

No. 14417

# Supreme Court of Illinois

Bressler

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vs.

B'd. of Supervisors,  
Whiteside County

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STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division

No. 48

*Adoptive*

*75*

*1863*

*Bresler*

# SUPREME COURT,

THIRD GRAND DIVISION, }

APRIL TERM, A. D. 1862. }

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THE BOARD OF SUPERVISORS OF  
WHITESIDE COUNTY, STATE  
OF ILLINOIS,

*Plaintiffs in Error,*

vs.

ROBERT C. BURCHELL, STATE'S  
ATTORNEY OF THE TWENTY  
SECOND JUDICIAL CIRCUIT OF  
THE STATE OF ILLINOIS, AND  
PETER BRESSLER,

*Defendants in Error.*

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## ABSTRACT OF THE RECORD.

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Record. BILL for injunction and relief, filed by complainants below, on the 2d  
Page 1 day of May, A. D. 1860, in the Whiteside County Circuit Court, alleging  
2 that on the 28th day of September, A. D. 1850, and ever since that time  
there were lying and being within the county of Whiteside, large tracts  
of land, amounting to 65,366 acres, which were swamp, wet and over-

## ASSIGNMENT OF ERRORS.

**First:** The court erred in overruling the demurrer to the bill of complainant; whereas, by the law of the case, the court should have sustained the demurrer of the defendant below.

**Second:** The court erred in taking said bill as confessed as against the defendants below, and rendering the decree aforesaid thereon without any order for the said defendants to answer the said bill.

**Third:** The court erred in rendering the decree aforesaid, for the reason that the decree is not authorized by the case made in the bill, and for the reason that the same is not authorized by the law of the land.

**Fourth:** The court erred in rendering the decree aforesaid, the same being so vague and uncertain that the defendants, therein named, cannot know with certainty what they are required to do or perform.

170 48  
Board of Supervisors  
of Whiteside County  
v.  
Robert S. Burchell et al.  
Abstract of Records

Filed Dec. 29, 1862.  
L. Island  
Clerk.

3 flowed, and thereby rendered unfit for occupancy, tillage or cultivation,  
and were also for that reason noxious, malarious, and detrimental to the  
3 health and well being of the citizens of said county, but of all of which  
lands were of easy and practical drainage; that up to the 28th day of  
September, A. D. 1850, all of said lands were a part of the public lands  
and domain of the United States; and that by the certain act of Con-  
gress, entitled "An act to enable the State of Arkansas and other States  
to reclaim the swamp and overflowed lands within their limits," ap-  
proved September 28, A. D. 1850, (to which act the said complainants in  
their bill beg leave specifically to refer) the said swamp and overflowed  
lands being in the said county of Whiteside, were granted to and vested  
in the State of Illinois, for the purpose and to the intent that said State  
should cause to be constructed the necessary levees and drains to render  
said lands fit for cultivation, and with the express condition, limitations  
and reservations that the proceeds of said lands, whether from sale or by  
4 direct appropriation in kind, should be applied exclusively, so far as  
necessary to the purpose of reclaiming said lands by means of such  
levees, and that such grant was accepted by the State subject to the  
trusts, conditions and limitations aforesaid.

4 The bill further alleges, that the State of Illinois, for the purpose of  
more effectually carrying into effect the trusts, conditions and limitations  
of said grant, and without any consideration other than the fulfillment of  
said trusts and the performance of the conditions and limitations afore-  
said, by an act of the General Assembly of said State, entitled "An act  
to dispose of the swamp and overflowed lands, and to pay the expenses  
of selecting and surveying the same, approved June 22d, A. D. 1852,  
grant and convey to the county of Whiteside all of the swamp and over-  
flowed lands lying within the limits of said county, upon the trusts, and  
to and for the uses, trusts, intents and purposes, and subject to the limi-  
tations and conditions in said act of Congress and in the said act of the  
5 Legislature of the State of Illinois, and the sundry acts amendatory  
thereto, contained, that is to say, among other things that the said lands  
so granted to said county should be under the care and superintendence  
of the Board of Supervisors of said county, whose duty it should be, at  
the next regular term after the passage of said act, approved June 22d,  
A. D. 1852, to appoint an officer styled "Drainage Commissioner," of

said county, to perform the several acts and things in that behalf, in  
 said last mentioned act provided, and to sell at public auction, in the  
 manner provided in said last mentioned act, to the highest bidder for  
 cash, so much and such parts of said lands only as should be sufficient  
 to fully drain and reclaim the whole of said lands, which said purchase  
 money should be paid and discharged by such purchasers, at their option  
 respectively, in labor to be performed by them in draining and reclaim-  
 6 ing the said lands, as in said act provided; and that the county, by its  
 proper officers in that behalf, after having ascertained what portion of  
 said lands there were susceptible of being drained, with an estimate of  
 the probable cost thereof should divide all such drainable lands into sec-  
 tions numbering 1, 2, 3 and 4, &c., respectively, and whenever there  
 should be a sufficiency of said lands so sold to complete the draining and  
 reclaiming of one or more of such sections, the same should, as soon as  
 practicable, be put under contract, and the operation of draining and  
 reclaiming commenced thereon, and in like manner should such work of  
 draining and reclaiming progress until the avails of said lands so granted  
 to said county should be exhausted or the drainage thereof completed as  
 in said last mentioned act provided; that said county in laying off said  
 work into sections as aforesaid should make such <sup>direction</sup> ~~directions~~ thereof as  
 will enable such purchasers before mentioned to pay for said lands so  
 respectively purchased by them, in labor to be performed by them re-  
 spectively in and about the draining and reclaiming of said lands, as in  
 said last mentioned act provided; and that said county of Whiteside,  
 upon receiving said grant of said swamp and overflowed lands so subject  
 to the trusts, limitations and provisions aforesaid, accepted the same, to-  
 7 gether with the trusts so confided in it, took possession of the said swamp  
 and overflowed lands, and entered upon the use, management and con-  
 trol thereof, under the trusts, limitations and provisions of said grant,  
 and in pursuance and in part performance thereof, did, by the Board of  
 Supervisors of said county, on the 28th day of March, A. D. 1855, ap-  
 point William Pollock, Drainage Commissioner of said county, and did  
 cause plats and graduated valuation of said swamp and overflowed lands to  
 be made, and did, on the said 28th day of March, A. D. 1855, at the March  
 term of said Board of Supervisors of that year, after the making and return  
 of such plats and recording of such graduated valuation, appoint the  
 second Monday of October, A. D. 1855, for the selling of a portion of

8 such swamp and overflowed lands in townships twenty and twenty-one, range seven, in said county, to wit: 25,316 acres, and did publish a notice thereof of the time and place of such sale, in the Sterling Times, a weekly newspaper published in said county, a copy of which is hereto attached and made part of this bill; and that afterwards, on the second Monday of October, A. D. 1855, the said county, by the said Drainage Commissioner, under pretense that they, the said county, would apply the proceeds of said sale to the construction of the necessary drains and levees to reclaim said lands, and would well and faithfully observe, and keep and perform all the trusts, conditions and provisions of said grant, as specified and contained in said several acts mentioned, did sell large quantities of said swamp and overflowed lands so advertised, to wit: 25,316 and 2-100 acres, at various sums and prices per acre, amounting, in the aggregate, to \$73,122.32; and that all the lands so sold then, were, and ever since have been, susceptible of easy and practicable drainage, and by the construction of the necessary drains and levees, could and can be easily and profitably reclaimed and rendered fit and suitable for occupancy, tillage and cultivation, at an expense of money much less than the proceeds of said sale.

9 The bill further alleges that on the day of September, A. D. 1855, the Board of Supervisors of said county, ordered all that portion of said lands lying south of Rock River, and not theretofore ordered to be sold, and also the north tier of sections of township twenty, North, range seven, in said county, to be sold on the second Monday of March, A. D. 1856, upon a notice of sale similar to the one above referred to, and did, on the said second Monday of March, A. D. 1856, under the pretences aforesaid, and also under the pretence that they, the said Board of Supervisors, would suffer and permit the complainant, Peter Bressler, and others, the purchasers at said last mentioned sale, pay and discharge the amount of their several and respective purchases, in labor to be performed in the draining and reclaiming of said lands, did sell further large quantities of said swamp and overflowed lands, at various sums and prices per acre, amounting in the aggregate to at least \$77,150.88; and further, that all the said lands, and particularly all that portion thereof purchased by the said Peter Bressler, as described in said bill, then were, and ever since have been susceptible of easy and practicable

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drainage, and profitably reclaimed and rendered fit and suitable for occupancy, tillage and cultivation, at an expense much less than the proceeds of said last mentioned sale. And that at said last mentioned sale  
11 the said complainant, Peter Bressler, relying on the said pretences of said county, and particularly upon the pretences that said county would suffer and permit him, at his option, to pay and discharge the amount of the purchase money of all lands by him purchased, in work and labor to be done and performed by him in the construction of necessary drains  
12 and levees, as in said act provided, and, in consideration thereof, did become a purchaser of large quantities of said swamp and overflowed lands, at sundry large prices, greatly exceeding, respectively, the value of said several parcels of land ; and further, that the said Peter Bressler did thereupon pay to the said county one-fourth of the said purchase money in cash, and did deliver to said county his several promissory notes, amounting, in the aggregate, to the sum of \$5,706.04, being the remaining three-quarters of the said purchase money payable in five years after the date thereof, with interest at the rate of six per cent., payable semi-annually in advance, and to secure the notes made and delivered to the Drainage Commissioner certain mortgages upon the real  
13 estate so purchased ; and did, at the same time, receive from said county deeds of conveyance to the lands so purchased. The bill further alleges that the complainant Bressler has paid to the county, at different times,  
14 as interest upon said notes, the sum of \$684.75 in cash ; and as to all the balance of said purchase money, that he was, and ever since has been, greatly desirous to pay and discharge the same, in labor to be done by him in draining and reclaiming said lands, and in the construction of the necessary levees and drains, as in said act provided. The bill further alleges, on information and belief, that the said county has, at divers times, and in divers manners, sold and conveyed all the other and remaining parcels of said swamp and overflowed lands, and that the whole amount of the proceeds of such sales, exclusive of the sum of \$12,520.75, collected as interest money, is \$170,775.36, and that amount is more than sufficient to construct the necessary levees and drains, and to reclaim all of said swamp and overflowed lands, and render the same fit for occupation.

15 And that the said Board of Supervisors, disregarding their duty in

that behalf, and the trusts in them confided, have failed, neglected, and refused to construct the necessary drains and levees to reclaim said lands, or to determine what portion of the same are susceptible of being drained, or to make any estimate of the probable cost thereof, or to divide such as were drainable, for the purpose of drainage, or to make any such divisions thereof as to enable the purchasers thereof to pay for lands by them purchased, in work in respect to such drainage or otherwise, or to cause any work to be done in any sections, divisions or parts of said lands, or to cause any notice of any lettings thereof, as in said act provided, or otherwise, or to take any step, or do any act in respect of the construction of any drains or levees, or the reclaiming of said lands except as in said bill stated, or to suffer or to permit the said complainant, Bressler, or other purchasers, to pay or discharge the amount of their several purchases, or any part thereof, in labor, as in said act specified, or otherwise.

16       The bill further alleges, that some time in the year 1857, the said  
Board of Supervisors, under pretence of performing their duties and  
obligations in that behalf, did drain and reclaim some three thousand  
17       acres of said land, lying in a small body in a remote portion of the  
county, at an expense not exceeding \$5,000; and further, that said Board  
of Supervisors is threatening and preparing to squander and waste the  
proceeds of said sales, and to divide and distribute the same among the  
several towns of the said county, for some pretended school or other pur-  
pose, but in fact for the purpose of more conveniently and craftily avoid-  
ing the performance of their duty and the execution of the trusts in  
them confided as aforesaid, and to place it beyond their power to keep  
and perform the same.

18       The bill further alleges that for the reason that the said Board of Su-  
pervisors had failed and neglected to perform their duties, and to execute  
the trusts confided to them in respect to the draining and reclaiming of  
the said lands, had refused to make any other or further payments upon  
his said notes and mortgages, and that thereupon the Board of Supervi-  
sors commenced suit against him at the October term, A. D. 1859, in the  
Whiteside County Circuit Court, to recover of and from him the several  
installments of interest expressed to be paid in said promissory notes, ac-

ording to the terms and effect thereof, which suit is still pending and undetermined in said court.

21       The bill, after setting out certain alleged pretences of the said Board of Supervisors, further charges that said swamp and overflowed lands so lying within said county, were so granted to said county for the consideration, intent and purpose, and none other, and subject to all the trusts, conditions, provisions, limitations and requirements in that behalf above mentioned, and that by such grant and conveyance, the State of Illinois granted and conveyed to the said county such title, interest and estate, and no more nor greater than the said State had received in that behalf, and that inasmuch as it was made in the grant to said State an  
22       express condition that the whole of the proceeds of said swamp and overflowed lands should be applied exclusively, so far as necessary, to the purpose of reclaiming by means of the construction of the necessary levees and drains, and for the purpose of carrying into effect the trusts and conditions of such grant in that behalf, above mentioned, the State of Illinois did not and could not, by any law or otherwise, vacate the conditions and trusts appertaining to said grant, and absolve the said county from their duty and obligations in that behalf, to the loss and injury of the complainant, Peter Bressler, and to the injury and detriment of the inhabitants of said county and the people of said State, in so far as the said swamp and overflowed lands were and are for that reason noxious, malarious, and detrimental to the health and well being of the inhabitants of said county and the people of said State: and further, that the said complainant, Bressler, did not, by an act, matter, or thing, either expressly or by implication, waive any of the said duties resting upon said county, in respect of the draining and reclaiming of said lands, and that said Board of Supervisors has not, by such expenditure of about \$5,000, or otherwise, performed such trusts or discharged itself from liability in that behalf.

23       Oath to the answer waived in the bill, and prayer that upon the final hearing of the case that said county be required, by decree and order of the court, to observe, keep, fulfill and perform all and singular, the trusts, provisions and limitations aforesaid in respect of said grant and the re-

quirements and provisions of said acts, and particularly that the said Board of Supervisors be so required to use, appropriate and apply the whole of the proceeds of the said several sales, and such interest money arising thereon, or so much thereof as shall be necessary in and about the construction of the necessary drains and levees to reclaim said swamp and overflowed lands, and to that end, with all reasonable dispatch to ascertain and to determine what portions of said swamp and overflowed lands were and are susceptible of being so drained and re-

24 claimed, together with the probable and reasonable cost thereof, and immediately thereupon to divide such drainable lands into sections numbered respectively, 1, 2, 3, &c., and in so doing, to make such division thereof as will best enable the several purchasers of said land to pay and discharge the amounts of their respective purchases thereof, in necessary labor in that behalf as in said act approved June 22d, A. D. 1852, is particularly provided, and to suffer and permit the said complainant, Peter Bressler, to pay and discharge the amount of the purchase money and interest yet remaining unpaid of all the land by him so purchased, in necessary labor to be done by him in the construction of the necessary drains and levees, and in the reclaiming of the said lands by him so purchased, as in said act provided, and to do all other the acts, matters and things proper to be done by said county to the fulfillment of the trusts and performance of the conditions and requirements above mentioned in respect of said lands so granted to said county; and further, that the said Board of Supervisors and the Drainage Commissioner of said county, their, and each of their officers, agents and attorneys be perpetually enjoined from prosecuting said suit at law pending against the said Peter Bressler, and from instituting or prosecuting any suits or actions against him in respect of his said purchase money or

25 interest thereon until the said Board of Supervisors has first complied with the terms, conditions and requirements of such decree and order, as is prayed for as above, and further, until the said Peter Bressler shall have thereupon made default and refused, or failed to so pay for the land by him so purchased, in labor to be performed by him in that behalf; also, prayer for temporary injunction and general prayer for relief.

34           At the January term, A. D. 1861, of said court, defendant filed a  
general demurrer to the bill.

36           At the May term, A. D. 1861, of said court, the court overruled said  
demurrer, and the defendants not answering further, it was ordered by  
37           the court that the bill of complaint be taken as confessed as against the  
defendants; and thereupon the cause was heard and decree rendered for  
38-9          the complainants as follows, to wit: It is therefore ordered, adjudged  
and decreed by the court, that the said Board of Supervisors shall ob-  
serve, keep, fulfill and perform all and singular the trusts, provisions  
and limitations in said bill of complaint, more particularly mentioned in  
respect of the certain grant of lands and the provision of certain acts of  
the General Assembly of the State of Illinois in respect thereof, in that  
behalf, in said bill of complaint more particularly mentioned. And  
particularly, that the said Board of Supervisors shall appropriate and  
apply the whole of the proceeds arising from the several sales made by  
them, of the swamp and overflowed lands appertaining to said county,  
and the interest moneys arising therefrom for so much thereof as shall  
be necessary in that behalf, in and about the construction of the neces-  
sary drains and levees to reclaim said swamp and overflowed lands; and  
to that end that the said Board of Supervisors shall, with all reasonable  
dispatch, proceed according to law, to ascertain and determine what por-  
tions of said swamp and overflowed lands were and are susceptible of  
being drained and reclaimed, together with the probable and reasonable  
cost thereof, and shall immediately thereupon divide such drainable land  
into sections, numbered respectively, 1, 2, 3, &c., and, in so doing, shall  
make such divisions thereof as will best enable the several purchasers of  
said lands to pay and discharge the amounts of their respective pur-  
chases thereof, in necessary labor in that behalf, as in the certain act of  
the General Assembly of the State of Illinois, approved June 22d, A. D.  
40          1852, more particularly provided, and particularly shall suffer and per-  
mit the said complainant, Peter Bressler, to pay and discharge the  
amount of the purchase money and the interest yet remaining unpaid in  
respect of all the lands by him purchased in that behalf in necessary  
labor to be done by him, under the direction of the said Board of Super-  
visors, or of some officer thereof, in the construction of necessary drains  
and levees, and in the reclaiming of said lands by him so purchased, as

by law provided. And further, shall do and perform all other the acts, matters and things necessary and proper to be done by said county, or the proper officers thereof, in the fulfillment of the trusts and performances of the conditions and requirements limited and enjoined by said last mentioned act in the premises. And further, that the said Board of Supervisors and the Drainage Commissioner of said county, their, and each of their officers, agents and attorneys, absolutely and perpetually enjoined from prosecuting a certain suit at law, now pending in the Circuit Court of said county, in favor of the said Drainage Commissioner, and against the said complainant, Peter Bressler, more particularly entitled Peter V. Pollock, administrator of the estate of William Pollock, deceased, to the use of the county of Whiteside, &c., against Peter Bressler, and from instituting or prosecuting any suits or actions against him, the said Peter Bressler, in respect of his said purchase money or interest thereon, and from making any claim or demand in that behalf of or from the said Peter Bressler until the said Board of Supervisors shall have first complied with the terms, conditions and requirements of this decree and order; and further, until the said complainant, Peter Bressler shall have thereupon made default and refused or failed to thereupon so pay for the lands by him so purchased, in labor to be performed by him in that behalf as aforesaid. And further, that the said Board of Supervisors and the Drainage Commissioner and the School Commissioner of said county, their, and each of their officers, agents or attorneys, be absolutely and perpetually enjoined from dividing or distributing, among any of the towns or town officers of said county for any school or other purposes, any of the proceeds of said swamp and overflowed lands so appertaining to said county, or any interest moneys accruing thereon, or any securities, or choses in action taken or held in respect thereof, or from in any manner parting with the possession, custody or control of the same, or any part thereof, except to use and apply the same in the fulfillment of trusts and performance of the conditions and requirements of said last mentioned act in obedience to this decree, until the said Board of Supervisors shall have first kept and performed all and singular the conditions and requirements of this decree and order, and that the said defendants pay the costs of this suit.

STATE OF ILLINOIS,  
SUPREME COURT,

} ss. The People of the State of Illinois,

To the Sheriff of Whiteside - County, GREETING:

Because, In the record and proceedings, and also in the rendition of  
the judgment <sup>& Verdict</sup> of a plea which was in the Circuit -  
Court of Whiteside - County, before the Judge thereof, between  
Robert C. Burchell State Attorney of 22 Judicial  
Circuit of the State of Illinois & Peter Bessler  
Complainants  
plaintiff, and The Board of Supervisors of  
Whiteside County -

defendants, it is said that manifest error hath intervened, to the injury of  
the said Defendants.

as we are informed by them -  
complainants the record and proceedings of  
which said judgments 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

Robert C. Burchell  
& Peter Bessler

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 first Tuesday after the third Monday in April  
~~next~~ <sup>inst. next</sup> to hear the record and proceedings aforesaid, and the errors assigned, if  
they shall see fit; and further to do and receive what said Court  
shall order in this behalf; and have you show there the names of those by  
whom you shall give the said Burchell & Bessler

notice, together with this writ.

Witness, The Hon. John D. Eaton, Chief Justice of our  
said Court, and the Seal thereof, at Ottawa, this 12<sup>th</sup>  
day of April - in the year of our Lord One  
Thousand Eight Hundred and Sixty-two,

S. Seland  
Clerk of the Supreme Court.

The Board of Supervisors  
of Whiteside Co

No. 170 vs.

Peter Brejler v  
Robert C. Burchell

SCIRE FACIAS.

FILED April 22 A. D. 1862

S. Selman Clerk.

State of Missouri ss  
Whiteside County

I have duly served  
the within by reading the same to in  
the presence and hearing of Peter Brejler  
this 19<sup>th</sup> day of April A. D. 1862. The within  
named Robert C Burchell not found in  
my county this 19<sup>th</sup> day of April A. D. 1862

Robert G. Clevidence  
Sheriff of Whiteside

County By Edward Bush  
Depty. sheriff

Fees service 50  
Mileage 80  
return 10  
\$1.40

State of Illinois. Supreme Court  
At Ottawa. April Term 1862  
Error from Whiteside County

The Board of Supervisors  
of Whiteside County.

VS

Robert C. Churchill  
State's Attorney for 22<sup>nd</sup>  
Judicial District. vs  
Peter. Bussler

Plaintiffs  
in Error

Defendants  
in Error

Now Comes the  
said. plaintiffs in error by Henry Price  
and Sackett, and Samuel Strawder, their  
attorneys and say that in the record  
and proceedings aforesaid, and also  
in the decree aforesaid there is man-  
ifest error, in this, to wit. —

1<sup>st</sup> That the Court erred in over-  
ruling the demurrer to the Bill of  
Complaints, whereas by the Law of the  
Case the Court should have sustained the  
demurrer of the Defendants below.

2<sup>nd</sup> The Court erred in taking said Bill as Confessed as against the Defendants below and rendering the decree aforesaid therein without making any order for the Defendants to answer said Bill

3<sup>d</sup> The Court erred in rendering the decree aforesaid for the reason that decree is not authorized by the case made in the Bill and for the reason that the same is not authorized by the laws of the land

4<sup>th</sup> — There is a misjoinder of parties Complainsants in the Bill

5<sup>th</sup> The Court erred in rendering the decree aforesaid which is so vague and uncertain that the Defendants therein named cannot know with certainty what they are thereby required to do or perform

And the said plaintiffs in error that the decree aforesaid for the errors aforesaid and for other errors in said record proceedings and decree may

be reversed annulled and altogether held  
for naught, and the Case dismissed  
at the Cost of the Complainants in the  
Bill below, and that the said Board  
of Supervisors may be restored to all that  
they have lost by reason thereof, wherefore  
the said Board of Supervisors, pray that  
a writ or citation may issue accord-  
-ing to Law.

Henry Price & Sacket.  
and Samuel Strawder.  
Attys for Plaintiffs  
in Error

Shelton April 12 1862

S. Selana

clerk

October Term of the Whiteside County Circuit Court  
A.D. 1860

At a regular term of the Circuit Court in and for the County of Whiteside and State of Illinois begun and holden at the Court house in the Town of Morris in said County and State on the second Monday of October in the year of our Lord one thousand eight hundred and sixty (1860) it being the eighth day of said month and the Judge not arriving on this day the Court convened and organized on Tuesday morning October ninth A.D. 1860

Present Hon John V Eustace Judge of the twenty second Judicial Circuit in the State of Illinois  
Present Robert L Wilson Clerk of the Circuit Court in and for the County of Whiteside and the State of Illinois  
Present John Dippell Sheriff of the County of Whiteside and State of Illinois  
Present Robert C Burchell State attorney for the twenty second Judicial Circuit in the State of Illinois

Be it remembered that heretofore to wit on the twenty second day of May A.D. 1860 there was filed in the office of the Clerk of the Circuit Court of Whiteside County in the State of aforesaid a certain bill of Complaint & order for injunction which is in the words and figures following to wit

State of Illinois }  
 Whiteside County } Whiteside County Circuit Court of  
 the May Term thereof A.D. 1860

Robert C Burchell States attorney }  
 of the 29<sup>th</sup> Judicial Circuit of the State  
 of Illinois and Peter Bupler

vs

The Board of Supervisors of Whiteside  
 County State of Illinois

To the Hon John

V Eustace Judge of the twenty second Judicial Circuit  
 of the State of Illinois in Chancery sitting

Humbly Complaining

Sheweth unto your Honor your orators Peter Bupler  
 of the County of Whiteside in the State of Illinois and  
 Robert C Burchell duly elected and qualified States  
 Attorney of the twenty second Judicial Circuit of the State  
 of Illinois for and on behalf of the people of said State  
 that on the twenty eighth day of September in the year of our  
 Lord one thousand eight hundred and fifty, and ever since  
 that time there were, and are, lying, and being within  
 the County of Whiteside and State of Illinois large tracts  
 and quantities of land amounting in all to at least 65,  
 566 <sup>13</sup>/<sub>100</sub> acres, which were and are Swamp, wet and  
 overflowed, and thereby rendered unfit for occupancy,  
 tillage or cultivation and were and are also for that  
 reason noxious malarious and detrimental to the  
 health and well being of the Citizens of said County

and Annulled An

But all of which were and are of easy and practical drainage

And your Orators further State unto your Hon that up to the said 28<sup>th</sup> day of September A. D. 1850 All of the said tracts and quantities of such Swamp and overflowed lands, herein above mentioned and referred to remained and were of the public lands and domain of the general government of the United States

And your Orators further State unto your Honor, that under and by the certain act of Congress. Entitled "An act to enable the State of Arkansas and other States to reclaim the Swamp and overflowed lands within their limits" Approved September 28<sup>th</sup> A. D. 1850 by which were granted to the State of Illinois all the Swamp and overflowed lands lying and being within the limits of said State, then remaining the property of the United States, for the certain trusts interests and purposes in said act mentioned, (to which act your orators beg leave here specially to refer) the said Swamp and overflowed lands so lying and being in said County of Whiteside were among others for such trusts interests and purposes granted to and vested in the State of Illinois, that is to say for the purposes and to the intent that the said State of Illinois should cause to be constructed the necessary levees and drains, to reclaim and render fit for cultivation all such Swamp and overflowed lands so granted to said State for that purpose and with the express condition limitations and reservations that the proceeds of said lands, whether from sale

or by direct appropriation in kind should be applied exclusively so far as necessary, to the purpose of reclaiming said lands by means of such levees and drains as aforesaid, which said grant was thereupon accepted by said State, subject to the trusts conditions and limitations in that behalf aforesaid

And your orators further state unto your Honor that the said State of Illinois for the purpose of the more effectually carrying into effect the trusts conditions and limitations of said grant and without any consideration, other than the fulfillment of the trusts and the performance of the conditions and limitations hereinbefore and herein after in that behalf mentioned, did by act of the general assembly of said State entitled "An act to dispose of the Swamp and overflowed lands, and to pay the expenses of selecting and surveying the same" approved June 29<sup>th</sup> A.D., 1852. Grant and convey to the said County of Whiteside all the said tracts and quantities of Swamps and overflowed lands, so lying and being within the limits of said County and so amounting in all to at least 65,366  $\frac{13}{100}$  acres, upon the trusts and to and for the certain uses, trusts, interests and purposes, and subject to the limitations and conditions in said last mentioned act, and said act of Congress contained. That is to say, upon trust, and for the purpose that said County of Whiteside should thereupon construct all necessary drains and levees and reclaim

The whole of said Swamp and overflowed lands so lying  
 and being within the limits of said County, which were  
 and are susceptible of drainage, and under the same  
 fit for occupancy, tillage and cultivation, and thus no  
 longer noxious malarious and detrimental to the health  
 and well being of the inhabitants of the said County as  
 aforesaid. According to the provisions trusts and limitations  
 of said grant and conveyance to said County in all  
 things as limited provided and set forth in said Act  
 of Congress and last mentioned act and the sundry  
 Acts amendatory thereto. That is to say among other  
 things that the said lands so granted to said County  
 should be under the care and superintendance of the  
 Board of Supervisors of said County whose duty it sh-  
 ould be at the next regular term after the passage  
 of said last mentioned act so approved June 29<sup>th</sup>  
 A.D. 1852 to appoint an officer to be styled drainage  
 Commissioner of said County to perform the several acts  
 and things in that behalf in said last mentioned act  
 provided and to sell at public auction in the mode  
 provided in said last mentioned act to the highest  
 bidder for cash so much and such parts of said land  
 s. only as should be sufficient to fully drain and  
 reclaim the whole of said lands so granted to said  
 County, which said purchase money should be paid  
 and discharged by such purchasers at their option  
 respectively in labor to be performed by them respe-  
 ctively in the draining and reclaiming of said lands  
 as in said act provided

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And that to that end the said County by its proper officers in that behalf, after having ascertained what portion of said lands then were susceptible of being drained or reclaimed, with an estimate of the probable cost thereof should divide all such drainable lands into sections, numbering 1 2 3 &c respectively, and whenever there should be a sufficiency of said lands so sold to complete the draining and reclaiming of one or more of such sections, the same should as soon as practicable be put under contract, and the operation of draining and reclaiming commenced thereon, and in like manner should such work of drainage and reclaiming progress until the avails of said lands so granted to said County should be so exhausted, or the drainage thereof completed as in said last mentioned Act more particularly provided.

And that said County in so laying off said work into sections as aforesaid should make such divisions thereof as will enable such purchasers aforesaid to pay for said lands so respectively purchased by them in labor to be performed by them respectively, in and about the draining and reclaiming of said lands as in said last mentioned Act provided. And your orators further state unto your Honor that said County of Whiteside, upon receiving said grant of such swamp and overflowed lands so subject to the trusts limitations and provisions aforesaid, accepted the same together with said trusts so certified in it

right, and the Co  
of the

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The said County and took possession of said Swamp and overflowed lands, and entered upon the use management and control thereof under the trusts limitations and provisions of said grant, and the terms provisions and requirements of said last mentioned act and in pursuance and full performance thereof, did by the Board of Supervisors of said County on the 28<sup>th</sup> day of March A.D., 1855 appoint William Pollock drainage Commissioner of said County as in said last mentioned act provided, and did thereupon cause plats, and graduated valuation of said Swamp and overflowed lands to be duly made as in same act provided, and did on the same 28<sup>th</sup> day of March A.D., 1855, at the March Term A.D., 1855 of said Board of Supervisors after the making and return of such plats, and the making and recording of such graduated valuation, fix upon, order and appoint a time to-wit: the second Monday of October A.D., 1855 for the selling of a portion of such Swamp and overflowed lands to-wit: all that portion thereof lying north and west of Rock River and all that portion thereof lying south of Rock River in Township twenty (20) and twenty one (21) Range seven in said Co. the certain twenty five thousand three hundred and sixteen acres described in the certain notice in that behalf hereinafter mentioned, and did afterwards by their said drainage Commissioner, advertise for sale said lands so ordered to be sold, and did publish a notice thereof in the Sterling Times a weekly Newspaper published in

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in said County a copy of which notice is hereto  
attached and marked exhibit "A" and made a  
part of this bill

And your orator further states unto your Honor that  
afterwards on the 2<sup>d</sup> Monday of October A.D. 1853 being  
the day mentioned in that behalf in said published  
notice, the said County by the said drainage Commis-  
sioners under present that they the said County would  
apply the proceeds of said sale to the construction of  
the necessary drains and levees to reclaim said lands  
and would well and faithfully observe keep and perform  
all the trusts conditions and provisions of said grant  
as specified and contained in said several  
acts above mentioned, did sell large quantities  
of said swamp and overflowed lands so advertised  
to wit: 25 316,02 acres at various times and  
prices per acre amounting in the aggregate to at  
least 73,122,32<sup>1</sup>/<sub>100</sub> dollars

And your orator further  
states unto your Honor that all the lands <sup>so</sup> sold then  
were and ever since have been susceptible of easy &  
practicable drainage, and by the construction of the  
necessary drains and levees could and can be eas-  
ily and profitably reclaimed and rendered fit and  
suitable for occupancy tillage and cultivation as  
in said acts provided, at the expense of an amount  
of money much less than the proceeds of said sale

And your orators further State unto your Honor  
That afterwards on the \_\_\_\_\_ day of September A.D. 1855  
the Said County of Whiteside by the Said Board of Su-  
pervisors. did order and appoint other large quantities  
of Said Swamp and overflowed lands to be sold at  
public auction to-wit all that portion of Said lands  
lying South of Rock River and not heretofore ordered to  
be sold, and also the South tier of sections of Township  
Twenty (20) North range Seven (7) of Said County to be  
sold on the second Monday of March A.D. 1856, and  
did Cause a notice thereof to be published in the St-  
irling Times a weekly newspaper published in Said  
County a copy of which is hereto attached marked Ex-  
hibit "B" and did afterwards on the second Monday  
of March A.D. 1856 being the time specified in that  
behalf in Said last mentioned notice, under like  
pretence, that they the Said County incurred and  
apply the whole of the proceeds of Said several sales  
or so much thereof as should be necessary in that be-  
half in and about the construction of the necessary do-  
ams and levees, to reclaim Said Swamp and over-  
flowed lands so granted to Said County, and would  
well and faithfully observe - keep and perform, all the  
Trusts conditions and promises of Said grant in manner  
as specified and contained in Said last mentioned  
act, and that they the Said Board of Supervisors will  
suffer and permit your orator Peter Brepler and other  
the purchasers at Said last mentioned sale to pay  
and discharge the amount of their several and

respective purchases in that behalf in Rebor to be performed in respect of the draining and reclaiming of said lands, and the construction of the necessary drains and levees in that behalf as in said last mentioned act provided. did sell further large quantities of said Swamp and overflow lands so advertised as aforesaid to wit;

Acres thereof at various sums and prices per acre amounting in the aggregate to at least 77,150 <sup>88</sup>/<sub>100</sub> ——— dollars

And your orators further state unto your Honor that all of the said lands so sold at the said last mentioned sale thereof, and particularly all that portion thereof purchased by your orator Peter Bressler and hereinafter described, then were and ever since have been susceptible of easy and practicable drainage and by the construction of the necessary levees and drains could and can be easily and profitably reclaimed, and rendered fit and suitable for occupancy, tillage and cultivation as in said last mentioned act provided — at the expense of an amount of money much less than the proceeds of said last mentioned sale

And your orators further state unto your Honor that at such last mentioned sale to wit on the 2<sup>nd</sup> Monday of March A.D. 1856 your Orator Peter

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Brepler relying on the said pretences of said  
 County, and that they the said Board of Supervisors  
 would well and faithfully in all things and to all intents  
 carry into effect, observe keep and perform the terms, trusts  
 and conditions of said Grant according to the provisions  
 limitations and behests of said several acts above mentio-  
 ned, and particularly that said County would use  
 appropriate and apply the whole of the proceeds of said  
 several sales or so much thereof, as should be necessary  
 in that behalf in and about the construction of the nece-  
 ssary drains and levees to reclaim said Swamp and  
 overflowed lands, and would to that end with all rea-  
 sonable dispatch ascertain and determine what portions  
 of said Swamp and overflowed lands were susceptible of  
 being drained or reclaimed and would immediately  
 thereupon divide such drainable land into sections  
 numbered respectively 1, 2, 3 &c and in so doing would  
 make such divisions thereof as would best enable the  
 several purchasers of such lands to pay and discharge  
 the amount of their respective purchases thereof in ne-  
 cessary work as in said last mentioned act particular-  
 ly provided, and would suffer and permit your Or-  
 ator Peter Brepler as his option to pay and discharge  
 the amount of the purchase money of all lands by him  
 purchased in that behalf in necessary work and labor  
 to be done and performed by your orator, Peter Brepler  
 in the construction of necessary drains and levees and  
 in the reclaiming of said lands as in said acts provid-  
 ed, and in consideration thereof your orator Peter

Breplewus thereby persuaded and induced to become and did become a purchaser at such last mentioned sale of large quantities of said Swamp and overflowed lands so offered for sale and sold at sundry large prices and sums of money greatly exceeding respectively the value of said several parcels of land so purchased by your orator Peter Breplew on the condition that the same then were and yet are being so uninclosed and unreclaimed and unfit for occupancy tillage or cultivation a schedule of which said several parcels of land so purchased by your orator Peter Breplew together with the prices in that behalf is hereto attached marked exhibit "C" and made a part of this Bill

And your orator further state unto your Honor that your orator Peter Breplew did thereupon pay in cash to said County

dollars being one fourth of the purchase money aforesaid and did make and deliver to said County the several promissory notes of your orator Peter Breplew amounting in the aggregate to the said remaining sum of \$706.04 dollars being the remaining three quarters of said purchase money payable to said Drainage Commissioners in five years after the date thereof with interest thereon at the rate of six per cent per annum payable semiannually in advance and as a further security in that behalf did make execute and deliver to the said Drainage Commissioners certain mortgages on the real estate by your orator Peter

Brepler so purchased, and conditioned among other things for the payment of the said notes respectively and interest according to their respective tenor and effect and did at the same time receive and from the said County certain deeds of conveyance in that behalf conveying to your orator Peter Brepler from said board of supervisors in fee all the lands by your orator Peter Brepler so purchased true copies of which said deeds mortgages and notes are hereto attached marked respectively exhibits and made a part of this your orator's bill of complaint

And your orator further states unto your Honor that immediately after the giving of said notes and mortgages your orator Peter Brepler did on the same day pay unto said drainage Commissioners the interest thereon in advance for the half year then next ensuing, and did also in like manner from time to time as the same became due and payable according to the tenor and effect of said notes and mortgages pay to the said drainage Commissioners sundry other large sums and instalments of interest upon said notes and mortgage amounting in all to at least 684,75 $\frac{1}{10}$  dollars all of which said several sums so paid by your orator Peter Brepler were to be used and applied by said drainage Commissioners, in and about the draining and reclaiming of said lands, and the fulfilment of the trusts and conditions in that behalf above mentioned and all of which said purchase money of your orator, and particularly all the said balance and remaining sum of 5,706.04

Dollars your orator was and ever since has been greatly  
desirous to pay and discharge in labor to be done by  
your orator Peter Buepler in respect of the draining and  
reclaiming of said lands, and in construction of the neces-  
sary levees and drains as in said act provided

And your orator further shew unto your Honor that  
the said Board of Supervisors since the time of making  
the two several sales aforesaid has as your orator are  
informed and believes at divers times and in divers man-  
ners sold and conveyed all the other and remaining  
parcels of said Swamp and overflowed lands so granted  
to said County and has received therefrom other large  
sums of money in addition to the said several amounts  
above mentioned.

And your orator further shew  
unto your Honor that the whole amount of the proceeds  
of said Swamp and overflowed lands so from time  
to time sold by said County exclusive of sundry large  
sums and amounts to wit the aggregate sum & amount of  
12,520 <sup>75</sup>/<sub>100</sub> — Dollars collected and received by said  
County, as and for interest money in respect of said sales  
is as your orator are informed and believes about but not  
less than 170,775 <sup>36</sup>/<sub>100</sub> — Dollars, and the said

amount and proceeds so received by said County in that  
behalf, is an amount more than sufficient to construct  
the necessary levees and drains, and to reclaim all of  
said Swamp and overflowed lands so granted to said  
County and render the same fit for occupancy, tillage  
and cultivation in pursuance of the trusts and

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Conditions of said grant and the requirements and provisions of said last mentioned act

And your orators further state unto your Honor that the said Board of Supervisors disregarding their duty in that behalf and the Trusts in them so conferred as aforesaid and in violation of the promises and limitations of said grant, and the requirements and behests of said last mentioned act in that behalf, although they the said Board of Supervisors have received such large amounts and sums of money, as and from the proceeds of such Swamp and overflowed lands by the said Board of Supervisors sold as aforesaid have utterly failed neglected and refused to construct the necessary drains and levees to reclaim said Swamp and overflowed lands, or to ascertain and determine in the mode indicated in said acts or otherwise, which or what portions of said Swamp and overflowed lands are or were susceptible of being drained, or to make an estimate of the probable cost thereof or to divide such drainable lands or any part thereof into sections numbered 1, 2, 3 &c or otherwise for the purpose of drainage, or to make any such divisions thereof in that behalf as would enable the said purchasers thereof to pay for lands by them so respectively purchased or any part thereof in work in respect of said drainage or otherwise, or to cause any work to be done in any sections, divisions, or parts of said Swamp and overflowed lands, or to cause any notice of any lettings thereof to be posted up or published as in said act provided or otherwise or to issue any slips or to do

Any act matter or thing in respect of the construction of any drains or levees or the reclaiming of said swamp and overflowed lands or the fulfillment of said trusts and requirements in their behalf except as herein after stated, or to suffer or permit your orator Peter Brepler or other the purchasers of said swamp and overflowed lands to pay for the same or to discharge the amount of their several purchases or any part thereof in labor to be performed in respect to said drainage as in said act specified or otherwise

And your orator further states unto your Honor that the said Board of Supervisors well knowing their duties and obligations in their behalf and under pretence of performing the same did on the day of \_\_\_\_\_ A.D., 1857 as your orator are informed and believes by the construction of certain inefficient drains and levees, pretend to have drained and reclaimed a certain small portion to wit not exceeding 3000 acres of said lands, lying in a small body in a remote portion of said County at an expense however of not exceeding 5000 dollars leaving still in the hands of said County of the proceeds of said swamp and overflowed lands at least the sum of 200,000 dollars and taking no measures or steps whatever in respect of the draining and reclaiming of said swamp and remaining 62,366 <sup>1</sup>/<sub>100</sub> acres of land so granted to said County although the same was and is susceptible of easy and practicable drainage as aforesaid

And your orator further State unto your Honor that Said Board of Supervisors is threatening and preparing to squander and waste the said proceeds of said lands so sold as aforesaid, and to divide and distribute the same among the several Towns in said County for some pretended School or other purposes, but in truth and in fact for the purposes of the more conveniently and craftily avoiding the performance of their duty and the execution of the trusts in them Confided as aforesaid in respect of the drainage and reclaiming of said lands, and to place it beyond their power to keep and perform. Such trust and conditions and requirements in that Behalf. And your orator further State unto your Honor that your orator Peter Buepler being so greatly desirous to so discharge and pay the amount of his said purchase money in work to be performed by him in respect to draining and reclaiming said Swamp and overflowed lands, as in said act provided, and said Board of Supervisors having also in their part so utterly neglected and refused to drain and reclaim said lands or to use and apply, and of the proceeds of such sales for that purpose or to keep and perform and of the trusts in them so Confided, or to suffer or permit your orator Peter Buepler to pay and discharge the amount of his said purchase in labor to be performed by him in respect of the drainage of said lands as aforesaid, your orator Peter Buepler did thereupon for that reason refuse to make any other or further payments of interest upon said notes and mortgage, Whereupon the said

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Board of Supervisors afterwards on the 28 day of September  
A.D. 1859 caused to be prosecuted out of the office of  
the Clerk of the Circuit Court of said County a certain writ  
of Summons against your orator Peter Brepler in favor  
of Peter & Pollock Administrators of the Estate of William  
Pollock deceased for the use of the County of Whiteside  
in a certain plea of assumpsit to the damage of said  
plaintiff as in said writ alleged of five hundred dollars  
returnable on the second Monday of October A.D. 1859 at  
the Term of said Court then to be holden in said County  
which said suit was so instituted and prosecuted from  
term to term in said Court to recover of and from your  
orator Peter Brepler the several installments of interest  
expressed to be paid in said promissory notes according to  
the tenor and effect thereof and for no other claim or dam-  
and matter or thing whatever, which said suit is still pen-  
ding and undetermined in said Court

And your orator further state unto your Honor that  
your orator Peter Brepler is and ever has been desirous  
that the said Board of Supervisors would well and faith-  
fully carry into effect observe keep and perform the terms  
trusts and Conditions of said grant according to the pro-  
visions limitations and behests of said last mentioned act  
and particularly that said Board of Supervisors would  
use appropriate and apply the whole of the proceeds of said  
several sales or so much thereof as should be necessary in  
that behalf in and about the construction of the necessary  
drains and levees to reclaim said Swamp and overflow  
-bed

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lands, and should to that end with all reasonable dispatch ascertain and determine what portions of said Swamp and overflowed lands are susceptible of being drained and reclaimed, and should immediately thereupon divide such drainable lands into sections numbered respectively 1, 2, 3 &c and in so doing should make such division thereof as would best enable the several purchasers of said lands to pay and discharge the amounts of their respective purchases thereof in necessary labor, as in said last mentioned act particularly provided, and would suffer and permit your orator Peter Brepler to pay and discharge the amount of the purchase money yet remaining unpaid of all lands by him purchased in that behalf in necessary labor to be done by him in the construction of drains and levees, and in the reclaiming of said Swamp and overflowed lands, as in said act provided and would do all other the acts matters and things proper to be done by said Board of Supervisors to the fulfillment of the trusts and performance of the conditions and requirements above mentioned in respect of said lands, and to that end your orator Peter Brepler has made frequent applications to the said Board of Supervisors. And your orator had well hoped that the said Board of Supervisors would have complied with such reasonable requests as in justice and equity they ought to have done. But now so it is may it please your Honor said Board of Supervisors refuse under various pretences all of which are untrue, to comply with such Reas-

enable requests of your orator. That is to say the said Board of Supervisors. Sometimes pretending that they the said Board of Supervisors had received, and up to the time of such several sales had held and owned said lands so granted to them absolutely in fee simple free and discharged of and from all and every the trusts limitations conditions and provisions in that behalf above mentioned and that they the said County were not bound at law to fulfill and discharge any such trusts limitations or provisions or to do any act in respect to the draining or reclaiming of said Swamp or overflowed lands or any part thereof. And sometimes again pretending that although the said County had received and did up to the time of such sales respectively hold said lands subject to the trusts limitations and conditions and promises in that behalf above mentioned yet that then the said County by a certain act of the legislature of this State entitled "an act to legalize certain acts and proceedings of the Board of Supervisors of White Side County in relation to the sale and conveyance of the Swamp and overflowed lands situated in said County in force Feb 18" A.D. 1859 had been and were by said last mentioned act absolved and discharged of and from all duty and liability in respect of the fulfillment of the trusts and the performance of the conditions and provisions in respect of the draining and reclaiming of said lands in that behalf above mentioned and sometimes again pretending that your orator

Peter Beppler, and other the purchasers of such Swamp and overflowed lands, by having complied with the terms of such several sales in the payment of a portion of their respective purchase money, and the giving of the notes and mortgages and the payment of certain installments of interest in that behalf had thereby received all claim against said County in respect of the draining and reclaiming of said Swamp and overflowed lands, and the said County was thereby absolved from their duty and liability in that behalf. And sometimes again pretending that by the expenditures of the said sum of about Five Thousand dollars in the construction of such insufficient drains and levees above mentioned, said County had fully kept, discharged, performed, and complied, with the several trusts, terms, conditions and provisions of said grant above mentioned, whereas in fact your orators on the contrary expressly charge and so aver the truth to be, that said Swamp and overflowed lands so lying within said County were so granted to said County for the consideration interest and purpose, and none other and subject to all the trusts, conditions, provisions, limitations and requirements in that behalf above mentioned, and that by such grant and conveyance to said County the said State of Illinois so granted and conveyed to the said County, such title interest and estate and no more or greater than they the said State had received in that behalf and in as much as it was made in the terms of said grant to said State an express

Condition that the whole of the proceeds of said  
 Swamp and overflowed lands whether from sale  
 or direct appropriation in kind should be applied  
 exclusively as far as necessary to the purpose of recla-  
 iming said land by means of the construction of the  
 necessary levees and drains and for the purpose  
 of carrying into effect the trusts and conditions of  
 such grant in that behalf above mentioned. The  
 said State of Illinois did not and could not by any  
 law or otherwise vacate the conditions and trusts  
 appertaining to said grant, and absolve the said Co-  
 unty from their duty and obligations in that behalf  
 to the loss and injury of your orator Peter Brepler  
 and other the purchasers in that behalf and to the  
 injury and detriment of the inhabitants of said Cou-  
 nty and the People of the State of Illinois, in so far  
 as said Swamp and overflowed lands were and are for  
 that reason noxious malarious and detrimental to the he-  
 alth and well being of the inhabitants of said County and  
 the people of said State of Illinois. And your orator further  
 expressly charge that your orator Peter Brepler did not ever  
 by any act matter or thing either expressly or by implication  
 or waive any of the said duties so vesting upon said County  
 in respect of the draining and reclaiming of said lands  
 and the performance of the trusts above mentioned and  
 that said Board of Supervisors has not by such expen-  
 iture of about Ten thousand dollars or otherwise as above  
 pretended performed such trusts or discharged itself

from liability in that behalf.

In tender consideration whereof, and in as much as your orators are remediless at and by the strict rules of Common Law, and can only obtain relief in a Court of Equity, where matters of this kind are properly Cognizable and relievable, wherefore your orators have been advised to apply to this Hon Court for aid and direction in the premises. To the end therefore that the said Board of Supervisors of said County of Whiteside whom your orators pray may be made a party defendant herein may full true and perfect answers make to all and singular the allegations and Charges aforesaid but without oath, the answer of said defendant on oath being hereby in pursuance of the Statute in such case made and provided expressly waived, and upon the final hearing of this Cause that said County be required by Decree and order of this Hon Court to observe keep full fill and perform all and singular the trusts provisions and limitations aforesaid in respect of said grants and the requirements and provisions of said Acts.

And particularly that the said Board of Supervisors be so required to use appropriate and apply the whole of the proceeds of said several sales, and such interest moneys arising thereon or so much thereof as shall be necessary in that behalf in and about the construction of the necessary drains and levees to reclaim said Swamp and overflowed lands, and to that end with all reasonable dispatch to ascertain and determine what portions of said Swamp and overflowed lands are and are

Susceptible of being so drained and reclaimed together with the probable and reasonable cost thereof, and immediately thereupon to divide such drainable land as into sections numbered respectively 1 2 3 & c and in so doing, to make such division thereof as will best enable the several purchasers of said land to pay and discharge the amounts of their respective purchases thereof in necessary labor in that behalf as in said act approved June 22<sup>nd</sup> A.D., 1852 particularly provided and to suffer and permit your orator Peter Buepler to pay and discharge the amount of the purchase money and interest yet remaining unpaid of all the land by him so purchased in that behalf in necessary labor to be done by him in the construction of the necessary drains and levees, and in the reclaiming of said lands by him so purchased, as in said acts provided and to do all other the acts <sup>and</sup> <sup>things</sup> proper to be done by said County to the fulfillment of the trusts and performance of the conditions and requirements above mentioned in respect of said lands so granted to said County, and that said Board of Supervisors, and the Drainage Commissioners of said County, their and each of their officers agents and attorneys, be absolutely, and perpetually enjoined from further prosecuting said suit at law now so pending against your orator Peter Buepler and from instituting or prosecuting any suits or actions against him in respect of his said purchase money or interest thereon, and from making any claim or

demand in that behalf of or from your orator Peter  
 Baepfer untill the said Board of Supervisors has  
 first complied with the terms and conditions and  
 requirements of such decree and order, so herein above  
 payed for, and further untill your orator Peter Baep-  
 fer shall have thereupon made default and refused  
 or failed to thereupon so pay for the land by him so  
 purchased in labor to be performed by him in that  
 behalf as aforesaid. And that in the mean time  
 and untill such final order and decree herein the  
 said Board of Supervisors and the Drainage Commis-  
 sioner of said County, their and each of their officers agents  
 and Attorneys be absolutely & strictly enjoined from further  
 or prosecuting said suits of law now so pending against  
 your orator Peter Baepfer, and from instituting or prosecut-  
 ing any suits or actions against him in respect of his said  
 purchase money or interest thereon, or from making any  
 claim or demand in that behalf of or from your orator  
 Peter Baepfer, or from dividing or distributing among any  
 of the Towns or Town officers of said County for any school  
 or other purpose any of the proceeds of said lands on any  
 interest money accruing thereon or from in any manner  
 parting with the possession custody ownership or control  
 of the same or any part thereof, except to use and apply  
 the same in fulfillment of the trusts and the perform-  
 ance of the conditions and requirements of said several  
 acts as herein above mentioned and set forth, and that  
 your orator may have such further relief or such other  
 relief as the nature of this case may require, and as

shall be agreeable to equity and good conscience  
 May it please your Honor to grant unto  
 your orator the Peoples writ of Injunction issuing out  
 of and under the seal of this Hon Court, directed to the  
 said Board of supervisors and the drainage Commif  
 ioner of said County their and each of their Agents and  
 Attorneys, Commanding them and each of them absolu  
 tely to desist and refrain from further prosecuting  
 said suit at law now so pending against your orator  
 Peter Buefler, and from instituting or prosecuting any  
 suits or actions, against him in respect of his said pur  
 chase money or interest thereon or from making any Cl  
 aim or demand in that behalf of or from your orator  
 Peter Buefler or from dividing or distributing among  
 any of the Towns or Town officers of said County for  
 any school or other purposes, any of the proceeds of said  
 lands or any interest money accruing thereon, or from in  
 any manner parting with the possession ~~constructive~~ owner  
 ship or control of the same or any part thereof, except to  
 use and apply the same in fulfillment of the trusts and  
 the performance of the conditions and requirements of said  
 several acts as herein above mentioned and set forth

May it please your Honor to grant unto your orator  
 the writ of Subpoena issuing out of and under the seal  
 of this Hon. Court directed to the said Board of super  
 visors of Whiteside County in the State of Illinois Comma  
 nding them by a certain day and under a certain pen  
 alty to be and appear before your Honor in this case

or, in this, to see

27

Circuit Court in Chancery sitting to answer this  
your orators bill of Complaint: and further to stand  
to and abide by such order and decree in the premises  
as shall be agreeable to Equity and good Conscience and  
as to your Honor shall seem meet.

And your orators as in duty bound shall ever pray &c

Peter Baepfer

Edw. Kirk  
Compt<sup>rs</sup> Sol

State of Illinois }  
Whiteside County }

Peter Baepfer one of the above named  
Complainants being first duly sworn according  
to law in that behalf on his oath says that he has  
heard read the foregoing bill of Complaint subscribed by  
him and knows the contents thereof and that all the  
matters and things therein contained are true of his  
own knowledge except as to those matters therein stated  
on information and belief and as to those matters he  
believes them to be true

Peter Baepfer

Subscribed and sworn to before me this  
29<sup>th</sup> day of March A.D. 1860

Edw. Kirk J.P.

Seal

"Exhibit C"

SW 1/4 of Sec 4 - T. 19 - R. 6 - 160 acres at 2.47 per a.	\$ 396
NE 1/4 of SW 1/4	204
SW 1/4 of SE 1/4	80
NE 1/4 of NE 1/4	185
SE 1/4 of NE 1/4	164
SE 1/4	240
SW 1/4 of NW 1/4	404
NE 1/4	488
NW 1/4 or 2 SW 1/4	212.62
NW 1/4 of SE 1/4	236
SW 1/4 of NW 1/4	120
SE 1/4 of NE 1/4	80
NW 1/4 of NW 1/4	114.80
SW 1/4 of SE 1/4	320
NW 1/4 of NW 1/4	520
<b>\$ 3983.42</b>	

State of Illinois }  
Whiteside County } Circuit court of Whiteside County  
of the May Term A.D. 1860

Robert C Burchell States attorney of 22<sup>nd</sup>  
Judicial Circuit of the State of Illinois and  
Peter Brepler

vs  
The Board of supervisors of Whiteside  
County State of Illinois

This application

for injunction having been made and argued by  
Counsel for complainants and defendants prior to  
the May Term A.D. 1860 of said Court;

"It is ordered that the Clerk of said Court file said  
bill as of the first day of ~~the~~ May Term A.D. 1860 of said  
Court nunc pro tunc

And it is further ordered that said Clerk thereupon  
issue an injunction in said cause as in said bill pro-  
posed for

Dated this 31 day of August A.D. 1860 John W. Wallace  
Judge 22<sup>nd</sup> J.C.

And afterwards to wit on the eleventh day of September A.D., 1860. there was issued out of the office of the Clerk of said Circuit Court and under the Seal thereof the peoples writ of Summons directed to the Sheriff of Whiteside County to execute and clothe in the words and figures following to wit;

State of Illinois }  
Whiteside County }<sup>ss</sup>

The People of the State of Illinois  
To the Sheriff of said County Greeting;

We Command you that you summon The Board of Supervisors of Whiteside County State of Illinois, if they shall be found in your County, personally, to be and appear before the Circuit Court of said County on the first day of the next term thereof, to be holden at the Court House in Morrison in said Whiteside County on the second Monday of October next to answer unto Robert C Burchell States attorney of 22<sup>nd</sup> Judicial Circuit of the State of Illinois and Peter Brepler in their certain Bill of Complaint filed in the said Court on the Chancery side thereof.

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

Witness R L Wilson Clerk of said Court and the Seal thereof at Morrison this 11<sup>th</sup> day of September A.D. 1860

R L Wilson Clerk  
per J. C. [unclear] Sept 11<sup>th</sup> 1860

Seal

And afterwards to wit on the thirtieth day of September in the year last aforesaid there was issued there was issued out of the office of the Clerk of said Circuit Court and under the seal thereof the People writ of injunction directed to the Sheriff of Whiteside County to execute clothed in the words and figures following to wit:

State of Illinois }  
Whiteside County }

The People of the State of Illinois to the Board of supervisors of Whiteside County State of Illinois, and the drainage Commissioners of said County. Whereas it has been represented to John C. Eustace Judge of the 22<sup>nd</sup> Judicial Circuit in the State of Illinois on the part of Robert C. Burchell State attorney of said 22<sup>nd</sup> Judicial Circuit in the State of Illinois, and Peter Kueper by Bill filed in the Circuit Court of said County and State on the Chancery side thereof against you the said Board of supervisors of Whiteside County State of Illinois and the drainage Commissioners of said County, you and each of you, your officers agents and attorneys among other things that you are threatening to injure and oppress the said Complainant touching the matters and things set forth in said Complainants Bill of Complaint, and that your actings and doings in the premises are contrary to equity and good conscience, and whereas by an order bearing date the 31<sup>st</sup> day of August

A.D. 1860 the said John O. Cusack Judge as aforesaid  
 that writ of Injunction should issue in accordance  
 with the prayer of said Bill of Complaint. Now therefore  
 in Consideration of the premises we do strictly Com-  
 enjoin and restrain you the said Board of Supervisors  
 and said drainage Commissioners you and each of you your  
 officers agents & attorneys absolutely to desist and refrain from  
 further prosecuting any suits at law now pending against  
 the said Peter Baepfer, and from instituting or prosecuting  
 any suits or actions against him in respect to the purch-  
 ase money or interest due for the purchase of certain Swamp  
 Lands purchased by said Peter Baepfer and now fully desc-  
 ribed in said Complainant's said Bill of Complaint filed  
 herein or from making any claim or demand in that beh-  
 alf of or from said Peter Baepfer or from dividing or distri-  
 buting among any of the Towns or Town officers of said  
 County for any school or other purposes any of the proceeds  
 of the sale of said Swamp Lands or any interest money  
 accruing thereon or from in any manner parting with the  
 possession custody ownership or control of the same or  
 any part thereof except to use and apply the same in the  
 fulfillment of the trusts and the performance of the con-  
 ditions and requirements of the said several acts as  
 mentioned and set forth in said Complainant's said  
 Bill of Complaint. And this you will not omit at your  
 peril. To the Sheriff of said County to execute

Witness R. L. Nelson Clerk of our said Court and the seal

Sherrif as above on this 13<sup>th</sup> Sept 1860

(Seal)

R. L. Nelson Clerk  
 per R. L. Nelson dep



And afterwards to wit: on the 30<sup>th</sup> day of January  
in the year of our Lord one thousand eight hundred  
and sixty one the said defendants by their attorney  
filed in the said Circuit Court of Whiteside County  
their certain demurrer to said Complainants Bill  
clothed in the words and figures following to wit:

The State of Illinois }  
Whiteside County } 3

Robert C. Burchell State attorney of 22<sup>nd</sup>  
Judicial Circuit of the State of Illinois  
and Peter Buepler

v,  
The Board of Supervisors of Whiteside  
County & State of Illinois

The demurrer of  
the said Board of Supervisors of the said County of  
Whiteside. Respondents to the Bill of Complaint of the  
said Robert C. Burchell State attorney of the 22<sup>nd</sup> Jud-  
icial Circuit of the State of Illinois and Peter Buepler  
Complainants.

The Respondent by protestation not  
Confessing or acknowledging all or any of the matters  
or things in and by the said Bill set forth and Com-  
plainant of to be true in manner and form as the same  
are therein set forth and alleged, and the respondent  
say that they are advised that there is no matter  
or thing in the said Bill contained good and suffi-  
cient in law to call these defendants in question in  
this Honorable Court for the same but that there is

good cause of demurrer thereto, and therefore these  
 defendants say that the Complainants said Bill  
 in case the allegations therein contained were true  
 which these defendants doth in no sort admit  
 Contains nor any matter or equity wherein this Court  
 can grant any decree or give the Complainants  
 any relief or assistance as against these defendants  
 wherefore and for divers other errors and imperfections  
 in said Bill appearing, these defendants doth demur  
 in law therunto and humbly demands the judgement  
 of this Honorable Court, whether they shall be Compelled  
 to put in any further or other answer to the said Bill  
 and humbly prays to be hence dismissed with their  
 reasonable costs in this behalf most wrongfully  
 sustained  
 Secrett & Strawser  
 Solicitors for respondent

May Term A. D. 1861

At a regular Term of the Circuit Court in and for the  
 County of Whiteside and State of Illinois begun and holden  
 at the Court House in the Town of Morris in said County  
 and State on the third Monday of May in the year of our Lord  
 one thousand eight hundred and sixty one being the second  
 day of said month and the judge not arriving on this day  
 the Court convened and organized on Tuesday morning May  
 twenty first A. D. eighteen hundred and sixty one

Present Hon John W. Craswell Judge of the twenty  
second judicial circuit in the State of Illinois

Present Addison Farrington Clerk of the Circuit Court in and  
for the County of Whiteside and State of Illinois

Present David M. Carney States Attorney for the twenty second  
Judicial Circuit in the State of Illinois

Present Robert G. Clendenin Sheriff in and for the County  
of Whiteside and State of Illinois

Attest A Farrington Clerk

And afterwards to wit on the thirty first (31) day  
of May A.D. 1861 it being one of the judicial days  
of said term of said Court, the following among other  
proceedings were had and entered of record to wit:

101	"	Robert C. Burchell States Attorney	} Injunction
	"	and Peter Brepler	
	"	vs	
	"	The Board of Supervisors of Whiteside County	

This day came the  
said complainant by Erik their solicitor and the  
said defendants by Alexander & Bristol and Henry  
Prier & Sackett their solicitors, and the demurrer to  
the said complainants Bill of Complaint entered  
herein at a former term of this Court is this day overruled  
and by the Court, to which ruling the said defendants  
by their solicitors excepts. And the said defendants

not answering further. it is ordered by the Court that the said Complainants bill of Complaint, and the matters and things therein contained be taken as confessed against the said defendants. And that upon this cause is heard and a decree rendered for the Complainant in the words and figures following

Ad vit;

State of Illinois }  
Whiteside County }

Circuit Court of Whiteside  
County of the May Term A.D. 1861

Robert C Burchell States Attorney  
of 22<sup>nd</sup> Judicial Circuit of the  
State of Illinois and  
Peter Buxler

The Board of supervisors of  
Whiteside County, State of Illinois

And now on this 31<sup>st</sup>  
day of May A.D. 1861 this cause being called for  
hearing, and it appearing to the Court that a summons  
in Chancery duly issued herein had been served upon  
the said Board of supervisors at a regular session thereof  
in the manner prescribed by law. more than ten days  
previous to the first day of the present term of this court  
as appears by said summons, and the return of the  
Sheriff of said County endorsed thereon and now on file  
herein. And the said Complainants appearing,

by E. N. Kirk their solicitor and the said defend-  
 ants by Frederick Sackett Esq and Samuel Straw-  
 der Esq their solicitors and said Cause coming on  
 to be heard upon the said Complainants Bill of Com-  
 plaint, and the general Demurrer of the said Defendants  
 filed thereto. And the Court having heard the argument  
 of Counsel and being sufficiently advised of the premises  
 and being satisfied that the said Bill of Complaint is  
 in all things good and sufficient. And that the said  
 Demurrer thereto ought not to be sustained either as to  
 the whole or any part thereof. It was therefore ordered  
 by the Court, that said demurrer, &c. and the same is  
 hereby overruled. And the said Defendants by their  
 said Solicitors declining to answer further in the  
 premises. On motion of the said Complainants by  
 their said Solicitors it is ordered by the Court that  
 the said Bill of Complaint and the matters and  
 things therein alleged be taken as confessed as against  
 the said Defendants. And thereupon this Cause coming  
 on to be heard upon the said Complainants Bill  
 of Complaint and the proofs and exhibits introduced  
 herein by the said Complainants, and the Court  
 now being sufficiently advised of the premises and being  
 satisfied that the proofs and exhibits herein fully prove  
 all the material allegations in said Complainants  
 bill of Complaint, and being satisfied of the truth  
 thereof. And no sufficient reason to the contrary ap-  
 pearing it is therefore ordered Adjudged and decreed  
 by the Court, that the said Board of Supervisors

Shall observe keep fulfill and perform all and singular the trusts provisions and limitations in said Bill of Complaint more particularly mentioned in respect of the certain grant of lands. And the provision of certain acts of the general assembly of the State of Illinois in respect thereof in that behalf in said Bill of Complaint more particularly mentioned. And particularly that the said Board of supervisors shall use appropriate and apply the whole of the proceeds arising from the several sales made by them of the Swamp and overflowed lands, appertaining to said County, and the interest moneys arising therefrom for so much thereof as shall be necessary in that behalf in and about the construction of the necessary drains and levees to reclaim said Swamp and overflowed lands. And to that end that the said Board of Supervisors shall with all reasonable dispatch proceed according to law to ascertain and determine what portions of said Swamp & overflowed lands were and are susceptible of being drained and reclaimed together with the probable reasonable cost thereof And shall immediately thereupon divide such drainable land into sections numbered respectively 1 2 3 & c and in so doing shall make such divisions thereof as will be most agreeable to the several purchasers of said lands to pay and discharge the amounts of their respective purchases thereof in necessary labor in that behalf as in the certain act of the general assembly of the State of Illinois approved

lands

June 22<sup>nd</sup> A. D. 1852. More particularly provided,  
 And particularly shall suffer and permit the said  
 Complainant Peter Bupler to pay and discharge the  
 amount of his purchase money, and interest yet remain-  
 ing unpaid in respect of all the lands by him purch-  
 ased in that behalf, in necessary labor to be done by him  
 under the direction of said Board of supervisors or of some  
 officer thereof in the construction of necessary drains and  
 levees, and in the reclaiming of said lands by him so  
 purchased, as by law provided. And further shall  
 do and perform all other the acts matters and things  
 necessary and proper to be done by said County or the  
 proper officers thereof in the fulfillment of the trusts and  
 performance of the conditions and requirements limited  
 and enjoined by said last mentioned Act in the p-  
 remises. And further that the said Board of  
 Supervisors and the drainage Commissioner of said  
 County their and each of their officers agents and atto-  
 rneys be absolutely and perpetually enjoined from  
 further prosecution of a certain suit at law now pend-  
 ing in the Circuit Court of said County in favor of  
 the said drainage Commissioner, and against the  
 said Complainant Peter Bupler, more particular-  
 ly entitled "Peter V Pollock administrator of the  
 Estate of William Pollock deceased to the use of the  
 County of Whiteside &c against Peter Bupler and from  
 instituting or prosecuting any suits or actions against  
 him the said Peter Bupler in respect of his said  
 purchase money or interest therein and from making

Any claim or demand in that behalf of or from the said  
 Peter Brepler until the said Board of supervisors shall  
 have first complied with the terms conditions and require-  
 ments of this decree and order and further until the said  
 Complainant Peter Brepler shall have thereupon made default  
 and refused or failed to thereupon so pay for the lands by him  
 so purchased, in labor to be performed by him in that behalf as  
 aforesaid. And further that the said Board of Supervisors  
 and the drainage Commissioner and School Commissioner of  
 said County, their and each of their officers agents or attorneys  
 be absolutely and perpetually enjoined from dividing or distribu-  
 ting, among any of the towns or town officers of said County for  
 any school or other purpose, any of the proceeds of said Dr-  
 ainage and overflowed lands so appertaining to said  
 County or any interest monies accruing thereon, or any  
 securities or choses in action taken or held in respect  
 thereof, or from in any manner parting with the possession  
 custody or control of the same or any part thereof except  
 to use and apply the same in the fulfillment of the  
 trusts and ~~the~~ performance of the conditions and require-  
 ments of said last mentioned act in obedience to  
 this decree, until the said Board of Supervisors shall  
 have first kept and performed all and singular the  
 conditions and requirements of this decree and order.  
 And that the said defendants pay the costs of this  
 Suit

John V. Curran

July 22<sup>nd</sup> J.C.

Supreme Court of the State of  
Illinois at Ottawa April Term 1862

Error from Whiteside County

The Board of Supervisors of  
Whiteside County

Plaintiff in Error

vs  
Peter Kuebler & Robert C Burchell } Defendant in Error

Now comes the said plaintiff in error by Henry Price & Sackett and Samuel Strawder their attorney and say that in the record and proceedings aforesaid, and also in the decree aforesaid there is manifest error in this to wit:

First That the Court erred in overruling the demurrer to the bill of complainant whereas by the law of the case the Court should have sustained the demurrer of the defendant below. Secondly The Court erred in taking said bill as confessed as against the defendants below, and rendering the decree aforesaid thereon without any order for the said defendants to answer the said bill

Thirdly The Court erred in rendering the decree aforesaid for the reason that the decree is not authorized by the case made in the bill and for the reason that the same is not authorized by the law of the land

Fourthly There is a misnomer of Peter Kuebler

The Court erred in rendering the decree aforesaid which is so vague and uncertain that the defendants therein named cannot know with certainty what they are thereby required to do or perform

And the said plaintiffs in error pray that the decree aforesaid for the errors aforesaid and for other errors in the said record, proceedings and decree may be reversed annulled and altogether held for naught and the case dismissed at the cost of the complainants in the bill and that the said Board of Supervisors may be restored to all things they have lost by reason thereof. Wherefore the said Board of Supervisors further pray that a writ of Error may issue returnable according to law

Henry Price & Sackett & Samuel Strawder  
 Sol for plffs in error

State of Illinois }  
Whiteland county Court 3<sup>d</sup> Division for  
Whiteland county.

Board of Supervisors      April Term A.D. 1863  
of Whiteland county - Plffs -  
in Error  
vs

Peter Brenner & Robert  
C. Benchell State Atty  
for 2<sup>d</sup> Judicial District of the  
State of Illinois Defs in Error

And etc

said Peter Brenner & Robert C. Benchell  
State Atty vs now come & say that  
there is no error either in the  
record & proceedings aforesaid  
or in giving judgment aforesaid  
& therefore they pray that the said  
judgment may be affirmed & that  
their costs may be adjudged to  
them &c

John W. Fella  
Atty for Defs in Error

48  
Board of Supervisors  
of Whitson County  
Pliffs in Error  
vs

Robert C. Bunchell  
State Atty. vs vs et al  
Defendants in Error

---

Comide in Error

Filed April 21<sup>st</sup> 1883  
L. Leland  
Clk

State of Illinois  
Whiteside County

I Addison Farrington Clerk of the  
Circuit Court within and for said County do hereby  
certify the above and foregoing to be a true <sup>full</sup> and complete  
copy of all the original papers and proceedings entered  
of record <sup>and of the record</sup> in a certain Cause lately pending in said  
Court on the Chancery side thereof wherein Robert C  
Burchell States attorney of the twenty second Judicial  
Circuit of the State of Illinois and Peter Baepfer were  
Plaintiffs and the Board of Supervisors of Whiteside Co  
nty defendants

In witness whereof I have hereunto set my  
hand and affixed the seal of said Court at  
Morrison in said County this second day  
of April A.D. 1862

A Farrington Clerk



170

The Board of Super-  
visors of Whiteside Co.

vs  
Peter Buehler et al  
Record & Enrol

Filed Apr. 12, 1862  
L. C. C. C.  
Clk.

Sennett

Mr. Justice

Preese

delivered the opinion of the Court.

The question upon this record arises on a demurrer to a bill in chancery, predicated on an alleged ~~error~~ <sup>prejudicial</sup> ~~error~~ <sup>ground</sup> in proper joinder of complainants, and ~~does~~ upon the merits of the bill itself.

It is insisted by the ~~complainants~~ <sup>complainants</sup> that in error, that the State attorney has as in fact, ~~the~~ <sup>the</sup> ~~rights~~ <sup>rights</sup> ~~and~~ <sup>and</sup> ~~interests~~ <sup>interests</sup> in common with his co-complainant Pepler, ~~is~~ <sup>is</sup> ~~not~~ <sup>not</sup> in the subject matter of the bill itself, nor has he any authority to intercede such suit, in virtue of his ~~own~~ <sup>own</sup> official position. It is further urged, that the rights and interests of the complainants, as disclosed by the bill, ~~are~~ <sup>are</sup> ~~not~~ <sup>not</sup> set upon dipindia grounds, <sup>and</sup> the relief sought by the one, <sup>has</sup> ~~has~~ <sup>no</sup> ~~no~~ <sup>no</sup> homogeneity with that sought by the other complainant, and therefore the demurrer should have been sustained.

p. 73

5

+

~~The complainants insist, that the general rule is equity, and that the State attorney, being the officer appointed by law, to~~

The complainants insist, that as the object of the bill was to compel the defendants to expend the money received on the sale of the swamp lands within the County, in draining and reclaiming them, <sup>and</sup> the people of the County have an interest in that object, and as the State attorney

stands as the representative of the people of the County, it was both his right and duty to commence and prosecute this suit, and was not only a proper, but a necessary party to the bill.

We have always understood, that the duties of States' attorney were of a special and well defined character, ~~which~~ <sup>they</sup> may, in brief, to commence and prosecute all actions, suits, ~~processes~~ <sup>and prosecutions</sup>, indictments, civil and criminal in which the people of the state, or any County within his judicial district may be concerned, to defend actions brought in his circuit against the auditor of public accounts, <sup>against</sup> or any of the counties therein, and to prosecute all forfeitures, recognizances and all suits and actions for the recovery of debts, revenues or accruing to the people of the state, or any County within his circuit, and to give his opinion when requested, to any County Court or Justice of the peace in his circuit upon any question of law relating to ~~any~~ <sup>any</sup> ~~or other~~ <sup>or other</sup> matters in which the people or the County is concerned.

2

Scots' Comp. 674.

There does not seem to be any power vested in ~~him~~ this officer, of his own mere motion, to originate any prosecution



~~When the bill is introduced into the Legislature,~~  
 this matter is <sup>a</sup> joining as several complainants  
 join in ~~the~~ bill demanding distinct matters  
 against the same defendants. Now the  
 State's attorney bases his claim to relief  
 under and in virtue of certain alleged  
 debts devolving on the County by the con-  
 currence of the County <sup>by the State</sup> to the County, whilst  
 his co-complainant ~~he~~ bases his  
 claim upon a contract and purchase  
 of a portion of these lands of the County  
 which he alleges <sup>should</sup> ~~have~~ be discharged  
 in labor. Whilst the State's attorney  
 prays that the County should be enjoined  
 from appropriating any of the  
 mounds of these lands to the  
 school fund but to their drainage, his  
 co-complainant prays that the County  
 may be enjoined from collecting the  
 notes issued for the purchase  
 money, and that he be allowed to  
 discharge them in labor in making  
 drains and reclaiming the land. This  
 multifariousness can be taken advan-  
 tage of by general demurrer. 1 Danell  
 Ch. p. 395.

4

Now as to the merits of the bill. Its object seems to be to compel the County of Whiteside, to execute specifically, a Trust supposed to have devolved upon it, by reason of the annexation to it, by the State of the Swamp and overflowed lands lying within it, which were granted to the State by the Act of Congress of Sept. 28. 1850. This is the ground of the claim set up by the State attorney, whilst his co-complainant seeks to compel the County to enforce the Act of ~~March~~ the General Assembly of June 22 1852, in all its parts, so that he may be enabled to pay for that portion of those lands which he has purchased, and for which he has granted his notes and mortgages, in labor to be expended by him in draining, and reclaiming the lands and for this he has obtained a decree.

5

An enquiry into the Legislation of Congress and of our General Assembly, on the subject of these lands, will show, we think, satisfactorily, that there is no ground or reasonable pretence whatever for the claims set up.

shows us to the limits of the slide.

On the 28<sup>th</sup> of September 1850<sup>th</sup> Congress passed an act to enable the State of Arkansas, and other States to reclaim the "Swamp Land" within their limits. The first Section of the act is as follows:

That to enable the State of Arkansas to construct the Newpaw levee and drain to reclaim the swamp and overflowed lands therein, the whole of those swamp and overflowed lands made unfit thereby for cultivation, which shall remain unused at the passage of this act, shall be, and the same are hereby granted to said State.

The second Section provides that the Secretary of the Interior shall make out accurate lists and plats of these lands and transmit the same to the Governor of that State, and at his request, shall issue a patent therefor and a that patent the fee simple to those lands shall vest in the State of Arkansas, subject to the disposal of the Legislature of that State - Provided however, that the proceeds of said lands whether from sale or by direct appropriation in kind, shall be applied, exclusively, as far as may be, to the purpose of reclaiming said lands by means of the drains and

Levees. The third section provides that if the greater part of all legal provisions of such laws shall be lost and unfit for cultivation the whole provision shall be included in the list -

The fourth section provides that the provisions of the act shall extend to and their benefits be conferred upon upon land of the other States of the Union in which such swamp and overflowed lands may be situated. 9 Vol. Laws U. S. 520. Stat. Comp. 1146.

5  
7

By an act passed by the General Assembly of this State approved June 22 1852, all the swamp and overflowed lands were granted to the Counties respectively, in which the same were situated, for the purpose of constructing the necessary levees and drains to reclaim them, and the balance of the lands if any remained after they were reclaimed were distributed in each County equally, among the townships thereof for the purposes of education or in the construction of roads and bridges, or to such other purposes, as might be deemed expedient by the County or County judges. An abstract of the lands was to be furnished by the Auditor to the General

County, to be filed recorded in a book to be provided for that purpose by the County Clerk and filed among the records of his office. Provision is then made for a sale of the land and the more ~~and terms~~ thereof provided. The fourth section provides that 'the terms of selling said land shall be to the highest bidder for cash, the amount of which, however, may be discharged by the purchaser in labor to be performed according to the terms and manner hereinafter specified.'

8  
7

It is further provided, that the drainage land shall be divided into sections and when sufficient land are sold to complete a section, it shall be put under contract. ~~The contract~~ Section fourteen provides that the County Court shall cause the work to be done on the sections to be let out at public sale to the lowest bidder who shall give bond (\$15) conditioned for the faithful performance of the work. Section fifteen provides that the County Court shall lay off the divisions in such manner as will enable the purchasers of the land to pay for the same in performing work, and if said

Agreed

Purchasers shall be the lowest bidders  
 at the selling, the land to purchase shall  
 be paid for in work, but if any other res-  
 possible persons shall be lower bidders  
 it shall be struck off to them, and  
 the purchasers shall be forth with requir-  
 ed to buy for their land purchased in  
 cash or on credit by giving mortgages  
 and good security for the purchase money  
 at the discretion of the drainage commis-  
 sioners - Section Seventeen provides that  
 no more land shall be sold than  
 may be necessary to complete the  
 reclaiming and drainage; and if there  
 be a residue, it shall be divided  
 equally among the several townships  
 of the County, and constitute a part of  
 the school fund, or the remainder may  
 be applied in the construction of roads  
 bridges or other works of internal improve-  
 ment within the limits of the County. (Stats  
 Comp. 1148 to 1154.)

By an act passed March 4, 1854  
 it is provided (~~§12~~) to amend the act of  
 June 22, 1852, it is provided by the  
 aforesaid section that all the parts of the  
 acts to which this is an amendment, which  
 appear to grant the swamp and overflowed  
 lands to the townships in the several Counties

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 9

and which authorize the County Judges to execute deeds, and all other parts of said acts which are inconsistent with the provisions of this act, are repealed, and all the swamp and overflowed lands granted to this State by the Act of Congress are ~~being~~ granted to and vested in the several Counties in which they are situated. Sec. 1160

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At the same Session of the Legislature, the Swamp Land lying in the County of Hancock were granted to that County without any conditions or restrictions. At the next Session on the 15th of Feb. 1855 an act was passed ~~repealing~~ <sup>dividing</sup> the ~~lands~~ <sup>proceeds</sup> of the proceeds of these lands from drainage and levees, to the School fund of the County, and Adams County was authorized to do as she pleased with the proceeds of these unswamp lands. At the Session of 1857 the funds arising from the sale of these lands in the County of Green, <sup>and</sup> <sup>Madison</sup> were divided from drainage and levees, and <sup>or</sup> <sup>paid</sup> <sup>to</sup> <sup>be</sup> <sup>used</sup> <sup>in</sup> <sup>the</sup> <sup>same</sup> <sup>manner</sup> <sup>as</sup> <sup>the</sup> <sup>proceeds</sup> <sup>of</sup> <sup>the</sup> <sup>same</sup> <sup>lands</sup> <sup>in</sup> <sup>the</sup> <sup>County</sup> <sup>of</sup> <sup>Green</sup>, <sup>and</sup> <sup>paid</sup> <sup>over</sup> <sup>to</sup> <sup>the</sup> <sup>County</sup>, <sup>to</sup> <sup>be</sup> <sup>used</sup> <sup>in</sup> <sup>the</sup> <sup>same</sup> <sup>manner</sup>. And the same legislation, was adopted for Monroe County.

At the Session of 1859 a general act was passed entitled, "an act for the Sale of Swamp Land," the third section of which provides, that the proceeds arising from any sale or sales shall be tribute to the order of the County judge for such purposes as the County Court may direct.

Law of 1859 page 201

At the same Session an act was passed authorizing the board of supervisors of Whiteside county to appropriate the ~~Board~~ ~~and overflowed~~ land to each of the townships of that county, the school fund which accrued on the sale of certain swamp and overflowed lands therein in such manner as the Board of Supervisors might deem expedient.

11

Feb. 189.

~~It has been the intention~~  
 in referring to the legislation of this State on the subject of the Swamp Land for the reasons this is the substance of the legislation of this State in relation to the Swamp Land. By the grant of those lands to the State and ~~the~~ a fee simple estate passed clogged by no condition. The State became the absolute owner of the lands with power to dispose of them in such manner, and for such pur-

now, as to the state might seem most absurd.  
 The language of the act is, in the first section,  
 "lands be and the same are hereby granted  
 to the state." This is a "pure and perfect grant of  
 an indefeasible estate. In the next section, a  
 patent to evidence the title is required to be  
 issued to the state, and on that patent the  
 fee simple to these lands shall rest in the state,  
 subject to the disposal of the Legislature of the  
 state." Language cannot be used to express  
 more clearly, and in more compact concise terms,  
 the intention of the granting power as to these lands.  
 They are granted unconditionally to the state,  
 to be at the uncontrolled disposal of its Legisla-  
 ture.

The proviso does not limit or qualify  
 the power of the Legislature over them, and  
 their proceeds, in any manner. It is at the  
 utmost, but the expression of a wish or a  
 desire on the part of Congress, that the proceeds  
 of their sale, should be expended in levees, and  
 drains with a view to their reclamation. It is  
 not a condition of the grant that they shall be  
 so expended, for a discretion is left with the Legis-  
 lature to expend them, "as far as necessary." From  
 the act itself, no inference can be drawn that it  
 was the desire of Congress to resume the grant, if  
 the lands were not appropriated to their drainage.

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The grant was a political measure, in which the States, having vast bodies of swamp and overflowed land within their borders, unfit for cultivation, productive of disease, and yielding no revenues to the State, ~~or~~ had a deep and important interest whilst to the Nation at large, the interest was comparatively trifling. Congress, in view of these facts, said to these States, these lands are of no use to the Nation, take them we make to you a perfect title to them, drain them and reclaim them if you can. ~~Proceeds~~ ~~from their~~ Proceeds - we commit them, and the whole subject, to your Legislature - except the policy we recommend, but take the lands. ~~And was the binding trust created with the~~ ~~grant not with the proceeds of the lands~~

13, 1

But if the grant was made upon the trust that the proceeds of the lands should be expended in reclaiming them, where does the power reside to compel the Legislature to execute the trust specifically? If it is a trust, it is of municipal and not judicial concern, over which the power of the State is plenary and exclusive. The principle we think is the same as that established by the Supreme Court of the United States in the case of Coxey vs Roberts, 18 How., 173.

in relation to the sale of the School Sections. In that case the Court said "the grant of those lands was to the State directly, without limitation of its power, though there is a limited obligation imposed on its public faith. We think it was competent to Michigan to sell the School Reservations without the consent of Congress." In this case the sale was not for school purposes, but the proceeds went into the general funds. We can see no difference in the principle of that case and of this. Here the grant is to the State directly of those lands, without any restriction of its power, and no application to Congress, or any other authority, is necessary to direct the appropriation of their proceeds.. (strip 18)

174c

Fig

On the acceptance of the grant by the State, the subject of draining and reclaiming <sup>and their proper "disposal" of them</sup> the lands, became a question of State policy, wholly to be determined by the Legislature. At the outset, as we see by the act of Nov 22. 1853, the drainage policy was adopted, and all the necessary machinery set in motion to carry it out to success. The views of the people changed as to this policy, and it was changed by the legislature, as is seen by the various acts of the legislature, to which we have referred, until, finally, by the act of 1859, the proceeds arising

from the sale of these lands, are made  
 subject to the order of the County Judges of  
 the several Counties for such purposes as the  
 County Courts respectively, may direct. Who  
 shall question the power of the Legislature  
 thus to change its policy, in regard to these  
 lands? To what tribunal shall resort be  
 had to bring back the state to its original  
 policy <sup>in</sup> ~~with~~ regard to them, and where is the  
 power lodged to compel that body to repeal  
 see the laws of 1859, and prior laws on this  
 subject? It is a political question <sup>in</sup> which  
 the Courts cannot interfere, and in their action  
 upon it the Legislature are responsible alone  
 to their consciences and the public judgment.

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What then is the position of the complain-  
 ant Paper, for the rights claimed by the  
 State Attorney, as the representative of the  
 people of Whiteside County, are disposed  
 of, by what we have already said.

~~Land~~ Paper claims to have purchased  
 on the second Monday of March 1856, a large  
 portion of these lands, at prices greatly exceed-  
 ing their value on which he has paid one  
 fourth of the purchase money in cash, and  
 has executed his ~~to~~ several promissory  
 notes for the remaining three fourths amounting  
 to five thousand seven hundred and six <sup>4</sup>/<sub>100</sub> dollars,

payable in five years from date, with interest at 6 per cent payable semi annually in advance, and he also executed a mortgage on the land, to secure the purchase money - that he has paid in part on this balance to the amount of five hundred and eighty four <sup>75</sup> dollars, and avers, as to all this balance of purchase money, he was always desirous to pay and discharge the same in labor to be done by him in draining and reclaiming the land, and in the construction of the masonry levees and drains as provided in the act of June 22, 1852, and he further alleges that the County has lately leased the grounds of which are sufficient to drain and reclaim all the lands granted to the County, and render them fit for occupation. ~~He also alleges~~ He also alleges, that the County, by its Board of Supervisors, is about to ~~execute~~ ~~the~~ ~~act~~ ~~of~~ ~~1852~~ ~~providing~~ ~~the~~ ~~dis~~ ~~tributing~~ among the different townships in the County, the moneys arising from the sale of these lands, for school purposes. That suits have been commenced on some of the notes he executed, and prays for an injunction restraining their collection. He further prays, that the County be compelled to take its pay in labor in reclaiming the lands

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and that they be relieved from disturbing the funds for school purposes, but to expend them in ditching and draining the lands. The court decreed ~~that the County should~~ <sup>that the County should</sup> ~~obey the laws, regulations and provisions~~ <sup>obey the laws, regulations and provisions</sup> ~~of the Board, provisions and limitations~~ <sup>of the Board, provisions and limitations</sup> all that was prayed, and annulled all the legislation of the State on the subject of the swamp lands, ~~except~~ except the act of June 22. 1852, which was to be carried into full effect by the County.

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It certainly was the intention of the Legislature as we gather it, from the various acts we have cited, especially that of Feb. 14. 1859, which is very formal in its terms to remit to the several counties the exclusive control over these lands, and over their proceeds and to release them from all the liabilities and obligations whatsoever imposed upon them respecting them. That act releases to the fullest extent all the interest of the State in the lands, and all the machinery devised by the act of 1852 becomes so much dead weight. <sup>Personal</sup> Rights however, acquired under that act which had become perfect, are by no means disturbed. They remain in full

free. The complainant Pfeiffer has a <sup>clear</sup> title to the land he purchased under the system devised by that act, and the county has a right to the money he contracted to pay for them. The contract, in this regard, is in full force and virtue.

48

The right he contracted to pay for these lands in labor, never existed in him, under the act of 1852. All the right he had, was to become a bidder at the callings of the work on the sections, and if he ~~was~~ became the lowest bidder, and executed the required bond ~~then he could~~ that the work should be faithfully done, he could discharge his notes in such work. Paying the land and executing notes and not-  
 pay for the purchase money, gave him no absolute right to a contract for work. The note was for the absolute payment of money. If the ~~said~~ <sup>that</sup> contract was, it could be discharged in labor, why was it not so expressed in the note? Giving the note for the payment of money, conveyed any right he might have had to do the work. That he had no such right only on the contingency that he should be the lowest bidder at the callings of the work and executed a satisfactory bond.

Suppose he had not been the lowest bidder at the Lettings, was he not to pay his note? How else could the County procure means to pay those who performed the work except by collecting the notes given for the land?

No special contract is set up or shown by which these notes were to be paid in labor. They grew out of the system originally adopted by the State for the disposal of the Swamp Lands. For wise public reasons the system was abandoned, and the proceeds diverted to other public objects. It is not for Mepler to complain, as he has the land he bargained for with an unimpaired title. The appropriation of the proceeds is of no other concern to him than as affecting the value of these lands, which properly might have appreciated had the system been fully carried out to completion. As he has stated his case, no relief can be granted him in a Court of Equity. ~~The~~ ~~power~~ The power of the Legislature being plenary and exclusive over the whole subject of these lands they had the unrestricted right to appropriate the proceeds, in such direction and for such purposes, as to them seemed most expedient. The remedy to the bill for the reasons given should have been sustained.

The ~~propositions~~ ~~and~~ ~~decree~~ ~~is~~ ~~reversed~~ ~~and~~ ~~the~~ ~~bill~~ ~~dis~~ ~~missed~~.

~~March 1st 1854~~ ~~and~~ ~~March 1st 1854~~  
In this opinion the whole Court concurred.

Decree reversed.

19

No 48 = 14

IN THE  
 Supreme Court of the State of Illinois,  
 THIRD GRAND DIVISION,  
 APRIL TERM, A. D. 1863.

BOARD OF SUPERVISORS OF WHITESIDE COUNTY, STATE  
 OF ILLINOIS,  
 vs.  
 PETER BRESSLER and ROBERT C. BURCHELL State's  
 Attorney of the Twenty-second Judicial Cir-  
 cuit of the State of Illinois.

ARGUMENT OF F. SACKETT,  
 FOR PLAINTIFF IN ERROR.

Filed April 21. 1863

*G. G. Garland*  
 Clerk

CHICAGO:  
 PRINTED BY BEACH & BARNARD, 14 SOUTH CLARK ST.

1863.

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## STATEMENT OF FACTS.

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At a sale of swamp lands, made by the Drainage Commissioners of Whiteside county, in the fall of 1855, and also at a sale made in the spring of 1856, Bressler, one of the complainants below, made purchases of these lands to a considerable amount—paying one-fourth of the purchase money, at the time, in cash, and for the balance, giving his note running five years, with interest at the rate of six per cent., payable semi-annually, securing the same by mortgage upon the premises purchased.

Upon suit being brought by the county to recover for interest due on the note, Bressler, in his own right, and Burchell, as State's Attorney for the 22nd judicial circuit, on behalf of the people, filed a bill in chancery to compel the county to drain the swamp lands within the county, and to enjoin the collection of the note, principal and interest, until the work of draining shall be commenced, and an opportunity given to Bressler to discharge the amount due from him in work to be done in draining the land.

Defendant below filed a general demurrer to the bill. The court overruled the demurrer, and rendered a decree in favor of complainants.

The case comes into this court by writ of error.

# ARGUMENT.

## I.

The rights and interests of two entirely distinct parties are attempted to be brought before the court by the complainant's bill; Bressler appearing in his own right, and Burchell on behalf of the people of the State. An examination of the nature of the case made by the complainants, discloses obvious defects in the bill, for which the demurrer ought to have been sustained by the court. :

FIRST. Burchell shows no title, or interest authorizing him to commence the suit on behalf of the people.

SECOND. The bill is multifarious, or, perhaps, rather there is a mis-joinder of complainants, and also causes of action.

THIRD. Both the complainants failed to show, that they are in any manner damaged or injured by the acts or omissions charged against the defendant.

FOURTH. There is no sufficient case made by the bill to authorize the interference of a court of equity, or to sustain its jurisdiction. Each of these objections is reached by a general demurrer.

1 Daniell Ch. Prac. 617, 395.

Story's Eq. Pld's, secs. 47, 279, 509.

The defendant may, at the hearing of his demurrer, assign other causes of demurrer, different, or in addition to, those assigned on the record; provided such causes are co-extensive with the causes of demurrer assigned upon the record.

Daniell's Ch. Prac. 657.

Story's Eq. Plds. sec. 464.

*Garlic vs. Strong*, 3 Paige, 440.

We have no law or practice requiring or authorizing the Circuit Attorneys to commence suits in their own names where the interests of the State are involved. Our Statute makes it the duty of the Circuit Attorney to attend each Circuit Court to be held in each of the counties of his circuit, and to prosecute all actions, suits and prosecutions, civil and criminal, in which the people of the State or any county within his circuit are concerned; and also to defend all actions brought against the counties of his circuit. But in neither of these cases is he to prosecute or defend in his own name.

Sec. 4. chap. 12, R. S.

Under the English practice, as well as the practice prevailing in many of the States, whenever a suit is instituted on behalf of the State or Government, or when the suit immediately concerns the rights of the State, the proper officer, usually the Attorney General, proceeds by information on behalf of the State. The institution of this suit in the name of Burchell, as States' Attorney for the 22d Judicial Circuit, may have been intended as a compliance with this rule, though the form of an information has not been pursued in the frame of the bill in this case.

But no such practice exists in this State. Our Statute provides that all causes, suits, motions and proceedings, in which the State shall be a party, plaintiff or complainant, shall be instituted and prosecuted in the name of the people of the State, whether such causes, suits and motions grow out of contracts, express or implied, or out of torts of any nature or description whatever, affecting the interests or welfare of the State.

Secs. 51 & 52 chap. <sup>29</sup>~~30~~ R. S.

the legislature had refused to pass any act whatever disposing of the lands, or to take any steps for draining and reclaiming the same, could any one have filed a bill; and through the court, have compelled the legislature to pass an act disposing of the lands, or compel the State, in any manner, to ditch and drain the same. The court has not the power to direct the legislature of a State by decree.

If it be true that the State received these lands in trust to sell and apply the monies arising from the sale thereof, in reclaiming and rendering them fit for cultivation, it is equally true that the trust is an entire trust, embracing all the lands within the State, and the fund, a common fund, to be laid out and expended, as far as necessary, throughout the whole State. Some of the counties have large quantities of these lands, which it will cost but little to drain, leaving them a surplus to be appropriated to other objects; while other counties having a much less quantity of land, and which it will cost more to drain, will not have sufficient means for that purpose. So that, if it be admitted that the State assumed any such trust in reference to these lands, the conveyance of them by the State to the counties in which they lie, under the provisions of the act of June, 22d, 1852, was as much a violation of such trust, as the one complained of in the bill—the same in character, if not in degree.

### III.

The whole legislation of the State shows that it is the intention of the legislature, as a matter of public policy, to leave the whole subject of the management, sale and disposition of the proceeds of the sales of swamp lands exclusively to the people of the different counties, in which they lie, through their respective boards of supervisors. By the act of February, 1855, the county commissioners of Jersey county were required to divide the money, arising from the sale of swamp lands in that county, among the different townships of the county, for school purposes.

Sess. Laws, 1855, page 48.

By act of February 10, 1857, the county court of Green county,

was authorized to order the money, arising from the sale of swamp lands, to be paid to such persons, and for such uses, as that court should see fit.

Sess. Laws, 1857, page 41.

By an act of February 9, 1859, it is provided, that all monies received from the sale of swamp lands in Henry county, shall be subject to the control of the board of supervisors of that county ; and may be, from time to time, appropriated in such sums, and in such manner, and for such objects, as said board may deem best for the interests of said county.

Sess. Laws, 1859, page 202.

Like provisions have been made for other counties of the State, by the legislature, from time to time.

By an act of February 24, 1859, the board of supervisors of Whiteside county were authorized and empowered to apportion to each of the townships, of said county, the school fund of said county, which had accrued on the sale of the swamp and overflowed lands therein, as they should deem expedient for the best interests of the county.

Sess. Laws, 1859, page 189.

By an act of the legislature, entitled "An Act for the sale of Swamp Lands, approved February 14, 1859, it is provided that the proceeds arising from any sale, or sales of (swamp lands) shall be subject to the order of the county judge for such purposes as the county court may direct. And in counties which have adopted township organization, the boards of Supervisors are authorized to carry out the provisions of this act. The provisions of the act are of the most general character ; and it cannot be doubted that it was the intention of the legislature, in the passage of this act, and of the acts above referred to, to leave to the people of the several counties, the entire and exclusive control of all matters relating to the sale and disposition of the lands, and of the disposition of the moneys arising from the sale thereof, and to release the counties from all liabilities and obligations, imposed by former statutes, requiring them to drain

the lands, or in reference to the disposition of the proceeds of the sales of the lands. And that so far as the State is concerned, all right or interest which it might have had, has been extinguished and released by the passage of that act. And the same as to any right or interest which Bressler might have had, in reference to the drainage of the land and the disposition of the moneys arising from the sales, provided the legislature had the power and authority to pass the act in question, in so far, as it may be supposed to have affected his rights or interests. No good reason can be given why the legislature could not pass that act. It does not impair the obligation of any contract to which Bressler was a party, or by which he acquired any rights. He purchased the lands of the county, at a given price, and gave his notes and mortgage to secure the purchase money, and that contract is still in force in all its parts.

In one sense, it may be said that, at the time of his purchase, he had the right to have his lands drained in common with the other swamp lands in the county, and the privilege of paying the price of his purchase in labor, upon complying with the provisions of the statute. But these rights are not such as are within the protection of the constitutional provision, prohibiting the legislature from passing any law impairing the validity of contracts. This constitutional provision is not intended to apply to public property; to the discharge of public duties; to possession or exercise of public rights, nor to any changes or qualifications in any of these, which the legislature of a State may, at any time, deem expedient.

2 Parsons on Contracts, page 511.

The contracts designed to be protected, are those by which *perfect rights—certain, definite, fixed private rights—of property, are vested*. These are clearly distinguishable from measures or engagements adopted or undertaken by the body politic, or State government, for the benefit of all, and from the necessity of the case, to be varied or discontinued, as the public good shall require.

*Butler vs. Pennsylvania*, 10 How. 402.

No part of the constitution of the United States applies to a State

law, divesting rights, which were vested in an individual by law, provided its effect be not to impair the obligation of a contract.

*Satterlee vs. Mattheson*, 2 Peters, U. S. 380.

The State of Maryland, in 1836, passed a law directing a subscription of \$3,000,000 to be made to the capital stock of the Baltimore and Ohio Railroad Company, with a proviso, that if said company shall not locate said road in the manner provided for in this act, then, and in that case, they should forfeit \$1,000,000 to the State of Maryland, for the use of Washington county. This proviso was inserted in the law for the benefit of Washington county, and to compel the construction of the road through certain points in that county. The subscription was made and accepted by the company. The company did not, however, finally locate their road within the limits of Washington county, as required by the act. The county commissioners brought suit, in the name of the State, to recover the \$1,000,000—claiming that the county acquired a vested right to the money, and any interest which the State might have, it held in trust for the county.

In March, 1841, and after the commencement of the suit, the legislature of the State passed another act, repealing so much of the prior act as made it the duty of the company to construct the road by the route therein prescribed, remitting and releasing the penalty, and directing the discontinuance of the suit brought to recover it. The Supreme Court of the United States sustained the latter act—holding that the proviso, in the former act, was a measure of State policy, which it had a right to change, if the policy was afterwards discovered to be erroneous, and neither the commissioners, nor the county, nor any one of its citizens, acquired any separate or private interest under it, which could be maintained in a court of justice.

1 American Railway Cases, page 1.

## IV.

Suppose it be admitted, that Bressler acquired an indefeasable right to have his lands drained, and to pay for them in labor, instead of cash, as a bare legal right; does he then make such a case as would authorize the interference of a court of equity, to give him the relief prayed for? In equity, it is not enough that a party shows that he has a strict legal right; he must make such a case as appeals to the equity of the court, and the court is bound to see that it really does that complete justice to all parties, which it aims at, and which is the ground of its jurisdiction. Does Bressler, then, make such a case as calls upon the court to interfere to change the public policy of the State, with reference to these lands, as declared by the legislature, and to compel the county of Whiteside to engage in the undertaking of draining and reclaiming some seventy thousand acres of swamp and overflowed lands, at an expense, if need be, of the amount of \$200,000, the sum received from the sale of the land, when it has been determined by the people of the county, to whom the legislature have seen fit to submit the question, that, as a matter of public policy, it would not be advisable so to do, and to prevent the county from collecting the interest money on the amount of his purchases, until the county shall give him the privilege of working out the amount of his purchase, at a price to be determined by competition with the world, instead of paying in cash?

The result of the case, as it now stands under the decree, is, that we must either reverse the public policy of the State, as thus declared, with reference to the lands in Whiteside, and also of the adjoining counties, should it become necessary to drain the lands in common, or give Bressler his 4000 acres of land, getting nothing for them in return.

## V.

In reference to the privilege of working out the amount of the purchase, which seems to be the principal grievance complained of,

and the matters mainly relied upon in the bill, it will be observed that the purport and effect of the act approved June 22, 1852, has been mistaken by the complainants in the case attempted to be made in the bill, the relief prayed, and also by the court in the decree rendered so far as these relate to that matter. That act requires the work of drainage to be let out at public auction to the lowest bidder. The persons to whom said lettings should be struck off, should enter into a bond for the faithful performance of the work so undertaken by him, and should any purchaser of the land be the lowest bidder at the lettings, the land so purchased might be paid for in work.

1852  
Sess. Laws, Secs. 14, 15 and 16.  
*Purple's Stat. Pg. 695*

And there is nothing in the act which authorized any officer of the county to make any contract for the performance of the labor of draining the land, except in the manner prescribed in these sections. The decree of the court following the case made by the bill, orders that the defendant shall "suffer and permit the said complainant to pay and discharge the amount of the purchase money and the interest yet remaining unpaid in respect of all the land by him purchased in that behalf, in necessary labor to be done by him under the direction of the said board of supervisors, or of some officer thereof, in the construction of necessary drains and levees, and in the reclaiming of said lands by him so purchased, as by law provided."

The act, however, does provide that the purchasers may pay for their lands in cash, or secure the payment by executing a note and mortgage in the discretion of the Drainage Commissioner.

Secs. 8 and 16.

Again, the terms of the contract made by Bressler with the county in the purchase of his land, as to time and mode of payment, are entirely inconsistent and incompatible with the pretences now set up, of an understanding on his part that the lands were to be immediately divided into sections for draining, and the work commenced and prosecuted to completion by the county. His note and mortgage had five years to run. Let us suppose that in the

meantime, the county had offered the work of draining the lands at public auction, and that Bressler had not been the lowest bidder, or being the lowest bidder, had failed to give the security for the due performance of the work ; where, in such case, would the county have procured the means necessary to prosecute the work or to pay others for doing it ? The order of the board of supervisors ordering the sales and the published notices of the sales, copies of which are attached to the bill, not only rebut and contradict the alleged pretences of the county, that it intended to undertake immediately thereafter the work of draining the lands ; but they show that it was not the understanding of the county or of the purchasers at the sales, that it should do so. And if, with this notice, Bressler saw fit to bid off lands in pursuance of this understanding, and to give his note and mortgage payable five years from date, with interest payable semi-annually, he cannot now repudiate the contract nor set up any rights in conflict with its terms, basing his privilege so to do on any rights acquired under the contract as a purchaser.

It is nowhere claimed in the bill that any special contract or undertaking was entered into by the county, at the time of the sale, in reference to the draining or reclaiming of these lands, or in relation to the disposition of the monies, unless it be in the averments of the "pretences" under which the sales were made, it is not claimed that any of the alleged pretences were contained either in the resolution of the board of supervisors or in the notices of sale, or in either the note, mortgage or deed. These were the evidences of contract, and the parties must be held to be estopped from denying that such evidences correctly represented the contract. No person or officer can hold out any pretences for the county by which the county will be bound, or upon which any one has a right to rely. The county acts through the board of supervisors and other officers ; whatever the officer is empowered to do by law, he may do ; if he exceeds his powers, his acts are simply void, and every person is presumed to know the limit of the powers of public officers ; no officer of a county is authorized to make "pretences" for, or on behalf of, a county.

Although a demurrer admits the matters in the bill to be true, such admission is confined to matters that are well pleaded, i. e. matters of fact. It does not, therefore, admit any matters of law which are suggested in the bill or inferred from the facts stated. It does not admit matters contrary to a record pleaded and set out in bill, or any matter repugnant to other matters stated in the bill or contrary to that of which the court takes judicial notice.

1st Dan'l, Ch'y Prac., page 601 and 602.

The correct practice is not to render a decree directly upon overruling a demurrer to a bill in chancery, but the order should be that the defendant's answer the bill, and if they neglect to do so, the complainant may have the bill taken for confessed.

*Miller et al. vs. Davidson*, 3 Gil. 528.

F. SACKETT,

*Attorney for Plaintiff in Error.*

No 218

IN THE  
Supreme Court of the State of Illinois,  
THIRD GRAND DIVISION,  
APRIL TERM, A. D. 1863.

BOARD OF SUPERVISORS OF WHITESIDE COUNTY, STATE  
OF ILLINOIS,

vs.

PETER BRESSLER and ROBERT C. BURCHELL State's  
Attorney of the Twenty-second Judicial Cir-  
cuit of the State of Illinois.

ARGUMENT OF F. SACKETT,  
FOR PLAINTIFF IN ERROR.

Filed April 21-1863

G. Ireland  
Clark  
CHICAGO:

PRINTED BY BEACH & BARNARD, 14 SOUTH CLARK ST.

1863.

IN THE  
Supreme Court of the State of Illinois,  
THIRD GRAND DIVISION,  
APRIL TERM, A. D. 1863.

BOARD OF SUPERVISORS OF WHITESIDE COUNTY, STATE  
OF ILLINOIS,

vs.

PETER BRESSLER and ROBERT C. BURCHELL State's  
Attorney of the Twenty-second Judicial Cir-  
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## STATEMENT OF FACTS.

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At a sale of swamp lands, made by the Drainage Commissioners of Whiteside county, in the fall of 1855, and also at a sale made in the spring of 1856, Bressler, one of the complainants below, made purchases of these lands to a considerable amount—paying one-fourth of the purchase money, at the time, in cash, and for the balance, giving his note running five years, with interest at the rate of six per cent., payable semi-annually, securing the same by mortgage upon the premises purchased.

Upon suit being brought by the county to recover for interest due on the note, Bressler, in his own right, and Burchell, as State's Attorney for the 22nd judicial circuit, on behalf of the people, filed a bill in chancery to compel the county to drain the swamp lands within the county, and to enjoin the collection of the note, principal and interest, until the work of draining shall be commenced, and an opportunity given to Bressler to discharge the amount due from him in work to be done in draining the land.

Defendant below filed a general demurrer to the bill. The court overruled the demurrer, and rendered a decree in favor of complainants.

The case comes into this court by writ of error.

## ARGUMENT.

### I.

The rights and interests of two entirely distinct parties are attempted to be brought before the court by the complainant's bill; Bressler appearing in his own right, and Burchell on behalf of the people of the State. An examination of the nature of the case made by the complainants, discloses obvious defects in the bill, for which the demurrer ought to have been sustained by the court. :

**FIRST.** Burchell shows no title, or interest authorizing him to commence the suit on behalf of the people.

**SECOND.** The bill is multifarious, or, perhaps, rather there is a mis-joinder of complainants, and also causes of action.

**THIRD.** Both the complainants failed to show, that they are in any manner damaged or injured by the acts or omissions charged against the defendant.

**FOURTH.** There is no sufficient case made by the bill to authorize the interference of a court of equity, or to sustain its jurisdiction. Each of these objections is reached by a general demurrer.

1 Daniell Ch. Prac. 617, 395.

Story's Eq. Pld's, secs. 47, 279, 509.

The defendant may, at the hearing of his demurrer, assign other causes of demurrer, different, or in addition to, those assigned on the record; provided such causes are co-extensive with the causes of demurrer assigned upon the record.

Daniell's Ch. Prac. 657.

Story's Eq. Plds. sec. 464.

*Garlic vs. Strong*, 3 Paige, 440.

We have no law or practice requiring or authorizing the Circuit Attorneys to commence suits in their own names where the interests of the State are involved. Our Statute makes it the duty of the Circuit Attorney to attend each Circuit Court to be held in each of the counties of his circuit, and to prosecute all actions, suits and prosecutions, civil and criminal, in which the people of the State or any county within his circuit are concerned; and also to defend all actions brought against the counties of his circuit. But in neither of these cases is he to prosecute or defend in his own name.

Sec. 4, chap. 12, R. S.

Under the English practice, as well as the practice prevailing in many of the States, whenever a suit is instituted on behalf of the State or Government, or when the suit immediately concerns the rights of the State, the proper officer, usually the Attorney General, proceeds by information on behalf of the State. The institution of this suit in the name of Burchell, as States' Attorney for the 22d Judicial Circuit, may have been intended as a compliance with this rule, though the form of an information has not been pursued in the frame of the bill in this case.

But no such practice exists in this State. Our Statute provides that all causes, suits, motions and proceedings, in which the State shall be a party, plaintiff or complainant, shall be instituted and prosecuted in the name of the people of the State, whether such causes, suits and motions grow out of contracts, express or implied, or out of torts of any nature or description whatever, affecting the interests or welfare of the State.

Secs. 51 & 52 chap. <sup>39</sup>~~30~~ R. S.

The case made by the State, and that made by Bressler, are entirely different and distinct from each other, as to the nature of the rights claimed against the defendant; as to the injuries sustained by each of the parties; as to the source of the rights and interests claimed for each of the complainants, and of the liabilities imposed on the defendant; as to the relief sought by each against the defendant; and, finally, as to the nature of the defense that may be made to each. The State claims its rights under and by virtue of certain alleged trusts imposed on the county, in the conveyance of the lands to the county, while Bressler claims under and by virtue of a contract and purchase of a portion of the lands from the county. The State does not show in what way it is injured by the failure of the county to execute the alleged trusts, while Bressler's principal grievance is, that he will be compelled to pay the amount of his purchase money in cash, instead of labor. The relief sought by the State is, that the county should be enjoined from appropriating the proceeds of the sale to the school fund of the county, and compelled to drain the whole of the swamp lands lying within the county, while Bressler prays that the county be enjoined from collecting the amount of his purchase money, and that he have an opportunity afforded him to work it out in draining and reclaiming the land.

## II.

The case made by the bill is, to a great extent, based upon the act of congress, of September 28, 1850, granting the swamp and overflowed lands to the State. The argument being that, as that act provided that the proceeds of said lands should be applied exclusively, so far as necessary, to the purpose of reclaiming them by means of levees and drains. The State, in accepting the grant of lands, took them with the condition attached, and assumed the trust of applying the proceeds thereof to reclaiming the lands. That it is a trust running with the land, and one, from the performance of which, neither the State nor the county can release itself, and the proper execution of which can be enforced against the county in a court of equity.

But we deny that the State assumed any such trust, or liability, as is claimed ; and if the county assumed any liabilities in reference to these lands, they were such as were imposed by the grant from the State, and not such as were assumed by the State in accepting the grant from the general government, and Bressler's rights were such only as he acquired under his contract of purchase from the county.

The State took these lands in its sovereign capacity as a State, and the lands became a portion of its public domain, and their management and sale a matter of public policy with the State. The citizens of the State acquired no individual or private interest, or property, in the lands, by virtue of the grant to the State, nor did any citizen of the county acquire any such interest, or property, in the land, by the grant to the county.

The trust reposed by the United States, in the State of Illinois, is a personal trust in the public faith of the State, and not a property trust, and is exclusively under the control of the legislature of the State.

*Dunklin County vs. The District County Court  
of Dunklin Co., 23 Mo., 449.*

The Supreme Court of the United States, in speaking of the validity of a sale made by the State of Michigan of the school section donated by the United States to the State of Michigan, for school purposes, say that, the trust created by this compact relates to a subject of municipal concern, over which the power of the State is plenary and exclusive, and sustained the sale made by the State, though not in accordance with the purposes of the grant from the general government.

*Cooper vs. Roberts, 18 How. 173.*

See, also, to the same effect,

*Long vs. Brown, 4 Ala. 622.*

Suppose that after the State had received the patent for the lands,

the legislature had refused to pass any act whatever disposing of the lands, or to take any steps for draining and reclaiming the same, could any one have filed a bill, and through the court, have compelled the legislature to pass an act disposing of the lands, or compel the State, in any manner, to ditch and drain the same. The court has not the power to direct the legislature of a State by decree.

If it be true that the State received these lands in trust to sell and apply the monies arising from the sale thereof, in reclaiming and rendering them fit for cultivation, it is equally true that the trust is an entire trust, embracing all the lands within the State, and the fund, a common fund, to be laid out and expended, as far as necessary, throughout the whole State. Some of the counties have large quantities of these lands, which it will cost but little to drain, leaving them a surplus to be appropriated to other objects; while other counties having a much less quantity of land, and which it will cost more to drain, will not have sufficient means for that purpose. So that, if it be admitted that the State assumed any such trust in reference to these lands, the conveyance of them by the State to the counties in which they lie, under the provisions of the act of June, 22d, 1852, was as much a violation of such trust, as the one complained of in the bill—the same in character, if not in degree.

### III.

The whole legislation of the State shows that it is the intention of the legislature, as a matter of public policy, to leave the whole subject of the management, sale and disposition of the proceeds of the sales of swamp lands exclusively to the people of the different counties, in which they lie, through their respective boards of supervisors. By the act of February, 1855, the county commissioners of Jersey county were required to divide the money, arising from the sale of swamp lands in that county, among the different townships of the county, for school purposes.

Sess. Laws, 1855, page 48.

By act of February 10, 1857, the county court of Green county,

was authorized to order the money, arising from the sale of swamp lands, to be paid to such persons, and for such uses, as that court should see fit.

Sess. Laws, 1857, page 41.

By an act of February 9, 1859, it is provided, that all monies received from the sale of swamp lands in Henry county, shall be subject to the control of the board of supervisors of that county ; and may be, from time to time, appropriated in such sums, and in such manner, and for such objects, as said board may deem best for the interests of said county.

Sess. Laws, 1859, page 202.

Like provisions have been made for other counties of the State, by the legislature, from time to time.

By an act of February 24, 1859, the board of supervisors of Whiteside county were authorized and empowered to apportion to each of the townships, of said county, the school fund of said county, which had accrued on the sale of the swamp and overflowed lands therein, as they should deem expedient for the best interests of the county.

Sess. Laws, 1859, page 189.

By an act of the legislature, entitled " An Act for the sale of Swamp Lands, approved February 14, 1859, it is provided that the proceeds arising from any sale, or sales of (swamp lands) shall be subject to the order of the county judge for such purposes as the county court may direct. And in counties which have adopted township organization, the boards of Supervisors are authorized to carry out the provisions of this act. The provisions of the act are of the most general character ; and it cannot be doubted that it was the intention of the legislature, in the passage of this act, and of the acts above referred to, to leave to the people of the several counties, the entire and exclusive control of all matters relating to the sale and disposition of the lands, and of the disposition of the moneys arising from the sale thereof, and to release the counties from all liabilities and obligations, imposed by former statutes, requiring them to drain

the lands, or in reference to the disposition of the proceeds of the sales of the lands. And that so far as the State is concerned, all right or interest which it might have had, has been extinguished and released by the passage of that act. And the same as to any right or interest which Bressler might have had, in reference to the drainage of the land and the disposition of the moneys arising from the sales, provided the legislature had the power and authority to pass the act in question, in so far, as it may be supposed to have affected his rights or interests. No good reason can be given why the legislature could not pass that act. It does not impair the obligation of any contract to which Bressler was a party, or by which he acquired any rights. He purchased the lands of the county, at a given price, and gave his notes and mortgage to secure the purchase money, and that contract is still in force in all its parts.

In one sense, it may be said that, at the time of his purchase, he had the right to have his lands drained in common with the other swamp lands in the county, and the privilege of paying the price of his purchase in labor, upon complying with the provisions of the statute. But these rights are not such as are within the protection of the constitutional provision, prohibiting the legislature from passing any law impairing the validity of contracts. This constitutional provision is not intended to apply to public property; to the discharge of public duties; to possession or exercise of public rights, nor to any changes or qualifications in any of these, which the legislature of a State may, at any time, deem expedient.

2 Parsons on Contracts, page 511.

The contracts designed to be protected, are those by which *perfect rights—certain, definite, fixed private rights—of property, are vested*. These are clearly distinguishable from measures or engagements adopted or undertaken by the body politic, or State government, for the benefit of all, and from the necessity of the case, to be varied or discontinued, as the public good shall require.

*Butler vs. Pennsylvania*, 10 How. 402.

No part of the constitution of the United States applies to a State

law, divesting rights, which were vested in an individual by law, provided its effect be not to impair the obligation of a contract.

*Satterlee vs. Mattheson*, 2 Peters, U. S. 380.

The State of Maryland, in 1836, passed a law directing a subscription of \$3,000,000 to be made to the capital stock of the Baltimore and Ohio Railroad Company, with a proviso, that if said company shall not locate said road in the manner provided for in this act, then, and in that case, they should forfeit \$1,000,000 to the State of Maryland, for the use of Washington county. This proviso was inserted in the law for the benefit of Washington county, and to compel the construction of the road through certain points in that county. The subscription was made and accepted by the company. The company did not, however, finally locate their road within the limits of Washington county, as required by the act. The county commissioners brought suit, in the name of the State, to recover the \$1,000,000—claiming that the county acquired a vested right to the money, and any interest which the State might have, it held in trust for the county.

In March, 1841, and after the commencement of the suit, the legislature of the State passed another act, repealing so much of the prior act as made it the duty of the company to construct the road by the route therein prescribed, remitting and releasing the penalty, and directing the discontinuance of the suit brought to recover it. The Supreme Court of the United States sustained the latter act—holding that the proviso, in the former act, was a measure of State policy, which it had a right to change, if the policy was afterwards discovered to be erroneous, and neither the commissioners, nor the county, nor any one of its citizens, acquired any separate or private interest under it, which could be maintained in a court of justice.

1 American Railway Cases, page 1.

## IV.

Suppose it be admitted, that Bressler acquired an indefeasable right to have his lands drained, and to pay for them in labor, instead of cash, as a bare legal right; does he then make such a case as would authorize the interference of a court of equity, to give him the relief prayed for? In equity, it is not enough that a party shows that he has a strict legal right; he must make such a case as appeals to the equity of the court, and the court is bound to see that it really does that complete justice to all parties, which it aims at, and which is the ground of its jurisdiction. Does Bressler, then, make such a case as calls upon the court to interfere to change the public policy of the State, with reference to these lands, as declared by the legislature, and to compel the county of Whiteside to engage in the undertaking of draining and reclaiming some seventy thousand acres of swamp and overflowed lands, at an expense, if need be, of the amount of \$200,000, the sum received from the sale of the land, when it has been determined by the people of the county, to whom the legislature have seen fit to submit the question, that, as a matter of public policy, it would not be advisable so to do, and to prevent the county from collecting the interest money on the amount of his purchases, until the county shall give him the privilege of working out the amount of his purchase, at a price to be determined by competition with the world, instead of paying in cash?

The result of the case, as it now stands under the decree, is, that we must either reverse the public policy of the State, as thus declared, with reference to the lands in Whiteside, and also of the adjoining counties, should it become necessary to drain the lands in common, or give Bressler his 4000 acres of land, getting nothing for them in return.

## V.

In reference to the privilege of working out the amount of the purchase, which seems to be the principal grievance complained of,

and the matters mainly relied upon in the bill, it will be observed that the purport and effect of the act approved June 22, 1852, has been mistaken by the complainants in the case attempted to be made in the bill, the relief prayed, and also by the court in the decree rendered so far as these relate to that matter. That act requires the work of drainage to be let out at public auction to the lowest bidder. The persons to whom said lettings should be struck off, should enter into a bond for the faithful performance of the work so undertaken by him, and should any purchaser of the land be the lowest bidder at the lettings, the land so purchased might be paid for in work.

Sess. Laws, <sup>1852</sup> Secs. 14, 15 and 16.  
*Purples Stat. P. 9, 691.*

And there is nothing in the act which authorized any officer of the county to make any contract for the performance of the labor of draining the land, except in the manner prescribed in these sections. The decree of the court following the case made by the bill, orders that the defendant shall "suffer and permit the said complainant to pay and discharge the amount of the purchase money and the interest yet remaining unpaid in respect of all the land by him purchased in that behalf, in necessary labor to be done by him under the direction of the said board of supervisors, or of some officer thereof, in the construction of necessary drains and levees, and in the reclaiming of said lands by him so purchased, as by law provided."

The act, however, does provide that the purchasers may pay for their lands in cash, or secure the payment by executing a note and mortgage in the discretion of the Drainage Commissioner.

Secs. 8 and 16.

Again, the terms of the contract made by Bressler with the county in the purchase of his land, as to time and mode of payment, are entirely inconsistent and incompatible with the pretences now set up, of an understanding on his part that the lands were to be immediately divided into sections for draining, and the work commenced and prosecuted to completion by the county. His note and mortgage had five years to run. Let us suppose that in the

meantime, the county had offered the work of draining the lands at public auction, and that Bressler had not been the lowest bidder, or being the lowest bidder, had failed to give the security for the due performance of the work; where, in such case, would the county have procured the means necessary to prosecute the work or to pay others for doing it? The order of the board of supervisors ordering the sales and the published notices of the sales, copies of which are attached to the bill, not only rebut and contradict the alleged pretences of the county, that it intended to undertake immediately thereafter the work of draining the lands; but they show that it was not the understanding of the county or of the purchasers at the sales, that it should do so. And if, with this notice, Bressler saw fit to bid off lands in pursuance of this understanding, and to give his note and mortgage payable five years from date, with interest payable semi-annually, he cannot now repudiate the contract nor set up any rights in conflict with its terms, basing his privilege so to do on any rights acquired under the contract as a purchaser.

It is no where claimed in the bill that any special contract or undertaking was entered into by the county, at the time of the sale, in reference to the draining or reclaiming of these lands, or in relation to the disposition of the monies, unless it be in the averments of the "pretences" under which the sales were made, it is not claimed that any of the alleged pretences were contained either in the resolution of the board of supervisors or in the notices of sale, or in either the note, mortgage or deed. These were the evidences of contract, and the parties must be held to be estopped from denying that such evidences correctly represented the contract. No person or officer can hold out any pretences for the county by which the county will be bound, or upon which any one has a right to rely. The county acts through the board of supervisors and other officers; whatever the officer is empowered to do by law, he may do; if he exceeds his powers, his acts are simply void, and every person is presumed to know the limit of the powers of public officers; no officer of a county is authorized to make "pretences" for, or on behalf of, a county.

Although a demurrer admits the matters in the bill to be true, such admission is confined to matters that are well pleaded, i. e. matters of fact. It does not, therefore, admit any matters of law which are suggested in the bill or inferred from the facts stated. It does not admit matters contrary to a record pleaded and set out in bill, or any matter repugnant to other matters stated in the bill or contrary to that of which the court takes judicial notice.

1st Dan'l, Ch'y Prac., page 601 and 602.

The correct practice is not to render a decree directly upon overruling a demurrer to a bill in chancery, but the order should be that the defendant's answer the bill, and if they neglect to do so, the complainant may have the bill taken for confessed.

*Miller et al. vs. Davidson*, 3 Gil. 528.

F. SACKETT,

*Attorney for Plaintiff in Error.*

# SUPREME COURT,

THIRD GRAND DIVISION, }

APRIL TERM, A. D. 1862. }

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THE BOARD OF SUPERVISORS OF  
WHITESIDE COUNTY, STATE  
OF ILLINOIS,

*Plaintiffs in Error,*

vs.

ROBERT C. BURCHELL, STATE'S  
ATTORNEY OF THE TWENTY  
SECOND JUDICIAL CIRCUIT OF  
THE STATE OF ILLINOIS, AND  
PETER BRESSLER,

*Defendants in Error.*

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## ABSTRACT OF THE RECORD.

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Record. BILL for injunction and relief, filed by complainants below, on the 2d  
Page 1 day of May, A. D. 1860, in the Whiteside County Circuit Court, alleging  
2 that on the 28th day of September, A. D. 1850, and ever since that time  
there were lying and being within the county of Whiteside, large tracts  
of land, amounting to 65,366 acres, which were swamp, wet and over-

3 flowed, and thereby rendered unfit for occupancy, tillage or cultivation,  
and were also for that reason noxious, malarious, and detrimental to the  
health and well being of the citizens of said county, but of all of which  
3 lands were of easy and practical drainage; that up to the 28th day of  
September, A. D. 1850, all of said lands were a part of the public lands  
and domain of the United States; and that by the certain act of Con-  
gress, entitled "An act to enable the State of Arkansas and other States  
to reclaim the swamp and overflowed lands within their limits," ap-  
proved September 28, A. D. 1850, (to which act the said complainants in  
their bill beg leave specifically to refer) the said swamp and overflowed  
lands being in the said county of Whiteside, were granted to and vested  
in the State of Illinois, for the purpose and to the intent that said State  
should cause to be constructed the necessary levees and drains to render  
said lands fit for cultivation, and with the express condition, limitations  
and reservations that the proceeds of said lands, whether from sale or by  
4 direct appropriation in kind, should be applied exclusively, so far as  
necessary to the purpose of reclaiming said lands by means of such  
levees, and that such grant was accepted by the State subject to the  
trusts, conditions and limitations aforesaid.

4 The bill further alleges, that the State of Illinois, for the purpose of  
more effectually carrying into effect the trusts, conditions and limitations  
of said grant, and without any consideration other than the fulfillment of  
said trusts and the performance of the conditions and limitations afore-  
said, by an act of the General Assembly of said State, entitled "An act  
to dispose of the swamp and overflowed lands, and to pay the expenses  
of selecting and surveying the same, approved June 22d, A. D. 1852,  
grant and convey to the county of Whiteside all of the swamp and over-  
flowed lands lying within the limits of said county, upon the trusts, and  
to and for the uses, trusts, intents and purposes, and subject to the limi-  
tations and conditions in said act of Congress and in the said act of the  
5 Legislature of the State of Illinois, and the sundry acts amendatory  
thereto, contained, that is to say, among other things that the said lands  
so granted to said county should be under the care and superintendence  
of the Board of Supervisors of said county, whose duty it should be, at  
the next regular term after the passage of said act, approved June 22d,  
A. D. 1852, to appoint an officer styled "Drainage Commissioner," of

said county, to perform the several acts and things in that behalf, in said last mentioned act provided, and to sell at public auction, in the manner provided in said last mentioned act, to the highest bidder for cash, so much and such parts of said lands only as should be sufficient to fully drain and reclaim the whole of said lands, which said purchase money should be paid and discharged by such purchasers, at their option respectively, in labor to be performed by them in draining and reclaiming the said lands, as in said act provided; and that the county, by its proper officers in that behalf, after having ascertained what portion of said lands there were susceptible of being drained, with an estimate of the probable cost thereof should divide all such drainable lands into sections numbering 1, 2, 3 and 4, &c., respectively, and whenever there should be a sufficiency of said lands so sold to complete the draining and reclaiming of one or more of such sections, the same should, as soon as practicable, be put under contract, and the operation of draining and reclaiming commenced thereon, and in like manner should such work of draining and reclaiming progress until the avails of said lands so granted to said county should be exhausted or the drainage thereof completed as in said last mentioned act provided; that said county in laying off said work into sections as aforesaid should make such directions thereof as will enable such purchasers before mentioned to pay for said lands so respectively purchased by them, in labor to be performed by them respectively in and about the draining and reclaiming of said lands, as in said last mentioned act provided; and that said county of Whiteside, upon receiving said grant of said swamp and overflowed lands so subject to the trusts, limitations and provisions aforesaid, accepted the same, together with the trusts so confided in it, took possession of the said swamp and overflowed lands, and entered upon the use, management and control thereof, under the trusts, limitations and provisions of said grant, and in pursuance and in part performance thereof, did, by the Board of Supervisors of said county, on the 28th day of March, A. D. 1855, appoint William Pollock, Drainage Commissioner of said county, and did cause plats and graduated valuation of said swamp and overflowed lands to be made, and did, on the said 28th day of March, A. D. 1855, at the March term of said Board of Supervisors of that year, after the making and return of such plats and recording of such graduated valuation, appoint the second Monday of October, A. D. 1855, for the selling of a portion of

8 such swamp and overflowed lands in townships twenty and twenty-one, range seven, in said county, to wit : 25,316 acres, and did publish a notice thereof of the time and place of such sale, in the Sterling Times, a weekly newspaper published in said county, a copy of which is hereto attached and made part of this bill ; and that afterwards, on the second Monday of October, A. D. 1855, the said county, by the said Drainage Commissioner, under pretense that they, the said county, would apply the proceeds of said sale to the construction of the necessary drains and levees to reclaim said lands, and would well and faithfully observe, and keep and perform all the trusts, conditions and provisions of said grant, as specified and contained in said several acts mentioned, did sell large quantities of said swamp and overflowed lands so advertised, to wit : 25,316 and 2-100 acres, at various sums and prices per acre, amounting, in the aggregate, to \$73,122.32 ; and that all the lands so sold then, were, and ever since have been, susceptible of easy and practicable drainage, and by the construction of the necessary drains and levees, could and can be easily and profitably reclaimed and rendered fit and suitable for occupancy, tillage and cultivation, at an expense of money much less than the proceeds of said sale.

9 The bill further alleges that on the day of September, A. D. 1855, the Board of Supervisors of said county, ordered all that portion of said lands lying south of Rock River, and not theretofore ordered to be sold, and also the north tier of sections of township twenty, North, range seven, in said county, to be sold on the second Monday of March, A. D. 1856, upon a notice of sale similar to the one above referred to, and did, on the said second Monday of March, A. D. 1856, under the pretences aforesaid, and also under the pretence that they, the said Board of Supervisors, would suffer and permit the complainant, Peter Bressler, and others, the purchasers at said last mentioned sale, pay and discharge the amount of their several and respective purchases, in labor to be performed in the draining and reclaiming of said lands, did sell further  
10 large quantities of said swamp and overflowed lands, at various sums and prices per acre, amounting in the aggregate to at least \$77,150.88 ; and further, that all the said lands, and particularly all that portion thereof purchased by the said Peter Bressler, as described in said bill, then were, and ever since have been susceptible of easy and practicable

11 drainage, and profitably reclaimed and rendered fit and suitable for oc-  
cupancy, tillage and cultivation, at an expense much less than the pro-  
ceeds of said last mentioned sale. And that at said last mentioned sale  
12 the said complainant, Peter Bressler, relying on the said pretences of  
said county, and particularly upon the pretences that said county would  
suffer and permit him, at his option, to pay and discharge the amount of  
the purchase money of all lands by him purchased, in work and labor to  
be done and performed by him in the construction of necessary drains  
and levees, as in said act provided, and, in consideration thereof, did be-  
come a purchaser of large quantities of said swamp and overflowed  
lands, at sundry large prices, greatly exceeding, respectively, the value  
of said several parcels of land ; and further, that the said Peter Bressler  
did thereupon pay to the said county one-fourth of the said purchase  
money in cash, and did deliver to said county his several promissory  
notes, amounting, in the aggregate, to the sum of \$5,706.04, being the  
remaining three-quarters of the said purchase money payable in five  
years after the date thereof, with interest at the rate of six per cent.,  
payable semi-annually in advance, and to secure the notes made and de-  
13 livered to the Drainage Commissioner certain mortgages upon the real  
estate so purchased ; and did, at the same time, receive from said county  
deeds of conveyance to the lands so purchased. The bill further alleges  
14 that the complainant Bressler has paid to the county, at different times,  
as interest upon said notes, the sum of \$684.75 in cash ; and as to all  
the balance of said purchase money, that he was, and ever since has  
been, greatly desirous to pay and discharge the same, in labor to be done  
by him in draining and reclaiming said lands, and in the construction of  
the necessary levees and drains, as in said act provided. The bill fur-  
ther alleges, on information and belief, that the said county has, at  
divers times, and in divers manners, sold and conveyed all the other and  
remaining parcels of said swamp and overflowed lands, and that the  
whole amount of the proceeds of such sales, exclusive of the sum of  
\$12,520.75, collected as interest money, is \$170,775.36, and that amount  
is more than sufficient to construct the necessary levees and drains, and  
to reclaim all of said swamp and overflowed lands, and render the same  
fit for occupation.

15 And that the said Board of Supervisors, disregarding their duty in

that behalf, and the trusts in them confided, have failed, neglected, and refused to construct the necessary drains and levees to reclaim said lands, or to determine what portion of the same are susceptible of being drained, or to make any estimate of the probable cost thereof, or to divide such as were drainable, for the purpose of drainage, or to make any such divisions thereof as to enable the purchasers thereof to pay for lands by them purchased, in work in respect to such drainage or otherwise, or to cause any work to be done in any sections, divisions or parts of said lands, or to cause any notice of any lettings thereof, as in said act provided, or otherwise, or to take any step, or do any act in respect of the construction of any drains or levees, or the reclaiming of said lands except as in said bill stated, or to suffer or to permit the said complainant, Bressler, or other purchasers, to pay or discharge the amount of their several purchases, or any part thereof, in labor, as in said act specified, or otherwise.

16       The bill further alleges, that some time in the year 1857, the said  
Board of Supervisors, under pretence of performing their duties and  
obligations in that behalf, did drain and reclaim some three thousand  
17       acres of said land, lying in a small body in a remote portion of the  
county, at an expense not exceeding \$5,000; and further, that said Board  
of Supervisors is threatening and preparing to squander and waste the  
proceeds of said sales, and to divide and distribute the same among the  
several towns of the said county, for some pretended school or other pur-  
pose, but in fact for the purpose of more conveniently and craftily avoid-  
ing the performance of their duty and the execution of the trusts in  
them confided as aforesaid, and to place it beyond their power to keep  
and perform the same.

18       The bill further alleges that for the reason that the said Board of Su-  
pervisors had failed and neglected to perform their duties, and to execute  
the trusts confided to them in respect to the draining and reclaiming of  
the said lands, had refused to make any other or further payments upon  
his said notes and mortgages, and that thereupon the Board of Supervi-  
sors commenced suit against him at the October term, A. D. 1859, in the  
Whiteside County Circuit Court, to recover of and from him the several  
installments of interest expressed to be paid in said promissory notes, ac-

ording to the terms and effect thereof, which suit is still pending and undetermined in said court.

21       The bill, after setting out certain alleged pretences of the said Board of Supervisors, further charges that said swamp and overflowed lands so lying within said county, were so granted to said county for the consideration, intent and purpose, and none other, and subject to all the trusts, conditions, provisions, limitations and requirements in that behalf above mentioned, and that by such grant and conveyance, the State of Illinois granted and conveyed to the said county such title, interest and estate, and no more nor greater than the said State had received in that behalf, and that inasmuch as it was made in the grant to said State an  
22       express condition that the whole of the proceeds of said swamp and overflowed lands should be applied exclusively, so far as necessary, to the purpose of reclaiming by means of the construction of the necessary levees and drains, and for the purpose of carrying into effect the trusts and conditions of such grant in that behalf, above mentioned, the State of Illinois did not and could not, by any law or otherwise, vacate the conditions and trusts appertaining to said grant, and absolve the said county from their duty and obligations in that behalf, to the loss and injury of the complainant, Peter Bressler, and to the injury and detriment of the inhabitants of said county and the people of said State, in so far as the said swamp and overflowed lands were and are for that reason noxious, malarious, and detrimental to the health and well being of the inhabitants of said county and the people of said State: and further, that the said complainant, Bressler, did not, by an act, matter, or thing, either expressly or by implication, waive any of the said duties resting upon said county, in respect of the draining and reclaiming of said lands, and that said Board of Supervisors has not, by such expenditure of about \$5,000, or otherwise, performed such trusts or discharged itself from liability in that behalf.

23       Oath to the answer waived in the bill, and prayer that upon the final hearing of the case that said county be required, by decree and order of the court, to observe, keep, fulfill and perform all and singular, the trusts, provisions and limitations aforesaid in respect of said grant and the re-

quirements and provisions of said acts, and particularly that the said Board of Supervisors be so required to use, appropriate and apply the whole of the proceeds of the said several sales, and such interest money arising thereon, or so much thereof as shall be necessary in and about the construction of the necessary drains and levees to reclaim said swamp and overflowed lands, and to that end, with all reasonable dispatch to ascertain and to determine what portions of said swamp and overflowed lands were and are susceptible of being so drained and re-claimed, together with the probable and reasonable cost thereof, and im-24 mediately thereupon to divide such drainable lands into sections numbered respectively, 1, 2, 3, &c., and in so doing, to make such division thereof as will best enable the several purchasers of said land to pay and discharge the amounts of their respective purchases thereof, in necessary labor in that behalf as in said act approved June 22d, A. D. 1852, is particularly provided, and to suffer and permit the said complainant, Peter Bressler, to pay and discharge the amount of the purchase money and interest yet remaining unpaid of all the land by him so purchased, in necessary labor to be done by him in the construction of the necessary drains and levees, and in the reclaiming of the said lands by him so purchased, as in said act provided, and to do all other the acts, matters and things proper to be done by said county to the fulfillment of the trusts and performance of the conditions and requirements above mentioned in respect of said lands so granted to said county; and further, that the said Board of Supervisors and the Drainage Commissioner of said county, their, and each of their officers, agents and attorneys be perpetually enjoined from prosecuting said suit at law pending against the said Peter Bressler, and from instituting or prosecuting any suits or actions against him in respect of his said purchase money or 25 interest thereon until the said Board of Supervisors has first complied with the terms, conditions and requirements of such decree and order, as is prayed for as above, and further, until the said Peter Bressler shall have thereupon made default and refused, or failed to so pay for the land by him so purchased, in labor to be performed by him in that behalf; also, prayer for temporary injunction and general prayer for relief.

34           At the January term, A. D. 1861, of said court, defendant filed a  
general demurrer to the bill.

36           At the May term, A. D. 1861, of said court, the court overruled said  
demurrer, and the defendants not answering further, it was ordered by  
37           the court that the bill of complaint be taken as confessed as against the  
defendants ; and thereupon the cause was heard and decree rendered for  
38-9          the complainants as follows, to wit : It is therefore ordered, adjudged  
and decreed by the court, that the said Board of Supervisors shall ob-  
serve, keep, fulfill and perform all and singular the trusts, provisions  
and limitations in said bill of complaint, more particularly mentioned in  
respect of the certain grant of lands and the provision of certain acts of  
the General Assembly of the State of Illinois in respect thereof, in that  
behalf, in said bill of complaint more particularly mentioned. And  
particularly, that the said Board of Supervisors shall appropriate and  
apply the whole of the proceeds arising from the several sales made by  
them, of the swamp and overflowed lands appertaining to said county,  
and the interest moneys arising therefrom for so much thereof as shall  
be necessary in that behalf, in and about the construction of the neces-  
sary drains and levees to reclaim said swamp and overflowed lands ; and  
to that end that the said Board of Supervisors shall, with all reasonable  
dispatch, proceed according to law, to ascertain and determine what por-  
tions of said swamp and overflowed lands were and are susceptible of  
being drained and reclaimed, together with the probable and reasonable  
cost thereof, and shall immediately thereupon divide such drainable land  
into sections, numbered respectively, 1, 2, 3, &c., and, in so doing, shall  
make such divisions thereof as will best enable the several purchasers of  
said lands to pay and discharge the amounts of their respective pur-  
chases thereof, in necessary labor in that behalf, as in the certain act of  
40          the General Assembly of the State of Illinois, approved June 22d, A. D.  
1852, more particularly provided, and particularly shall suffer and per-  
mit the said complainant, Peter Bressler, to pay and discharge the  
amount of the purchase money and the interest yet remaining unpaid in  
respect of all the lands by him purchased in that behalf in necessary  
labor to be done by him, under the direction of the said Board of Super-  
visors, or of some officer thereof, in the construction of necessary drains  
and levees, and in the reclaiming of said lands by him so purchased, as

by law provided. And further, shall do and perform all other the acts, matters and things necessary and proper to be done by said county, or the proper officers thereof, in the fulfillment of the trusts and performances of the conditions and requirements limited and enjoined by said last mentioned act in the premises. And further, that the said Board of Supervisors and the Drainage Commissioner of said county, their, and each of their officers, agents and attorneys, absolutely and perpetually enjoined from prosecuting a certain suit at law, now pending in the Circuit Court of said county, in favor of the said Drainage Commissioner, and against the said complainant, Peter Bressler, more particularly entitled Peter V. Pollock, administrator of the estate of William Pollock, deceased, to the use of the county of Whiteside, &c., against Peter Bressler, and from instituting or prosecuting any suits or actions against him, the said Peter Bressler, in respect of his said purchase money or interest thereon, and from making any claim or demand in that behalf of or from the said Peter Bressler until the said Board of Supervisors shall have first complied with the terms, conditions and requirements of this decree and order; and further, until the said complainant, Peter Bressler shall have thereupon made default and refused or failed to thereupon so pay for the lands by him so purchased, in labor to be performed by him in that behalf as aforesaid. And further, that the said Board of Supervisors and the Drainage Commissioner and the School Commissioner of said county, their, and each of their officers, agents or attorneys, be absolutely and perpetually enjoined from dividing or distributing, among any of the towns or town officers of said county for any school or other purposes, any of the proceeds of said swamp and overflowed lands so appertaining to said county, or any interest moneys accruing thereon, or any securities, or choses in action taken or held in respect thereof, or from in any manner parting with the possession, custody or control of the same, or any part thereof, except to use and apply the same in the fulfillment of trusts and performance of the conditions and requirements of said last mentioned act in obedience to this decree, until the said Board of Supervisors shall have first kept and performed all and singular the conditions and requirements of this decree and order, and that the said defendants pay the costs of this suit.

## ASSIGNMENT OF ERRORS.

**First :** The court erred in overruling the demurrer to the bill of complainant; whereas, by the law of the case, the court should have sustained the demurrer of the defendant below.

**Second :** The court erred in taking said bill as confessed as against the defendants below, and rendering the decree aforesaid thereon without any order for the said defendants to answer the said bill.

**Third :** The court erred in rendering the decree aforesaid, for the reason that the decree is not authorized by the case made in the bill, and for the reason that the same is not authorized by the law of the land.

**Fourth :** The court erred in rendering the decree aforesaid, the same being so vague and uncertain that the defendants, therein named, cannot know with certainty what they are required to do or perform.

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Board Supervisors of  
Whiteside County

vs

Robert C. Burchill

Abstract

Filed April 21-1863,

L. Lorland  
clerk

STATE OF ILLINOIS, WHITESIDE COUNTY.

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Error to the Supreme Court at Ottawa, from Whiteside County. In  
Chancery, April Term, 1863.

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ROBERT C. BURCHELL, STATE'S ATTORNEY, IN AND FOR THE 22D  
JUDICIAL CIRCUIT OF SAID STATE, AND PETER BRESSLER,—vs.—THE  
BOARD OF SUPERVISORS OF SAID COUNTY.

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BRIEF OF POINTS AND AUTHORITIES FOR COMPLAINANT.

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The Act of Congress of Sept. 28th, 1850, by which the lands for which the notes mentioned in Bill was to secure purchase money, were ceded to the State of Illinois, provides as follows, to-wit: "Sec. 1st. Be it enacted, &c., &c., that to enable the State of Arkansas to construct the necessary levees and drains to reclaim the swamp and overflowed lands therein, the whole of those swamp and overflowed lands made unfit thereby for cultivation, which shall remain unsold at the passage of this act, shall be and the same are hereby granted to said State. Sect. 2. And, Be it further enacted, &c., that it shall be the duty of the Secretary of the Interior, as soon as may be practicable, to make out a list, &c., and transmit the same to the Governor, &c., at the request of said Governor, cause a patent to be issued to the State therefor, and on that patent the fee simple to said lands shall vest in the State, &c., subject to the disposal of the Legislature thereof; *provided*, however, that the proceeds of said lands whether from sale or by direct appropriation in kind, shall be applied *exclusively*, as far as necessary, to the purpose of reclaiming said lands by means of the levees and drains aforesaid."

Whether the State of Illinois took the lands by act of Congress free and clear of all incumbrance, and by an absolute title or in trust for a certain object, we do not discuss, as it is not necessary to a right understanding of this case. We only say that the wording of the act it-

self, and the decision of the District Court of Dunklin County, 23d Missouri Reports, page 449, appears to be conclusive in favor of the grant as a trust.

But suppose this were not so; that the grant to the State was absolute as counsel contend, it is clearly competent for the Legislature to make the county a *trustee* for a disposal both of the land and the proceeds thereof.

And that this was the intention of the Legislature, hardly admits of controversy. "A trust is a right to receive the profits, and in many cases, to dispose of the land itself for particular purposes, as directed by the lawful owner, or pointed out by the deed of settlement, or other conveyance, which created the trust." 2 Lill. Abr. 624. Apply this definition to the act of the Legislature, approved June 22d, 1852. "Be it enacted, &c., That all the swamp and overflowed lands granted to the State of Illinois by the act of Congress, entitled, &c., &c., approved September 28th, 1850, be and the same are hereby granted to the counties, respectively, in which the same may lie or be situated, *for the purpose of constructing the necessary levees and drains to reclaim the same, and the balance of said land, if any there be, after the same are reclaimed as aforesaid, shall be distributed in each county equally among the townships thereof, for the purpose of education, &c., &c.*; Purple's Statute, chap. 61, page 692,—and there can be no question but that the grant therein made by the Legislature created a trust for one certain object, to wit: the draining and reclaiming those lands. This is made still plainer by sec. 17, of the same act, which provides that "said County Court (now Board of Supervisors) shall not dispose of nor sell more of said lands than shall be absolutely necessary, to complete the reclaiming and draining the same; and in all cases where there are any lands remaining unsold after the completion of said draining, in any county, the lands so remaining unsold as aforesaid, *shall belong to and the same are hereby granted to the several townships in such county,*" &c., &c., thus showing the intention to be to grant to the county, land to be disposed of for one purpose, and only sufficient for that purpose;—for, as to all other lands, except a sufficiency for that end, the grant is to the township, and not to the county. The grant may be of one acre or ten thousand, according to the amount of land in a county and the expense of draining it.

Nothing can be more explicit than Sec. 1, as to the purpose of the grant, and nothing plainer than Sec. 17, that no more than was necessary for the purpose was granted, and it can need neither argument nor authority to show that the grant is one in trust, for that end and no other, and that the county is but a trustee and the people the beneficiary.

This being so, the Court had the power, and it was clearly its duty, on the presentation of proof of these facts, to compel defendants to carry out and execute the trust, and the more so, as it had taken upon itself the execution of it in part. All the right it possesses to sell land, and all power over it, and the proceeds thereof, are given by the act of the Legislature, and it is but strict justice to trustee and beneficiary, to compel a compliance with the law from which alone it derives any power in the premises, and as this is the only *end* and object of the decree, it is unobjectionable in that particular.

But it is said the Act of February 14th, 1859, gives to the Board full power to dispose of the lands and the moneys arising from the sale thereof, as the Board shall see fit. Yet it is clear that so far as that act relates to contracts for the sale of said lands made before its passage, it is clearly in violation of Sect. 17, Chap. 13, of the Constitution of the State, and as Courts are bound to construe the law so that it may be constitutional and valid when they will admit of such construction, the law in question must be held to apply only to contracts made after its passage.

Some of the obligations, indeed the principal ones, on the part of the County in its contract with Bressler, is to expend all the money, if necessary, arising from the sale of said lands in reclaiming the same, and to allow Bressler an opportunity to pay for the same in labor; obligations which it is easy to see must have been the great inducement to the purchase. Now, to give to the Board a right to dispose of these moneys in any other manner, to demand pay in any other way, is to impair the obligation of said contract, hence the act of 1859 cannot be constitutional and valid, as to contracts made, as Bressler's was, in 1855, and has nothing to do with a disposal of moneys arising from a sale made before its passage.

True, it was no part of Bressler's contract, that he might pay for his lands in ditching, &c., but it is equally true that it was a part of the contract, that he might do so if he would comply with the requirements of the law, and defendants were obligated to give him an opportunity to elect whether he would pay in cash or labor. But it is said that he made such election at the time of giving the notes, &c. What evidence of this is offered? The giving of the notes? This is no such evidence, for by Sect. 10th, of the act of June 22d, 1852, the purchaser is required to secure the payment of the purchase money on the day of sale, or the land must be re-sold; besides the time when the Commissioner can let such draining, &c., is undetermined, as he must await the action of the Board and the Surveyor, and until the letting is had, there is no opportunity to elect to pay cash, or in labor. The notes were given for five years, it is true; yet even this length of time appears not to be sufficient for the County to complete its arrangements for the letting, and Bressler never yet has had the opportunity to elect what he will do. The notes were given in compliance with Sect. 10th, to prevent a re-sale, and he never waived any rights, or made any election. Again, it is objected that the decree is uncertain. But it simply prohibits the collection of the notes till certain specified things has been done, and enjoins upon the Board the keeping and performing of the Act of Congress, of Sept. 28th, 1850, and of the Legislature of the State, of June 22d, 1852, and as these acts are definite and certain, the decree is definite and certain. The only remaining point made by counsel is, "Is there not a misjoinder of parties complainant?"

The general rule in equity is "all persons who are interested in the object of the suit, ought to be made parties to it." Story's Equity, Pl. Sec. 76 and 77 and notes. The object of this suit was to compel defendants to expend the purchase price of lands sold by them, in draining and reclaiming the swamp lands of the county, and in no other manner. In this object the *people* of the county all have an interest; an interest as well defined, though perhaps not as great, as though

Bressler had bought the whole of the swamp lands of the county, and the question was whether any of the lands are to be drained; for their interest grows out of the fact that the draining of such lands is beneficial to the health of community.

Sec. 4, of chap. 12, Purple's Statute, says: "It shall, also, be the duty of the Attorney General and of each Circuit Attorney, to attend each Circuit Court to be held in each of the counties belonging to his judicial circuit, and to *commence and prosecute* all actions, suits, processes, indictments, civil and criminal, in which the people of this State, or any county *within such judicial circuit, may be concerned.*" Now, as Burchell was, at the time of filing of said Bill, States Attorney of the District embracing the county of Whiteside, and liable to all the duties imposed on the Circuit Attorney by said Section, he was not only a proper, but a necessary, party to the bill. As State's Attorney, he stands a representative of the people of the county, and it was both his right and duty to commence and prosecute this suit for the said people, and as Bressler's rights are different from those of the people, at large, it is clear that he is a necessary party, and there is no misjoinder of parties. The decree is accordance with the prayer of the bill, is definite and certain, is in conformity with law and equity, and should be sustained.

JOHNSON & TELLER,  
*Of Counsel for Compt.*



STATE OF ILLINOIS, WHITESIDE COUNTY.

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Error to the Supreme Court at Ottawa, from Whiteside County. In  
Chancery, April Term, 1863.

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ROBERT C. BURCHELL, STATE'S ATTORNEY, IN AND FOR THE 22<sup>D</sup>  
JUDICIAL CIRCUIT OF SAID STATE, AND PETER BRESSLER, <sup>Plff.</sup> VS. THE  
BOARD OF SUPERVISORS OF SAID COUNTY. <sup>vs. The</sup>

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But it is said the Act of February 14th, 1859, gives to the Board full power to dispose of the lands and the moneys arising from the sale thereof, as the Board shall see fit. Yet it is clear that so far as that act relates to contracts for the sale of said lands made before its passage, it is clearly in violation of Sect. 17, Chap. 13, of the Constitution of the State, and as Courts are bound to construe the law so that it may be constitutional and valid when they will admit of such construction, the law in question must be held to apply only to contracts made after its passage.

Some of the obligations, indeed the principal ones, on the part of the County in its contract with Bressler, is to expend all the money, if necessary, arising from the sale of said lands in reclaiming the same, and to allow Bressler an opportunity to pay for the same in labor; obligations which it is easy to see must have been the great inducement to the purchase. Now, to give to the Board a right to dispose of these moneys in any other manner, to demand pay in any other way, is to impair the obligation of said contract, hence the act of 1859 cannot be constitutional and valid, as to contracts made, as Bressler's was, in 1855, and has nothing to do with a disposal of moneys arising from a sale made before its passage.

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JOHNSON & TELLER,  
*Of Counsel for Compl't.*

<sup>48</sup>  
Superior Court  
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Whitman Co. Plffs -  
vs  
Error  
Robert C Burchell  
State Atty vs St At  
Defrs - in Error  
Brief for Defrs in Error

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J. Leland Mc

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STATE OF ILLINOIS, WHITESIDE COUNTY.

Error to the Supreme Court at Ottawa, from Whiteside County. In  
Chancery, April Term, 1863.

ROBERT C. BURCHELL, STATE'S ATTORNEY, IN AND FOR THE 22D  
JUDICIAL CIRCUIT OF SAID STATE, AND PETER BRESSLER, VS. THE  
BOARD OF SUPERVISORS OF SAID COUNTY. *P. B. Burchell* *P. Bressler*

BRIEF OF POINTS AND AUTHORITIES FOR COMPLAINANT.

The Act of Congress of Sept. 28th, 1850, by which the lands for which the notes mentioned in Bill was to secure purchase money, were ceded to the State of Illinois, provides as follows, to-wit: "Sec. 1st. Be it enacted, &c., &c., that to enable the State of Arkansas to construct the necessary levees and drains to reclaim the swamp and overflowed lands therein, the whole of those swamp and overflowed lands made unfit thereby for cultivation, which shall remain unsold at the passage of this act, shall be and the same are hereby granted to said State. Sect. 2. And, Be it further enacted, &c., that it shall be the duty of the Secretary of the Interior, as soon as may be practicable, to make out a list, &c., and transmit the same to the Governor, &c., at the request of said Governor, cause a patent to be issued to the State therefor, and on that patent the fee simple to said lands shall vest in the State, &c., subject to the disposal of the Legislature thereof; *provided*, however, that the proceeds of said lands whether from sale or by direct appropriation in kind, shall be applied *exclusively*, as far as necessary, to the purpose of reclaiming said lands by means of the levees and drains aforesaid."

Whether the State of Illinois took the lands by act of Congress free and clear of all incumbrance, and by an absolute title or in trust for a certain object, we do not discuss, as it is not necessary to a right understanding of this case. We only say that the wording of the act it-

self, and the decision of the District Court of Dunklin County, 23d Missouri Reports, page 449, appears to be conclusive in favor of the grant as a trust.

But suppose this were not so; that the grant to the State was absolute as counsel contend, it is clearly competent for the Legislature to make the county a *trustee* for a disposal both of the land and the proceeds thereof.

And that this was the intention of the Legislature, hardly admits of controversy. "A trust is a right to receive the profits, and in many cases, to dispose of the land itself for particular purposes, as directed by the lawful owner, or pointed out by the deed of settlement, or other conveyance, which created the trust." 2 Lill. Abr. 624. Apply this definition to the act of the Legislature, approved June 22d, 1852. "Be it enacted, &c., That all the swamp and overflowed lands granted to the State of Illinois by the act of Congress, entitled, &c., &c., approved September 28th, 1850, be and the same are hereby granted to the counties, respectively, in which the same may lie or be situated, *for the purpose* of constructing the *necessary levees and drains to reclaim the same*, and the *balance* of said land, if any *there be*, after the same are reclaimed as aforesaid, shall be *distributed in each county equally among the townships* thereof, for the purpose of education, &c., &c.; Purple's Statute, chap. 61, page 692,—and there can be no question but that the grant therein made by the Legislature created a trust for one certain object, to wit: the draining and reclaiming those lands. This is made still plainer by sec. 17, of the same act, which provides that "said County Court (now Board of Supervisors) shall not dispose of nor sell more of said lands than shall be absolutely necessary, to complete the reclaiming and draining the same; and in all cases where there are any lands remaining unsold after the completion of said draining, in any county, the lands so remaining unsold as aforesaid, *shall belong to and the same are hereby granted to the several townships in such county,*" &c., &c., thus showing the intention to be to grant to the county, land to be disposed of for one purpose, and only sufficient for that purpose;—for, as to all other lands, except a sufficiency for that end, the grant is to the township, and not to the county. The grant may be of one acre or ten thousand, according to the amount of land in a county and the expense of draining it.

Nothing can be more explicit than Sec. 1, as to the purpose of the grant, and nothing plainer than Sec. 17, that no more than was necessary for the purpose was granted, and it can need neither argument nor authority to show that the grant is one in trust, for that end and no other, and that the county is but a trustee and the people the beneficiary.

This being so, the Court had the power, and it was clearly its duty, on the presentation of proof of these facts, to compel defendants to carry out and execute the trust, and the more so, as it had taken upon itself the execution of it in part. All the right it possesses to sell land, and all power over it, and the proceeds thereof, are given by the act of the Legislature, and it is but strict justice to trustee and beneficiary, to compel a compliance with the law from which alone it derives any power in the premises, and as this is the only end and object of the decree, it is unobjectionable in that particular.

But it is said the Act of February 14th, 1859, gives to the Board full power to dispose of the lands and the moneys arising from the sale thereof, as the Board shall see fit. Yet it is clear that so far as that act relates to contracts for the sale of said lands made before its passage, it is clearly in violation of Sect. 17, Chap. 13, of the Constitution of the State, and as Courts are bound to construe the law so that it may be constitutional and valid when they will admit of such construction, the law in question must be held to apply only to contracts made after its passage.

Some of the obligations, indeed the principal ones, on the part of the County in its contract with Bressler, is to expend all the money, if necessary, arising from the sale of said lands in reclaiming the same, and to allow Bressler an opportunity to pay for the same in labor; obligations which it is easy to see must have been the great inducement to the purchase. Now, to give to the Board a right to dispose of these moneys in any other manner, to demand pay in any other way, is to impair the obligation of said contract, hence the act of 1859 cannot be constitutional and valid, as to contracts made, as Bressler's was, in 1855, and has nothing to do with a disposal of moneys arising from a sale made before its passage.

True, it was no part of Bressler's contract, that he might pay for his lands in ditching, &c., but it is equally true that it was a part of the contract, that he might do so if he would comply with the requirements of the law, and defendants were obligated to give him an opportunity to elect whether he would pay in cash or labor. But it is said that he made such election at the time of giving the notes, &c. What evidence of this is offered? The giving of the notes? This is no such evidence, for by Sect. 10th, of the act of June 22d, 1852; the purchaser is required to secure the payment of the purchase money on the day of sale, or the land must be re-sold; besides the time when the Commissioner can let such draining, &c., is undetermined, as he must await the action of the Board and the Surveyor, and until the letting is had, there is no opportunity to elect to pay cash, or in labor. The notes were given for five years, it is true; yet even this length of time appears not to be sufficient for the County to complete its arrangements for the letting, and Bressler never yet has had the opportunity to elect what he will do. The notes were given in compliance with Sect. 10th, to prevent a re-sale, and he never waived any rights, or made any election. Again, it is objected that the decree is uncertain. But it simply prohibits the collection of the notes till certain specified things has been done, and enjoins upon the Board the keeping and performing of the Act of Congress, of Sept. 28th, 1850, and of the Legislature of the State, of June 22d, 1852, and as these acts are definite and certain, the decree is definite and certain. The only remaining point made by counsel is, "Is there not a misjoinder of parties complainant?"

The general rule in equity is "all persons who are *interested* in the object of the suit, ought to be made parties to it." Story's Equity, Pl. Sec. 76 and 77 and notes. The object of this suit was to compel defendants to expend the purchase price of lands sold by them, in draining and reclaiming the swamp lands of the county, and in no other manner. In this object the *people* of the county all have an interest; an interest as well defined, though perhaps not as great, as though

Bressler had bought the whole of the swamp lands of the county, and the question was whether any of the lands are to be drained; for their interest grows out of the fact that the draining of such lands is beneficial to the health of community.

Sec. 4, of chap. 12, Purple's Statute, says: "It shall, also, be the duty of the Attorney General and of each Circuit Attorney, to attend each Circuit Court to be held in each of the counties belonging to his judicial circuit, and to *commence and prosecute* all actions, suits, processes, indictments, civil and criminal, in which the people of this State, or any county within such judicial circuit, may be concerned." Now, as Burchell was, at the time of filing of said Bill, States Attorney of the District embracing the county of Whiteside, and liable to all the duties imposed on the Circuit Attorney by said Section, he was not only a proper, but a necessary, party to the bill. As State's Attorney, he stands a representative of the people of the county, and it was both his right and duty to commence and prosecute this suit for the said people, and as Bressler's rights are different from those of the people, at large, it is clear that he is a necessary party, and there is no misjoinder of parties. The decree is accordance with the prayer of the bill, is definite and certain, is in conformity with law and equity, and should be sustained.

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*Of Counsel for Compt't.*

