon this title

under the patents and
inasmuch as they pur-
chased with notice of
our equity the plaintiff
principles of justice &
equity require that
they should take the
lands subject to our
lien for the unpaid
balance of the purchase
money.

den Trefpunkt

Franklin of J. 39th Dec 57

22

John S. Worrell et al

Briggs

Never